United States Senate
Committee on the Judiciary

Questionnaire for Non-Judicial Nominees

Appendix 12(b)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

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Questionnaire for Non-Judicial Nominees

Attachments to Question 12(b)

WILLIAM PELHAM BARR
Nominee to be United States Attorney General

MILLER CENTER OF PUBLIC AFFAIRS

UNIVERSITY OF VIRGINIA

The Separation of Powers: The Roles of Independent Counsels, Inspectors General, Executive Privilege and Executive Orders

Final Report of the National Commission on the Separation of Powers

December 7, 1998

The Miller Center of Public Affairs ◆ 2201 Old Ivy Road ◆ Charlottesville, Virginia 22903

Voice: (804) 924-7236 ◆ Fax: (804) 982-2739 ◆ Web: http://www.virginia.edu/~miller

Founded in 1975, The Miller Center of Public Affairs at the University of Virginia is a nonpartisan research institute that supports scholarship on the national and international policies of the United States. Miller Center programs emphasize both the substance and the process of national policymaking, with a special emphasis on the American presidency and the executive branch of government. Philip Zelikow, White Burkett Miller Professor of History, is Director of the Miller Center.

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NATIONAL COMMISSION ON THE SEPARATION OF POWERS

FINAL REPORT

December 7, 1998

INTRODUCTION

The separation of governmental powers is one of the hallmarks of the American Constitutional system. In Britain and in the many other countries that follow the Westminster model, the executive, legislative and judicial functions are all handled, wholly or in important measure, by the single entity known as parliament. In the United States, however, each of these functions is carried out by a separate branch of government, namely the Presidency, the Congress and the Judiciary.

The three are interrelated, not only in the way they derive their power but also in the way they exercise it. The President, senators and representatives are directly elected; judges and justices are appointed by the President with the consent of the Senate. Congress can remove a President from office by impeachment for "high crimes and misdemeanors." All three branches can be involved in the formulation of laws; Congress must pass them, the President must sign or veto them and the courts are frequently called upon to adjudge their constitutionality and meaning. This arrangement of separated and overlapping functions creates a system of checks and balances that is another hallmark of the American system.

Some of this is set out in the Constitution. Some is codified in the decisions of the Supreme Court, such as Marbury v. Madison, which established the right of the Court to rule on the constitutionality of acts of Congress. Many gray areas remain, however, where the delineation of powers is not so clear and where, in fact, the branches of government, usually the legislative and executive, grapple from time to time for dominance. Often these struggles take place deep within the bureaucracy, but sometimes, as in the extensive investigation of a sitting President by an independent counsel and the resulting consideration by Congress of his report, they become the stuff of national preoccupation.

One important struggle was recently decided by the Supreme Court when it declared unconstitutional the line-item veto statute passed by Congress after years of agitation for a Federal law giving Presidents the right, already enjoyed by many governors, to approve some parts and disapprove other parts of legislation. President Clinton signed the bill and used its powers on several occasions, but the Court subsequently found that it ceded to the President Congressional powers that Congress was not empowered to cede in the absence of a Constitutional amendment.

The Miller Center Commission on the Separation of Powers is the eighth such commission established by the Center to study aspects of the Federal government, in a series dating back to 1980. Like the others, it is independent of party and faction. Over the last two and one-half years, it has conducted a methodical and scholarly survey, examining a number of areas where the separation of powers is unclear and selecting five of them for detailed consideration. These are: The office of independent counsel, the uses of inspectors general throughout the government, the doctrine of executive privilege, the issuance of executive orders and the War Powers Resolution passed in 1973. All are related in some way to the contentious debates that arose out of the Vietnam War and the Watergate scandal. The Commission makes specific recommendations on each.

INDEPENDENT COUNSEL

Doubtless the most topical of these recommendations relates to the functioning of independent counsels, who operate under a law first passed in 1978 for a five-year period and renewed and amended several times since. This is a role born of the distrust in government created by Watergate. When the holders of specified high offices, 49 in all, are alleged to have committed crimes, the authority of the Attorney General himself to investigate the matter is severely limited, and the Attorney General must consider requesting the judicial appointment of an independent counsel.

If such a counsel is deemed to be necessary, the duty to faithfully execute the laws, which is vested in the President by the Constitution, and normally exercised through the Department of Justice with respect to criminal law, is in effect transferred in cases where the President might have

a conflict of interest. From November, 1979, to May, 1998, no fewer than 21 independent counsels have been named.

The Commission concludes that the law is seriously flawed. It finds that the Attorney General is unduly restricted in deciding the need for independent counsel. The Attorney General can remove the counsel, but only for cause, and that can be contested in the courts. In the practical world, no counsel is likely to be removed by an Attorney General. There are no realistic fiscal or time constraints on the counsel. In effect the law creates miniature departments of justice, independent of the Attorney General, to prosecute particular persons.

Driven by the fact that the independent counsel statute will expire next year unless Congress acts to revise or extend it, the Commission considered a number of ways in which the statute establishing the independent counsel could be reformed. It concludes that there is no way of correcting the inherent absence of fairness from the procedure itself --- chiefly the isolation of the putative defendant from the safeguards afforded to all other subjects of Federal criminal investigations.

A paper discussing the law was prepared for the Commission by former Attorney General Griffin B. Bell, its co-chairman. The paper states, quoting from a 1988 brief that he wrote with two other former attorneys general: "The inherent checks and balances the system supplies heighten the occupational hazards of a prosecutor: taking too narrow a focus, a possible loss of perspective and a single-minded pursuit of alleged suspects seeking evidence of some misconduct. This search for a crime to fit the publicly identified suspect is generally unknown or should be unknown to our criminal justice system." Judge Bell also criticized the provision of the statute requiring independent counsels to issue final reports. In some though not all cases, such as the Iran-contra investigation, he said, these can suggest guilt even though there is no indictment in the case.

Gerhard Casper, the president of Stanford University, who is a nationally recognized authority on the separation of powers, said recently that he doubted that the office of independent counsel could be eliminated because, he argued, once established, such institutions are hard to uproot.

The Commission urges that the independent counsel statute be permitted to expire next year under the five-year "sunset" provision. But the Commission recognizes that the possibility of conflicts of interest in investigations of high officials is far from imaginary. The difficulty lies in striking a balance between holding such officials accountable and protecting their inherent right to fair treatment. The Commission suggests that when the President, the Vice President or the Attorney General is involved in a criminal investigation, the Attorney General should be required under a new statute to recuse himself or herself from the case. The Attorney General, though recused, could appoint either outside counsel or a Justice Department official who was not disqualified. The Attorney General would remain accountable as the responsible official, entitled to dismiss the counsel or Justice Department official for cause.

INSPECTORS GENERAL

After the Watergate scandal, Congress took a second step to check abuse in the executive branch, passing the Inspector General Act of 1978. The act, as amended, currently empowers the President to appoint inspectors general in each of 28 Federal agencies, and prohibits senior officials within those agencies from obstructing any audit or investigation by an IG or blocking the issuance of any subpoena by an IG during the course of an audit or investigation. A President may remove an IG, but only after reporting his reasons to Congress, which raises separation of powers concerns. (We note, however, that in practice the reasons can be perfunctory, as when President Reagan told Congress that he was removing all the IGs because he needed to have the "fullest confidence in the ability, integrity and commitment" of each.)

IGs must also report to Congress twice a year, which means they are subject to two masters, in that they serve as members of the Executive Branch yet report to Congress about the internal workings of their agencies. They serve, in other words, within executive agencies as Congressional ferrets of dubious constitutionality, though the issue has not been raised in court. While the system creates conflict, it is also useful in the detection and prevention of fraud and abuse within the Executive Branch. Once again, as with the independent counsel, it is a question of balance.

As one vivid demonstration of how the system operates, the Commission cites the role of the IG in the Justice Department, which attenuates the Attorney General's authority. The IG can always threaten the Attorney General with a "seven-day letter." That is to say, whenever the IG has serious concerns about the way things are being handled within the Justice Department, he can report his concerns at once to the Attorney General, who then has seven days to send the report to Congress.

It has even been suggested that inspectors general be permitted to prosecute certain kinds of cases. Currently, when an IG uncovers evidence of criminal conduct, the prosecutions are conducted by United States Attorneys and the Department of Justice. Judge Bell, who also reported to the Commission on this subject, said that any grant of prosecutorial authority would represent an unacceptable widening of the IG's authority. The Commission opposes any further moves in that direction. The fundamental problem is that no one watches the watchdogs. There is no central agency that collects information about what each inspector general is doing, which varies widely from agency to agency. The IGs, born independent by design, are now so independent that some have begun to run amok. They constantly seek more authority, and when it is not expressly granted, some take it anyway. No one is there to check their power. The Commission endorses the suggestion recently made by Senator Susan Collins that the General Accounting Office or some other neutral agency periodically review the inspector generals' operations to insure consistency and to rein in IGs who exceed their statutory mandate.

EXECUTIVE PRIVILEGE

Whenever Congress exercises its power to "check and balance" the actions of the executive through investigation and corrective legislation, one of the President's main defenses has been invoking executive privilege. That is the President's right to withhold documents and testimony concerning the content of communications with his top-level staff and other executive branch officials relating to official business. It is strongest where national security is concerned, weakest where Congress is investigating allegedly illegal or unethical actions by executive branch officials.

Many Presidents --- from Jackson in 1833, who refused to comply with a Senate request for a document relating to the Bank of the United States, to Reagan in 1982 --- who ordered an aide not to reply to a House committee's subpoena, have cited the doctrine of executive privilege. Perhaps surprisingly, such assertions have been subjected to court proceedings only twice to test their constitutionality.

In the case of President Nixon's Watergate tapes, an appellate court rejected a claim of absolute privilege but declined to enforce a subpoena issued by the Senate Watergate Committee, absent a showing of a specific need for the tapes. In the case of President Reagan's Environmental Protection Agency administrator, whom Congress cited for contempt, the President sued for a declaratory judgment that his claim was well taken. The judge ruled that suit premature, pending any criminal action to enforce the citation, but pregnantly observed that the difficulties of the case "should encourage the two branches to settle their differences without further judicial involvement. Compromise and cooperation, rather than confrontation, should be the aim of the parties."

Executive privilege is much more difficult to sustain against the demands of criminal juries for information relevant to a criminal indictment or trial. Even though the lower courts had previously refused to enforce the Senate Watergate subpoena for the Nixon tapes, the Supreme Court upheld a subpoena for the same tapes issued by the judge presiding over the criminal trial of the principal Watergate defendants. In response to the President's claim that some of the tapes referred to national security matters, the Supreme Court authorized the trial judge to examine the tapes *in camera* and to provide the prosecutor with those, including the so-called "smoking gun" tapes, which did not raise national security concerns. As to executive claims outside the national security area, the Court instructed the trial judge to balance the jury's need for each document against the President's assertion of the right to withhold it.

The Watergate case profoundly affected executive privilege, as it affected so many things. Lloyd N. Cutler, twice a Presidential counsel, argued in a study for the Commission: "While the President still holds a strong legal hand when he asserts executive privilege vis-à-vis the Congress, his political power and will to do so have been greatly weakened by

Watergate and its aftermath. Watergate seriously impaired the moral status of the Presidency, and substantially enhanced the moral status of Congressional investigations. Since Watergate, incumbent Presidents have been reluctant to assert executive privilege whenever they or their closest advisors or family members have been accused of illegal or unethical misconduct. This reluctance is induced by a well-founded concern that their political opponents and a portion of the media will react by charging 'cover-up,' and that odious comparisons will be drawn to Watergate."

In the Commission's view, the waivers of executive privilege by modern Presidents, including Bill Clinton, are doing serious long-term damage to the ability of Presidents to perform their duties. When Presidents dare not seek confidential advice for fear it will not remain confidential, when Presidential aides and cabinet members are reluctant to offer advice for the same reason, when all top executive branch officials are loath to write memoranda or make records of their consultations with one another, Presidents are ill-equipped to exercise their full executive power. Moreover, historians and biographers will lose their most important source materials. The Commission therefore recommends that Congress reduce its demands on the Presidency concerning its internal deliberations, and that Presidents invoke executive privilege to resist unreasonably invasive demands from Congress. The Presidency cannot function with a Congressional TV surveillance camera at the White House.

EXECUTIVE ORDERS: THE WAR POWERS ACT

The use of executive orders is almost as old as the republic. The first, issued by Thomas Jefferson, led to the Marbury v. Madison decision, which established the Supreme Court's power to decide the constitutionality of acts of Congress but left untouched another highly significant issue --- the power of the President alone, by executive order, to take binding actions not expressly authorized by the legislature. It is a critical issue for the separation of powers, and although more than 13,000 executive orders have now been published, the issue has not been resolved to this day.

When Congress passes and the President signs legislation expressly delegating some legislative power to the President, such as the power to make environmental or safety regulations, the courts have generally sustained the delegations. (But, as noted above, the Supreme Court overturned a more sweeping delegation, the Line Item Veto Act.) The separation of powers question arises in its most difficult form when Congress has delegated nothing, and the President relies on his own explicit or implicit powers. Two examples are President Truman's seizure of the steel mills during the Korean War and President Carter's suspension of court actions by U. S. nationals against the government of Iran; a third, the standoff over the War Powers Resolution, is treated separately below.

In the steel case, the Supreme Court ruled against President Truman, noting that Congress had voted down a bill that would have delegated seizure power to him. In the Iranian case, the court upheld President Carter's order as a legitimate exercise of his foreign-policy powers. The issues created in these and other cases have been managed without significant damage to the principle of checks and balances. But the commission believes the War Powers Resolution creates a serious risk of such damage and that further steps should be taken to limit that risk.

Born of American involvement in Vietnam, the War Powers Resolution reflects the legislature's desire to reassert its prerogatives in foreign affairs, which had been eroded by the Executive Branch over a long period. It is intended to deal with the modern reality that armed conflicts involving American troops abroad have become more commonplace and declarations of war have become rarer. The resolution requires the President "in every possible instance" to consult with Congress before committing armed forces to hostilities and keep consulting until they are no longer involved in hostilities or have been removed from the war zone.

Although widely derided as unwise, unconstitutional or both, the resolution has never been subject to definitive Constitutional review. Presidents have ignored it when using force for short-term operations and sought approval for major operations such as the Gulf War without conceding that they need it. Congress has skirted confrontation as well. In any event, modern technology makes it impractical to apply the War Powers Resolution to the most important war decision of all, responding to a nuclear attack. Here the need for speed, not Presidential usurpation, has removed

Congress from the equation. Similarly, the need for secrecy has made it impossible to consult large numbers of members of Congress in cases of hostage-rescue missions.

Nevertheless, it remains true that Presidents cannot effectively exercise their shared powers to make foreign policy and to wage war without the cooperation of Congress, and in achieving such cooperation, as George Shultz said, "trust is the coin of the realm." To build that trust, the next President and Congress would be well advised, before deploying armed forces, to consult the majority and minority leaders and the relevant committee leaders of both houses. Another possibility, the Commission believes, would be an agreement to amend the resolution to remove the generalized requirement to consult Congress, limiting the duty to consult to designated leaders, while at the same time repealing the probably unconstitutional requirement to withdraw American forces if Congress has not concurred within 60 days. In the complex world we inhabit today, no greater degree of Congressional consultation and involvement seems feasible.

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COMMISSION MEMBERSHIP

Howard H. Baker, Jr., co-chair, was United States senator from Tennessee from 1967 to 1985, and chief of staff in the Reagan administration. He practices law in the Knoxville, Tennessee firm of Baker, Donelson, Bearman & Caldwell, with offices in Washington, D.C.

Griffin B. Bell, co-chair, was Attorney General of the United States from 1977 to 1979. He is a senior partner in the law firm of King & Spalding in Atlanta.

R.W. Apple, Jr. is chief correspondent of the *New York Times*. He has reported for the New York Times since 1963, writing from more than 100 countries.

Lloyd N. Cutler is Senior Counsel to the Washington law firm of Wilmer, Cutler & Pickering. He served as White House counsel for Presidents Carter and Clinton and was special counsel to President Carter on the ratification of the SALT II Treaty.

William P. Barr served as Attorney General in the Bush Administration. He is Executive Vice-President and General Counsel of GTE Corporation.

Andrew H. Card, Jr. is the president and chief executive officer of the American Automobile Manufacturers Association. He served in President Bush's cabinet as Secretary of Transportation.

Lawrence S. Eagleburger was Secretary of State from 1992 until 1993. He served in the Foreign Service for 27 years. In 1993, he joined the law firm of Baker, Worthington, Crossley, Stansberry and Woolf as Senior Foreign Policy Advisor.

William Frenzel is a guest scholar at he Brookings Institution in Washington D.C. During his 20 year tenure in the House of Representatives (R-Minn.), he served as ranking minority member of the House Budget Committee and was a member of the Ways and Means Committee and its trade subcommittee.

Paul D. Gewirtz is the Potter Stewart Professor of Constitutional Law at Yale University.

Juanita Kreps is James B. Duke Professor of Economics and Vice President Emeritus, Duke University. She served as Secretary of Commerce in the Carter Administration.

Daniel J. Meador is the James Monroe Professor of Law Emeritus at the University of Virginia. He served as Assistant Attorney General, Office for Improvements in the Administration of Justice, U.S. Department of Justice, from 1977 to 1979.

Joshua I. Smith is the chairman and chief executive officer of MAXIMA Corp, a computer systems and management information products and services firm. He served as Chairman of the U.S. Commission on Minority business Development under the Bush Administration and was a member of the Executive Committee of the 1990 Economic Summit of Industrialized Nations.

Sander Vanocur was a television journalist and commentator. He is presently host of "Movies in Time" on the History Channel.

William Webster is a senior partner with Milbank, Tweed, Hadley &McCloy, in Washington, D.C. He served as the director of the FBI from1978 until 1987 and of the CIA from 1987 until 1991. From 1973 until 1978, he served as judge, U.S. Court of Appeals.

Kenneth Thompson, the Commonwealth Professor of Government and Foreign Affairs at the University of Virginia, served as Commission coordinator. During his tenure as Director of the Miller Center from 1979 to 1998, he established the National Commissions program as a way to fulfill a key Miller Center mission: to examine and improve the American presidency. He is currently Resident Scholar at the Miller Center.

THE STATE OF VIOLENT CRIME IN AMERICA

January 1996

First Report of

THE COUNCIL ON CRIME IN AMERICA

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THE COUNCIL ON CRIME IN AMERICA

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A PROGRAM OF
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The Council on Crime in America was established in November 1995 to examine violent crime, crime prevention and law enforcement. It seeks to provide rigorous, factual information on the scope of violent crime to individuals, citizen-based groups, and officials who wish to develop effective, community-based anti-crime strategies. The bipartisan Council is comprised of leading experts on fighting crime at the federal, state and local levels. The views expressed in the Council's publications do not necessarily reflect the official views of the members of the Council.

The Council on Crime in America is a program of the New Citizenship Project (NCP), a Washington-based public policy organization. The NCP was founded in June 1994 to help forge a cohesive agenda for reinvigorating citizenship in an era marked by growing skepticism toward big government. For further information on the Council on Crime in America or on the NCP, please contact:

The New Citizenship Project
1150 Seventeenth Street, N.W., Suite 510
Washington, DC 20036
Phone: (202) 822-8333 Fax: (202) 822-8325

TEN HIGHLIGHTS

The American people are basically right about violent crime. The facts and figures support the public's principle fears of crime: **Revolving-door justice *is* a reality**. About one-third of all persons arrested for a violent crime (murder, rape, robbery, assault) are on probation, parole, or pretrial release; the vast majority of convicted criminals are *not* incarcerated; barely one criminal goes to prison for every 100 violent victimizations; and most violent prisoners serve less than half their time behind bars before being released. **Most prisoners *are* violent or repeat criminals**. Since 1974 over 90 percent of state prisoners have committed a violent crime or been sentenced to incarceration or probation one or more times in the past; even most "nonviolent" prisoners have long adult and juvenile criminal histories; and many state prisoners are probation or parole violators whose latest convictions were for violent crimes including murder and rape. **Prisons *do* cut crime**. Millions of violent and property crimes are averted each year by keeping plea-bargained convicted criminals behind bars; tens of thousands of Americans have been killed or maimed by prisoners who were released early; and, as both empirical studies and common sense clearly suggest, if we freed any significant number of imprisoned felons tonight, we would have more murder and mayhem on the streets tomorrow.

Americans must search for better, more cost-effective ways of **preventing** violent crime and **protecting** themselves and their loved ones from violent and repeat criminals, adult and juvenile. But our first order of business must be **restraining** known, convicted, violent and repeat criminals. **Restraining violent criminals** is a necessary but insufficient condition for meeting America's crime challenges, reforming the justice system, and **restoring public trust** in the system and in representative democracy itself.

We hope that people will take the time to read this report from cover to cover. The national media have generally ignored the truth about the extent and dire consequences of revolving-door justice and the social benefits of incarceration. But in deference to convention and the needs of busy readers, we offer the following ten highlights from the pages ahead:

1. Despite recent reports of a decline in crime, crime rates remain at historic highs. America is a ticking violent crime bomb. In 1993 the actual number of completed violent crimes (10.8 million) was 5.6 times higher than the number of violent crimes reported to the police (1.9 million). In particular, rates of violent juvenile crime and weapons offenses have been increasing dramatically and by the year 2000 could spiral out of control.

2. There were 43.6 million criminal victimizations in America in 1993. One out of four criminal victimizations in America today is violent. Violent crimes committed in a single year will cost Americans about $426 billion. The risk of being victimized by violent crime exceeds many other significant life risks. Violent crime in America is increasingly concentrated by race, place, and age.

3. Public understanding of violent crime is far greater than is often supposed. Those citizens who are objectively most likely to be victimized are most worried about being victimized.

4. Americans are plagued by revolving-door justice. The justice system imprisons barely one criminal for every 100 violent crimes. Over half of convicted violent felons are not even sentenced to prison. About one in three violent crimes are committed by persons "under supervision" in the community at the time that they murder, rape, or attack.

5. On any given day, seven offenders are on the street for every three who are behind bars. During 1994 about 4.2 million cases were handled on probation and 1.1 million were processed on parole. On any given day, there are about 1.5 times more convicted violent offenders out on the streets on probation or parole than behind bars.

6. Since 1977 over 400,000 Americans have been murdered. Recent evidence shows that community-based offenders on probation, parole, pretrial release, or other types of "supervision" have been responsible for a third of all violent crimes including murders. Adding bureaucratic insult to human tragedy, the federal government and most state corrections agencies keep plenty of data such as the kind and amount of "treatment" received by imprisoned rapists, but do not compile or retain comprehensive data on such questions as the ages of rape victims or how many convicted murderers were on probation, parole, or some other form of "supervision" at the very moment they killed.

7. In 1991, 45 percent of state prisoners were persons who, at the very time they committed their latest crimes, were on probation or parole. While free in the community, they committed at least 218,000 violent crimes including 13,200 murders and 11,600 rapes (over half of the rapes against children).

8. Since 1974 over 90 percent of all state prisoners have been violent offenders or recidivists. Between 1980 and 1993, the number of persons in state prisons for violent crimes grew by 221,000, 1.3 times the growth in imprisoned "drug offenders." Over 80 percent of imprisoned state and federal drug offenders are drug traffickers with multiple-offense histories. The average quantity of drugs involved in federal cocaine trafficking cases is 183 pounds. In the year prior to their imprisonment, half or more of all prisoners commit at least a dozen serious crimes, excluding all drug crimes. Even if measured only in terms of enhanced public safety, the cost to society of letting most violent or repeat prisoners out early is at least twice as much as keeping them in prison for all or most of their terms.

9. Most violent prisoners serve less than half their time in prison before being released. Most prisons are neither severely "overcrowded" nor without substantial programs for inmates. On average, murderers released from state prisons in 1992 served only 5.9 years. Despite the enactment of mandatory minimum laws, between 1985 and 1992 the average maximum sentences of prisoners declined about 15 percent from 78 months to 67 months. In 1992 the actual time served by violent felons (both jail credits and prison) was 43 months. Since it has been in effect, slightly over 1,000 thrice-convicted felons have been sentenced under California's "three strikes" law, not all of them for life. The full facts of their cases--including the much-publicized case of the "pizza thief"--do far more to underline than to undercut the case for imprisoning violent and repeat felons.

10. The juvenile justice system operates as the first revolving door. In 1991 about 51,000 male juveniles were in custody, a third of them for violent offenses. In 1992 alone, there were over 110,000 juvenile arrests for violent crimes and over 1.6 million juvenile arrests for other crimes. Stronger law enforcement and incarceration can work to restrain violent juvenile and adult criminals, enhance public safety, and restore public trust in the justice system--and in representative government itself.

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THE STATE OF VIOLENT CRIME IN AMERICA

I. America's Three Crime Challenges

Americans face at least three distinct but related crime challenges. First is the challenge of *preventing* at-risk children from becoming juveniles or adults who criminally violate the life, liberty and property of others by murdering, assaulting, raping, robbing, burglarizing, or dealing deadly drugs. Second is the challenge of *protecting* ourselves from victimization at the hands of juvenile and adult criminals. Third is the challenge of *restraining* convicted but community-based juvenile and adult criminals so that they cannot commit additional crimes against persons or property.

Facing up to the first challenge--preventing at-risk children from becoming criminals--means focusing our attention on the earliest stages of youth development. As every study shows, after all is said and done, the most serious criminals are males who begin committing crimes at a very early age. Many crime-prone boys, including the most violent ones, embark on their criminal careers well before they reach puberty; few wait until they are old enough to vote or legally take a drink before committing their first serious crimes. In thinking about the root causes of crime, conservatives stress such factors as fatherlessness and extreme moral poverty, while liberals stress such factors as hopelessness and extreme economic poverty. But nearly everyone now agrees that society's best anti-crime insurance policy would be to produce children who are born to loving, responsible parents or guardians, and raised in homes, schools, and neighborhoods where their life prospects--becoming literate, graduating from high school, escaping abuse and neglect, avoiding serious criminal victimization, landing a decent job--increase rather than diminish from birth into their 20's.

Facing up to the second challenge--protecting ourselves from juvenile and adult street criminals--means acknowledging that our vulnerability to criminal victimization varies according to a mix of at last three sets of factors: the quantity and quality of government law enforcement resources; the extent and efficacy of community-based anti-crime initiatives; and the size and scope of individual efforts to make the localities where we live, work, worship, recreate, attend school, shop, or do business relatively impervious to crime. At the extremes, and other things being equal, the residents of a well-policed neighborhood with an active town-watch association and many people or businesses who invest in security hardware or services will be much better protected from crime than the residents of an under-policed community where neighbors remain strangers and few people or businesses are able or willing to make such private investments.

Facing up to the third challenge--restraining convicted criminals from committing more crimes--means recognizing that a large fraction of all serious crime, including a large fraction of all violent crime, is committed by repeat criminals who have had numerous contacts with the justice system. In effect, much of crime in America is a self-inflicted wound. Each year a significant number of murders, rapes, robberies, assaults, burglaries, and drug crimes are committed by criminals whom the system has repeatedly had in hand but repeatedly let go, offenders who are serially placed in custody and released back to the streets under-supervised, ill-supervised, or not supervised at all.

As this great nation nears the 21st century, Americans can and should seek to achieve all three goals--prevention, protection, and restraint. As is perfectly obvious, progress on any one of these goals may well constitute progress on either or both of the other two goals as well. For example, fewer at-risk children who become criminals translates directly into fewer at-large criminals against whom we need to protect ourselves and fewer convicted criminals who need to be restrained. Likewise, better

community-based anti-crime efforts or more rigorous restraints on convicted predators spells fewer deviant, delinquent, or criminal influences on the lives of severely at-risk children.

But it is a mistake--in some cases, as we shall document below, quite literally a fatal mistake--to suppose that substantial progress on any one of these goals is necessary to making substantial progress on either or both of the other two.

For example, in debates over crime policy, one often hears it said that "Incarceration is not the answer." But if incarceration is not the answer, then what, precisely, is the question? If the question is how Americans can achieve substantially higher levels of crime prevention, then incarcerating convicted violent or repeat criminals who have been committing murder or wreaking mayhem on the streets for years is hardly the answer. But if the question is how Americans can achieve substantially greater levels of restraint against such offenders, then incarceration is most definitely a large part (though by no means the sum total) of the answer.

Likewise, one often sees crime experts quoted approvingly by journalists and pundits to the effect that "More incarceration does not cut crime." But as these self-same experts like to stress, crime rates are a function of complex linkages among demographic trends, socio-economic variables, and public policies. Given the multi-variate character of crime, it would be bizarre if crime rates did move in lockstep with incarceration rates. At the same time, it would be doubly curious if incarcerating violent or repeat criminals, most of whom commit many more serious crimes than they are ever prosecuted or punished for committing, did not cut crime. While imprisoned, a high-rate violent or repeat criminal cannot commit new crimes against anyone except other prisoners, staff, or visitors. In fact, as we shall document in detail below, incarceration does have a significant marginal reduction-effect on crime, and is well worth the cost in the vast majority (though not all) cases.

By the same token, some much-cited commentators and tough-on-crime lawmakers reflexively disparage community-based substance abuse treatment programs, gang-violence prevention networks, teen-pregnancy counseling centers, church-run "safe havens," and diversionary recreational programs for youth offenders (for example, the much-maligned "midnight basketball"). Such "touchy-feely" programs, they insist, do more to coddle or coax delinquents and criminals than to cut crime. Yet many of these same voices will acknowledge that most serious crime is indeed committed by very bad boys from very bad neighborhoods. To be worthwhile, such community-based programs (precious few of which are funded by Washington or receive other public funds, and most of which operate on shoestring budgets) need not decimate juvenile crime rates; they need only to divert a small number of youth who would otherwise be headed for a gang, a gun, a prison, or a premature death.

Indeed, it is a grave conceptual error--and an even worse practical mistake--to conclude that because few such programs have withstood the tests of scientific scrutiny, because they are so very hard to replicate widely, or because they do not ultimately take every bad guy off the streets, all we can and should do is wait to arrest and incarcerate.

To offer just one illustration, almost everyone reveres the 91-year-old voluntary Big Brothers/Big Sisters (BB/BS) program. In 1995, BB/BS maintained 75,000 active matches between an adult volunteer and a child. A recent scientific study tracked 959 10- to 16-year-olds who applied to BB/BS in 1992 and 1993. Over 60 percent of the youth were boys and more than half were minority group members (70 percent African-American).

Almost all lived with a single parent, 80 percent were from low-income households, and 30 percent had witnessed or experienced domestic violence. Half of the applicants got into the program; the other half were placed on a waiting list. On average, the adult-youth pairs met for three to four hours three times a month for at least a year. Each group was tracked for eighteen months. The study found that the simple addition of a Big Brother or Big Sister to a youngster's life cut first-time drug use by 46 percent (and reduced alcohol use as well), lowered school absenteeism by 52 percent (and improved school performance), and, perhaps best of all, reduced violent behavior (assaults) by 33 percent.[1]

Does anyone truly doubt that in at least some cases such prevention programs might succeed in diverting at least some youth away from crime, or that additional human and financial resources devoted to BB/BS or kindred programs would constitute a wise anti-crime investment? And does anyone truly doubt that in too many cases, and despite every social program intervention, a number of at-risk boys will go on to terrorize their families, neighbors, and total strangers and will need to be incarcerated, both for the sake of public safety and because they deserve punishment? We doubt neither set of propositions.

1. Prevention, Protection, Restraint

Above all else, Americans and their leaders must be totally honest and realistic about the state of our applied policy knowledge with respect to crime, and, in turn, about government's capacities as an agent of crime prevention, protection, and restraint.

On prevention, we all know that at-risk youth of whatever race, region, religion, demographic description, or socio-economic status who are born healthy to good families and are fortunate to have good teachers, coaches, clergy, and other caring adults in their lives are much less likely than otherwise comparable children to become either crime victims or victimizers. And we all know that not all children are born so lucky.

The hard social fact is that America is now home to nearly 70 million children age 18 or younger, one of the largest youth cohorts in decades. As many as 15 million of these youngsters are growing up in relative poverty, many in places where the institutions of civil society--families, schools, churches, voluntary associations--are proving too weak to keep them on the straight and narrow.

The tragic and frightening numbers on juvenile crime contained in this report counsel that neither more spending by Washington, the states, or the cities, nor the mere withdrawal of government, can prevent today's at-risk four- to seven-year-old boys from becoming the next decade's 14- to 17-year-old predatory street felons or the next century's first big class of adult career criminals.

On protection, we are convinced that the drops in serious crime that occurred in the first half of the 1990's in New York City, Houston, and several other cities were due in no small measure to innovative community-based policing strategies, concomitant community-based citizen anti-crime initiatives, and continued target-hardening by private individuals and businesses. In this report, we conclude by briefly summarizing some of the best and latest empirical evidence on the efficacy of policing, and draw some preliminary but highly positive crime-protection lessons from recent success stories.

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[1]Joseph P. Tierney and Jean Baldwin Grossman with Nancy L. Resch, *Making A Difference: An Impact Study of Big Brothers/Big Sisters* (Philadelphia: Public/Private Ventures, November 1995).

Through the Council's forthcoming hearings in several cities, we look forward to learning more about such successes, and how, if at all, they can be replicated and sustained.

But make no mistake: Recent drops in serious crime are but the lull before the coming crime storm. As this report forecasts, this storm is gathering in the form of a demographic bulge of young, highly crime-prone males. Between now and the year 2005, enormous upward pressure will be exerted on crime rates. Redoubling crime protection efforts will not keep the storm off shore. But it can help to keep its human and financial damage to a minimum.

On restraint, the facts, figures, and findings detailed in this report amply justify the frustrations and fears of crime-weary Americans, most especially their profound displeasure with a justice system that is not doing nearly enough to restrain convicted violent and repeat criminals from committing more crimes, including crimes committed while on probation, parole, or pretrial release. As things now stand, each and every day, and in far too many ways, the justice system institutionalizes crime without punishment, and invites convicted offenders, adult and juvenile, to return to crime without restraint.

2. Revolving-Door Justice Versus Representative Democracy

As some of the best empirical political science research of the last thirty years plainly suggests, "Voters are not fools."[2] On crime and most other issues, the American people are far more capable than not of relating their beliefs and interests to electoral and policy choices, far more rational than reactionary, far more informed than ignorant, and far more savvy than simple-minded about the relative social costs and benefits of competing policy options.

Most average Americans understand perfectly well that government cannot "solve" the nation's crime problem. They understand that government's capacity to prevent crime and protect them from criminals is limited, not limitless. They stand ready to spend more on prisons and other means of restraint, and are aware of the opportunity costs of doing so. They even accept, albeit begrudgingly, that some arrested criminals are bound to escape justice on legal technicalities, and that every so many felons out on pretrial release, probation, or parole are bound to elude supervision and commit new crimes.

But what the American people do not accept, and ought not to have to accept, is government's prolonged and persistent failure to restrain convicted violent and repeat criminals. Nothing could be more fundamental to the government's holding up its end of the social contract. A government incapable of restraining known criminals in its custody cannot be trusted to do any number of inherently more complicated and costly public chores, domestic or international. A government that passes wave after wave of "get-tough" anti-crime laws but often proves toothless in the execution of those laws is a

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[2]V.O. Key, *The Responsible Electorate* (Harvard University Press, 1966). Also see Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences* (University of Chicago Press, 1992); John Zaller, *The Nature and Origins of Mass Opinion* (Cambridge University Press, 1992); William G. Mayer, *The Changing American Mind* (University of Michigan Press, 1992); and Morris Fiorina, *Retrospective Voting in American National Elections* (Yale University Press, 1981); Milton Lodge et al., "The Responsive Voter: Campaign Information and the Dynamics of Candidate Evaluation," *American Political Science Review*, June 1995, pp. 309-326; and Donald E. Stokes and John J. Dilulio, Jr., "The Setting: Valence Politics in Modern Presidential Elections," in Michael J. Nelson, ed., *The 1992 Elections* (Congressional Quarterly Press, 1993), chapter 1.

government well on its way to destroying public confidence in the integrity of lawmakers, in the prudence of judges, and in the competence of public administrators.

In 1993 and again in 1994, there was but one public institution in which the people had less confidence than they did in the U.S. Congress, namely, the criminal justice system.[3] Such poll results merely serve to reinforce our keen collective sense, bred by our combined years of public service, personal and professional experience, and intensive study, that government's failure to restrain convicted violent or repeat criminals has done as much as any other policy failure of the last thirty years to bring about the loss of public trust and confidence in our political institutions.

3. About This Report

In this, our first report, we begin with the challenge of restraining convicted criminals. We do so for at least four reasons. First, of the three crime challenges facing America, restraint is the most urgent, immediate, and tractable within the solitary compass of public policy and governmental authority. Second, we find overwhelming evidence that great gains to public safety can be realized by keeping violent or repeat criminals behind bars longer, by tightening enforcement of the terms of their community-based supervision, or (as we prefer) by doing both. Third, we feel that it is morally wrong to continue administering justice in ways that radically discount both how dangerous many community-based felons truly are, and how much punishment they truly deserve when measured by the full weight of their criminal acts, adult and juvenile, against life, liberty, and property.

But the fourth and overarching reason we begin with restraint is because no representative democracy, not even America's, can long survive the sort of deep and disheartening lack of public trust that swirls about the bleak reality of revolving-door justice. It is long past time to speak the truth, the whole truth, and nothing but the truth to the American people about revolving-door justice, especially as it relates to violent criminals.

Thus, in the remainder of this report we offer a detailed overview of the following: recent criminal victimization trends, with a special focus on violent juvenile crime today and tomorrow; the present extent and heavy toll of revolving-door justice; recent evidence on the efficacy of incarceration as a crime-restraint tool; and recent evidence on the efficacy of policing as a crime-protection tool.

We intend for this report to inform the American public, elected leaders, justice system professionals, judges, journalists, and others who are engaged in the civic discourse on crime policy. We hope that it will help to shape future deliberations on the challenges of crime prevention, protection, and restraint, and echo as a bipartisan moral call to arms.

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[3]The Gallup Poll News Service, April 25, 1994. According to the Gallup data, in both 1993 and 1994, 18 percent of poll respondents expressed a "great deal" or "quite a lot" of confidence in the U.S. Congress, versus 17 percent in 1993 and 15 percent in 1994 for the criminal justice system. But the police were an exception, enjoying over 50 percent public confidence in both years, on a par with organized religion and a distant third to the military.

II. America's Ticking Crime Bomb

The title of a recent story in the *New York Times* almost got it right: "Crime Continues to Decline, but Experts Warn of Coming 'Storm' of Juvenile Violence."[4] We say "almost" right rather than exactly right for at least four reasons.

First, national crime rates have been dropping in the 1990's, but that decrease has been heavily concentrated in a handful of high-crime big cities like New York City and Houston. Second, even if the large drops in crime in New York City and elsewhere continued for the next five years (and, as we shall see, they most definitely will not), the people of New York City and the rest of the nation would still face levels of homicide and other serious crime that are many times higher than pre-1970 norms. Third, not only is the storm of juvenile violence coming, it has already touched down in some places. And, fourth, like most popular accounts of crime and punishment in America, the *Times* story focused on crime data gathered by the Federal Bureau of Investigation (FBI), which counts only certain crimes reported to the police, and significantly underestimates the fraction of all crime that is violent crime.

Still, the story captured the big point. As all the best and most recent data make plain, America is a ticking violent crime bomb, and there is little time remaining to prepare for the blast.

1. Violent Crime By The Numbers: UCR and NCVS

There are two main sources of information about crime in America. The oldest and still the one cited most widely is the FBI's annual Uniform Crime Reports (UCR). Begun in 1929, the UCR tallies crimes reported to state and local law enforcement agencies. The UCR counts seven reported "index crimes," which, in turn, are often divided into "violent" crimes and "property crimes." The violent crimes in the UCR include murders and non-negligent manslaughters, forcible rapes, robberies, and aggravated assaults, while the property crimes are burglaries, larceny, thefts, and motor vehicle thefts. The overall crime rate rose steadily from 1960 to 1980, by each of these measures. Since 1980, the property crime rate has stabilized somewhat, while the rate of violent crime continued to increase during the 1980s but may have leveled off in the early 1990s.

But there are at least three limits to the FBI's crime data. First, remember that the UCR is based only on crimes reported to the police. Second, local police departments determine how to compile their statistics, which has given rise to informed suspicions of systematic undercounting in given periods by some big-city departments intent on reporting a reduction in crime. Third, the FBI uses a method of "hierarchical" counting in which only the "most serious" act in any one incident is recorded. If a woman is raped and her wallet is stolen, for example, the FBI records the rape but not the theft.

Although efforts to enrich the FBI's crime data are underway, it is not clear how successful they will be. For example, a number of states and localities are now experimenting with the FBI's National Incident-Based Crime Reporting System, or NIBRS. Under NIBRS, data are collected on 46 specific crimes. For each incident, there are a half-dozen categories of reporting, including details about the crime, the victim, and the offender. NIBRS includes a multiple-offense option in order to avoid the problem

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[4]Fox Butterfield, "Crime Continues to Decline, but Experts Warn of Coming 'Storm' of Juvenile Violence," *New York Times*, November 19, 1995, p. A18.

mentioned a moment ago. But the software problems with NIBRS have yet to be cracked, and the day when this complex database will be operational in 16,000 separate law enforcement agencies remains a long way off.

The other main source of crime data is the National Crime Victimization Survey (NCVS) of the U.S. Bureau of Justice Statistics (BJS). About 50,000 households and over 100,000 individuals have participated in the NCVS each year since 1973, making it the second largest household survey conducted by the federal government. The NCVS counts violent crimes (rapes, sexual assaults, robberies, aggravated assaults, simple assaults) and property crimes (burglaries, motor vehicle thefts, and thefts of other property). The survey reports that the overall level of crime has decreased since its peak in 1981. But rates for most types of crime have tended to fluctuate from year to year.

Generally speaking, the NCVS is a more reliable measure of crime than the UCR. And in recent years, the NCVS and the UCR trend lines have become more parallel (which tells us, in effect, that the UCR has been getting better). But the NCVS has been far from perfect. For example, the NCVS has undercounted the actual incidence of and increase in several types of violent crime. After consultations over the last decade with a consortium of experts in criminology, survey design, and statistics, the BJS has recently redesigned its survey to address this problem. It has also greatly improved the NCVS in other ways, including computer-assisted telephone interviewing and "short cues"--examples of specific people, places, objects, or actions which may have been associated with a victimization--used to jog respondents' memories of events.

The first survey to make use of this redesign was the BJS report on criminal victimization in 1993, released in May 1995. It is only a slight exaggeration to say that this BJS report is the first reliable tally of crime in America committed in a single calendar year.

Table 1 summarizes the NCVS crime data for 1993. It shows that in 1993, U.S. residents age 12 or older experienced a total of 43.6 million crimes, including nearly 11 million violent crimes (25 percent), and over 32 million property crimes (75 percent). That year there were 51.5 violent victimizations per 1,000 persons and 322 property crimes per 1,000 persons.

Table 1. Criminal victimizations and victimization rates, 1993: Estimates from the redesigned National Crime Victimization Survey

Type of crime	Number of victimizations (1,000's)	Victimization rates (per 1,000 persons age 12 or older)
All crimes	43,622	...
Personal crimes[a]	11,409	53.9
Crimes of violence	10,896	51.5
Completed violence	3,226	15.3
Attempted/threatened violence	7,670	36.3
Rape/Sexual assault	485	2.3
Rape/attempted rape	313	1.5
Rape	160	.8
Attempted rape	152	.7
Sexual assault	173	.8
Robbery	1,307	6.2
Completed/property taken	826	3.9
With injury	276	1.3
Without injury	549	2.6
Attempted to take property	481	2.3
With injury	100	.5
Without injury	381	1.8
Assault	9,104	43.0
Aggravated	2,578	12.2
With injury	713	3.4
Threatened with weapon	1,865	8.8
Simple	6,525	30.8
With minor injury	1,358	6.4
Without injury	5,167	24.4
Property crimes	32,213	322.4
Household burglary	5,995	60.0
Completed	4,835	48.4
Forcible entry	1,858	18.6
Unlawful entry without force	2,977	29.8
Attempted forcible entry	1,160	11.6
Motor vehicle theft	1,967	19.7
Completed	1,297	13.0
Attempted	670	6.7
Theft	24,250	242.7
Completed[b]	23,033	230.5
Less than $50	9,642	96.5
$50-$249	7,688	76.9
$250 or more	4,264	42.7
Attempted	1,217	12.2

Note: These data are preliminary and may very slightly from the final estimates. Completed violent crimes include completed rape, sexual assault, completed robbery with and without injury, aggravated assault with injury, and simple assault with minor injury. The total population age 12 or older was 209,352,860 in 1992; in 1993 it was 211,524,770. The total number of households in 1992 was 99,046,200; in 1993 it was 99,926,400.

... Not applicable

[a]The victimization survey cannot measure murder because of the inability to question the victim. Personal crimes include purse snatching and pocket picking, not shown separately.

[b]Includes thefts in which the amount taken was not ascertained.

Source: *Criminal Victimization 1993* (Bureau of Justice Statistics, May 1995), p. 2.

Table 2 summarizes the UCR crime data for 1993. It shows that the total number of reported crimes in 1993 recorded by the FBI was 14.1 million, including 1.9 million violent crimes (13 percent) and 12.2 million property crimes (87 percent). In 1993, there were 7.46 reported violent crimes per 1,000 persons and 47.3 reported property crimes per 1,000 persons.

Table 2. Reported crimes and reported crime rates, 1993: Data from the Uniform Crime Reports

Type of reported crimes	Number of reported crimes (1,000's)	Reported crime rates per 1,000 persons
All index crimes	14,141	54.82
Violent crimes	1,924	7.46
Murder	24.5	.095
Rape	104	.406
Robbery	659	25.5
Assault	1,135	4.40
Property crimes	12,216	47.36
Burglary	2,384	10.99
Larceny	7,820	30.32
Motor theft	1,561	6.05

Note: Offense totals are rounded. Rates calculated based on Bureau of Census estimate for total national population in 1990: 257,908,000. Complete data for 1993 were not available for the states of Illinois and Kansas; their crime counts were estimated.
Source: *Crime in the United States, 1993* (Federal Bureau of Investigation, 1994), p. 58.

Comparing the NCVS and UCR data on violent crimes in 1993 yields at least four important insights. First, in 1993 there were at least 5.7 times more violent crime victimizations than were reported to the police and recorded by the FBI. Second, contrary to the much-repeated notion that "fewer than 1 in 10 crimes is a violent crime," the NCVS suggests that 1 in 4 criminal victimizations are violent, while the UCR indicates that 1.3 in 10 reported crimes are violent. Third, by both measures, and despite recent drops in reported crimes, Americans suffer from a great deal of violent and other serious crime, both in absolute terms and relative to the best estimates of crime rates before 1970.

Fourth and finally, as table 3 indicates, the rate of violent criminal victimization for Americans age 12 and older (51.5 per 1,000) is substantially higher than the rate of many other serious life risks, including injury from a car accident and death from heart disease. Violent crime is now at least as much of a real danger to Americans as many other widely recognized threats to our individual and societal health and safety. Indeed, as a forthcoming National Institute of Justice study has found, the cost of crime to

victims is about $450 billion annually, $426 billion of which is due to violent crime. As the study reports:

* Violent crime causes 3 percent of U.S. medical spending.
* Violent crime results in wage losses equal to 1 percent of American earnings.
* A single rape costs its victim and society an average of $87,000--many times greater than the cost of keeping a rapist in prison for a year.[5]

Table 3. Rates of violent criminal victimization compared to rates of other life risks

Risks	Rates per 1,000 adults per year
Accidental injury, all causes	220
Accidental injury at home	66
Violent Victimization	***51.5***
Injury in vehicle accident	22
Heart disease death	5
Injury in aggravated assault	***3.4***
Cancer death	3
Rape	***.8***
Accidental death, all causes	.4
Pneumonia/influenza death	.4
Vehicle accident death	.4
HIV infection death	.1
Murder	***.095***

Sources: *Highlights from 20 Years of Surveying Crime Victims* (Bureau of Justice Statistics, October 1993), p. 6; Criminal Victimization 1993 (Bureau of Justice Statistics, May 1995), p. 2; and *Crime in the United States* (Federal Bureau of Investigation, 1994), p. 58.

2. Violent Crime: Concentrated By Race, Place, and Age

The costs of violent crime fall disproportionately on certain citizens. Violent crime in America is concentrated by race, place, and age. As early as 1969, the report of the National Commission on the Causes and Prevention of Violence explained that crime is "chiefly a problem of the cities of the nation, and there violent crimes are committed mainly by the young, poor, male inhabitants of the ghetto slum . . . increasingly powerful social forces are generating rising levels of violent crime which, unless checked, threaten to turn our cities into defensive, fearful societies."[6] As much of the data reported below make all too clear, over the last three decades this nightmarish prediction has largely come true.

But we do not wish to be misunderstood. For, while violent crime in America is heavily concentrated in the nation's inner-cities, it is hardly confined to the nation's inner-cities. The NCVS data indicate that while the violent crime victimization rate per 1,000 is a whopping 73.8 in urban America, it is a significant 47.8 in suburban America

[5]Ted R. Miller et al., *Crime in the United States: Victim Costs and Consequences*, Final Report to the National Institute of Justice, May 1995, p.1.

[6]National Commission on the Causes and Prevention of Violence, *Violent Crime: the Challenge to Our Cities* (George Brziller, 1969), p. 82.

and 43.4 in rural America.[7] It is not unreasonable to be concerned that, over time, the inner-city violent crime problem could spill over more and more into gentrified central city districts, inner-ring suburbs, edge cities, and even the rural heartlands. It is already disturbingly apparent that more and more violent crime involves strangers and teenage "wolf packs." As the International Association of Chiefs of Police has concluded, whereas most murders were once committed among persons who knew each other, today most murders in America are between strangers (53 percent of the 23,760 murders committed in 1992), while juvenile gang killings are the fastest growing type of murder (increasing 371 percent from 1980 to 1992).[8] Indeed, juveniles now commit about a third of all homicides against strangers, often murdering their victims in groups of two or more.[9]

By the same token, while it remains true that violent crime in America is predominantly *intra*-racial, not inter-racial, black-on-white violent crime has reached significant levels, most especially with respect to multiple-offender violent victimizations. Table 4 summarizes 1993 NCVS data on victim-offender relationships by type of crime and the perceived race of the offender. From these data, it would appear that in 1993 over 1.54 million violent crimes committed against whites (about 18 percent of all violent victimizations committed against whites) were committed by blacks, while in the same year over 1.29 million violent crimes committed against blacks (about 80 percent of all violent crimes committed against blacks) were committed by blacks. The black-on-white crime problem is more acute with respect to violent crimes committed by juveniles. For example, in 1991, 95 percent of all violent crimes committed by white juveniles were committed against whites, while 57 percent of all violent crimes committed by black juveniles were committed against whites.[10]

Nonetheless, it remains true that at this moment in time, America's violent crime problem, especially the rage of homicidal and near-homicidal violence, is extremely concentrated among young urban minority males who figure disproportionately as both violent crime victims and violent crime victimizers.

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[7] *Criminal Victimization 1993* (Bureau of Justice Statistics, May 1995), p. 3.

[8] *Murder in America* (International Association of Chiefs of Police, May 1995), p. 6.

[9] James Alan Fox, "Teenage Males are Committing Murder at an Increasing Rate," a report prepared for the National Center for Juvenile Justice, Pittsburgh, PA, April 1993.

[10] *Juvenile Offenders and Victims* (Office of Juvenile Justice and Delinquency Prevention, August 1995), p. 47.

Table 4. Estimated numbers and percentages of violent victimizations by race of victims and perceived race of offenders, 1993

	Numbers	Percentages
Single-offender against whites		
Single-offender by blacks against whites	1,071,867	15.8
Single-offender by whites against whites	5,006,596	73.8
Single offender by other against whites	583,421	8.6
Single-offender by unknown against whites	122,111	1.8
Total single-offender against whites	6.783 million	100
Multiple-offender against whites		
Multiple-offender by all blacks against whites	472,536	24.6
Multiple-offender by all whites against whites	918,180	47.8
Multiple-offender by all other against whites	474,457	24.7
Multiple-offender by unknown against whites	55,705	2.9
Total multiple-offender against whites	1.920 million	100
Single-offender against blacks		
Single-offender by whites against blacks	161,813	13.3
Single-offender by blacks against blacks	986,695	81.1
Single-offender by all other against blacks	42,582	3.5
Single-offender by unknown against blacks	25,599	2.1
Total single-offender against blacks	1.216 million	100
Multiple-offender against blacks		
Multiple-offender by all whites against blacks	24,527	6.0
Multiple-offender by all blacks against blacks	308,636	75.5
Multiple offender by all other against blacks	66,632	16.3
Multiple-offender by unknown against blacks	8,993	2.2
Total multiple-offender against blacks	408,788	100
Violent crimes against whites		
Total black against white	1.54 million	18
Total white against white	5.92 million	68
Grand total all against white	8.70 million	100
Violent crimes against blacks		
Total white against black	186,000	11
Total black against black	1.29 million	80
Grand total all against black	1.62 million	100

Note: Multiple-offender calculations for category "all other" adds categories "all other" and "mixed races" from original survey.
Source: Calculated from *Criminal Victimization in the United States, 1993* (Bureau of Justice Statistics, forthcoming), tables 42 and 48.

For example, a BJS study of murders committed in 1988 in the nation's 75 most populous counties found that blacks were 52 percent of all murder victims and 62 percent of all murder defendants, but they were only 20 percent of the general population in these metropolitan jurisdictions. By comparison, whites were 44 percent of all murder victims and 36 percent of all defendants, but they were over 77 percent of the general population in these urban areas. About 93 percent of all black murder victims and 83 percent of all white victims were killed by someone of the same race.[11]

Likewise, between 1985 and 1992 the rate at which males ages 14 through 17 committed murder increased by about 50 percent for whites and over 300 percent for blacks.[12] Between 1973 and 1992, the rate of violent victimizations of black males ages 12 to 24 increased about 25 percent; for example, black males ages 16 to 19 sustained one violent crime for 11 persons in 1973 versus one for every six in 1992.[13] In 1992, black males between the ages of 16 and 24 were one percent of the population age 12 or over and experienced five percent of all violent victimizations. By comparison, white males in this age group were six percent of the population and were victims in 17 percent of violent crimes. Moreover, the "violent crimes" experienced by young black males tended to be far more serious than those experienced by young white males; for example, aggravated assaults rather than simple assaults, and violence involving gunfire rather than weaponless attacks.[14]

Indeed, 23 percent of those arrested for weapons offenses during 1993 were younger than 18 years old, and overall weapons arrest rates were five times greater for blacks than for whites.[15] As summarized in table 5, from 1987 to 1992 the average annual rate of handgun victimization per 1,000 young black males was three to four times higher than for young white males. Likewise, between 1987 and 1991 the annual arrest rate per 100,000 for murder among white males ages 14 to 17 rose from 7.6 to 13.6, but for black males of the same ages it more than doubled from 50.4 to 111.8.[16]

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[11] *Sourcebook of Criminal Justice Statistics, 1994* (Bureau of Justice Statistics 1995), p. 343 (only single offender, single victim incidents); and *Murder in Large Urban Counties* (Bureau of Justice Statistics, May 1993).

[12] Alfred Blumstein, "Prisons," in James Q. Wilson and Joan R. Petersilia, eds., *Crime* (Institute for Contemporary Studies, 1995), pp. 397-419.

[13] *Young Black Male Victims* (Bureau of Justice Statistics, December 1994).

[14] Ibid.

[15] *Weapons Offenses and Offenders* (Bureau of Justice Statistics, November 1995).

[16] Alfred Blumstein, "Violence By Young People: Why the Deadly Nexus?," *National Institute of Justice Journal*, August 1995.

Table 5. Average annual rate of crime, 1987 to 1992, committed with handguns per 1,000 males, by age and race of victims

	Race of victim	
Age of victim	White	Black
12-15	3.1	14.1
16-19	9.5	39.5
20-24	9.2	29.4
25-34	4.9	12.3

Note: Rates do not include murder or non-negligent manslaughter committed with handguns.
Source: *Young Black Male Victims* (Bureau of Justice Statistics, December 1994).

As suggestive as they are, such national data on the concentration of violent crime by race, place, and age need to be brought down to the street-level in order to be understood. Consider the case of Philadelphia. For many years, crime rates in Philadelphia have been lower than in the rest of the nation's ten largest cities. Still, as measured by the UCR, in 1990 Philadelphia's total crime rate was about twice that of the four surrounding suburban Pennsylvania counties, and its violent crime rate was over three times that of those counties. Forty-two percent of all violent crimes committed in Pennsylvania occurred in Philadelphia, which contained only 14 percent of the state's total population.[17]

In 1994, 433 people were murdered in the City of Brotherly Love, 340 of them black. Blacks were 39 percent of the city's population but 78.5 percent of its murder victims. More than half of the victims were males between the ages of 16 and 31. All but five of the 89 victims under 20 were non-white. Citywide, the number of murders per 100,000 residents was 23 (the national average since 1990 has hovered around 9.5). But in the predominantly white, working-class Greater Northeast region of the city, the murder rate was about two per 100,000; in predominantly poor, black North Philadelphia, the rate was 66; and in the heart of North Philadelphia, in an area known to residents and police as "the Badlands," the rate was over 100.[18] The picture on the next page is probably worth 1,000 words.

Like other big cities, Philadelphia's concentrated violent crime problem is exacerbated by street-gang activity. But compared to the gang problems of Los Angeles County and some other cities, Philadelphia should count its blessings. L.A. has some 400 street gangs organized mainly along racial and ethnic lines: 200 Latino, 150 black, the

[17] *Uniform Crime Report, Commonwealth of Pennsylvania, Annual Report, 1990* (Pennsylvania State Police, 1991), pp. A2-A4.

[18] Don Russell and Bob Warner, "Fairhill: City's Deadliest Turf in '94," *The Philadelphia Daily News*, January 9, 1995, pp. 4-5. Also see Craig R. McCoy et al., "Crime in the City," *The Philadelphia Inquirer*, September 25, 1995, pp. A6-A7.

rest white or Asian. Together these gangs claim over 50,000 members. In 1994 their known members committed 370 murders and over 3,300 felony assaults.[19]

3. Violent Crime Demographics

Demographic trends make it virtually certain that these gangs in L.A. and other cities will have plenty of potential recruits between now and the year 2005. As table 6 indicates, in 1990 the country had about 64 million children age 17 or younger. By the year 2010 that number will increase by 15 percent, eight percent for whites, 26 percent for blacks, and 71 percent for Latinos.

Table 6. U.S. Juvenile Population, 1990 and projected 2010

	Population		Increase	
	1990	2010	Number	Percent
All juveniles	64,185,000	73,617,000	9,432,000	15%
Ages 0-4	18,874,000	20,017,000	1,143,000	6%
Ages 5-9	18,064,000	19,722,000	1,658,000	9%
Ages 10-14	17,191,000	20,724,000	3,533,000	21%
Ages 15-17	10,056,000	13,154,000	3,098,000	31%
White	51,336,000	55,280,000	3,944,000	8%
Black	9,896,000	12,475,000	2,579,000	26%
Latino	7,886,000	13,543,000	5,657,000	71%

Source: Bureau of the Census, 1993, Office of Juvenile Justice and Delinquency Prevention, 1995.

Today America is home to about 7.5 million males between the ages of 14 to 17. That crime-significant cohort will increase by roughly 500,000 between now and the year 2000. Between now and the year 2005, the number of 14-to-17-year-old males will increase by 23 percent, with increases of 28 percent and 50 percent for blacks and Latinos, respectively.[20]

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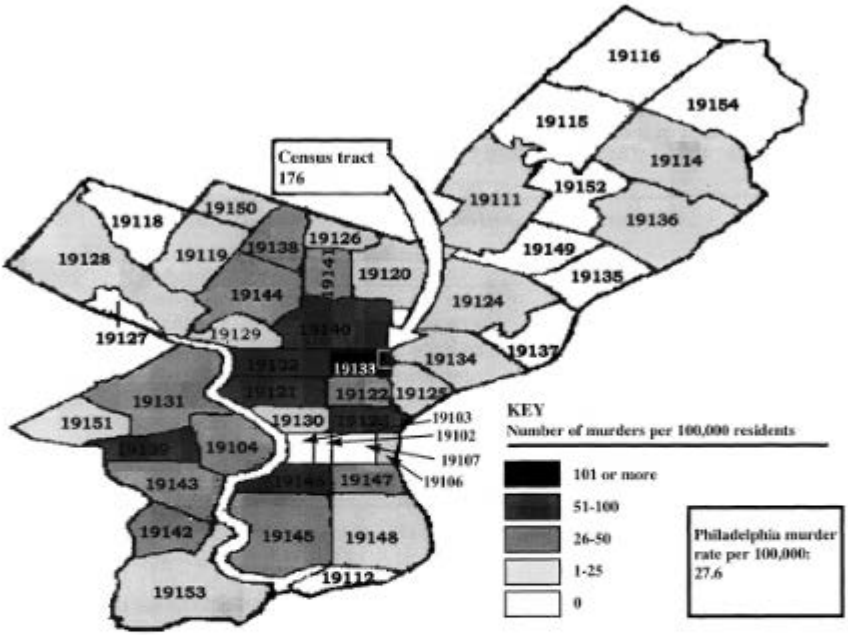
[19]Pehr Luedtke, *Gang Politics in Los Angeles County* (Senior Thesis, Woodrow Wilson School, Princeton University, 1995).

[20]James Alan Fox, "Homicide Offending Patterns: A Grim Look Ahead," paper presented at the American Academy for the Advancement of Science Annual Meeting, Atlanta, Georgia, February 16-21, 1995.

Figure 1. Murder in Philadelphia, according to ZIP code



Sources: Philadelphia Police Department, 1990 U.S. census, Philadelphia Daily News analysis.

Justice system officials are generally aware of these demographic shifts. For example, the New York City police department forecasts that between now and the year 2000, the number of males in the city between the ages of five and 14 will rise by over 50,000.[21] Likewise, California officials project that the state's number of juveniles ages 11 through 17 (the ages responsible for 99 percent of juvenile arrests) will increase 33 percent in the next decade.[22]

Still, it is worth stressing that this increase in young males may not simply be a matter of rising numbers in terms of violent crime rates in the years ahead; instead, it is likely that, on average, tomorrow's new young felons will commit more serious crimes than today's juvenile offenders do.

For starters, consider the results of a famous study of all 10,000 males born in 1945 who lived in Philadelphia between their tenth and eighteenth birthdays.[23] Over one-third had at least one recorded arrest by the time they were eighteen. Most of the arrests occurred when the boys were fifteen, sixteen, or seventeen. Half of the boys were arrested more than once; once a boy had been arrested three times, the chances that he would be arrested again were over 70 percent. But perhaps the most significant finding of the study was that six percent of the boys committed five or more crimes before they were eighteen, accounting for over half of all the crimes, and about two-thirds of all the violent crimes, committed by the entire cohort. This "six percent do 50 percent" statistic has been replicated in a series of subsequent longitudinal studies on Philadelphia and other cities.

But even more important, this same literature indicates that each generation of crime-prone boys is several times more dangerous than the one before it, and that over 80 percent of the most serious and frequent offenders escape detection and arrest. For example, crime-prone boys born in 1958 who resided in Philadelphia between their tenth and eighteenth birthdays did about three times as much crime as their older cousins in the class of '45. But about 60 percent of the most serious offenders in the former cohort were never known to the police, and it is probable that an even larger fraction of the serious offenders in the latter cohort had no official record.

Taken as a whole, the data suggest that the difference between the juvenile criminals of the 1950s and those of the 1970s and early '80s was about the difference between the Sharks and Jets of "West Side Story" and the Bloods and Crips of L.A. County fame. It is not inconceivable that the demographic surge of the next ten years will bring with it young male criminals who make the "O.G.s" (original gangsters) of the Bloods and Crips look tame by comparison. And it is all too likely that most of the worst of the worst offenders will escape detection, arrest, and punishment: clearance rates for murder dropped to a record low of 65 percent in 1992, and in a few cities where juvenile crime is already spiraling, half of all murders go unsolved for a year or more.[24]

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[21]Data supplied by Office of the Commissioner, New York City Police Department, September 26, 1995.

[22]Elizabeth G. Hill, *Juvenile Crime: Outlook for California* (Legislative Analyst's Office, State of California, May 1995), p. 22.

[23]Marvin E. Wolfgang et al., *Delinquency in a Birth Cohort* (University of Chicago Press, 1972).

[24]Murder in America (International Association of Chiefs of Police, May 1995), p. 6; Monica Rhor et al., "Half of Camden's '94 Homicides Unsolved," *The Philadelphia Inquirer*, March 12, 1995, pp. A1, A22-A23; Marvin Wolfgang et al., *From Boy to Man, From Delinquency to Crime* (University of Chicago Press, 1987);

4. Violent Crime Dynamics

No one fully understands the causal dynamics behind crime demographics. In the aggregate, it is easy to explain and predict differences in predatory criminal propensities between, say, well-off boys from intact families residing in good neighborhoods, and impoverished boys from single-parent families living in drug- and crime-infested places. But under what conditions do otherwise comparable young males vary in their propensities to commit violent crimes (remember, not every "bad home" produces a "bad boy" or a career street predator)? And why has each recent cohort of serious young male offenders been, on average, more prone to homicidal and violent crime than the one before it?

Many researchers in criminology, the social sciences, and even the bio-medical sciences are doing studies that may (or may not) yield definitive policy-relevant answers to such questions. For example, a number of analysts have been at work on the "project on human development in Chicago neighborhoods," described in a recent National Institute of Justice report as "an unprecedented, long-range program of research designed to study a broad range of factors at the level of the community, the family, and the individual believed to be important in explaining early aggression and delinquency, substance abuse, and criminal behavior, including violence."[25] Table 7 lists the thirty different "contexts" and "factors" being investigated in the Chicago project.

Marvin Wolfgang et al., *Delinquency Careers in Two Birth Cohorts* (Plenum, 1990); D.S. Elliott et al., "Self-reported Violent Offending," *Journal of Interpersonal Violence* (1986), pp. 472-514; D.S. Elliott, "Serious Violent Offenders," *Criminology*, 1992, pp. 1-21; Alfred Blumstein et al., *Criminal Careers and Career Criminals* (National Academy Press, 1986); James Q. Wilson et al., *Understanding and Controlling Crime* (Springer-Verlag, 1986).

[25]Christy A. Visher, "Understanding the Roots of Crime: The Project on Human Development in Chicago Neighborhoods," *National Institute of Justice Journal*, November 1994, p. 9.

Table 7. Thirty contexts and factors being studied as part of the Project on Human Development

1. Social, economic, and demographic structure.
2. Organizational/political structure.
3. Community standards and norms.
4. Informal social control.
5. Crime, victimization, and arrests.
6. Social cohesion.
7. Residential turnover.
8. Level of involvement in drug and gang networks.
9. Academic achievement expectations.
10. School policies regarding social control.
11. School conflict.
12. Teacher-student relationships.
13. Strengths and weaknesses of the school environment.
14. Composition and size of social network.
15. Substance abuse and delinquency by peers.
16. Deviant and prosocial attitudes of peers.
17. Location of peer networks (school or community).
18. Changes in peer relationships over time.
19. Family structure.
20. Parent-child relationships.
21. Parental disciplinary practices.
22. Parent characteristics.
23. Family mental health.
24. Family history of criminal behavior and substance abuse.
25. Physical and mental health status.
26. Impulse control and sensation-seeking traits.
27. Cognitive and language development.
28. Ethnic identity and acculturation.
29. Leisure-time activities.
30. Self-perception, attitudes, and values.

Source: Christy A. Visher, "Understanding the Roots of Crime," *National Institute of Justice Journal*, November 1994, p. 14.

We have no doubt that this research will add something of intellectual interest to the already voluminous academic literature on understanding and reducing violence.[26] Likewise, we agree wholeheartedly that uncovering "the subtle interaction between individual characteristics and social circumstances requires policy-related research of a sort and on a scale that has not been attempted before."[27] And, as we stated in the first part of this report, Americans should strive to prevent crime by reducing the chances that given at-risk children will become delinquent or criminal in the first place.

[26]For a sample of the recent literature, see *1993 Report of the Harry Frank Guggenheim Foundation: Research for Understanding and Reducing Violence, Aggression and Dominance* (The Harry Frank Guggenheim Foundation, 1993).

[27]James Q. Wilson, *On Character* (American Enterprise Institute, 1991), p. 179.

But we would be as surprised, as we suspect most Americans would be, if these studies uncovered something fundamental about the dynamics of predatory street crime that we did not already know, or that strongly contradicted the common sense of the subject. For example, as every study shows--and as every family court judge knows--large fractions of highly violent juvenile offenders have suffered serious abuse or neglect by a family member, or have witnessed extreme violence, or both. Likewise, it has long been known that over half of state prisoners come from single-parent households, over one-quarter have parents who abused drugs or alcohol, and nearly a third have a brother with a prison or jail record.

Moreover, the human drama behind the statistics has been captured in numerous ethnographic accounts. One of the most recent of these accounts is Mark S. Fleisher's book on the lives of 194 West Coast urban street criminals, including several dozen who were juveniles at the time he did his primary field research (1988 to 1990). Almost without exception, the boys' families "were a social fabric of fragile and undependable social ties that weakly bound children to their parents and other socializers." Nearly all parents abused alcohol or drugs or both. Most had no father in the home; many had fathers who were criminals. Parents "beat their sons and daughters--whipped them with belts, punched them with fists, slapped them, and kicked them."[28]

Likewise, in a recent book on race and class in America, Jennifer L. Hochschild acknowledges that "some lawbreakers hold different values than most other Americans," and are quite distant from "mainstream norms":

> Asked for an alternative to killing another drug dealer, young murderers in Washington, D.C. speculate only that they could have shot their rival once rather than six times, or could have stabbed instead of shot him. Their sole regret is that incarceration "took a lot of my life"; one went to his victims' funerals to assure himself that they were indeed dead. Most chillingly, some seem incapable of seeing the future as potentially different from the past; when asked, "what are your thoughts about the future?," several youth asked for an explanation of the question.[29]

Does anyone actually doubt that poor, fatherless young males who are abused or neglected at home, vegetate or make trouble at school, hang out with deviant, delinquent, or criminal peers and live among people who abuse alcohol or drugs in neighborhoods dotted by malt-liquor outlets are substantially more likely to get into trouble with the law and commit violent crimes than otherwise comparable children who are less exposed to some or all of these criminogenic influences? Who among us still questions the increased criminal potential of children who are exposed to open-air drug markets; who lack attachment to religious, civic, or other communal associations; or who are simply never habituated by parents, guardians, relatives, friends, teachers, coaches, or clergy to control their aggressive impulses, defer immediate gratifications for the sake of future rewards, or respect the feelings, persons, and property of others?

Intellectually, it is worthwhile to strive for ever more analytically refined understandings of the conditions that spawn violent crime by spawning violent criminals.

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[28]Mark S. Fleisher, *Beggars and Thieves: Lives of Urban Street Criminals* (University of Wisconsin Press, 1995).

[29]Jennifer L. Hochschild, *Facing Up to the American Dream* (Princeton University Press, 1995), p. 205.

But we already know where violent crime is most heavily concentrated, and which children are most at risk: namely, poor minority children growing up in drug- and crime-infested inner-city neighborhoods. In our forthcoming hearings and in other ways, we hope to identify meaningful, real-world examples of community-based programs intended to prevent at-risk kids from becoming violent criminals. For beyond academic theory and expert-derived, one-size-fits-all public policy approaches, Americans most desperately need civic rescue missions to save particular at-risk children when and where it really counts.

5. Violent Crime: Voters are Not Fools

Most Americans already possess the common sense and the compassion necessary to meet the challenges of violent crime prevention, protection, and restraint. Moreover, most Americans are keenly aware of the relative violent crime risks which they face, and are by no means as prone to exaggerate those risks--as many critics of the public's understanding of crime and punishment have asserted.

Of course, we do not mean to suggest that most citizens have on the tips of their tongues the crime statistics cited in the foregoing sections of this report. Nor do we mean to deny that, under some conditions, public fear of violent crime (and of other types of crime as well) can be heightened beyond reason by news events, television viewing habits, or other factors. But we do mean to stress the often-overlooked fact that the relative intensity of citizens' personal concerns about violent crime is more a mirror than a mirage of their relative objective risks of being victimized by violent crime.

For example, in just about every major public opinion survey since January 1994, crime has been ranked ahead of unemployment, the deficit, pollution, and other issues as the main problem facing the country today. But while nearly all Americans now feel more threatened by crime than they did in the past, urban Americans feel more threatened than suburban or rural Americans, and urban blacks feel more threatened than other urban residents. For example, in 1991 about 7.4 percent of all households, 16.5 percent of black households, and 22.7 percent of central city black households identified crime as a major neighborhood problem. Between 1985 and 1991, the fraction of rural households that identified crime as a major neighborhood problem remained fairly stable, rising from 1.4 percent to 1.9 percent. But the fraction of black central-city households that did so nearly doubled from 11.8 percent to 22.7 percent.[30]

Likewise, a number of recent surveys, including one conducted by the Black Community Crusade for Children, have found that black urban children, who are far more likely than black urban adults to be murdered or victimized by many types of violent crime, ranked their top five present life concerns as follows: kids carrying guns (70 percent); violence in school (68 percent); living in a dangerous neighborhood (64 percent); involvement with gangs (63 percent); and involvement with people who cause trouble (63 percent).[31] And as table 8 indicates, black teenagers, who are more likely than white teenagers to be murdered or victimized by many types of violent crime, feel more threatened.

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[30]*Crime and Neighborhoods* (Bureau of Justice Statistics, June 1994).

[31]Black Community Crusade for Children, *Overwhelming Majority of Black Adults Fear For Children's Safety and Future* (Children's Defense Fund, May 26, 1994).

More broadly, consider the implications of the fact that many anti-crime activities in this country are private, not governmental. They consist of the countless financial, locational, and organizational decisions made each day by families, businesses, and neighborhood groups in an effort to render the environments in which law-abiding people live, work, shop, attend school, and play relatively impervious to crime. We lock our doors and install burglar alarms. We counsel our teenagers to be careful and to avoid driving through "bad neighborhoods." We relocate our families and our businesses. We make crime-sensitive investment decisions. We watch the neighbors' homes when they are on vacation. We hire private security guards. We form neighborhood watch groups. Were it not for these private anti-crime efforts, America's violent crime problem would be far worse. Undoubtedly, part of the reason for such high rates of criminal victimization among inner-city blacks is that the law-abiding people of these communities experience a relative lack of the financial and political resources needed to protect their homes, stores, parks, and schools.

To our knowledge, no one has attempted to measure or monetize what Americans spend privately on crime protection. Loose estimates have been made that twice as much is now spent on private security services as on public police, but no rigorous work on the costs of "rent-a-cops," let alone of the entire range of private anti-crime activities, is presently available.

Table 8. Teenagers and the threat of violent crime

	White Teenagers	Black Teenagers
How much of the time do you worry about being the victim of a crime?		
A lot or some of the time	36%	54%
Hardly ever or never	64%	46%
What kind of crime do you think is likely to happen to you?		
Robbery/mugging	13%	10%
Shooting	5%	27%
Assault	6%	7%
Rape	7%	2%
Other	2%	3%
Who do you think is more likely to commit that crime against you?		
Teenager you know	7%	11%
Teenager you don't know	18%	37%
An adult	9%	4%
Do you know someone who has been shot in the past five years?		
Yes	31%	70%
What is the biggest problem where you go to school?		
Violence	19%	37%
Gangs	5%	8%
Drugs	14%	8%
Racism	8%	6%
All other	40%	23%
Are organized gangs a problem in your school?		
Yes	18%	33%

Source: New York Times, July 10, 1994, p. 16, based on New York Times/CBS News Poll.

But we would not be surprised to learn that Americans are investing more of their own money, time, and effort in crime protection today than they did five, ten, or fifteen years ago. If that is so, then the public's crime fears are more understandable. For what average Americans seem to sense is that, for all of the private, corporate, and community-based anti-crime initiatives, for all of the disposable income spent on security devices, for all of the costly behavioral changes, and for all of the neighborhood rallies, they have to date gained only marginal and temporary relief from murder and mayhem on the streets.

III. The Reality of Revolving-Door Justice

A majority of Americans of every demographic description are convinced that existing government policies do not do nearly enough to complement private anti-crime efforts and protect law-abiding citizens from violent and repeat criminals. In stark contrast, many experts and criminals' rights advocates remain sanguine about how the system operates. In their view, the real problem is not revolving-door justice but its opposite--public policies that incarcerate too many convicted criminals for too long. The national media routinely side with the experts. A typical example is the 1994 *Time* magazine cover story which declared in bold letters that "outraged Americans" who favor "lock'em up" policies fail to see that "prisons have failed" and that "imposing longer sentences may only increase the crime rate."[52]

There is plenty of reliable data that can be used to referee this dispute between the people and the experts. Almost all of it supports the views held by average Americans.

As table 9 indicates, there is quite a gap between how much time average citizens think convicted criminals should serve in prison and how much time the criminals actually serve. For over a decade, the justice system has been overloading the streets at least as fast as it has been filling up the prisons. As table 10 indicates, more than seven out of 10 of the 5.1 million people under correctional supervision on any given day in 1994 were *not* incarcerated. Nationally, about three million persons were on probation, one million were in prison, 690,000 were on parole, and 484,000 were in jail. Between 1980 and 1994, the parole population and the prison population both grew by 213 percent.

Indeed, in 1992, over 10.3 million *violent* crimes were committed, but just 3.3 million were reported to the police. About 641,000 led to arrests, barely 165,000 to convictions, and only 100,000 or so to state prison sentences, which on average ended before the convict had served even half his time behind bars.[53]

How is it that the justice system imprisons barely one criminal for every 100 violent crimes? How is it that millions of convicted criminals with a history of violence end up on probation or parole rather than behind bars? Who really goes to prison, for how long, and under what conditions? What really happens on probation and parole? And how much violent crime is actually done by repeat violent criminals, including those who are legally "under supervision" at the very moment they find their latest victims?

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[52]Richard Lacayo, "Lock 'Em Up," *Time*, February 7, 1994, pp. 51, 55.

[53]*Criminal Victimization 1993* (Bureau of Justice Statistics, May 1995), p. 2; *Sourcebook of Criminal Justice Statistics 1993* (Bureau of Justice Statistics, 1994), tables 4.9 and 5.73; *Felony Sentences in State Courts, 1992* (Bureau of Justice Statistics, January 1995), tables 1, 2, and 4.

Table 9. Actual vs. Recommended Sentences

Offense	*Actual average time served, released in 1992*	*Average recommended time in prison, 1987*
Rape	4 years, 11 months	
with no other injury		15 years, 5 months
with forced oral sex, no other injury		16 years, 10 months
Robbery	3 years, 3 months	
no weapon, threat of force, no injury, $10		3 years, 8 months
threat of force with weapon, no injury, $10		5 years, 8 months
shot victim with gun, hospitalization, $1,000		10 years, 3 months
Assault	2 years	
intentional injury, treatment by doctor, no hospitalization		5 years, 7 months
intentional injury, treatment by doctor and hospitalization		7 years, 9 months
Burglary	1 year, 10 months	
burglary of a home with loss of $1,000		4 years, 5 months
Drug trafficking	1 year, 6 months	
cocaine sold to others for resale		10 years, 6 months

Note: This table compares the actual time served for selected serious offenses by those released from prison in 1992 with the prison sentences recommended by a representative sample of Americans in 1987.

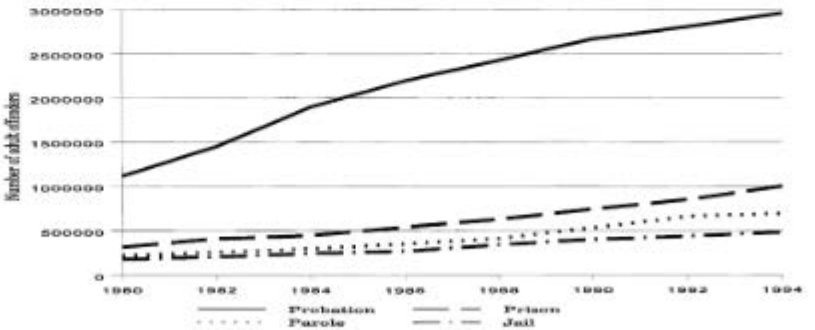
Source: Joseph M. Bessette, "Crime Justice, and Punishment," *Jobs and Capital*, Winter 1995, p. 22.

Table 10. Number of adults on probation, in jail or prison, or on parole, 1980-94

Year	Total estimated correctional population	Probation	Jail[a]	Prison	Parole
1980[b]	1,840,400	1,118,097	182,288	319,598	220,438
1985	3,011,500	1,968,712	254,986	487,583	300,203
1990	4,348,000	2,670,234	403,019	743,382	531,407
1991	4,536,200	2,729,322	424,129	792,535	590,198
1992	4,763,200	2,811,611	441,781	851,205	658,601
1993	4,943,900	2,903,160	455,500	909,186	678,100
1994	5,135,900	2,962,166	483,717	999,808	690,159
Percent change,					
1993-94	4%	2%	6%	10%	2%
1980-94	179%	165%	165%	213%	213%

Note: Every year some states update their counts. Counts for probation, prisons, and parole population are for December 31 each year. Jail population counts are for June 30 each year. Prisoner counts are for those in custody only. Because some persons may have multiple statuses, the sum of the number of persons incarcerated or under community supervision overestimates the total correctional population.
[a]Includes convicted and unconvicted adult inmates.
[b]Jail count is based on estimates.
Source: Bureau of Justice Statistics, 1995.

Figure 2. Adults in jail, on probation, in prison, or on parole in the United States, 1980-93



Source: *Correctional Populations in the United States, 1993* (Bureau of Justice Statistics, October 1995); *Sourcebook of Criminal Justice Statistics, 1994* (Bureau of Justice Statistics, 1995).

1. Who Really Goes to Prison?

The revolving door is greased when 65 percent of all felony defendants, and 63 percent of all violent felony defendants, are released prior to the disposition of their case. As table 11 indicates, in 1990 in the nation's seventy-five largest counties, 44 percent of all released defendants, and 11 percent of all released violent felony defendants, had a history of prior convictions, including 31 percent of the former who had 1 or more prior convictions, and 5 percent who had 10 or more prior convictions. About 19 percent of released violent felony defendants simply fail to appear in court. About 16 percent of released violent felony defendants are rearrested again within the year, a quarter of them for another violent crime.[34] And in 1992, 71 percent of the defendants charged with felony weapons offenses were released prior to trial.[35]

Table 11. Number of prior convictions of felony defendants, by whether released or detained and the most serious current arrest charge, 1990

		Percent of felony defendants in the 75 largest counties						
			Total with		Number of prior convictions			
Detention/release outcome and the most serious current arrest charge	Number of defendants	Total	No prior convictions	Prior convictions	10 or more	5-9	2-4	1
Released defendants								
All offenses	33,085	100%	56%	44%	5%	9%	17%	13%
Violent offenses	8,452	26	15	11	1	2	4	4
Property offenses	11,481	35	20	15	2	3	5	4
Drug offenses	10,474	32	17	15	1	3	6	5
Public-order offenses	2,678	8	4	4	--	1	2	1
Detained defendants								
All offenses	18,348	100%	29%	71%	11%	20%	27%	13%
Violent offenses	4,933	27	9	18	2	5	7	4
Property offenses	6,143	33	10	24	4	7	8	4
Drug offenses	6,027	33	9	24	4	6	10	4
Public-order offenses	1,245	7	1	6	1	2	2	1

Source: *Pretrial Release of Felony Defendants, 1990* (Bureau of Justice Statistics, November 1992).

But it is at the point of sentencing that the revolving door for violent felons really begins to swing. As table 12 shows, in 1992 fully 47 percent of state felons convicted of one violent crime were not sentenced to prison, and nearly a quarter of those convicted of

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[34] *Pretrial Release of Felony Defendants, 1990* (Bureau of Justice Statistics, November 1992), tables 12 and 13.

[35] *Weapons Offenses and Offenders* (Bureau of Justice Statistics, November 1995), p. 4.

three or more felony crimes, one or more of which was a violent crime, were not sentenced to prison.

Table 12. Convicted violent felons not sentenced to prison, by number of conviction offenses, 1992

	Percent of convicted felons *not* sentenced to prison for 1, 2, or 3 or more felony conviction offenses		
Most serious conviction offense	One	Two	Three or more
All violent offenses	47%	31%	23%
Murder	9%	5%	3%
Rape	39%	23%	20%
Robbery	30%	21%	14%
Aggravated assault	61%	45%	38%
Other violent*	65%	51%	36%

Note: This chart reflects prison non-sentencing rates for felons based on their most serious offenses. For example, if a felon is convicted for murder, larceny and drug possession, and not sentenced to prison, he would be represented in this chart under murder (the most serious offense) with three or more offenses.
*Includes offenses such as negligent manslaughter, sexual assault and kidnapping.
Source: Bureau of Justice Statistics, *Felony Sentences in State Courts*, January 1995, p. 6.

Given these facts, it is not surprising that virtually all convicted criminals who do go to prison are violent offenders, repeat offenders, or violent repeat offenders. Table 13 summarizes the number of prisoners in state prisons in 1991 by the most serious offenses (not the only offenses) for which they were convicted. Some 46.5 percent of the prisoners were in prison for violent offenses.

Table 13. Number of state prisoners in 1991, by most serious offense

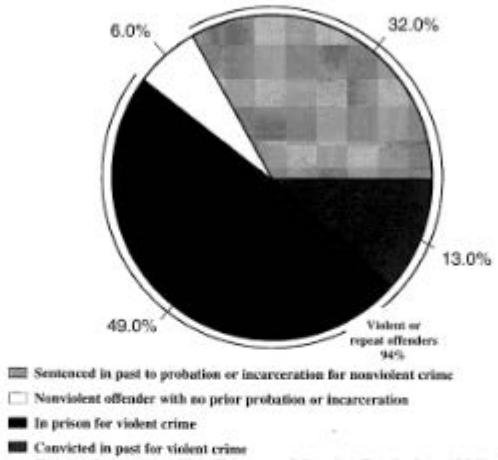
All offenses	728,605
Violent offenses	339,500
Murder	77,200
Manslaughter	13,100
Rape	25,500
Other sexual assault	43,000
Robbery	107,800
Assault	59,000
Other violent	13,100
Property offenses	180,700
Burglary	90,300
Larceny/theft	35,700
Motor vehicle theft	16,000
Fraud	20,400
Other property	18,200
Drug offenses	155,200
Public-order offenses	49,500
Other/unspecified offenses	2,900

Source: *Prisoners in 1994* (Bureau of Justice Statistics, August 1995).

It is a gross but common error to conclude from such data that half of all prisoners are "non-violent." In fact, as depicted in figure 3, based on a scientific survey representing 711,000 state prisoners in 1991, former BJS Acting Director Lawrence A. Greenfeld found that fully 62 percent of the prison population had a history of violence, and that 94 percent of state prisoners had committed one or more violent crimes or served a previous sentence to incarceration or probation.[36] In effect, this 94 percent statistic is a measure of the prison population's criminal "grade point average," accounting for the totality of prisoners' known adult and juvenile criminal acts against life, liberty, and property. Performing the same analysis on other large state prisoner data sets yields virtually the same results: since 1974 over 90 percent of all state prisoners have been violent offenders or recidivists.

[36] *Survey of State Prison Inmates, 1991* (Bureau of Justice Statistics, March 1993), p. 11.

Figure 3. Profile of Prison Inmates, 1991



Source: *Survey of State Prison Inmates, 1991* (Bureau of Justice Statistics, 1992). Statistics based on a sample representing 711,000 adults in state prisons.

Indeed, between 1980 and 1993 the growth in state inmates was greatest among offenders whose most recent and serious conviction offense was violent. During that period, the number of violent offenders behind bars grew by 221,000, representing 1.3 times the growth in the number of offenders whose most recent and serious conviction offense was for a drug law violation, and 42 percent of the total growth in state prison populations.[37]

In short, the closer one looks into the criminal and conviction histories of prisoners, the clearer it becomes that there are precious few petty, non-violent, or first-time felons behind bars who pose no real threat to public safety and who simply do not deserve to be incarcerated.

For example, in 1994 California's prison population rose to over 125,000 inmates. Since the mid-1980's, numerous experts and journalists have insisted that the state's prisons were overflowing with first-time offenders and harmless parole violators. And as California voters marched to the polls and overwhelmingly approved a three-strikes law, many analysts and commentators confidently warned that, within a year, the state's prisons would be bulging with petty criminals sentenced automatically to life without parole for any third felony conviction.

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[37] *Prisoners in 1994* (Bureau of Justice Statistics, August 1995), p. 11.

Table 14 summarizes the results of a California Department of Corrections analysis of the criminal histories of 16,520 randomly selected felony offenders admitted to the state's prisons in 1992 and classified as "nonviolent." The analysis reveals that 88.5 percent of these offenders had one or more prior adult convictions. The average number of prior convictions was 4.7. A fifth of these "nonviolent" felons had been committed to prison once or twice before.

Table 14. Felony offenders admitted to California prisons in 1992 and classified as nonviolent, by criminal histories

Prior convictions	
Juvenile (one or more)	18.2%
Adult (one or more)	88.5%
Adult - Average number	4.7
Adult - Violent (PC 667.5(c)) (one or more)	1.4%
Prior probations	
Prior Probation (one or more)	82.0%
Current Probation resulting in:	
Probation revocation with additional convictions(s)	24.2%
Probation revocation without additional conviction(s)	21.7%
Prior juvenile hall incarcerations (one or more)	5.8%
Prior jail - adult incarcerations	
One or more	65.9%
Three or more	32.8%
Prior California youth authority commitments	10.5%
Prior prison commitments	
One or more	20.6%
Three or more	1.8%

Source: Department of Corrections, State of California, March 1, 1994. Based on an analysis of 16,520 admissions.

Table 15 offers a detailed portrait of the 84,197 adults who were admitted to California prisons in 1991. It is based on a recent analysis by a former president of the American Society of Criminology, Joan R. Petersilia. It shows that only 3,116 of the prisoners (under 4 percent of total admissions) were, in fact, mere technical parole violators (the category "Administrative, non-criminal"). As Petersilia has concluded, these data disprove the notion that hordes of "parole violators are being returned for strictly technical violations. . . . The bottom line is that true technical violators do not currently represent a large portion of incoming inmates, nor do they serve very long prison terms."

More precisely, table 15 shows that about 45 percent of the prisoners were "Felons, New Court Admissions," meaning that they were sentenced by the courts for new crimes ranging from murders to drug deals. The rest were "Parole Violators," meaning that they were sentenced by the courts to additional terms ("Parole Violators With a New Term," 19 percent), or returned to prison by the Board of Prison Terms (the parole board) for having violated one or more conditions of their parole ("Parole Violators Returned to Prison," 36 percent). As the table's compilation of their offense records makes quite plain, the vast majority of both all new court admissions and all parole violators--in short, the vast majority of all persons admitted to California's prisons--were violent or repeat criminals, together responsible for literally tens of thousands of serious crimes including over 2,000 murder convictions.

Table 15. Persons admitted to California prisons, 1991
By commitment offense and average prison term served

	Number of Persons	% of Total Admissions	Median Months Served
Felons, New Court Admissions	38,240	45.41%	
Violent Offenses	10,616	12.61%	19.0
Homicide	1,840	2.19%	33.2
Robbery	3,701	4.40%	17.7
Assault	2,881	3.42%	16.2
Sex Crimes	1,936	2.30%	33.2
Kidnapping	258	0.31%	34.6
Property Offenses	10,537	12.51%	11.0
Burglary 1st	2,547	3.02%	20.5
Burglary 2nd	2,154	2.56%	9.9
Grand Theft	1,174	1.39%	10.0
Petty Theft with Pri.	1,520	1.81%	8.8
Rec. Stolen Property	1,003	1.19%	8.9
Auto Theft	1,384	1.64%	11.5
Forgery/Fraud	755	0.90%	9.9
Drug Offenses	12,459	14.80%	11.8
Possession	3,943	4.68%	7.7
Possession for Sale	4,173	4.96%	12.9
Drug Sale	3,052	3.62%	17.4
Drug Manufacture	376	0.45%	21.5
Marijuana	915	1.09%	10.4
Other Offenses	4,628	5.50%	8.9
Driving Under the Influence	2,911	3.46%	8.3
Weapons Possession	604	0.72%	10.6
Escape	68	0.08%	8.4
Arson	138	0.16%	13.6
Miscellaneous	907	1.08%	9.1
Parole Violators with New Term (PV-WNT)	16,010	19.01%	
Violent Offenses	2,705	3.21%	
Homicide	136	0.16%	33.2
Robbery	1,553	1.84%	17.7
Assault	751	0.89%	16.2
Sex Crimes	233	0.28%	33.2
Kidnapping	32	0.04%	34.6

Property Offenses	7,156	8.50%	11.0
Burglary 1st	1,106	1.31%	20.5
Burglary 2nd	1,776	2.11%	9.9
Grand Theft	516	0.61%	10.0
Petty Theft with Pri.	1,,905	2.26%	8.8
Rec. Stolen Property	701	0.83%	8.9
Auto Theft	853	1.01%	11.5
Forgery, Fraud	299	0.36%	9.9
Drug Offenses	4,627	5.49%	11.8
Possession	2,205	2.62%	7.7
Possession for Sale	1,036	1.23%	12.9
Sale	890	1.06%	17.4
Manufacture	172	0.20%	21.5
Marijuana	324	0.38%	10.4
Other Offenses	1,522	1.81%	8.9
Driving Under the Influence	479	0.57%	8.3
Weapons	672	0.80%	10.6
Escape	34	0.04%	8.4
Arson	19	0.02%	13.6
Other	318	0.38%	9.1

Parole Violators Returned to Prison (PV-RTP)	29,944	35.56%	
Administrative, non-criminal (technical violations)	3,116	3.70%	4.0
Administrative, criminal	26,828	31.86%	7.0
Type 1	8,382	9.95%	4.0
Drug Use	3,035	3.60%	4.0
Drug Possession	2,427	2.88%	5.0
Misc., Minor	2,920	3.47%	5.0
Type 2	12,010	14.26%	8.0
Sex Offenses	535	0.64%	6.0
Assault	1,431	1.70%	8.0
Burglary	880	1.05%	9.0
Theft	3,714	4.41%	8.0
Drug Sales	1,449	1.72%	10.0
Weapons	380	0.45%	8.0
Driving Violation	1,334	1.58%	8.0
Misc, nonviolent	2,287	2.72%	6.0
Type 3	6,436	7.65%	12.0
Homicide	119	0.14%	12.0
Robbery	1,168	1.39%	12.0
Rape/Assault	353	0.42%	12.0
Battery	2,394	2.84%	12.0
Burglary	704	0.84%	10.0
Drug - Major	253	0.30%	10.0
Weapons	1,093	1.30%	12.0
Driving Violation	171	0.21%	10.0
Miscellaneous	181	0.21%	12.0
Total Admissions	84,197	100%	11.83

Note: Persons who were revoked by the Parole Board in 1991 but "continued on parole" (8700 persons) were not included in this table nor were those with missing offense data (2690 persons).

Source: Joan R. Petersilia, "Diverting Non-Violent Prisoners to Intermediate Sanctions," paper prepared for the California Policy Seminar, Berkeley, California, 1995, pp. 9-11.

From the day it took effect through November of 1995, some 1,020 repeat felons were sentenced under California's three strikes law. About 969 of them were sentenced during the law's first year; the remaining 61 were sentenced over the ensuing eight months.[38] Clearly, the state's prosecutors are exercising their discretion to use the law against repeat offenders who for the sake of either public safety, just deserts, or both,

[38]Data provided by the California Department of Corrections, November 28, 1995.

need to be incarcerated. And, contrary to popular perceptions, not everyone sentenced under the law must serve life without the possibility of parole.

Consider the much-publicized case of the "pizza thief," the 29-year-old California man who was sentenced under the law for stealing a slice of pizza from children in a shopping mall.[39] Although much of the national press spun this story as a self-evident example of the folly of three-strikes (and other "get-tough" legislation), the facts paint a different picture. The offender's adult criminal history dated back to 1985. He was convicted of five serious felonies inside of a decade. He was granted probation five times in five years for convictions on two misdemeanor charges and three felony charges. Between 1985 and 1990, he had five suspended sentences. At one point he moved to Washington State--and was arrested there on additional charges. During his criminal career, he used eight aliases, three different dates of birth, four different Social Security numbers, and marijuana, cocaine, alcohol, and PCP. Standing 6 foot 4 inches, his "third strike" occurred when he and another man frightened and intimidated four children (ages 7, 10, 12, and 14), stole their pizza, and then walked away laughing. He was not sentenced to life; he could be eligible for parole in the year 2014. As one California official quipped, this repeat felon was already "doing life on the installment plan. Three strikes simply reduced the number of future installments and the number of future victims."

2. How Much Hard Time Do Violent Prisoners Really Serve?

The unvarnished truth, therefore, is that America's prisons hold few petty, first-time, non-violent criminals. Moreover, even violent prisoners spend relatively little time behind bars before being released, and do so under conditions of confinement that are far more generous than cruel.

As table 16 indicates, violent offenders released from prison in 1992 served an average of 48 percent of their time behind bars (both jail credit and prison time)--43 months on sentences of 89 months. Between 1988 and 1992 the percent of time served in prisons by released violent offenders rose from 43 percent to 48 percent. But over the same period the average sentence dropped from 95 months to 89 months, meaning that the actual average time served increased only from 41 months to 43 months. Overall, therefore, between 1988 and 1992, there was little change in the amount of time or in the percentage of sentence served for different types of violent crimes.[40] Among those violent offenders released in 1992, even murderers served only 5.9 years of 12.4 year terms.

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[39]Facts of the case supplied by the California Department of Corrections, May 26, 1995.

[40]*Prison Sentences and Time Served for Violence* (Bureau of Justice Statistics, April 1995), p. 2.

Table 16. Time served on confinement by violent offenders released in 1992

Type of offense	Average sentence (months)	Average time served* (months)	Percent of sentence served
All violent	89	43	48%
Homicide	149	71	48%
Rape	117	65	56%
Kidnapping	104	52	50%
Robbery	95	44	46%
Sexual assault	72	35	49%
Assault	61	29	48%
Other	60	28	47%

*Includes jail credit and prison time.
Source: Bureau of Justice Statistics, *Prison Sentences and Time Served for Violence* (Bureau of Justice Statistics, April 1995), p. 1.

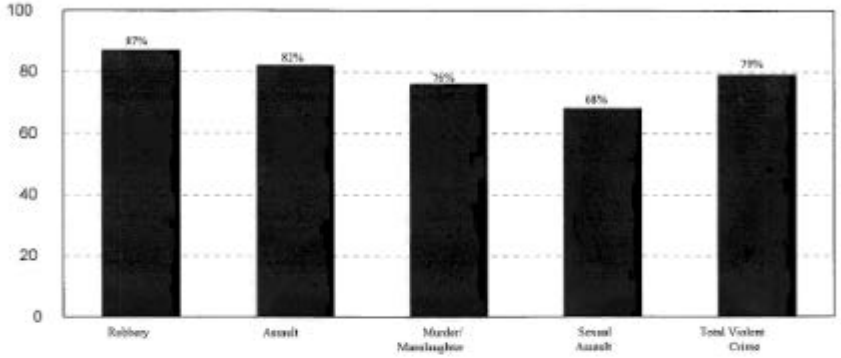
Much the same picture holds when the data on how much time violent felons actually serve in prison is broken down on a state-by-state basis. For example, figure 4 displays the percent of various categories of convicted violent felons in Virginia in 1992 who had at least one prior conviction. More than three-quarters of all violent criminals in Virginia prisons in 1992-93 had prior convictions. Figure 5 displays the average time served by Virginia felons released in 1993. Together, these two sets of data confirm that even most violent recidivists imprisoned for murder, rape, and robbery serve less than half of their sentenced time in confinement.[41]

It is possible, however, that truth-in-sentencing and related laws will succeed in increasing the amount of prison time actually served by violent offenders in Virginia and the rest of the nation. For example, the BJS estimates that state prisoners admitted in 1992 could serve an average of 62 months (versus 43 months for violent offenders released in 1992) and 60 percent of their sentences (versus 48 percent).[42]

[41]George Allen, "The Courage of Our Convictions," *Policy Review*, Spring 1995, pp 4-7. Also see *Governor's Commission on Parole Abolition and Sentencing Reform: Final Report* (State of Virginia, August 1994).

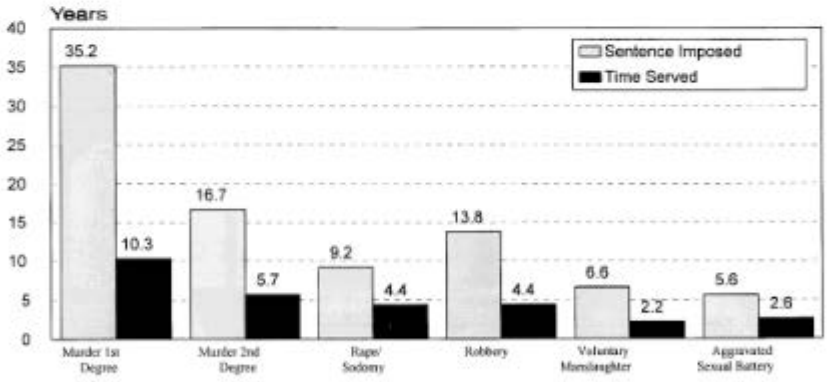
[42]*Prison Sentences and Time Served for Violence* (Bureau of Justice Statistics, April 1995), p. 2.

Figure 4. Percent of convicted violent felons in Virginia with prior convictions, 1992



Source: George Allen, "The Courage of Our Convictions," *Policy Review*, Spring 1995, p. 5.

Figure 5. Average sentences vs. actual time served by violent felons in Virginia, 1993, by offense at conviction



Source: George Allen, "The Courage of Our Convictions," *Policy Review*, Spring 1995, p. 6.

While such increases in the amount of time actually served by violent felons would constitute welcome steps in the right sentencing policy direction, there is reason to be

cautious. For one thing, sentencing laws can change, and many states have yet to tighten their grip on convicted violent felons. Despite the universal use of mandatory sentencing laws for murder and many other crimes, state sentencing regimes vary widely. Relatively few states have enacted and implemented strict truth-in-sentencing laws or related measures that keep violent felons behind bars for all or most of their terms.

Also, even with tougher laws on the books, not much may change. Public policies are enunciated in rhetoric, but they are realized (or not) in action. What gets done in "get-tough" crime legislation can be undone or watered down in the administrative process (for example, an escalation in the use of generous automatic "good time" credits), or as the result of judicial intervention (for example, the imposition of prison or jail caps by court orders or via consent decrees).

This is one bitter lesson of the experience with mandatory sentencing laws enacted in the 1970's and 1980's. Sentence lengths did not expand between 1973 and 1986 even though mandatory sentencing laws authorized or required longer sentences. For example, in 1986 the median sentence for a felony conviction was 48 months, compared with 60 months for most of the period between 1960 and 1980. In 1986 the median time served in confinement was 15 months, the same as it was in 1976. And between 1985 and 1992, the mean maximum sentence of prisoners actually declined about 15 percent from 78 months to 67 months.[43]

One reason for this failure to increase the amount of time actually served in prison by violent and other serious offenders was judicial intervention into prisons and jails. In 1990, scores of prisons and jails were operating under judicially-imposed caps on their populations, not to mention orders governing staffing, food services, recreation, counseling programs, and other matters.[44] Federal district court judges have often done whatever they felt was necessary to protect and expand prisoners' rights, including "ordering inmates released or facilities closed."[45]

To cite just one recent example, in the space of a single year a federal judge forced the City of Philadelphia to release defendants in 15,000 cases rather than violate the population limit she had established for the city's jails. "Thanks to the court order, the city now has 50,000 fugitives from justice--defendants who have been charged with a crime but do not even bother to show up for trial."[46] As in most such cases, the court's orders have led to skyrocketing fiscal costs and a worse human toll exacted in murders, rapes, and other crimes committed by those released in order to ease "overcrowding" or to remedy other ostensible violations of constitutional rights.

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[43]Patrick A. Langan, "America's Soaring Prison Population," *Science*, March 29, 1991, pp. 1568-1573; *Time Served in Prison and on Parole, 1984* (Bureau of Justice Statistics, December 1987); *Sentencing and Time Served* (Bureau of Justice Statistics, 1987); *Tracking Offenders, 1987* (Bureau of Justice Statistics, October 1990); *Prisoners in 1994* (Bureau of Justice Statistics, August 1995), p. 12.

[44]*Census of State and Federal Correctional Facilities* (Bureau of Justice Statistics, 1992), p. 7.

[45]William C. Collins, "A History of Recent Corrections is a History of Court Involvement," *Corrections Today*, August 1995, p. 150.

[46]Sarah B. Vandenbraak, "Bail, Humbug!: Why Criminals Would Really Rather Be in Philadelphia," *Policy Review*, Summer 1995, p. 73.

To be clear, we understand that since 1960 judges have done much to end horrible or abusive conditions behind bars. Too often, however, the courts have expanded prisoners' rights without due regard for such competing values as budgetary limits, institutional order, and public safety.[47] As the National District Attorneys Association has declared, "federal court orders in prison litigation often have severe adverse effects on public safety, law enforcement and local criminal justice systems."[48] And as ought never to be forgotten, government by consent decree is not the same as government by the consent of the governed.

Many of the most harmful court orders have married faulty constitutional interpretations to false empirical assumptions. For while some prisons are crowded, most prisons are not terribly "overcrowded." At the end of 1994, states reported that they were operating between 17 and 29 percent over their capacity (the maximum number of prisoners their facilities were designed or reconfigured to hold). Thirteen states and the District of Columbia were operating at or below 99 percent of their capacity. Because of new prison construction, the ratio of the inmate population to the capacity of state prisons has remained stable since 1990.[49]

Moreover, despite the conventional wisdom about the harmful effects of "overcrowding," the statistical data simply do not support the belief that inmates suffer greater levels of violence, illness, or other problems when prisons operate over capacity or increase population densities. And there is no shortage of case studies which suggest that dedicated prison managers have run truly crowded prisons without any increases in critical incidents or other serious problems.[50] It is clear that the quality of prison management and other intervening variables determine the negative consequences, if any, that flow from having prisoners, few of whom are confined to their cells all day, share limited cell space or sleep in make-shift dormitories.

By the same token, while it is easy to exaggerate the extent of resort-like conditions behind bars, the fact is that most prisons do offer prisoners a wide array of basic amenities and services, and that some prisons do indeed resemble resorts. As table 17 shows, in 1991 over 97 percent of federal prisoners, and 91 percent of state prisoners, were involved in some type of training, program activity, or work assignment. For a large number of prisoners, health care services and the like are both better and more readily available on the inside than they were on the outside.

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[47] William D. Hagedorn and John J. DiIulio, Jr., "The People's Court?: Crime, Federal Judges, and Federalism," in Martha Derthick, ed., forthcoming; John J. DiIulio, Jr., ed., *Courts, Corrections, and the Constitution* (Oxford University Press, 1990).

[48] National District Attorneys Association, Resolution, December 1994.

[49] *Prisoners in 1994* (Bureau of Justice Statistics, August 1995), p. 8.

[50] For a good recent summary of the statistical evidence, see Gerald G. Gaes, "Prison Crowding Research Examined," *The Prison Journal*, September 1994, pp. 329-363. For case studies, see John J. DiIulio, Jr., *Governing Prisons: A Comparative Study of Correctional Management* (Free Press, 1987); "Well-Governed Prisons Are Possible," in George Cole, ed., Criminal Justice (Wadsworth, 1993), chapter 23; "Prisons That Work: Management is the Key," *Federal Prisons Journal*, Summer 1990, pp. 7-15; and "Principled Agents: The Cultural Bases of Behavior in a Federal Government Bureaucracy," *Journal of Public Administration Research and Theory*, July 1994, pp. 277-318.

Indeed, in many states half or more of every prison dollar is now spent not on custody or security basics but on prisoner medical services, education, "treatment programs," and other functions.[51] In 1990 only 234 of the nation's 1,037 prisons were maximum-security prisons, and even in those facilities most prisoners enjoyed access to all manner of amenities and services, and were hardly confined to their living quarters all day. While there remains no evidence that most prison-based programs rehabilitate offenders, there is some evidence that certain types of prison-based substance abuse programs do some good, and that most prisoners who need drug treatment get it while incarcerated.[52]

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[51] *Sourcebook of Criminal Justice Statistics* (Bureau of Justice Statistics, 1994), p. 14.

[52] Charles H. Logan and Gerald G. Gaes, "Meta-Analysis and the Rehabilitation of Punishment," *Justice Quarterly*, June 1993, pp. 245-263; Marcia R. Chaiken, *Prison Programs for Drug-Involved Offenders* (National Institute of Justice, October 1989); Susan Wallace, "Drug Treatment: Perspectives and Current Initiatives," *Federal Prisons Journal*, Summer 1991; M. Douglas Anglin, "Ensuring Success in Corrections-Based Interventions with Drug Abusing Offenders," paper presented at the Conference on Growth and its Influence on Corrections Policy, University of California at Berkeley, May 10-11, 1990; *Sourcebook of Criminal Justice Statistics 1993* (Bureau of Justice Statistics, 1994), p. 637. It is worth noting here that in 1991 all state and federal government substance abuse treatment programs (prison- and community-based, both for offenders and others) had a utilization rate of 81.1 percent; see *Sourcebook*, p. 542.

Table 17. Training, programs, activities, and work assignment of sentenced federal and state prison inmates, by sex, 1991

	Percent of sentenced inmates					
	All		Male		Female	
	Federal	State	Federal	State	Federal	State
Any training, programs, activities, or work assignment	97.7	91.1	97.7	91.0	98.7	93.0
Training						
Academic	58.1	45.8	58.0	45.9	59.1	44.9
Basic<9th grade	10.4	5.3	10.7	5.3	7.0	5.1
High school	27.3	27.4	26.6	27.5	35.3	25.6
College	18.9	14.0	19.0	14.0	17.2	13.7
Other	8.4	2.6	8.6	2.5	6.0	4.0
Vocational	29.4	31.4	29.5	31.4	28.8	31.5
Programs/activities						
Religious	38.5	32.0	37.2	31.2	53.9	44.5
Self-improvement	19.8	20.2	17.9	19.5	41.7	32.4
Alcohol/drug support group	9.2	17.1	8.6	17.1	15.5	22.7
Counseling	11.6	17.1	10.8	16.7	20.2	23.4
Pre-release	7.0	8.1	6.4	8.0	13.2	8.9
Arts and crafts	13.1	7.4	11.8	7.1	28.9	12.6
Outside community	2.7	2.7	2.4	2.7	5.8	2.8
Ethnic or racial	6.1	2.5	5.9	2.5	7.8	2.1
Work assignment						
Any	91.2	70.0	91.0	69.7	93.4	74.8
General janitorial	11.7	13.4	11.6	13.3	13.7	16.3
Food preparation	13.1	12.6	13.0	12.5	13.8	16.0
Maintenance, repair or construction	14.6	8.9	14.7	9.1	12.4	4.9
Grounds and road maintenance	6.4	8.2	6.3	8.2	7.2	8.4
Library, barbershop, office or other services	14.9	8.0	14.9	7.8	14.3	11.7
Goods production	2.9	4.3	2.8	4.3	3.7	5.2
Farming, forestry, or ranching	.4	3.9	.4	4.0	.4	2.6
Laundry	2.3	3.0	2.4	3.0	1.8	4.0
Hospital or medical	1.7	.5	1.7	.5	1.8	.9
Other	24.8	12.0	24.7	11.9	26.5	13.8
Number of inmates	53,764	701,775	49,548	663,619	4,216	38,156

Source: Bureau of Justice Statistics, 1994.

3. Crime By Community-Based Violent Convicts

It is clear that violent convicted offenders do not do much hard time behind bars. And it is equally clear that they do tremendous numbers of serious crimes when loose on the streets, including a frightening fraction of all murders. For starters, a recent BJS analysis reveals the following:[53]

* In 1991, 45 percent of state prisoners were persons who, at the very time they committed their latest conviction offenses, were on probation or parole.

* Based only on the latest conviction offenses that brought them to prison, the 162,000 probation violators committed at least 6,400 murders, 7,400 rapes, 10,400 assaults, and 17,000 robberies while "under supervision" in the community an average of 17 months.

* Based only on the latest conviction offenses that brought them back to prison, the 156,000 parole violators committed at least 6,800 murders, 5,500 rapes, 8,800 assaults, and 22,500 robberies while "under supervision" in the community an average of 13 months.

* The prior conviction offense was violent for half of parole violators returned to prison for a violent offense. The prior conviction offense was violent for 43 percent of probation violators sent to prison for a violent offense.

* Together, probation and parole violators committed 90,639 violent crimes while "under supervision" in the community.

* Over half of the 13,200 murder victims were strangers.

* Over a quarter of the 11,600 rape victims were under the age of 12, and over 55 percent of them were under 18.

* Of all arrested murderers adjudicated in 1992 in urban courts, 38 percent were on probation, parole, pretrial release, or in some other criminal justice status at the time of the murder.

* A fifth of all persons who were arrested for the murder of a law enforcement officer from 1988 to 1992 were on probation or parole at the time of the killing.

These numbers represent only the crimes done by probation and parole violators who were actually convicted of new crimes and sent to prison. They do not even begin to measure the total amount of murder and mayhem wrought by community-based violent criminals whom the system has had in custody one or more times but failed to restrain.

The number of persons who are on probation or parole in a given year exceeds the number who are on probation or parole on any given day. As table 18 indicates, while 690,000 convicted criminals were on parole at the end of 1994, over 1 million cases were handled on parole in the course of the year. Likewise, while 2.96 million convicted offenders were on probation at the end of 1994, over 4.2 million cases were handled on probation in the course of the year.

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[53] *Probation and Parole Violators in State Prison, 1991* (Bureau of Justice Statistics, August 1995).

Table 18. Adults on parole and probation, 1994

	1/1/94	Entries	Exits	1/31/94	Year
Parole	676,000	411,000	396,000	690,000	1,101,000
Probation	2,900,000	1,360,000	1,300,000	2,960,000	4,260,000

Note: Because of nonresponse or incomplete data, the population on 1/1/94 minus exits is not exactly equal to the 12/31/94 population. Also, both the yearly figures and the entry and exit counts may involve a small fraction of double-counting because an undetermined number of adults on probation and parole enter and exit the system more than once a year.
Source: Calculated from *Probation and Parole 1994* (Bureau of Justice Statistics, 1994), pp. 5, 6.

Large numbers of convicted violent criminals are on probation and parole--more, in fact, than are in prison. For example, as Joan R. Petersilia has found, "on any given day in the U.S. in 1991, there were an estimated 435,000 probationers and 155,000 parolees residing in local communities who have been convicted of violent crime--or over a half million offenders. If we compare that to the number of violent offenders residing in prison during the same year, we see that there were approximately 372,500 offenders convicted of violent crime in prison, an approximately 590,000 *outside* in the community on probation and parole!"[54]

As table 19 indicates, in the nation's 75 largest counties in 1990, convicted offenders on probation and parole were 25 percent of all felony defendants, 23 percent of all those arrested for violent offenses, and 21 percent of all murder arrestees. Adding pretrial releases and others with a criminal justice status to those totals raises them to 38 percent, 36 percent, and 39 percent, respectively. Hence, about a third of all violent crime is traceable to persons who were on probation, parole, or pretrial release at the time of the offense.

[54]Joan R. Petersilia, "A Crime Control Rationale for Reinvesting in Community Corrections," *Spectrum*, Summer 1995, p. 19.

Table 19. Criminal justice status of felony defendants at time of arrest, by most serious arrest charge, 1990

		Percent of felony defendants in the 75 largest counties						
				With criminal justice status at time of arrest				
Most serious arrest charge	Number of defendants	Total	Without criminal justice status	Total	Probation	Pretrial release for earlier case	Parole	Other
All offenses	42,895	100%	62%	38%	18%	11%	7%	1%
Violent offenses	10,914	100%	64%	36%	16%	12%	7%	2%
Murder	440	100	61	39	14	11	7	6
Rape	595	100	76	24	12	6	5	1
Robbery	3,192	100	50	50	20	17	13	2
Assault	5,415	100	68	32	15	11	5	1
Other violent	1,272	100	74	26	13	7	3	3
Property offenses	15,248	100%	62%	38%	18%	12%	7%	1%
Burglary	4,588	100	57	43	21	12	9	1
Theft	6,239	100	61	39	19	11	7	1
Other property	4,420	100	67	33	14	12	6	1
Drug offenses	13,210	100%	62%	38%	18%	11%	8%	1%
Sales/trafficking	8,687	100	63	37	16	12	7	1
Other drug	4,523	100	58	42	20	10	10	1
Public-order offenses	3,523	100%	58%	42%	25%	7%	6%	4%
Driving related	1,143	100	56	44	35	4	3	1
Other public-order	2,379	100	58	42	20	8	7	6

Note: Data on criminal justice status at time of arrest were available for 76% of all cases. Detail may not add to total because of rounding.
Source: *Pretrial Release of Felony Defendants, 1990* (Bureau of Justice Statistics, November 1992).

The revolving door numbers do not become any less disturbing when broken down by violent offense categories. If anything, the reverse is true. For example, 42 percent of felony weapons defendants in 1992 had a criminal status at the time of the offense--17 percent on probation, 10 percent on parole, and 14 percent on pretrial release. And of those felony

weapons defendants with a history of felony convictions, more than half had two or more such convictions.[55]

Nor do the numbers look any more comforting when examined on a state-by-state basis. For example, table 20 tallies the crimes known to have been committed by prisoners released early from Florida prisons between January 1987 and October 1991--crimes committed during the period that the offenders would have been incarcerated had their prison sentences not been reduced. It shows that prisoners released early were responsible for 25,919 crimes, including 4,654 violent crimes. Among the violent crimes that would have been averted had these offenders remained behind bars rather than being released early were 346 murders and 185 sexual assaults.

Table 20. Crimes known to have been committed by convicted offenders released early from Florida prisons, 1/87 to 10/91

Category	Number	%	Offense	Number	%
Violent crimes	4,654	18.0	Murder, Manslaughter	346	1.3
			Sex Offenses	185	0.7
			Robbery	2,369	9.2
			Misc. Violent Offenses	1,754	6.8
Property crimes	11,834	45.9	Burglary	5,711	22.1
			Theft, Fraud, Forgery	4,777	18.5
			Weapons, Escape	969	3.8
			Misc. Property Offenses	377	1.5
Drugs	9,331	36.1	Drug offenses	9,331	36.1
Total	25,819	100		25,819	100

Source: *SAC Notes* (Florida Statistical Analysis Center, July 1993), p. 3.

Likewise, table 21 summarizes the data on how many persons convicted of murder in Virginia from 1990 through 1993 were on parole, probation, pretrial release, or had some other form of community-based legal status at the very moment they murdered. It shows that fully a third of the 1,411 convicted murders were "in custody" at the time they killed--91 on parole, 156 on probation, 81 on pretrial release, and 146 on electronic monitoring, with suspended sentences, or other forms of supervision.

[55] *Weapons Offenses and Offenders* (Bureau of Justice Statistics, November 1995), p. 5.

Table 21. Convicted murderers in Virginia, legal status at time they murdered, 1990-1993

Year	Probation	Parole	Pretrial Release	Other	None
1990	39	19	18	21	263
1991	36	21	17	40	231
1992	38	26	26	46	235
1993	43	25	20	39	208
1990-93	156	91	81	146	937

Note: Other includes unsupervised probation, community diversion, electronic monitoring and suspended sentences.
Source: Virginia Department of Corrections, Virginia Department of Criminal Justice Services, 1995.

The closer one examines the facts and figures about how much violent crime is done because of revolving-door justice, the plainer it becomes that the failure to restrain known criminals accounts for much of the predatory street crime that plagues our cities. For example, in 1994 a series of investigative reports by a local newspaper turned up plenty of facts about revolving-door justice in Dade County, Florida, which encompasses Miami. For example, only 671 of 4,615 identified local career criminals (average of 20 prior felony arrests and 6 convictions) were behind bars. From January 1992 to March 1994, 5,284 people were arrested twice or more and charged with violent or other serious felony crimes, including murders. Some 2,298 of them (43 percent) were rearrested for crimes worse than their first arrests. Only 9 percent (about 500) were convicted and sentenced to prison.[36]

Similarly, a 1994 local newspaper investigation into crime and punishment in New Jersey revealed that in 1993, 217,347 cases entered the state's criminal justice pipeline. Four out of ten cases were reduced or screened out of the system. Only 24 percent of those arrested and indicted wound up behind bars. About 40 percent got probation. Of those convicted, under 30 percent saw the inside of a prison for six months or more.[37]

In fact, many local newspapers around the country have done such investigative reports on the reality of revolving-door justice. But such reports are virtually unheard of in the national press, which spills incomparably more ink about how many convicted criminals are in prison rather than how many are not, and focuses little on how many released felons commit more crimes.

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[36]Jeff Lean et al., "Crime and Punishment," *The Miami Herald*, August 28-September 5, 1994 and December 18, 1994. Also see *Final Report of the Dade County Grand Jury* (Circuit Court of the Eleventh Judicial Circuit of Florida, May 11, 1994).

[37]Dave Neese, "Plenty of Punishment, Little Crime in Jersey," *The Trentonian*, August 15, 1994, p. 3.

By the same token, it speaks legions that while one can easily find detailed information on such things as the number and kind of treatment programs afforded to convicted rapists,[58] most states compile no data on such things as the ages of rapists' victims,[59] or on how many convicted murderers were on probation, parole, or pretrial release at the time that they killed.[60] Some state probation and parole agencies do not even keep data on how many of their charges are returned to prison during the term of their supervision.[61] Undoubtedly, most Americans would be more interested in knowing whether sex offenders are being punished and incapacitated, whether children are being raped, and whether convicted felons are being set free to murder, than in knowing whether notoriously hard-to-rehabilitate felons are enjoying a certain treatment regimen.

4. Reinventing Probation and Parole

Likewise, most citizens would be interested to know just why it is that probation and parole are failing to restrain so many violent criminals, and what, if anything, can be done to restrain them. It is all too obvious that hundreds of thousands of convicted criminals now on probation and parole need to be incarcerated; in the next section we will further document the costs and benefits of imprisonment.

But let us be absolutely clear: moving toward either blanket no-parole or no-probation policies would be completely unwise, totally unworkable, and impossibly expensive. Remember: even though millions of crimes are committed by community-based felons who recidivate, not everyone on probation or parole commits new crimes. For example, we know that within 3 years of sentencing, nearly half of all probationers and parolees commit a new crime or abscond.[62] But we also thereby know something else of equal importance, namely, that half of these community-based convicts do *not* enter (or flee) through the revolving door.

But how, if at all, can the justice system do a much better job of determining "which half is which" *before* it is too late--that is, before released community-based felons commit more murder and mayhem on the streets? How can it sort offenders more intelligently so that those who need to be restrained in prison remain behind bars, those who need to be restrained by hands-on supervision on the streets are effectively supervised, and those who are highly unlikely to violate the terms of their community-based sentences are monitored accordingly?

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[58]For example, see *Sourcebook of Criminal Justice Statistics 1993* (Bureau of Justice Statistics, 1994), table 6.77.

[59]*Child Rape Victims, 1992* (Bureau of Justice Statistics, June 1994), p. 1: "Thirty-six states responded that they did not keep such statistics. . . " Also see Andre Henderson, "The Scariest Criminal," *Governing*, August 1995, pp. 35-38.

[60]Twenty-nine states do not retain such data on murderers; most other states retain only some such data for selected years. Brookings Institution, Homicide Information Project, phone survey and correspondence, Summer 1995.

[61]For example, Anne Morrison Piehl, *Probation in Wisconsin* (Wisconsin Policy Research Institute, August 1992), p. 11: "The Wisconsin Division of Probation and Parole is uncomfortable thinking in terms of summary statistics and, therefore, does not record how many probationers go to prison during the term of their supervision."

[62]*Recidivism of Felons on Probation, 1986-1989* (Bureau of Justice Statistics, 1992), pp. 1,6; *Prisons and Prisoners in the United States* (Bureau of Justice Statistics, 1992), p. xvi.

Those who in the 1960s made the initial push for the widespread use of "alternatives to incarceration" stressed that caseloads must be kept within manageable limits. A 1967 presidential commission on crime recommended "an average ratio of 35 offenders per officer."[63] But in many jurisdictions today, officers "supervise" hundreds of "cases" at once. Those who in recent years have attempted to salvage the wreck of probation and parole have claimed that, by returning to intensive supervision, convicted criminals can be handled on the streets in ways that protect the public and its purse better than either routine probation and parole.

Unfortunately, however, more intensive programs have done little to remedy the problems of probationer and parolee noncompliance and recidivism. For example, a recent study found that over 90 percent of all probationers were already part of the very graduated punishment system called for by advocates of "intermediate sanctions"--substance abuse counseling, house arrest, community service, victim restitution programs, and so on. But about half of all probationers still did not comply with the terms of their probation, and only one-fifth of the violators ever went to jail for their noncompliance. As the study concluded, "intermediate sanctions are not rigorously enforced."[64]

Even the most intensive forms of intermediate sanctions have not proven highly effective. For example, the most comprehensive experimental study of intensive supervision programs for high-risk probationers concluded that these programs "are not effective for high-risk offenders" and are "more expensive than routine probation and apparently provide no greater guarantees for public safety." Similarly, the best experimental study of intensive supervision programs for high-risk parolees found that the "results were the opposite of what was intended," as the programs were not associated with fewer crimes or lower costs than routine parole.[65]

But it is important to note that even the "intensive" programs that failed were not all that intensive. For example, Joan R. Petersilia has recently found that most probationers get almost zero supervision, while even probationers who are categorized as high-risk offenders and slated for intensive monitoring receive little direct, face-to-face oversight. As she writes, if "probationers are growing in numbers and are increasingly more serious offenders, then they are in need of more supervision, not less. But less is exactly what they have been getting over the past decade."[66]

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[63]Presidents' Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.:Government Printing Office, 1967), p. 167.

[64]Patrick A. Langan, "Between Prison and Probation: Intermediate Sanctions," *Science*, May 6, 1994, p. 791.

[65] Joan Petersilia and Susan Turner, *Intensive Supervision for High-Risk Probationers: Findings from Three California Experiments* (Santa Monica: RAND Corporation, 1990), pp. ix, 98, and Susan Turner and Joan Petersilia, "Focusing on High-Risk Parolees: An Experiment to Reduce Commitments to the Texas Department of Corrections." *Journal of Research in Crime and Delinquency*, vol. 29, February 1992, p.34. Also see Joan Petersilia and Susan Turner, "Intensive Probation and Parole," in *Crime and Justice: A Review of Research*, volume 17, (University of Chicago, 1993), pp. 281-335.

[66]Joan R. Petersilia, "A Crime Control Rationale for Reinvesting in Community Corrections," *Spectrum*, Summer 1995, p. 19.

And note: this is not the fault of America's probation and parole officers, most of whom do the virtually impossible job of "caseload management" as well as it can be done given the legal, budgetary, and other constraints under which they presently operate.

Rather, if Americans want to slow or stop revolving-door justice, then we must be ready and willing to invest not only in keeping more violent and repeat criminals behind bars longer, but in keeping more community-based offenders under strict supervision. We can afford neither to leave probation and parole to business as usual nor to abandon them. Community-based corrections departments must be reinvented administratively as law enforcement agencies dedicated first and foremost to restraining violent and repeat criminals. Reinventing probation and parole will inevitably mean reinvesting in them. As Petersilia has estimated, we "currently spend about $200 per year per probationer for supervision. It is no wonder that recidivism rates are so high."[67] In short, there can be no denying the reality of revolving-door justice, and hence no escape from the need to restrain and punish more violent and repeat criminals more effectively both behind bars and on the streets.[68]

5. The First Revolving Door: Juvenile Justice

When it comes to the "first revolving door"--the juvenile justice system--the need to incarcerate certain types of violent and repeat offenders, and to structure no-nonsense but treatment-oriented community-based sanctions for less serious youth offenders, seems even more acute and pressing.

As discussed in part one of this report, the demographics and dynamics of juvenile crime make it certain that more and more serious youth offenders are just over the horizon. As countless studies have shown, adult repeat offenders often begin as juvenile repeat offenders. For example, a study of juvenile courts in Maricopa County, Arizona and the state of Utah revealed that significant fractions of youth returned to juvenile court after a first referral for the following offenses: burglary (58 percent), motor vehicle theft (51 percent), robbery (51 percent), forcible rape (45 percent), and aggravated assault (44 percent).[69]

Despite many legislative efforts aimed at trying more juvenile criminals as adults, not much has happened. In 1991 only about 51,000 male juveniles were held in public juvenile facilities, 32.5 percent of them for violent offenses ranging from murder to robbery.[70] But in 1992 alone there were over 110,000 juvenile arrests for violent crimes, and 16.64 times that number for property and other crimes.[71]

A good unobtrusive measure of just how bad revolving-door justice for juvenile offenders has become is the fact that in a survey of judges conducted by a trade paper for legal professionals, 93 percent said juveniles should be fingerprinted, 85 percent said that juvenile records should be available to adult authorities, and 40 percent said the minimum age for

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[67]Ibid., p. 1.

[68]John J. DiIulio, Jr., *No Escape: The Future of American Corrections* (Basic Books, 1991),pp. 5, 102.

[69]Penelope Lemov, "The Assault on Juvenile Justice," *Governing*, December 1994, p. 30.

[70]*Sourcebook of Criminal Justice Statistics* (Bureau of Justice Statistics, 1994), p. 584.

[71]Ibid., pp. 423-426.

facing murder charges should be 14 or 15.[72] (Most Americans, no doubt, would be surprised to learn that in most jurisdictions juveniles who commit crimes are not fingerprinted, and that their records of violent crimes are not weighed at all in adult criminal proceedings.) Likewise, much to the chagrin of advocates of leaving the juvenile justice system the way it is, both the Clinton administration and members of the 104th Congress have endorsed policies that would greatly facilitate the criminal prosection of violent and repeat juvenile offenders in adult courts.[73]

There is budding evidence that concerted efforts to close the first revolving door can work. To cite just one example, in July 1991, Harry L. Shorstein became state attorney for the Fourth Judicial Circuit in Jacksonville, Florida. At that time, Jacksonville was besieged by violent crime, much of it committed by juvenile offenders. In the year before Shorstein arrived, juvenile arrests had risen by 27 percent, but most young habitual criminals were released quickly. Jacksonville's finest were doing their best to remove serious young criminals from the streets, but the rest of the system was not following suit.

Then, in March 1992, Shorstein instituted an unprecedented program to prosecute and incarcerate dangerous juvenile offenders as adults. In most parts of the country, juvenile criminals for whom the law mandates adult treatment are not actually eligible for state prison sentences and are routinely placed on probation without serving any jail time. But Shorstein's program was for real. He assigned 10 veteran attorneys to a new juvenile-prosecution unit. Another attorney, funded by the Jacksonville Sheriff's office, was assigned to prosecute repeat juvenile auto thieves.

By the end of 1994, the program had sent hundreds of juvenile offenders to Jacksonville's jails and scores more to serve a year or more in Florida's prisons. Jacksonville's would-be juvenile street predators got the message, and the effect of deterrence soon appeared in the arrest statistics. From 1992 to 1994, total arrests of juveniles dropped from 7,184 to 5,475. From 1993 to 1994, juvenile arrests increased nationwide and by over 20 percent in Florida. But Jacksonville had a 30 percent decrease in all juvenile arrests, including a 41 percent decrease in juveniles arrested for weapons offenses, a 45 percent decrease for auto theft, and a 50 percent decrease for residential burglary. Although Jacksonville still has a serious violent crime program, the number of people murdered there during the first half of this year declined by 25 percent compared with the same period a year ago.[74]

While everyone would benefit from following this example and restraining violent juvenile criminals, perhaps the biggest potential beneficiaries of such policies are none other than violent juvenile offenders themselves. For example, a recent study by Harvard University economist Anne Morrison Piehl reveals that between 1990 and 1994 some 155 persons age 21 or younger were murdered by guns or knives in Boston: 22 (14 percent) were on probation

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[72]"Tougher Treatment Urged for Juveniles," *New York Times*, August 2, 1994, p. A16, citing data from a survey of 250 judges conducted by Penn and Schoen Associates for *National Law Journal*.

[73]Ken Cummins, "Clinton: Try More Youths as Adults," *Youth Today*, November/December 1995, pp. 28-29; Text of S. 1245, "Violent and Hard-Core Juvenile Offender Reform Act of 1995," 104th Congress, 1st Session, September 15 (legislative day, September 5), 1995. Also see Peter Reinharz, "Juvenile Injustice in New York," *Wall Street Journal*, July 20, 1994, p. A13.

[74]Data provided by Office of the State Attorney, Fourth Circuit, Jacksonville, Florida, 1995. Also see Mark Silva, "How 1 City Got Tough on Juvenile Crime," *The Miami Herald*, January 20, 1995, pp. A1, A10, and Paul Pinham, "Trial-As-Adult Policy Helped Lower Arrests," *The Florida Times-Union*, January 24, 1995, p. A6.

when they were killed, and 95 others (61 percent) had been arraigned in Massachusetts courts prior to their deaths. Likewise, 117 of the 155 young murder victims (76 percent) had criminal histories. And among the 64 known murders age 21 or younger, 15 (23 percent) were on probation when they killed, and 46 others (72 percent) had been arraigned in Massachusetts courts prior to the murders. Thus, 95 percent of the young killers and three-quarters of the young victims had criminal histories.[75]

It could not be any clearer: unless we close the revolving door on juvenile crime, we will close the coffin on more juveniles.

6. Why Prison Pays

Of course, incarcerating more juvenile and adult violent criminals will not rid America of its violent crime problem. As we stated at the outset of this report, Americans must actively pursue all three key crime goals--prevention, protection, and restraint.

But we continue to be amazed that many crime analysts and others refuse to acknowledge the data on how socially beneficial and cost-effective a crime-restraint tool imprisonment can be.

For example, many experts and commentators who must truly know better continue to assert that increased levels of incarceration have been a failure because increased imprisonment rates have not always been followed immediately by decreased crime rates. But as these same students of the subject are normally the first ones to emphasize, crime rates are largely a complex function of demographic and other variables over which the justice system, do whatever it will, can exercise relatively little direct control. As National Bureau of Economic Research economist Steven D. Levitt has observed, "To the extent that the underlying determinants of crime . . . have worsened over time, the increased use of prisons may simply be masking what would have been an even greater rise in criminal activity."[76]

To state the point a bit more bluntly, it apparently takes a Ph.D. in criminology to doubt that if we released half of all prisoners tonight, we would experience more crime tomorrow. This common sense of the subject--the obvious reality that prisons restrain convicted criminals from committing large numbers of crimes that they would be committing if free--is supported not only by the empirical data reported above on crime committed by community-based convicted criminals, but by a number of recent studies which estimate how much undetected and unpunished crime prisoners did before being taken off the streets.

To begin, we need to recognize that imprisonment offers at least four types of social benefits. The first is retribution: imprisoning Peter punishes him and expresses society's desire to do justice. Second is deterrence: imprisoning Peter may deter him or Paul or both from committing crimes in the future. Third is rehabilitation: while behind bars, Peter may participate in drug treatment of other programs that reduce the chances that he will return to crime when free. Fourth is incapacitation: from his cell, Peter can't commit crimes against anyone save other prisoners, staff, or visitors.

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[75]Data provided by Professor Anne Morrison Piehl, Project on Youth Crime in Boston, Harvard University, John F. Kennedy School of Government, 1995.

[76]Steven D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Legislation," National Bureau of Economic Research, February 1995, p. 1.

At present, it is harder to measure the retribution, deterrence, or rehabilitation value of imprisonment to society than it is to measure its incapacitation value. The types of opinion surveys and data sets that would enable one to arrive at meaningful estimates of the first three social benefits of imprisonment simply do not yet exist. But it is possible to estimate how much serious crime is averted each year by keeping those convicted criminals who are sentenced to prison behind bars, as opposed to letting them out on the streets.

Based on large prisoner self-report surveys in two states (Wisconsin in 1990, New Jersey in 1993), two Brookings Institution studies found that state prisoners commit a median of 12 felonies in the year prior to their imprisonment excluding all drug crimes.[77] Other recent studies offer higher estimates. For example, Steven D. Levitt has estimated that "(I)ncarcerating one additional prisoner reduces the number of crimes by approximately 13 per year, a number in close accordance with the level of criminal activity reported by the median prisoner in surveys."[78] Likewise, William and Mary economists Thomas Marvell and Carlisle Moody have estimated that "in the 1970s and 1980s each additional state prisoner averted at least 17 index crimes. . . . For several reasons, the real impact may be somewhat greater, and for recent years a better estimate may be 21 crimes averted per additional prisoner."[79]

Of course, it costs society as much as $25,000 to keep a convicted felon or repeat criminal locked up for a year. Every social expenditure imposes opportunity costs (a tax dollar spent on a prison is a tax dollar not spent on a pre-school, and vice versa). But what does it cost crime victims, their families, friends, employers, and the rest of society to let a convicted criminal roam the streets in search of victims?

A recent study of the costs of crimes to victims found that in 1992 economic loss of some kind occurred in 71 percent of all personal crimes (rape, robbery, assault, personal theft) and 23 percent of all violent crimes (rape, robbery, assault). The study estimated that in 1992 crime victims lost $17.2 billion in direct costs (losses from property theft or damage, cash losses, medical expenses, lost pay from lost work). This estimate, however, did *not* include direct costs to victims that occurred six months or more after the crime (e.g., medical costs). Nor did it include decreased work productivity, less tangible costs of pain and suffering, increases to insurance premiums as a result of filing claims, costs incurred from moving as a result of victimization, and other indirect costs.[80]

Another recent study took a somewhat more comprehensive view of the direct costs of crime and included some indirect costs of crime as well. The study estimated the costs and monetary value of lost quality of life in 1987 due to death and nonfatal physical and psychological injury resulting from violent crime. Using various measures, the study estimated that each murder costs $2.4 million, each rape $60,000, each arson $50,000, each

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[77]John J. DiIulio, Jr. and Anne Morrison Piehl, "Does Prison Pay?," *The Brookings Review*, Fall 1991, pp. 28-35 (Wisconsin data), and Anne Morrison Piehl and John J. DiIulio, Jr., "Does Prison Pay? Revisited," *The Brookings Review*, Winter 1995, pp. 21-25 (New Jersey data).

[78]Steven D. Levitt, "The Effects of Prison Population Size on Crime Rates: Evidence from Prison Crowding Litigation," National Bureau of Economic Research, February 1995, p. 25.

[79]Thomas Marvell and Carlisle Moody, "Prison Population Growth and Crime Reduction," *Journal of Quantitative Criminology*, 1994, p.136.

[80]*The Costs of Crime to Victims* (Bureau of Justice Statistics, February 1994), pp. 1, 2.

assault $25,000, and each robbery $19,000. It estimated that lifetime costs for all violent crimes totaled $178 billion during 1987 to 1990.[81]

Even these numbers, however, omit the sort of detailed cost accounting that is reflected in site-specific, crime-specific studies. For example, a survey of admissions to Wisconsin hospitals over a 41-month period found that 1,035 patients were admitted for gunshot wounds caused by assaults. Gunshot wound victims admitted during this period accumulated over $16 million in hospital bills, about $6.8 million of which was paid by taxes. Long-term costs rise far higher. For example, just one shotgun assault victim in this survey was likely to cost more than $5 million in lost income and medical expenses over the next 35 years.[82]

How much of the human and financial toll of crime could be avoided by incarcerating violent and repeat criminals for all or most of their terms?

One study, commissioned by the National Institute of Justice, found that the "lowest estimate of the benefit of operating an additional prison cell for a year ($172,000) is over twice as high as the most extreme estimate of the cost of operating such a cell ($70,000).[83] Likewise, the first Brookings study found that imprisoning 100 typical felons "costs $2.5 million, but leaving these criminals on the street costs $4.6 million."[84] The second Brookings study found that for every dollar it costs to keep the typical prisoner behind bars "society saves $2.80 in the social costs of crimes averted."[85]

And remember: these studies measure the social benefits of prisons solely in terms of imprisonment's incapacitation value. Because there is every reason to suppose that the retribution, deterrence, and rehabilitative values of imprisonment are each greater than zero--that is, because it is virtually certain that in addition to incapacitating criminals who would commit crimes when free, prison also succeeds in punishing, deterring, and rehabilitating at least some prisoners under some conditions--these estimates of the net social benefits of imprisonment are bound to be underestimates. And if, therefore, estimates made only in terms of prison's incapacitation value are positive, it means that the actual social benefits of imprisonment are even higher and that prison most definitely pays for the vast majority of all prisoners.

As if any further evidence were needed, we note that in 1989 there were an estimated 66,000 fewer rapes, 323,000 fewer robberies, 380,000 fewer assaults, and 3.3 million fewer burglaries attributable to the difference between the crime rates of 1973 versus those of 1989

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[81]Ted R. Miller et al., "Victim Costs of Violent Crime and Resulting Injuries," *Health Affairs*, vol. 12, Winter 1993.

[82]Neil D. Rosenberg, "Gunshots Shatter Lives, Cost Millions," *Milwaukee Journal*, March 14, 1993.

[83]David P. Cavanaugh and Mark A.R. Kleiman, *Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions* (BOTEC Analysis Corporation, 1990), p. 26.

[84]John J. DiIulio, Jr. and Anne Morrison Piehl, "Does Prison Pay?," *The Brookings Review*, Fall 1991, p. 34.

[85]Anne Morrison Piehl and John J. DiIulio, Jr., "Does Prison Pay? Revisited," *The Brookings Review*, Winter 1995.

(i.e., applying 1973 crime rates to the 1989 population). If only one-half or one-quarter of the reductions were the result of rising incarceration rates, "that would still leave prisons responsible for sizable reductions in crime."[86] Tripling the prison population from 1975 to 1989 "potentially reduced reported and unreported violent crime by 10 to 15 percent below what it would have been, thereby potentially preventing a conservatively estimated 390,000 murders, rapes, robberies, and aggravated assaults in 1989 alone."[87]

Still, it is important to caution that prison does not necessarily pay for each and every imprisoned felon. Moreover, the hidden costs of incarceration include losses in worker productivity and employability. Likewise, long-term imprisonment spells harmless geriatric inmates and associated health care costs. On the other hand, many incarcerated persons enter prison with anemic work records, a history of welfare dependence, and a fair probability of having to rely on government to pay for their health care whether or not they are incarcerated. And there are some geriatric prisoners whom we would want to remain in confinement purely for the sake of just desserts.

Also, while we know that prison pays, we do not know why per capita corrections spending varies so much from one jurisdiction to the next, why spending has risen so sharply in some places but not in others, or where the greatest opportunities for efficiency gains may lie. For example, prison operating costs in Texas grew from $91 million in 1980 to $1.84 billion in 1994, about a tenfold increase in real terms, while the state's prison population barely doubled. In Pennsylvania and other big states, corrections spending has grown much more slowly. Overall, Americans spend barely a penny of every tax dollar on prisons and jails. Thus, before Americans and their leaders can get a real policy-relevant handle on the social costs and benefits of incarceration versus other sentencing options, scholars will need to dig much deeper than criminologists have dug into the basic public finance questions related to crime and punishment.

For now, however, it is enough to acknowledge the overwhelming empirical evidence that, as the columnist Ben Wattenberg has quipped, "a thug in prison can't shoot your sister."[88]

7. For Restraining Violent Criminals

In sum, the simple truth is that, relative to the millions of crimes, including violent crimes, that are committed each year in America, the justice system imprisons only a small fraction of all offenders including only a small fraction of all violent offenders. Not surprisingly, therefore, those who really do go to prison in this country today are almost without exception the worst of the worst predatory career criminals. Not only are their official criminal records punctuated by many different types of serious crimes; they commit tremendous numbers of violent and other crimes that go wholly undetected, unprosecuted, and unpunished.

Scratch the criminal-records surface of most imprisoned "non-violent" prisoners, most "mere parole violators," and many "low-level drug offenders," and you will almost invariably find evidence of a life of crime that stretches back many years. These records, moreover, most

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[86]Patrick A. Langan, "America's Soaring Prison Population," *Science*, March 1991, p.1537.

[87]Patrick A. Langan, "Between Prison and Probation," *Science*, May 6, 1994.

[88]Ben Wattenberg, *Values Matter Most* (Free Press, 1995), p. 151.

likely include categories of offenses other than the ones for which the felon was most recently convicted, sentenced, and imprisoned. In addition, most imprisoned offenders, including the most violent ones, spend relatively little time behind bars before being released. For almost all of them, their conditions of confinement are quite humane. Problems of prison "overcrowding" are real but much exaggerated, and most prisoners enjoy access to a wide range of amenities and services behind bars.

Americans are paying a heavy human and financial toll for government's failure to restrain violent criminals, adult and juvenile. Given the country's crime demographics, and unless the system changes, over the next decade that toll is bound to become even heavier. Already the self-inflicted wound of serious crime done by persons on probation, parole, or pretrial release has begin to fester. Known offenders who are not restrained do as much as a third of all violent crime. Probationers and parolees are responsible for literally millions of crimes each year, including thousands of murders.

In our view, however, the answer is not to incarcerate every convicted felon, or even every convicted violent felon, for decades or for life. Nor is the answer to make conditions of confinement for those offenders who do end up behind bars harsh or inhumane; running "no-frills" prisons is not synonymous with curtailing revolving-door justice (although humane but spartan prisons certainly may have some deterrent effect). Going harder on the relatively small number of violent offenders in prison will do little to restrain the much larger (and younger, more impulsive, and harder to deter) violent offenders who roam free.

Rather, our view is that America needs to put more violent and repeat criminals, adult and juvenile, behind bars longer, to see to it that truth-in-sentencing and such kindred laws as are presently on the books are fully and faithfully executed, and to begin reinventing probation and parole agencies in ways that will enable them to supervise their charges, enforce the law, and enhance public safety. If the justice system were operating effectively in the public interest, then the challenge of restraining violent criminals, adult and juvenile, would be met more aggressively by *all* levels of government.

Americans are entitled to an honest, realistic civic discourse about restraining violent criminals, adult and juvenile. Before such a discourse can proceed, however, it must become unacceptable in elite circles to deny, discount, or disparage the public's legitimate desire to slow or stop revolving-door justice. In the 1960's and 70's, prisoners' rights activists and anti-incarceration analysts called for moratoria on prison construction ("Tear down the walls!"). Today many of these same people, flanked by various national media commentators, are battling--sometimes openly, but as often behind the scenes--to eliminate mandatory minimum laws, abolish or subvert truth-in-sentencing laws, and block any species of three strikes laws. They freely publicize and propagandize about the social costs of incarceration while choking off public discussion of its considerable social benefits. They lobby to expand the capacity of activist judges to impose prison caps which trigger the release of dangerous felons. In short, they achieve through junk science, administrative discretion, or judicial fiat what could not be achieved through democratic debate and legislative action.

In our view, and at a minimum, those who continue to ignore or to trivialize the facts about crime and punishment in America should be required by the press, policymakers, and the people to be more specific. For example, those who continue to assert that America should not imprison low-level drug offenders should tell us who, precisely, is to count as a "low-level drug offender." Of the 241,709 new court commitments to thirty-five state prisons in 1991, 74,423 (30 percent) were convicted of drug law violations, 16,632 of them for possession, the remaining 55,791 for drug trafficking and related crimes. Of the 36,648 new court commitments to federal prisons in 1991, 14,564 (42 percent) were drug law violators, 703 (2

percent) were convicted of possession, the remaining 13,861 for drug trafficking and related crimes. Most imprisoned drug traffickers are hardly first-time felons or strictly small-time dealers; many have quite diversified criminal portfolios involving violent and property crimes as well as drug crimes. The average quantity of drugs involved in federal cocaine trafficking cases is 183 pounds, while the average for marijuana traffickers is 3.5 tons.[39]

The truth about revolving-door justice and who really goes to prison is not pleasant. Acknowledging and acting on this truth will not set many violent or repeat prisoners free, but it will help to restore public trust and confidence in the justice system--and, over time, in representative government itself.

IV. The Good News About Fighting Violent Crime

Despite the depth and breadth of legitimate public concern about revolving-door justice and the failure to restrain violent criminals, the American people retain their confidence in the capacity of police to catch the bad guys and take them off the streets. The foregoing sections of this report are teeming with data that tell us what is not working, and beckon all concerned to take stock of the facts and figures behind the American public's valid crime fears.

But lest this Council be mistaken for a counsel of despair, we conclude this report by highlighting the evidence on what is working, namely, some police departments that have worked with citizens to take a huge bite out of violent crime. In our forthcoming hearings and in other activities, we hope to document and publicize real-life examples of such successful anti-crime efforts in action, and to gather, synthesize, and disseminate such research evidence as might prove useful to crime prevention, protection, and restraint.

1. Law Enforcement Matters

Just as there is a great deal of expert opinion which holds that incarceration has no effect on crime, so there is widespread doubt among criminologists that cops can work to cut rates of crime and disorder. In both cases, the people are empirically and morally right, and the experts dead wrong.

More than a dozen major empirical studies over the last two decades have failed to demonstrate either that police manpower and crime rates vary inversely or that particular types of community-oriented policing practices prevent crime. The most famous of these studies is the Kansas City, Missouri, "preventive patrol" experiment.

For a year in the early 1970s, Kansas City was divided into three areas, each of which received a different level of auto patrol. The 1974 report on the experiment found that criminal activity, reported crime, rates of victimization (as measured in a follow-up survey), citizen fear, and satisfaction with the police were about the same in all three areas. Active auto parol--beats where cars were visible patrolling the streets two or three times more frequently than in the control areas--made no difference at all.

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[39] *National Corrections Reporting Program, 1991* (Bureau of Justice Statistics, 1993); and *Comparing State and Federal Prison Inmates 1991* (Bureau of Justice Statistics, September 1994), p. 13.

But academic experts who treat such negative findings as the final words on the subject are badly mistaken. George L. Kelling of Northeastern University, the father of the Kansas City research and many other major studies, recently cautioned his colleagues that generalizing from a study about a specific tactic to other tactics or uses of police is inappropriate. As Kelling observed, random preventive patrol by automobile for the purpose of creating a feeling of police omnipresence is a relic of mid-century policing tactics. He keenly characterizes as defeatist dogma the view that crime stems from basic structural features of society and until problems like homelessness, social injustice and economic inequality are solved, nothing can be achieved.[90]

Indeed, there are a number of recent and ongoing statistical studies which demonstrate that policing can and does make a positive difference in cutting violent crimes. For example, in several recent studies, economist Dale O. Cloninger has found evidence that the number of police per violent crime is negatively and significantly related to certain crime rates: "police presence deters the commission of violent crimes by increasing the risk of being punished for committing those crimes."[91]

2. *Behind Drops in Violent Crime: Cops at Work*

Such statistical evidence, however, needs to be fleshed out by real-life examples. Two of the most interesting and most recent are Houston and New York City.

New York City and Houston have enjoyed truly phenomenal drops in serious crimes, including murder. In 1992 and again in 1993, more that 1,900 homicides were committed in the Big Apple. But in 1994 New York City's murder count fell to 1,581. Through July 1995, it suffered fewer than 700 murders, and it continued to show declines of 10 percent or more in robberies, burglaries, and most other serious crimes. Likewise, the number of people murdered in Houston declined by 32 percent during the first half of 1995 compared with the same period a year ago. Rapes in Houston decreased by 21 percent, robberies by 15 percent, and the overall violent crime rate by 7 percent. Demographics do not even begin to explain these drops. In both cities, the population of at-risk youth has been growing.

It is clear, however, that changes in policing have helped to drive down crime in both cities. Almost a thousand officers have been added to Houston's police force since 1991. Led by Police Chief Sam Nuchia, Houston has a cost-effective police overtime program which puts officers on the streets when and where they are most needed. Residents of Washington, D.C., which fields the highest number of police officers per capita of any major city, know that more police manpower does not necessarily produce less crime or better police performance. But in Houston, Nuchia has used the additional manpower to jump-start community anti-crime activities.

To cite just one example, Houston's Citizen Patrol Program has operated in more than a hundred of the city's neighborhoods. Among other things, thousands of citizen patrollers have observed and reported suspicious or criminal behavior from assaults to narcotics dealing

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[90]George L. Kelling, "Of Uniform Crime Reports and Police Accountability," draft manuscript, March 2, 1995; "How to Run a Police Department," *City Journal*, Autumn 1995, 34-45; with Catherine M. Coles, *Fixing Broken Windows: Restoring Order in American Cities* (Free Press, 1995).

[91]Dale O. Cloninger and Harold Braumn, "Violent Crime and Punishment," Applied Economics, 1995, p. 719. Also see Cloninger, "Enforcement Risk and Deterrence: A Re-Examination," *The Journal of Socio-Economics*, 1994, pp. 273-285.

to vandalism. Many once-troubled neighborhoods have gone as long as three consecutive months without needing to call for police service. Indeed, recent studies found that Nuchia's enforcement efforts not only contributed to Houston's falling crime rates, but also improved police emergency response times, and reduced citizens' fear of crime.

Like Houston, New York City has greatly expanded its police force. Since 1990 the NYPD has grown by 7,000 officers. Under Commissioner William J. Bratton, police have been directed to crack down on public drinking, graffiti, vandalism, and other public disorders. The NYPD has followed a six-prong strategy:

1. Getting guns off the streets
2. Curbing school violence
3. Driving out drug dealers
4. Breaking the cycle of domestic violence
5. Reclaiming public spaces
6. Reducing auto-related crime

In the process, Bratton has promoted a new breed of precinct commanders and made them responsible for finding innovative, cost-effective ways of serving citizens and cutting crime in their neighborhoods. Despite recent corruption scandals, the precinct-based management system is working, NYPD morale is high, and New Yorkers are getting results that range from fewer aggressive panhandlers to fewer shootings and murders.

3. Meeting America's Crime Challenges

To be sure, Houston and New York City are not the only places where police and citizens are meeting America's crime challenges. And even in these cities, more remains to be done. By combining smarter and tougher law enforcement with more vigorous efforts to restrain violent criminals, Americans can protect themselves from crime today while preparing for what lies ahead. Over time, safer streets and fewer public disorders become an invitation to more active citizen-initiated anti-crime activities, more traffic in public spaces, and more communal life and civic enjoyment. Over time, putting repeat predatory felons behind bars and keeping them there not only cuts crime by incapacitating criminals, but sends a firm moral message to all, including the criminally deviant youth who are tempted to victimize their truly disadvantaged neighbors. Over time, greater crime protection and restraint minimizes the criminogenic influences that shape innocent children into violent super-predators.

Over time all these things can be accomplished. But the time to begin accomplishing them is now, starting with the challenge of restraining violent criminals, adult and juvenile.

Governor's Commission on

Parole Abolition & Sentencing Reform

Final Report

August 1994

George Allen, Governor
Commonwealth of Virginia

Governor's Commission on

Parole Abolition & Sentencing Reform

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Memorandum for the Governor
August 23, 1994

From: **William P. Barr**
Richard Cullen
Co-Chairmen,
Commission on Parole Abolition and Sentencing Reform

We are pleased to present to you the Report of the Commission on Parole Abolition and Sentencing Reform.

Virginians' Demand for Change

Last year, when you and Attorney General Gilmore advocated the abolition of parole and the adoption of a truth-in-sentencing system to address the rapid rise in violent crime in Virginia, Virginians responded with strong support. In a variety of forums since then, the Commonwealth's citizens have made known their desire for the fundamental criminal justice reforms you have proposed.

Virginians clearly agree that freedom from violence and fear of crime is the most basic right of every citizen, and that protecting the safety of citizens is the foremost responsibility of government.

They understand that the vast majority of violent crime is committed by a relatively small number of repeat criminals — criminals who routinely move in and out of the criminal justice system, creating havoc and ruining lives with each succesive foray into the community.

In Virginia, three out of four violent crimes are committed by persons with prior criminal records.

Virginians' frustration and anger at this senseless and preventable crime is cresting and can no longer be ignored by responsible leaders.

Today, there is an emerging bipartisan consensus that further tinkering with the existing parole system will neither drive crime from Virginia's communities nor meet the people's legitimate expectations for decisive change.

Only truly fundamental reform, including the abolition of parole and the adoption of a truth-in-sentencing system, will empower the people of Virginia — juries and judges — to impose and enforce community judgments about punishment tailored to fit the crime committed. Only such a system will prevent the systematic undermining of that community judgment through bureaucratic decisions to grant early release.

Your Charge to the Commission

At the start of the Commission's work, you made clear your determination to keep faith with Virginians who signalled their support for parole abolition last fall. You also challenged us to make Virginia's criminal justice reform plan a model for the nation.

At the first Commission meeting on February 7, 1994, you charged us to keep in mind these guiding principles:

> First, that parole must be replaced by a system that deters crime by making punishment certain and predictable.
>
> Second, that the truth-in-sentencing system we adopt must be worthy of the name. We want sentencing juries to know that when they render a community judgment about the prison time that should be served, their judgment will be honored and enforced.
>
> Third, that violent criminals must be incarcerated for significantly longer periods than they now serve, and that *repeat* violent offenders must be taken out of action until they are well on in years.
>
> Fourth, that non-violent offenders must be diverted to alternative forms of punishment wherever possible in order to free up prison space and hold down the cost of incarcerating violent criminals longer.
>
> Fifth, that all offenders, violent and non-violent, must repay their debt to society by working while they are being punished. Meaningful work will also provide a solid base for these people to re-enter society as productive individuals with something to contribute.
>
> And, finally, that we must make the capital investment in increased prison capacity necessary to make the promise of sentencing reform a reality. We must heed the unfortunate lesson from those states that have been forced to release criminals early because they increased sentences without making adequate provision for additional prison space.

The Commission has been faithful to your instructions, and the recommendations contained in this Report will achieve the objectives you outlined. We believe that, if properly and expeditiously implemented, these recommended actions will

significantly enhance the safety of Virginians while ensuring that the increased incarceration of violent and repeat criminals is accompanied by the necessary public investment in expanded prison capacity.

The Commission's Work

Because the Commission you established is comprised of crime victims, law enforcement professionals, judges and prosecutors, business and civic leaders, respected state and local government officials of both parties, and other concerned Virginians of diverse backgrounds, we began our work with the advantage of a broad and informed perspective.

Since February, members of the Commission have held a series of well-attended public hearings around the state and have communicated in person and by mail with hundreds of citizens. One meeting was broadcast live to a statewide television audience that was invited to phone in with their comments and concerns regarding the struggle against crime. Individuals as diverse as victims and inmates, professors and probation officers — concerned Virginians from all walks of life — have shared their views with the Commission.

The stories told by the victims of crime have provided the most poignant and profound testimony about the need for fundamental reform. Many of these Virginians have been victimized not only by the criminals who assaulted them, but by a criminal justice system that leaves them in constant fear and forces them to re-live their nightmares many times over.

In Richmond, for example, Newport News police officer Carol Schindler explained how the brutal slaying of Officer Larry Bland by a paroled killer has devastated her: "Because of the failure of the parole system, I've not only lost my best friend and my partner - but I've lost my fiancee, who was the rest of my life." In Roanoke, the Commission heard from Connie Siegal, who described how the man who raped her escaped serious punishment: "I wanted to make sure he hurt no one else like he hurt me. Unfortunately, he was only incarcerated for eight months, and turned free to rape again, and rape again is exactly what he did. Now I ask you to do your part to see that people who are dangerous will be punished."

That same night Marilyn Crist, raped by the same man who had previously raped Ms. Siegal, stated the stark reality: "Something must be done! Again and again our criminal justice system has proven to be unjust!" Her words still ring powerfully in the ears of all who were present that night.

And in Portsmouth, Dorothy Soule, whose teenage son was killed in a senseless attack, addressed the Commission: "Our parole system has failed. The practice of good time credit serves the inmate who changes his behavior long enough to be paroled back to the street to continue his life of crime." Throughout Virginia, person after person described the trauma of having to tell their painful stories again and again in testimony before the Parole Board — just to prevent the early release of their attackers.

Added to this persuasive personal testimony was a vast amount of valuable statistical data, technical information and expert analysis provided to the Commission.

Meeting frequently in subcommittees, Commission members conducted on-site inspections at correctional facilities and programs around the state. They received in-depth briefings on key policy, fiscal and technical issues from the staff of the Criminal Justice Research Center, the Office of the Attorney General, the Senate Finance Committee, the Department of Corrections, and the Virginia State Police.

The work of the Commission was aided by an extended dialogue with, and valuable suggestions from, members of the Judicial Sentencing Guidelines Oversight Committee and representatives of the Virginia Association of Commonwealth's Attorneys. The Chief Justice of the Supreme Court of Virginia appointed a group of distinguished judges to work directly with the Commission, and these judges offered keen insights gained through years of service. Commission members and staff met frequently with other Virginia trial and appellate judges, prosecutors, law enforcement officers, and community leaders during the course of the Commission's work.

The Commission also considered detailed information regarding sentencing reform initiatives and criminal justice programs in other states and at the federal level, where parole was abolished nearly a decade ago.

The direct participation in the Commission's work by you, Attorney General Gilmore, and prominent members of the General Assembly in both political parties has been extremely helpful to the Commission throughout its deliberations.

With your permission and encouragement, we have worked closely with the Legislative Commission on Sentencing and Parole Reform, which has been examining the Commonwealth's sentencing practices for the last two years. Information has been freely shared between the two panels, and we have recently

briefed the legislative commission on our recommendations to you.

Since you established this Commission in January, we have received and assimilated a large amount of information in a relatively short time. This effort could not have succeeded without the benefit of prompt access to expert technical assistance and data previously gathered by the various state agencies, offices and officials identified above as well as by the legislative commission.

In short, there is ample credit to be shared by all for the plan that follows.

On behalf of your Commission and all Virginians whose safety will be enhanced by this far-reaching initiative, we wish to express our gratitude to those in and out of state government who assisted in this effort.

The Commission's Conclusions and Recommendations

The Commission and its subcommittees have reached conclusions regarding the recent surge in violent crime in Virginia, the impact of recidivism by violent offenders, the human and material costs of Virginia's existing parole system, the need for longer incarceration of dangerous criminals, more effective and economical ways of incapacitating criminals, and the likelihood of a tidal wave of increased crime and violence in Virginia if decisive action is not taken immediately.

These alarming conclusions are set forth in the following Final Report of the Commission.

The Commission's Report also provides specific recommendations for reform measures — including abolishing parole, adopting truth-in-sentencing, dramatically increasing the prison time served by violent and repeat offenders, and providing more cost-effective and productive settings for non-violent offenders.

In order to assist the Governor and General Assembly in crafting a financing package adequate to meet the increased capital and operating costs associated with the Commission's proposal, the Report contains specific bed space projections for the next 10 years.

Stop the Bleeding

In presenting this Report, we do not suggest that the plan proposed by the Commission will be a panacea for a society wracked by violent behavior.

The underlying causes of crime are numerous and complex, and we have not attempted to catalogue them or to offer comprehensive solutions. We wholeheartedly support the efforts of the persons and panels developing strategies for restoring high academic standards and accountability to education, ending the cycle of welfare dependency, stemming the destructive influences that undermine cohesive families and communities, and creating new jobs and expanding economic opportunity for the people of Virginia. These separate initiatives appear to address the issues most often considered as contributors to crime.

Our Commission's mission was to present an effective sentencing reform plan that will stop the bleeding in Virginia's besieged communities. While policies must be developed that treat the whole patient — the so-called "root causes" of crime in our society — such policies will not succeed and Virginians' full potential will not be unlocked unless we first restore peace to our communities and protect Virginians from attacks and threats by the violent few in our midst. The most effective form of crime prevention remains the incapacitation of violent and repeat offenders. The best way to prevent rape, for example, is to keep known rapists behind bars longer.

We must, as you have said, stop the bleeding before we can treat the whole patient.

In Virginia, the cradle of American liberty, our citizens are being denied the most basic of rights — the right to live in peace without fear of violence. We have heard Virginians' demand for fundamental change, and we respectfully encourage the Commonwealth's policy-makers to heed it.

As the special session of the General Assembly approaches, all eyes are looking to Virginia for leadership in the war on violent crime. The time for decisive action is now.

It is with a fervent belief that *crime can be overcome* and that *safety can be restored* to Virginia's communities that we commend the Commission's plan to you and to all the citizens of the Commonwealth.

William P. Barr

Richard Cullen

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Executive Summary

The Looming Crisis

In a nation wracked by violent crime, Virginia once might have been considered relatively safe. But during the last five years, the violent crime rate in the Commonwealth has surged by 28%.

Every 23 minutes, another Virginian is raped, murdered, robbed or maimed.

The future looks even bleaker. The recent rise in crime has occurred despite demographic conditions that pointed to a *decrease* in criminal activity. Most "criminal careers" begin around age 14 and peak by age 21, with "retirement" occurring by the late twenties or early thirties. Virginia's recent violent crime surge developed even as the size of this crime-prone age group was *shrinking* over the last decade.

Now the Commonwealth faces a ten-year period — 1996-2005 — when the crime-prone age group will *rise*. The well-established correlation between the size of this age group and the incidence of violent crime suggests that the recent surge in crime will accelerate in the years ahead.

The prospect of increasing victimization adds even greater urgency to the task of criminal justice reform. Virginians already do not feel safe, and they have demanded that government act decisively to quell the violence in their communities. In the state that gave birth to freedom, citizens are demanding that government fulfill its primary obligation — to preserve the peace.

Protecting Virginians from Violent Criminals

While there are many causes of crime, the most direct and immediate cause is the presence of violent career criminals in our communities.

Three out of every four violent crimes in Virginia is committed by a repeat offender. If more of these career predators were behind bars, fewer Virginians would become victims of their violence.

For that reason, Governor George Allen in January 1994 created the Commission on Parole Abolition and Sentencing Reform. He charged the Commission with developing a plan to abolish parole, establish truth-in-sentencing, and ensure that violent and repeat criminals stay in prison for much longer periods of time.

The Commission has completed its work and has recommended a plan that will achieve the objectives defined by the Governor.

The plan proposed by the Commission will impose the toughest penalties in the country on the worst violent criminals. And it will sharply increase the punishment for all repeat offenders who have violent convictions in their criminal records.

While the Commission recommends getting tougher with violent criminals, it proposes getting smarter in the way Virginia handles non-violent offenders. The Commission's plan neither increases nor decreases the time served by non-violent criminals who have no prior violent crime convictions. But the Commission recommends the use of more economical and productive facilities, such as work centers, for the incapacitation of these low-risk offenders.

By targeting violent and repeat offenders for the stiffer penalties, the Commission's plan will result in an increasing percentage of prison beds in Virginia occupied by violent criminals. This approach is far more cost-effective than merely increasing the length of confinement for all criminals without regard to the nature of their activities or the magnitude of the threat they pose.

Of the projected $800-850 million in increased capital construction costs required to implement the Commission's plan over the next ten years, at least $600 million will have to be spent even without the proposed reforms. The lion's share of the increased cost is the result of the underlying demographic conditions and crime trends projected for the next ten years.

Replacing Parole With Truth-in-Sentencing

Under Virginia's current sentencing system, criminals typically serve only a small fraction of their sentences. Juries and judges impose the punishment they deem appropriate to the crime, only to have their judgments routinely countermanded by a hodge-podge of early release rules.

With the combined effects of discretionary parole, mandatory parole, and generous "good-time" credits, the average criminal in Virginia serves only a third of his sentence. Many inmates are eligible for parole after serving as little as 17% of the time they were given by the judge or jury.

For example, the typical first-degree murderer in Virginia is sentenced to approximately 35 years and serves only ten. The average sentence for a rapist is 9.2 years; the average time actually served is 4.4 years. Robbers typically are sentenced to 13.8 years but serve only 4.4 years.

This misleading system has a negative impact on all concerned. Early release rules prevent judges and juries from pronouncing a community judgment about the proper punishment for illegal conduct. The result is unwarranted disparities in the length of incarceration and a loss of public confidence in the administration of justice. The deterrent value of incarceration is diminished as criminals perceive they can "beat the system." Worst of all, victims of crime are deprived of the finality and peace of mind that comes with a determinate sentence. To keep their assailants behind bars, victims must re-live the pain of their attacks year after year in appearances before the Parole Board.

To right these wrongs and bring truth-in-sentencing to Virginia, the Commission proposes the abolition of discretionary and mandatory parole effective January 1, 1995. All offenses committed after that date will be punishable under a new system in which every inmate will serve at least 85% of his or her sentence.

The existing "good-time" credit provisions — which now give the average inmate 300 days off his sentence for every 365 days served — will also be eliminated under the Commission's plan. In their place will be a system of *earned* sentence credits capped at 15% of sentence. To receive the credits, inmates will be required not only to practice good conduct and obey all prison rules, but also to engage in work, drug treatment, education, and other beneficial activities.

To facilitate the transition to a truth-in-sentencing system in which criminals actually serve their sentences, the Commission proposes expanded use of voluntary sentencing guidelines. The guideline sentences will reflect the actual time to be served, and will be based on the average time actually served for each offense during the five-year period 1988-1992. Unlike in mandatory guideline systems that have been criticized around the country, judges under the Commission's plan will be permitted to depart from the guideline sentence when the circumstances of the case warrant. However, judges must ensure the completion of guideline worksheets and must state in writing the reasons for any departures.

The Commission's plan calls for creation of a new sentencing commission to promulgate the voluntary sentencing guidelines

subject to legislative approval. The sentencing commission also will monitor sentencing practices, crime trends and correctional resources, and make recommendations to the Governor and the General Assembly regarding prison capacity and related resource needs. Based on an appraisal of sentencing practices under the new truth-in-sentencing system, the sentencing commission may subsequently recommend statutory changes to define offenses more specifically and to narrow authorized ranges of punishment. The commission will report annually to the General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia.

Under the Commission's proposal, jury sentencing will be retained. Juries will be able to impose punishment that reflects the sense of the community, and their judgments will not subsequently be erased by early release rules and parole decisions.

To facilitate their transition to society, all criminals released from prison will be subject to a period of probationary supervision of between six months and three years, the precise time to be determined by the sentencing judge. This probationary period will be *added* to the sentence imposed by the judge or jury.

Incarcerating Violent Criminals Longer

The Commission proposes steep increases in the time served by all violent offenders, and several-fold increases in the time served by offenders who have prior convictions for violent crimes.

These increases will be achieved through the sentencing guidelines, though statutory changes will remain an available option if sentencing practices fall short of the time-served guidelines.

Once the guideline sentences for all offenses have been converted to actual time served using the 1988-1992 average for each offense, the Commission proposes the following increases in the guideline sentences:

- For violent first-time offenders, a 100% increase.

- For violent offenders with a prior conviction for violent crime, increases of 300-700% (depending upon the seriousness of the prior violent offense).

- For non-violent offenders with a prior conviction for violent crime, increases of 300-500% (depending upon the seriousness of the prior violent offense).

Actual experience proves that these increases in prison time for violent offenders will *prevent crime*.

A conservative analysis by the state's Criminal Justice Research Center demonstrates that, if the Commission's proposals had been implemented eight years ago, the increased prison time *would have prevented more than 4,300 identifiable crimes* for which repeat offenders were convicted during 1986-1993.

This represents only the tip of the iceberg. When preventable crime is computed based on all *reported* offenses, and then is projected out over the next ten years, the impact of this reform is stunning. *More than 26,000 violent crimes — approximately 120,000 crimes in all — will be prevented during the next ten years if the Commission's plan is adopted.*

This prevented crime will represent a cumulative cost savings to victims and society of *$2.7 billion* during the next decade.

Punishing Non-Violent Offenders More Economically

The Commission found that in the correctional system today many low-risk inmates incarcerated for non-violent crimes are occupying expensive beds in medium and even maximum security prisons. Since non-violent offenders are the ones for whom intervention and rehabilitation hold some promise, the present arrangement is doubly wasteful. Inmates who pose little threat to the public are incarcerated in costly facilities where security considerations deprive them of opportunities to engage in activities that will assist their return to society as productive and law-abiding citizens.

While the Commission does not recommend any decrease in the time served by non-violent offenders, it does recommend use of low-cost work centers to house these low-risk inmates. To qualify for such a placement, the offender must have received a sentence of three years or less for a non-violent offense, have no prior convictions for violent offenses, and pass review under a risk-assessment procedure administered by the Department of Corrections.

Inmates in work centers will engage in farming and light industry, and will be available to assist inprison construction and to work in the community under carefully controlled conditions. The Department of Corrections will work with local officials to identify the types of projects that are deemed suitable for inmate labor.

The Commission also recommends the designation of certain prison facilities for intensive drug treatment programs, to be provided through private service organizations and public-private partnerships. The Commission offers further recommendations for enhancing community-based alternatives to incarceration and for assisting inmates in the transition to life in the community after release from prison.

Expanding Prison Capacity

Governor Allen has emphasized that Virginia must avoid the mistakes made by other states which abolished parole and increased sentence length but failed to expand prison capacity sufficiently to house the enlarged inmate population.

By shifting to sentencing based on actual time served and creating a new sentencing commission to monitor sentencing practices, crime trends, and correctional needs, the Commission believes that Virginia can stay a step ahead in anticipating and providing for the necessary prison space.

The Commission recommends reducing the cost of new prison construction and operations through privatization, use of inmate labor, construction of work centers for non-violent criminals, double-celling and double-bunking of existing and planned facilities, and other innovations.

Most important, by targeting violent and repeat criminals for longer incarceration, the Commission's proposals will ensure that Virginia's prison beds are occupied by a larger percentage of dangerous criminals, thereby giving Virginians a greater measure of safety in return for their increased investment in correctional facilities.

The Commission's proposed increases in sentence length will not result in significant new demands for prison bed space for several years. Far from exacerbating the current pressures on the capacity of the state corrections system and local jails, the Commission's recommendations provide ways to achieve prompt relief from crowded conditions.

Work centers can be constructed relatively quickly with pre-fabricated materials on existing prison sites. Double-celling and double-bunking also require little preparation time.

Most important, the $800-850 million projected cost for additional prison construction under the Commission's plan over the next ten years *includes* the cost of facilities necessary to house all state-responsible inmates. It is time for the Commonwealth

to meet its responsibility to provide space to incarcerate all state prisoners.

Conclusion

Longer incarceration of those who commit violent acts against their fellow citizens is the most immediate and the most effective means of preventing crime.

It is the only way to provide protection now to citizens who face the frightful prospect of a mounting wave of violent crime in the years just ahead.

The Commission recommends that the Commonwealth move decisively to meet that threat by adopting this comprehensive plan to abolish parole, establish truth-in-sentencing, incarcerate violent and repeat criminals significantly longer, institute more productive and economical methods to punish non-violent criminals, and expand prison capacity now to ensure that criminals are securely incarcerated in the years ahead.

Overview of Findings and Conclusions

Crime in Virginia: The Crisis Looming

- Virginia historically has enjoyed low crime rates compared to the rest of the nation.
- Virginia's violent crime rate has increased suddenly and sharply in recent years.
- Virginia's violent crime surge has occurred despite favorable demographic factors.
- Demographic trends indicate that violent crime will soar in Virginia in the years ahead.

Violent Criminals Do Not Serve Enough Time In Virginia

- Criminals in Virginia serve a small fraction of their sentences.
- Most violent crime is committed by repeat offenders.
- Longer incarceration will prevent crime.
- Recidivism rates decrease as length of incarceration increases.
- Longer incarceration of criminals reduces human suffering.
- Longer incarceration of criminals reduces the economic cost of crime to citizens and society.
- Minorities would benefit most from reduced victimization.

Early Release of Criminals Increases Victimization

- Parole has contributed to the crime surge in Virginia.
- Parole contributes to the perception by criminals that they can "beat the system."
- The parole system prolongs and compounds the agony of crime victims.

Parole Deceives Citizens and Denies Justice

- There is no truth in sentencing in Virginia; sentencing juries and judges are in the dark.
- Parole undermines confidence in the criminal justice system.
- Parole leads to wide disparities in sentencing.

Overview of Recommendations

Replace the Misleading Parole System With Truth-In-Sentencing

1. Abolish Discretionary and Mandatory Parole Effective January 1, 1995
2. Expand Existing Sentencing Guidelines System and Revise Guidelines to Reflect Actual Time Served
3. Establis a Sentencing Commission to Recommend Guidelines and Statutory Revisions
4. Retain Jury Sentencing
5. Replace "Good-Time" With Limited Earned Sentence Credits
6. Assure Post-Release Supervision

Prevent Violent Crime by Dramatically Increasing Time Served by Violent and Repeat Offenders

7. Double the Average Time Served by Violent First-Time Offenders
8. Increase Average Time Served by 300-700% for Violent Offenders With Prior Violent Convictions
9. Increase Average Time Served by 300-500% for Non-Violent Offenders With Prior Violent Convictions

Punish Non-Violent Offenders in More Economical and Productive Ways

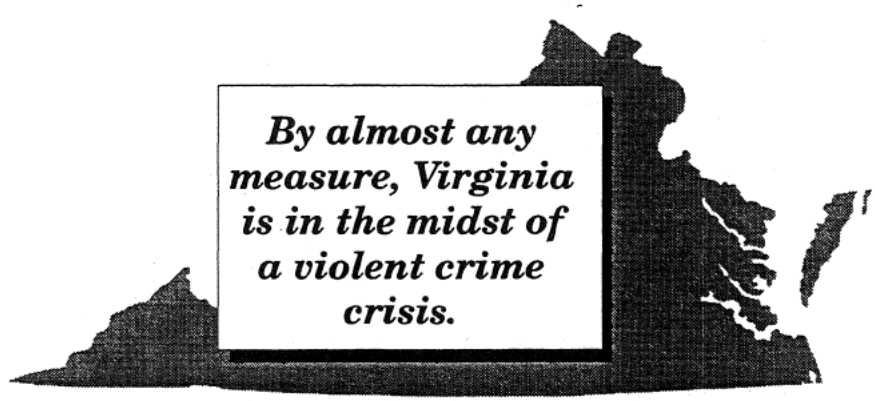
10. Apply Truth-In-Sentencing to Non-Violent Offenders
11. Use Work Camps to Save Money and Prevent Future Crime
12. Provide Substance Abuse Services in Appropriate Designated Facilities
13. Provide an Expanded Array of Alternatives to Incarceration
14. Develop Transitional Policies for Inmates Approaching Release

Expand Prison Capacity to Ensure Secure Incarceration

15. Ensure That Prison Needs Are Anticipated and Addressed Based on Sentencing Practices
16. Increase Double-Celling in Existing and Planned Facilities
17. Pursue Privatization and Inmate Labor to Reduce Costs
18. Construct Additional Prisons to Meet Anticipated Needs

Section I

Findings and Conclusions



CRIME IN VIRGINIA: THE CRISIS LOOMING

Virginia Historically Has Enjoyed Low Crime Rates Compared to the Rest of the Nation

Compared to many places around the country, Virginia historically has been a relatively safe place to live and work. Even in the 1980s Virginia never ranked higher than 34th among the states in the overall violent crime rate.

In Virginia this fact is often cited by opponents of sentencing reform and longer incarceration as justification for inaction. Yet, state-by-state comparisons are of little value when one considers that the country as a whole is confronted with violent crime rates far in excess of those in the other Western democracies.

Such statewide rankings ignore socio-economic and other relevant differences among states, and also fail to provide a true picture of the fear and violence that often pervade areas *within* a state, such as Virginia's violence-plagued urban centers.

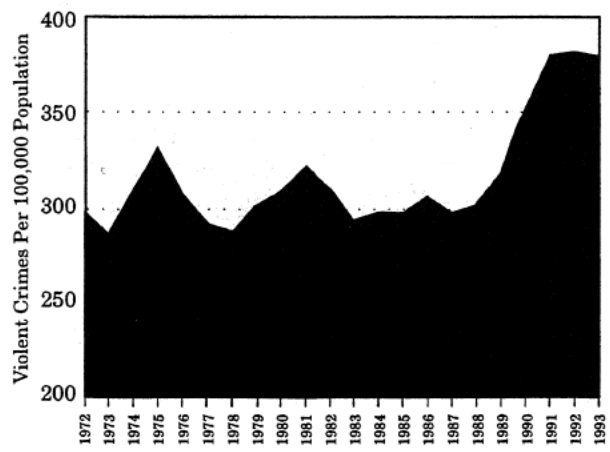
Most important, modest differences in crime rates from state to state provide scant comfort to the victims of crime and their families.

Every 23 minutes, another Virginian is raped, murdered, robbed or maimed. That appalling fact ought to shake every Virginian from any lingering illusion about the relative safety of life in our Commonwealth.

Virginia's Crime Rate Has Increased Suddenly and Sharply in Recent Years

Display 1

Violent Crime Rate in Virginia (1972 - 1992)



In recent years, the situation in our communities has deteriorated markedly. Violent crime has soared in Virginia — *up 28% in the last five years alone.* (See Display 1).

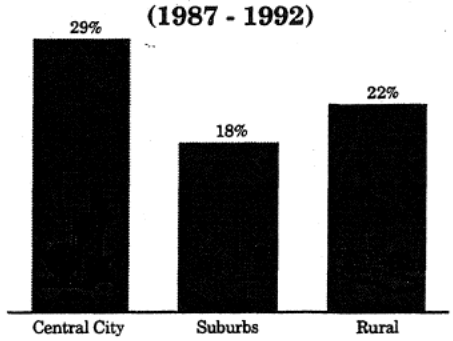
As Governor Wilder's Commission on Violent Crime candidly observed in its December 1992 report:

"The total level of violent crime — murder, rape, robbery and aggravated assault — is in the midst of a surge in Virginia. The overall violent crime rate ... was relatively steady from 1972 to 1987. However, since 1987 the overall violent crime rate has increased by 28%. The 1991 overall violent crime rate in Virginia was ... by far our highest rate in the past twenty years."

While the increase in crime during the past five years has been greatest in Virginia's inner cities (29%), neither Virginia's rural communities (22%) nor our suburbs (18%) have been immune from the trend. (See Display 2).

Display 2

Growth of Violent Crime By Location (1987 - 1992)



And while there are theories about why certain types of crime increase in certain areas at certain times, the reality is the sharp crime rises in Virginia have been registered across-the-board — in all major categories of violent crime and all areas of the state.

This data strongly suggests the need for fundamental, systemic change in Virginia's criminal justice policies.

Virginia's Violent Crime Surge Has Occurred Despite Favorable Demographic Factors

The Commission finds most disturbing the demographic conditions in which this recent, sudden and sharp increase in violent crime has occurred in Virginia.

According to studies provided by the Department of Criminal Justice Services, most "criminal careers" begin around age 14 and peak by age 21, with "retirement" by the late twenties or early thirties. By monitoring the growth of the population of this "crime-prone age group," criminologists have generally been able to forecast overall crime trends. (See Display 3).

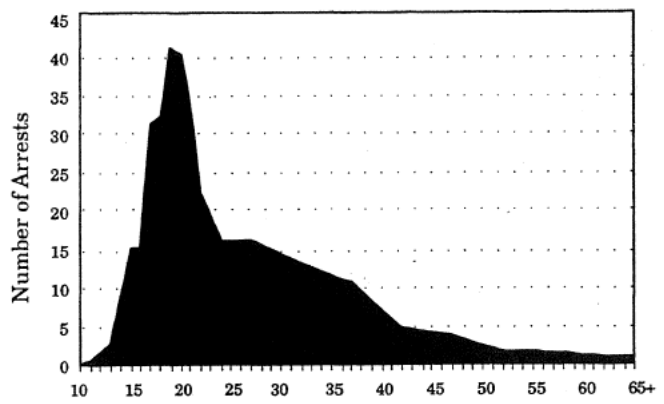
What is troubling to criminologists — and to this Commission — is the fact that Virginia's recent sharp increase in violent crime has occurred during a period in which the size of the crime prone age group has been in a decade-long decline.

Since the crime rate has been rising this fast under favorable demographic conditions, we must ask: *What will happen when the demographic pattern changes and the size of the crime-prone age group begins to grow again?*

We will soon find out.

Display 3

Age Distribution for Murder/Non-Negligent Manslaughter Arrests in Virginia (1993)



CRIME IN VIRGINIA - THE CRISIS LOOMING
Continued

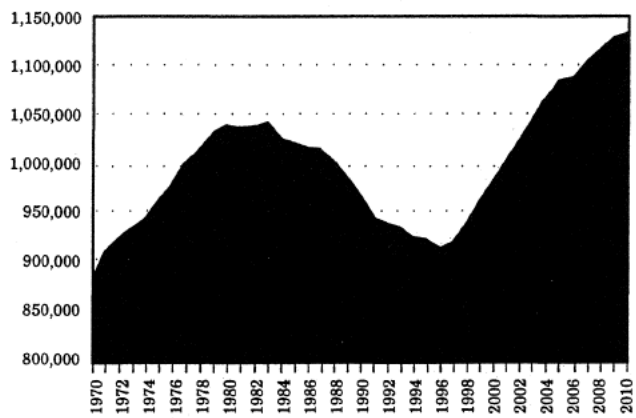
Demographic Trends Indicate Violent Crime Will Soar in Virginia in the Years Ahead

Beginning in 1996, the population of young people between the ages of 15 and 24 in Virginia is projected to rise, and rise continuously until approximately 2010. (See Display 4).

The clear historical correlation between levels of crime and the size of this crime-prone age group strongly suggests that Virginia's current violent crime crisis will become markedly more acute in the latter half of this decade and beyond.

Display 4

Virginia Population Estimates For Ages 15 to 24 Years (1970 - 2010)



This expected rise in crime will create significant additional demand for prison bed space even without reforms to increase the length of time violent criminals stay behind bars.

Curiously, some opponents of sentencing reform and longer incarceration point to this anticipated prison bed space shortfall as a reason not to abolish parole and not to increase the time violent criminals are incarcerated. Even without such reforms, they say, our prison population will skyrocket. Such arguments are like saying more resources should not be committed to fighting a raging forest fire because increasing wind gusts are forecast.

The worse things look in terms of projected increases in crime, the more evident is the need for dramatic reform.

The cost of inaction is likely to be a criminal reign of terror that will make our current violent climate seem tame.

Virginians must not stand idly by in the face of this deadly threat to our safety and the well-being of our families.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA

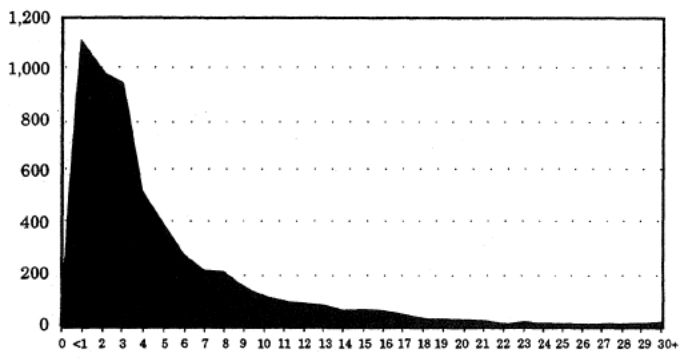
Criminals in Virginia Serve a Small Fraction of Their Sentences

Having heard from the people of Virginia and having reviewed data relative to the net time served by felony offenders in Virginia, the Commission is persuaded that the length of incarceration has been entirely too short.

One who commits a non-violent property crime in the Commonwealth is not usually committed to prison until his or her third or fourth offense. Even when committed to prison, the offender usually serves a very short prison term. Before reaching prison, a large number of these inmates have been given suspended sentences, probation, community-based alternatives, and/or a brief jail sentence. These alternatives to prison, geared to arresting the escalation of a criminal career, yield some successes. However, large numbers of inmates fail to change their pattern of behavior, and reach our prisons as three-time losers.

Display 5

Time Served on Prison Sentences Imposed on Violent Felony Offenders (FY85 - FY91)



A study of the length of sentence served by property offenders released from prison in Virginia between 1985 and 1991 reveals some disturbing truths. Of this subset of the prison population — comprised of burglars, thieves, certain sex offenders, and other non-violent, non-drug offenders — 49% served less than one year behind bars. A full 89% of the entire population of these offenders, including multiple offenders, served less than three years despite considerably longer sentences pronounced by the judge or jury.

A similar study of all those convicted of violent offenses reveals equally alarming information about the length of incarceration historically. From this category, which includes all homicides, robberies, rapes, and aggravated assaults over a seven-year period, 20% were released after serving only one year. A full 56% of these inmates were released after serving less than three years. (See Display 5).

Punishment of criminals is admittedly not a scientific endeavor subject to precise mathematical calculations. But this Commission is convinced that these brief sentences are simply not long enough.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA Continued

Most Violent Crime is Committed by Repeat Offenders

Study after study has shown that an extraordinary amount of violent crime in America is committed by a relatively small number of people who have dedicated themselves to "careers" of crime and violence. A 1992 survey by the U.S. Bureau of Alcohol, Tobacco, and Firearms found that many of these repeat offenders commit more than 150 serious crimes per year.

Arrest and conviction, alone, do not stop them. According to U.S. Department of Justice figures, more than a third of all violent crime is committed by offenders who are on bail, probation, or parole at the time of arrest. In fact, approximately five out of every eight felons released early from prison were arrested for a new felony or serious misdemeanor within three years of release. One study of 240 criminals found that those criminals were responsible for half a million crimes over an eleven-year period.

In 1989, *The Orlando Sentinel* followed the careers of nearly 4,000 prisoners who were released early from Florida's prisons. More than 30% of the offenders were re-arrested for a new crime during the period of time when they should have been in prison under their original sentences. A group of 950 of these criminals were charged with 2,180 new crimes, including 11 murders or attempted murders, 63 armed robberies, six sexual assaults, seven kidnappings, 104 aggravated assaults, 199 burglaries, and 451 drug offenses.

The Commonwealth has not avoided these tragic patterns. *In Virginia, three out of every four violent crimes are committed by repeat offenders.*

According to the January 1994 report of the Governor's Commission on Violent Crime in Virginia, 68% of all murders, 76% of all aggravated assaults, and 81% of all robberies were the work of repeat offenders. Rapists and other sex offenders were even more likely than other criminals to commit the same sort of crime again.

So long as these chronic offenders are permitted to roam freely on the streets of Virginia, thousands of otherwise preventable crimes will occur. However, if these dangerous predators and repeat offenders are separated from society through prolonged incarceration, lives will be saved and crime-related losses will be prevented.

Longer Incarceration Will Prevent Crime

Longer incarceration of violent criminals is by far the most effective way to combat the current and anticipated increase in violent crime in Virginia.

Opponents of reform predictably offer Virginians a Hobson's choice between punishment and prevention. But this dichotomy is a false one. The most effective crime prevention program — indeed, the only effective crime prevention program in the *short term* — is an increase in the time violent criminals stay behind bars. Longer terms are the best protection.

In the 1992 publication entitled *The Case for More Incarceration*, the U.S. Department of Justice summarized the overwhelming body of historical evidence that establishes a close relationship between incarceration rates and crime rates.

Cutting through the fog that typically surrounds discussion of these issues, the Justice Department reported:

> Prisons work. How do we know prisons work? To begin with, historical figures show that after incarceration rates have increased, crime rates have moderated. In addition, when convicted offenders have been placed on probation or released early from prison, many of them have committed new crimes. One can legitimately debate whether prisons rehabilitate offenders; one can even debate whether, and how much, prisons deter offenders from committing crimes. But there is no debate that prisons incapacitate offenders. Unlike probation and parole, incarceration makes it physically impossible for offenders to victimize the public with new crimes for as long as they are locked up.

The Commission has found no evidence to support the hollow claim that increased incarceration is futile in fighting crime. To the contrary, the evidence is irrefutable that *longer incarceration prevents crime.*

Recidivism Rates Decrease as Length of Incarceration Increases

While the claim that incarceration breeds criminal conduct continues to echo through some of the literature, there remains no persuasive evidence to support such a claim. To the contrary, criminologists at the state and national levels have concluded that lengthening incarceration has a positive impact on recidivism rates and thus the prevention of crime.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA Continued

An extensive study by the U.S. Bureau of Justice Statistics demonstrates that the length of time served in prison before release has an impact on the rate of recidivism. Inmates who had served *more* than five years before release were found to have *lower* recidivism rates than those who had served less than five years in prison.

Virginia's Department of Criminal Justice Services analyzed data regarding all first-time violent offenders released from prison between 1985 and 1991 to determine whether length of prison term affected likelihood of re-commitment within three years. The study concluded that, for offenders between the ages of 18 and 21 at the time of admission, those whose actual time served was *less* than three years were 20-25% *more likely* to be re-committed to prison for a new offense than those whose actual time served was greater than three years.

This study was limited by the fact that the Department was unable to measure the number of total crimes committed, but instead analyzed the number who committed a new crime and were detected, arrested, tried, convicted, and re-committed to prison. It is safe to assume that the higher re-commitment rate represents merely the tip of the iceberg of actual crimes committed. Thus, where longer terms are imposed, a significantly smaller number of offenders return to a life of crime.

The Commission has concluded that prolonged incapacitation of dangerous offenders is essential if Virginia is to protect law-abiding citizens from the expected surge in violent crime.

Longer Incarceration of Criminals Prevents Crime and Victimization

The focus on recidivism rates, demographic factors, and statistical measures tends to obscure the enormous human dimensions of the violent crime tragedy.

The members of the Commission wish that every member of the General Assembly and every policy-making official in the Executive Branch could have heard the testimony of the crime victims who appeared before the Commission to tell their stories. They gave the violent crime crisis in Virginia a tragically human face — a face of immense grief, sadness and torment; of unspeakable heartache and painful memories that do not fade; of frustration and anger, and an acute sense of loss and betrayal. Although they recognized the fundamental reforms recommended by this Report come too late to benefit them directly, many implored the Commission to adopt these changes for the benefit of their friends and family and to spare those who live under the shadow of fear.

Longer incarceration of violent criminals does more than lower crime rates. It saves lives. And, it prevents many more lives from being shattered by vicious acts of violence.

A detailed study conducted by the Criminal Justice Research Center identified more than 4,000 specific crimes that would have been prevented if the Commission's proposed increases in incarceration of violent criminals had been in place the last seven years. (See recommendation 9 and Appendix B for a full discussion of this study.)

These identifiable crimes are not just statistics; they are real people. Each number represents an actual Virginian who would have been spared victimization if Virginia had abolished parole during the last decade. The impact in the years ahead will be even greater if the Commonwealth's leaders fail to adopt this Report's recommendations.

The true human cost of crime can never be fully measured. But when the crime can be prevented — as these crimes can be — that cost is intolerably high.

Our state and national governments have spent billions of dollars in the past twenty years on highway safety, air and water quality, asbestos removal, and many other public health and safety initiatives — all in an effort to reduce the risk of harm.

In the face of a direct and immediate threat to the safety of Virginians, state government must act decisively to protect the Commonwealth's citizens from violent victimization.

Longer Incarceration of Criminals Reduces the Economic Cost of Crime to Citizens and Society

Much is made of the cost of abolishing parole and incarcerating dangerous criminals longer. But, in reality, releasing criminals early is penny-wise and pound-foolish. The cost of incarceration is but a fraction of the cost citizens and society pay as a consequence of letting dangerous criminals return to the community to commit more crime.

While we cannot quantify the *human* toll that violent crime takes, a considerable body of research has established the extremely high *economic* cost associated with violent crime and early release. This evidence leads ineluctably to the conclusion that investment in adequate prison space is not only the right thing morally, but is the wise thing to do on purely economic grounds.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA Continued

In recent years, there have been many studies concerning the high costs of crime. They all confirm this fact: *the costs of crime are many times higher than the cost of incarcerating repeat offenders.*

The economic costs of crime are enormous. *Business Week* has estimated the total direct and indirect cost of crime to be $425 billion per year. *U.S. News and World Report* puts the annual cost at $674 billion.

A landmark 1987 study by the U.S. Department of Justice concluded that putting 1,000 felons behind bars saves society about $405 million per year. This study was based on data showing the average crime cost to be $2,300 in property losses and/or in physical injuries, and establishing that the average felon commits 187 additional crimes when back out on the street.

The 1987 Justice Department study found that, when all transactional, social and economic costs and losses are taken into account, society spends on average 17 times more to release violent criminals early than it does to incarcerate them.

Making the most conservative possible projections, Professor John DiIulio of Princeton University found that for every dollar spent on incarcerating a criminal, society saves two dollars in social costs.

The Department of Criminal Justice Services Research Center studied the 1992 Virginia criminal justice system costs attributable to recidivism alone. Finding that this expense comprises 42% of all system costs, they reported that the cost to police and the courts was $187 million dollars.

The failure to keep repeat offenders behind bars costs government and society in many ways:

- Police and judicial resources must be expended in re-arresting and re-prosecuting habitual criminals.

- Fearful citizens must spend money to put bars on their windows and extra locks on their doors. Others incur relocation costs in an effort to escape crime-plagued neighborhoods.

- All insurance consumers share in the burden of crime-related physical injury and property damage through higher premiums.

- Businesses must hire security guards, obtain extra insurance, and cope with the loss of customers who are too frightened to go shopping. *These costs translate into lost jobs and lost revenues.*

Making matters worse, these cost burdens typically are borne disproportionately by those least able to afford them — the urban poor.

The average cost of incarcerating an inmate in Virginia is approximately $37,000 in capital costs and $18,000 annually in operating costs. These costs are not insignificant. But one must consider the cost of letting career criminals back out on the street.

Those who say that Virginia cannot afford the cost of keeping violent and repeat criminals behind bars longer are wrong. The truth is, Virginia cannot afford *not* to keep them locked up.

Minorities Would Benefit Most From Reduced Victimization

No group of Virginians will benefit more from the incarceration of violent criminals than the minority residents of urban neighborhoods. While the nation's violent crime rate has quadrupled over the past thirty years, inner-city areas have experienced the most devastating consequences.

No statistics are more shocking than those relating to murder. Although African-Americans comprise only about 12% of the American population, 2,000 more blacks were murdered across the nation in 1992 than whites.

Today, black males residing in cities are 2.5 times more likely to be victims of violent crimes than their white counterparts in metropolitan areas. Nationwide in 1992, 113 out of 1,000 black teenage males were victimized by violent crime — six times the victimization rate of white adult males.

With the heightened level of violent crime has also come many other harmful side-effects. The economic vitality of urban neighborhoods is choked off as potential customers avoid these areas, leaving businesses in the red and forcing the loss of jobs and income for residents. The resulting downward spiral causes hopelessness, anger, fear, and resignation from participation in society and conformity to its rules.

The economic revitalization and rebirth of Virginia's urban communities is dependent upon success in the struggle against violent crime. The hope of a generation of promising young minority Virginians depends on removing the violent few from their communities.

Reflecting this undeniable reality, many of the most impassioned pleas for longer incarceration of violent criminals received by the Commission came from African-American parents in the Commonwealth who fear for the future of their children.

EARLY RELEASE OF CRIMINALS INCREASES VICTIMIZATION

Parole Has Contributed to the Crime Surge in Virginia

It is impossible to deny that the recent surge in violent crime in Virginia is in significant part the result of the state's failed, lenient parole and "good-time" policies. These policies increase victimization by putting dangerous predators back on the street after serving a fraction of their sentences.

With a patchwork of statutory provisions, parole practices and "good-time" rules, sentencing policy in Virginia often seems incoherent. To the crime victims, judges, and criminal justice professionals who addressed the Commission, the Commonwealth's policy resembles a runaway freight train: No one is really in control, a lot of people are getting hurt, and the situation is sure to worsen.

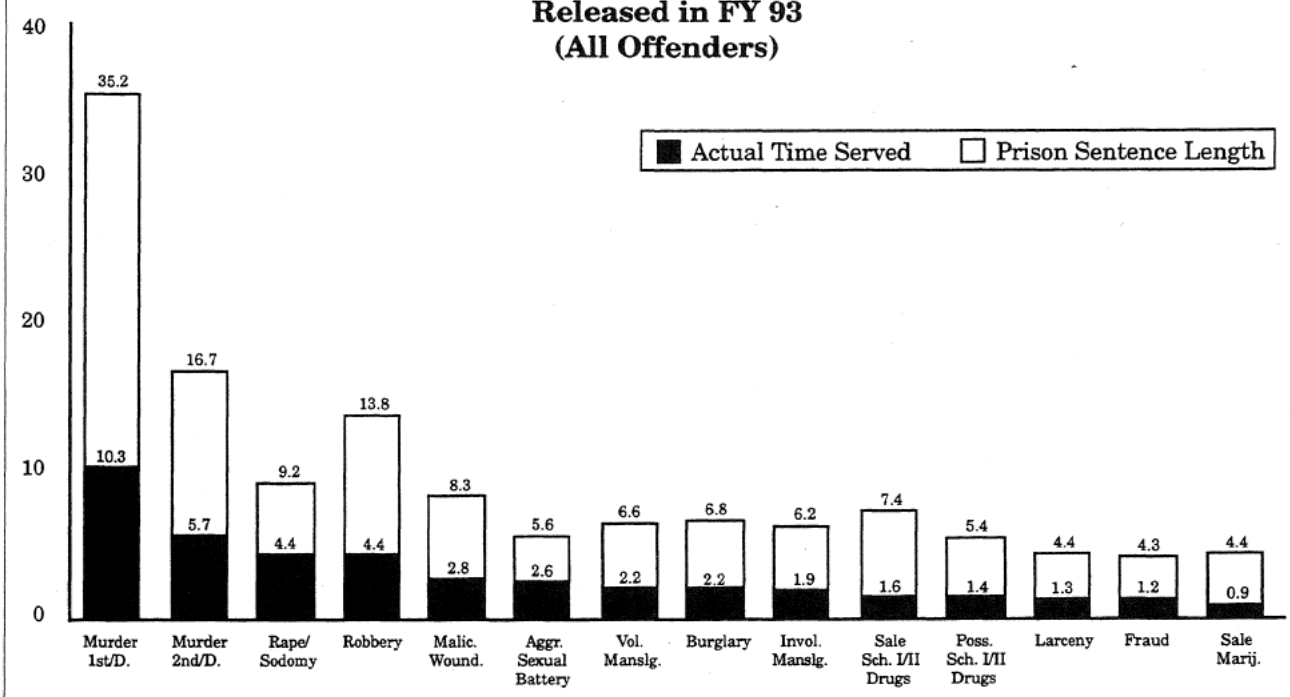
Consider these statistics for 1993, the most recent year for which data is available: (See Display 6).

- Among all felons released from state prisons, those who had been convicted of first degree murder served an average of only 33% of their terms.

- Those convicted of second degree murder actually served slightly more, averaging 35% of their terms.

Display 6

Average Time Served in Prison by Virginia Felons Released in FY 93 (All Offenders)



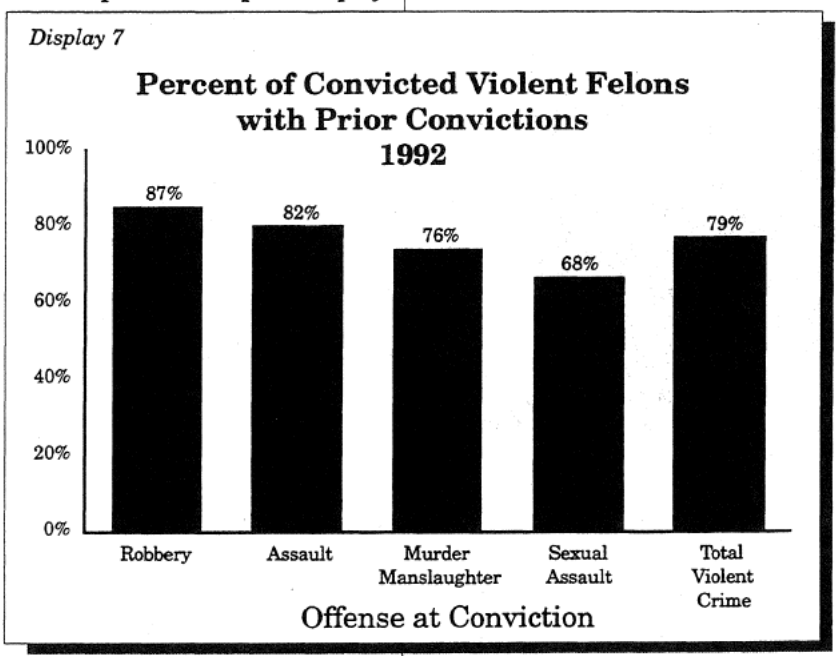
- Those convicted of *possessing* hard drugs served more of their sentence on average than those who had been convicted of *selling* those types of drugs.

- Of all offense categories, no group served, on average, as much as half of the sentence the circuit court judge thought he or she was imposing.

What is apparent is the absence of truth in sentencing in Virginia at any level. Early release is not confined to particular types of crime for which one may suppose offenders to be more amenable to treatment or less prone to recidivate. If anything, the across-the-board leniency indicates a pervasive philosophy favoring rehabilitation of criminals rather than incapacitation. If the operative assumption is that most criminals can be reformed, a closer look is needed.

Statistics supplied by the Department of Criminal Justice Services illustrate the folly in the early release of felony offenders. This data establishes that 79% of all violent offenders convicted in 1992 were previously convicted of at least one other reportable crime. Among this group, 87% of those convicted of robbery had been previously convicted of one or more such crimes. (See Display 7).

Display 7



Parole Contributes to the Perception That Criminals Can "Beat the System"

In 1992, Professor Morgan Reynolds of Texas A&M University published a report showing that the failure of the criminal justice system to punish offenders by imposing longer sentences has led many of them to believe that crime *does* pay. He writes:

> Most crimes are not irrational acts. Instead they are acts freely committed by people who compare the expected benefits with the expected costs. The reason we have so much crime is that, for many people, the benefit outweighs the costs. For some people a criminal career is more attractive than their other career options.

EARLY RELEASE OF CRIMINALS INCREASES VICTIMIZATION Continued

Reynolds reports that when the probabilities of arrest, prosecution, conviction and imprisonment are considered for all of the serious crimes committed in the United States, the perpetrator of a crime can expect to serve an average of eight days in prison per crime. For those who thrive on getting something for nothing, this systemic weakness is an invitation to a life of crime.

Many offenders approach arrest, prosecution and conviction much as a businessman would face a slow sales season. Those who know Virginia's system from the inside — as inmates — often are able to exploit its compromises. They know that busy prosecutors can satisfy victims and courtroom observers by agreeing to seemingly large sentences without trial, while the actual time served as a result of the sentence will be relatively minimal. Such minor periods of incarceration are viewed by career criminals merely as a cost of doing business.

The Parole System Prolongs and Compounds the Agony of Crime Victims

When an individual has been victimized through harm to person, family, friend, or property, government cannot erase the event. The sad truth is that, whatever we do within the criminal justice system, we cannot bring back the dead, remove a scar, or restore a shattered life.

What government *can* do is provide a just, speedy and certain response to the violation of society's rules for civilized behavior. Just as the funeral service brings a sense of closure to a terrible loss, the criminal justice process must provide finality with regard to punishment of the offender.

Nowhere is the current system more cruel to victims than at the parole hearing stage. At the time when grieving reaches its last stage, when the passage of time begins to dull the ache, and life's fullness crowds the empty void, victims are notified that the criminal responsible for the agony is standing at prison's door, ready to walk free. Every memory of every painful moment may burst into the heart and mind of the hearer. The crime scene, the preliminary hearing, the sleepless nights, public confrontation in court, and many other disturbing recollections return from their rest.

To make matters worse, this time there will be no police, no prosecutor, and no judge to ensure fairness and protection for the victim. Under Virginia's system, the authority to grant discretionary parole rests with an appointed board whose members are required to consider and re-consider each inmate's parole eligibility again and again over a period of many years. The victim may offer input, written or in person, but must stand alone, aware that her strong opposition may fall on deaf ears, and that the inmate whose release she protested may well soon be free.

The lonely decision whether to take the risk of crossing a violent offender by opposing his release on parole — when that release may be imminent — is faced by victims over and over again.

The burden of this constant reminder of a criminal's violent acts and impending return to society produces a re-victimization that is utterly unjustifiable. The human cost of this misguided and offensive system should no longer be tolerated.

The decision regarding length of stay is properly made by the sitting judge or the jury. The finality of this decision can serve as a solemn but comforting conclusion that marks the beginning of a new chapter for the aggrieved.

PAROLE DECEIVES CITIZENS AND DENIES JUSTICE

There is No Truth In Sentencing in Virginia; Sentencing Juries and Judges Are In the Dark

Without truth, there can be no justice.

Our system of criminal justice is predicated on the notion that a jury of one's peers or a judge should fashion punishment to fit the crime. This foundational principle is relied upon by citizens as they commit themselves to the rules of a society centered around the concept of ordered liberty. It provides the basis for the trust that allows for submission of our affairs to review by our neighbors. *The promise of a community judgment about proper punishment is merely an illusion if those acting on behalf of the community do not know what the sentence they impose actually will mean in terms of time served in prison.*

In Virginia, the sentences prescribed by judges and juries, which represent the community's sense of appropriate sanction, are routinely countermanded by a bizarre and confusing combination of mandatory parole requirements, discretionary parole grants, and "good-time" credits. (See Display 8 and Appendix A).

Most Virginians are totally unaware that, under existing law, mandatory parole provisions essentially require all inmates to be released when the balance of their time remaining reaches six months. More important, all but a few inmates are eligible for, and receive, earlier release through discretionary parole.

An inmate's parole eligibility date (the date the inmate may first be considered for parole) is based on a formula that takes into account the severity of the offense, the length of the total unsuspended sentence, and the number of prior prison commitments.

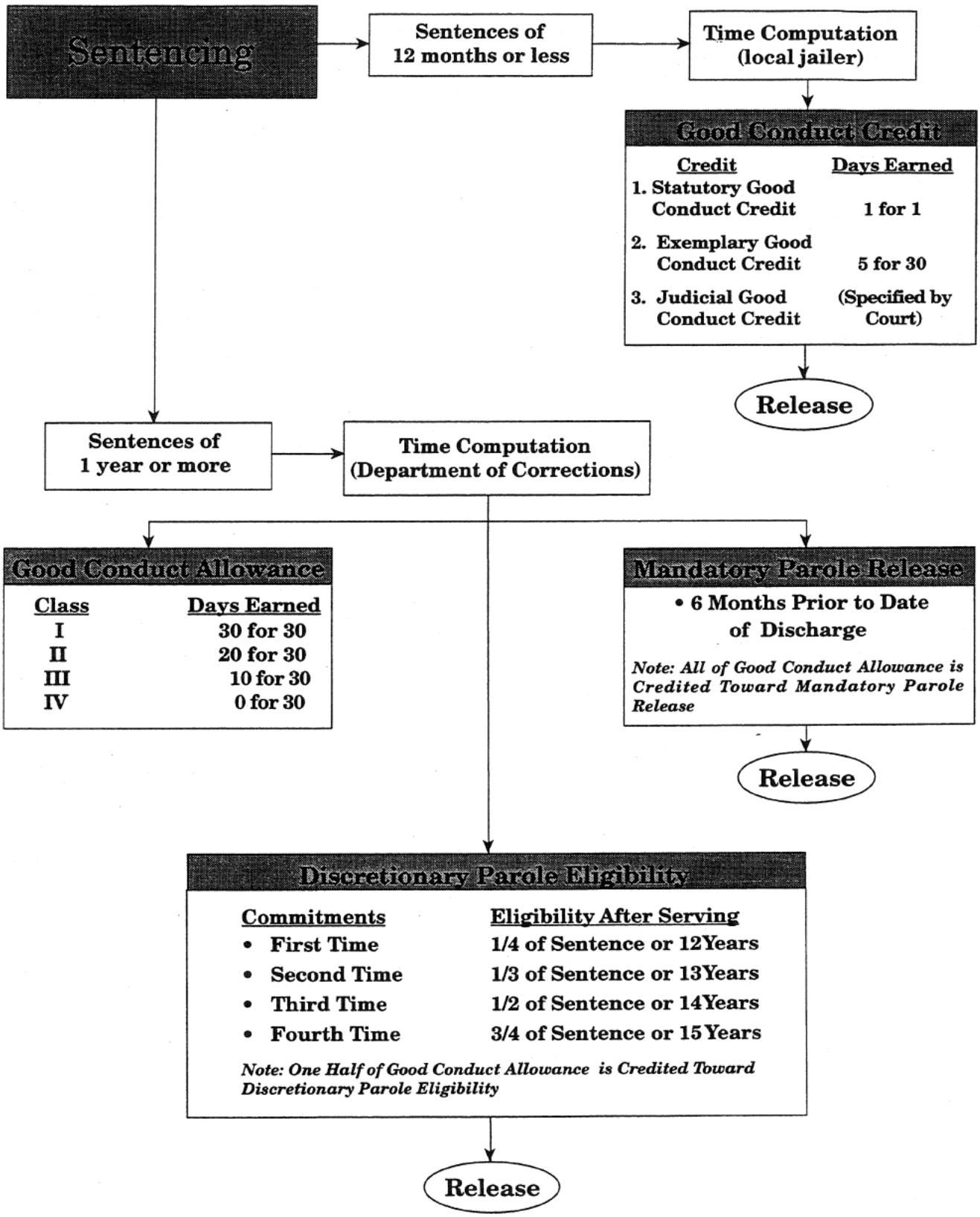
Added to this uncertain mix is a statutory scheme that gives inmates "good-time" credits under a variety of scenarios. The net result of this system is that, with a minimum of effort, the average prisoner can erase 300 days from his sentence for every 365 days he or she serves.

This hodge-podge of early release provisions results in most inmates serving only a fraction of their sentences.

For example, a person convicted of murder who has no prior felony convictions generally receives a judge-imposed sentence ranging from 30 to 68 years, but such persons on average spend only 9-22 years in prison.

Display 8

Description of Virginia Parole and "Good Time" Laws



PAROLE DECEIVES CITIZENS AND DENIES JUSTICE Continued

- While the average sentence given to a first degree murderer is about 35 years, the average time actually served is only about 10 years.

- The average sentence given to persons convicted of rape is 9.2 years, but the average time served by convicted rapists is just 4.4 years.

- Robbers are sentenced on average to 13.8 years, but actually serve only 4.4 years.

One father is painfully aware of what these early release rules really mean. In a letter written to Governor Allen and signed by 17 family members, Ottis Bishop of Virginia Beach spoke for many of the families of crime victims. He wrote that in the early morning hours of January 5, 1985, while she was working as a motel clerk along the beachfront, his daughter, Julie Bishop Crockett, was brutally attacked. Her killer stabbed her several times, severing the artery in her neck and her windpipe. Her lungs filled with her own blood, and she drowned. The killer was sentenced to fifty years in prison. On the eve of her killer's *second* parole hearing, Mr. Bishop wrote:

> We question why this man should serve a portion of his sentence, one that a jury felt was appropriate, and be turned loose... Why do law abiding citizens become the victims who are constantly in danger when these criminals are released to commit more crimes? There is so much wrong with our legal system that you surely will not be able to fix it all in one term. However, [the killer] and every criminal like him needs to serve his time. Release after serving one-sixth of a sentence is a slap in the face of the jury and every other person who has done their civic duty... What outrage we feel knowing that Julie's killer is parole-eligible after eight years of a fifty-year sentence... We need truth in sentencing!

Parole Undermines Confidence in the Criminal Justice System

As the news media has focused on the rise in crime rates and the inadequacy of the current system to cope with it, public awareness of the softness of our punishment scheme has increased. So, too, has a feeling of betrayal and alienation among many citizens.

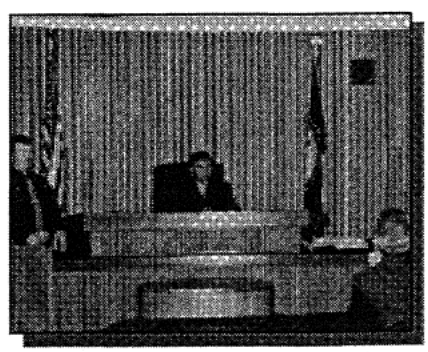
Virginians have a generalized feeling that something is fundamentally wrong with the way punishment is meted out to criminals, and they have a strong and abiding conviction that dangerous offenders do not serve enough time in prison.

Perhaps nowhere is the erosion of public confidence more apparent than among those whose flesh and blood stand as a buffer between citizens and crime. As law enforcement officers risk their lives to detect and apprehend criminals and gather every last shred of evidence, they are quickly dismayed by the insignificance of a sentence that is sharply discounted at the back end. This dismay turns to outrage when the veteran officer faces the same offender repeatedly, and is able to interrupt his budding criminal career only briefly as the list of frustrated victims grows.

Others familiar with the system, such as court personnel and public safety agency employees, share the disillusionment common among law enforcement officers. This lack of respect for the integrity of the criminal justice system contributes to a general sense of helplessness and dissatisfaction with public institutions. Ultimately, the inability to punish criminals appropriately diminishes respect for law itself.

Parole Leads to Wide Disparities in Sentencing

In practice, the current system has produced haphazard results, created an atmosphere of confusion, and contributed to widely disparate sentence lengths as judges attempt to extrapolate what sentence must be pronounced in order to achieve roughly the amount of incarceration the court deems appropriate.



For example, a judge who wishes to impose an active sentence of three years for a conviction for grand larceny may fashion a pronounced sentence of 12-15 years, having computed the discounts the defendant is likely to enjoy. Once the sentence is imposed, the multi-faceted process of sentence reductions results in a widening chasm between the events in the courtroom and the reality in the prison. Perhaps the judge's speculations and predictions will have been close to the mark; perhaps they will have been far wide of it. But, either way, what actually happens to the inmate bears little resemblance to the sentence imposed in the courtroom.

Inevitably, then, consistency in sentencing is at best elusive under the current system.

PAROLE DECEIVES CITIZENS AND DENIES JUSTICE Continued

If justice is to be equal for all, sentencing ought to follow some course of predictability and consistency, whether the offender is sentenced in a large urban area or a rural community, and regardless of his or her race, gender, or socio-economic position.

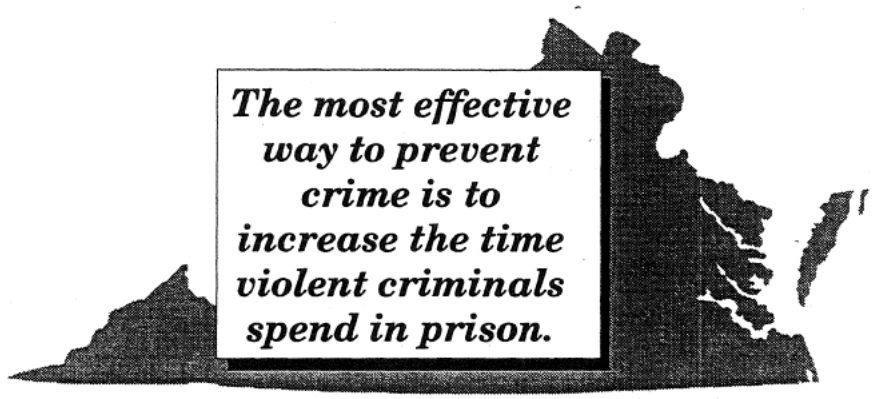
Judges commonly address this objective in criminal sentencing the only way they can as a practical matter — by reducing the pattern of sentencing decisions to numerical values that can provide guidance from case to case.

Dishonest numbers or unpredictable post-sentence developments make a mockery of this effort. False and variable assumptions produce sentences that vary widely, broadening both the perception and reality of disparity and injustice.

In the absence of truth-in-sentencing, a full measure of justice is simply unattainable.

Section II

Recommendations



RECOMMENDATIONS

The Commission recommends comprehensive structural reform of Virginia's sentencing system.

The four sets of recommendations below comprise a plan for immediate restructuring of the sentencing system. Once approved and implemented, the Commission's plan will:

- Bring Truth-in-Sentencing to Virginia
- Prevent Violent Crime By Keeping Violent and Repeat Criminals In Prison Much Longer
- Place Non-Violent Offenders in More Economical and Productive Settings
- Expand Prison Capacity to Ensure Secure Incarceration

While the Commission recommends dramatic change in the way Virginia sentences criminals and the length of time they serve, it recognizes that other significant steps have been taken in recent years to increase the punishment for violent criminals. Measures such as mandatory minimum sentences and incremental restrictions on parole eligibility have been important, though by themselves inadequate, responses to the existing crime surge and expected tide of violence in Virginia.

The Commission's recommendations for action at the special session of the General Assembly build on these improvements and especially on the progress made by the Governor and the General Assembly in the 1994 Regular Session, when important reforms such as bifurcated trials and severe new penalties for violent three-time offenders were enacted.

The Commission's recommendations also come against the backdrop of a declining parole grant rate for offenders already in the Virginia correctional system under the policies of the Parole Board appointed by Governor Allen.

Virginia is at a crossroads.

The Commission believes that further tinkering with the existing parole system will not be enough to save Virginians from a wave of carnage at the hands of violent criminals as the crime-prone age group swells during the next decade. Nor will further modest changes restore Virginians' lost confidence in the criminal justice system, or deter lawlessness by those who believe they can beat the system.

As long as there is the hidden hand of parole sweeping aside the solemn judgments of judges and juries, neither criminals nor law-abiding citizens will respect the criminal justice system in Virginia.

The Commission recommends following the path of fundamental and comprehensive reform:

- All Virginians will be safer if our sentencing system metes out honest time and criminals actually serve it.
- Fewer Virginians will be victimized if violent criminals — especially repeat violent criminals — are kept out of our neighborhoods and communities.
- The goal of a safe society can be better served by a more economical and forward-looking approach to the punishment of non-violent offenders.
- Justice requires truth-in-sentencing, safety requires longer sentences, and prudence requires increased prison capacity.
- *The time to act is now.*

The Commission recommends that Virginia implement a determinate sentencing system that allows the jury or judge to know the period of incarceration that will actually be served by the criminal being sentenced.

Accordingly, the Commission recommends the adoption of a truth-in-sentencing system under which both discretionary and mandatory parole are abolished, "good-time" is replaced by a limited system of earned sentence credits, and post-release supervision is preserved.

Under the system proposed by the Commission, all inmates will serve at least 85% of the sentence they receive from the judge or jury.

I. REPLACE THE MISLEADING PAROLE SYSTEM WITH TRUTH-IN-SENTENCING

Recommendation 1

ABOLISH DISCRETIONARY AND MANDATORY PAROLE EFFECTIVE JANUARY 1, 1995.

The constitutional rights of criminals preclude the abolition of parole for offenses committed before the effective date of the new legislation. Accordingly, the change from the existing parole and "good-time" regime to the new truth-in-sentencing system should occur as quickly as practicable, allowing reasonable time for an orderly transition.

If enacted by the General Assembly and signed by the Governor before the end of September 1994, legislation adopting the Commission's recommendations will become effective on January 1, 1995. The proposed new sentencing commission (see Recommendation #3) would come into existence and begin its work on that date.

After consultation with judges and prosecutors, the Commission recommends that the abolition of parole become effective on January 1, 1995, the effective date of the legislation. This means that persons convicted of offenses committed on or after January 1, 1995 would not be eligible for parole.

The Commission believes that the lag time of several months between commission of an offense and sentencing will provide sufficient time to prepare judges, prosecutors, and court and corrections officials to implement the new truth-in-sentencing system. A crucial part of this preparation will be the sentencing commission's development of new sentencing guidelines and worksheets, and the introduction of these changes to judges, prosecutors, probation officers, and other officials. The Commission recommends that sentencing commission members be appointed immediately after the effective date of the legislation so they can complete the revision of guidelines and worksheets well in advance of any sentencing under the new system.

Recommendation 2

EXPAND THE EXISTING SENTENCING GUIDELINES SYSTEM AND REVISE GUIDELINES TO REFLECT ACTUAL TIME SERVED

The Commission recommends use of voluntary sentencing guidelines to assist judges in implementing the new truth-in-sentencing system and avoiding unwarranted disparities in sentencing.

The Commission proposes a guideline system with the following attributes:

- Guidelines will be based on actual time to be served.
- Initial guidelines for each offense will be determined by taking the average time served for that offense during the five-year period 1988-1992. This baseline will be increased for certain violent and repeat offenders, as described in Recommendations #7-9 below.
- Judges will be required by statute to ensure completion of guideline worksheets in every felony case and make them part of the trial record.
- Judges will be permitted to depart from the guideline sentence when the factual circumstances warrant, subject only to the requirement that they state the reason for such departure on the worksheet.
- Because the guidelines will be voluntary, judicial decisions to depart from the guideline sentences will be purely discretionary, and neither the Commonwealth nor the defendant will have any new appeal rights.

Preserving Judicial Discretion - *Voluntary* Guidelines

A major issue addressed by the Commission was the character of the proposed sentencing guidelines. The Commission considered and rejected the use of mandatory sentencing guidelines, which have been adopted in a number of states and in the federal system following the abolition of parole.

The Commission believes that broad judicial discretion in sentencing is generally desirable and should be preserved. It is the judge who conducts the trial, who may question the attorneys, victims, and witnesses, and who is best situated to

II. PREVENT VIOLENT CRIME BY DRAMATICALLY INCREASING TIME SERVED BY VIOLENT AND REPEAT OFFENDERS

Recommendation 9

INCREASE AVERAGE TIME SERVED BY 300-500% FOR NON-VIOLENT OFFENDERS WITH PRIOR VIOLENT CONVICTIONS

The Commission also recommends guideline sentence enhancements for those whose instant offense is non-violent, but who have a prior conviction for a violent offense.

The fact that a criminal was convicted of a non-violent offense does not establish that the person is a non-violent criminal. To the contrary, the data provided to the Commission demonstrated clearly that many non-violent offenders "graduate" to violent offenses, and that many persons arrested and convicted for non-violent property crimes actually are violent criminals.

When a person with a prior conviction for a violent offense is convicted of a non-violent offense, the probability is high that he or she is engaged in an ongoing pattern of violent and non-violent criminal activity. The Commission believes that these offenders must be targeted for sharply increased incarceration.

The Commission recommends the following enhancements to the guideline sentences for these crimes:

- For persons convicted of offenses other than the violent crimes discussed above, and who have a prior conviction for an offense carrying a maximum sentence of less than 40 years, the Commission recommends a 300% increase in the guideline sentence.

- For persons convicted of offenses other than the violent crimes discussed above, and who have a prior conviction for an offense carrying a maximum sentence of 40 years or more, the Commission recommends a 500% increase in the guideline sentence.

The Commission proposes no increase or decrease in the average time served by non-violent offenders who have no prior convictions for violent offenses.

Identifiable Crimes Prevented

The offenders targeted for enhanced punishment under Recommendations #7-9 account for 34.5% of all new admittees in the current corrections system. By targeting these worst

offenders with sharply increased sentences, a large amount of future victimization can be prevented.

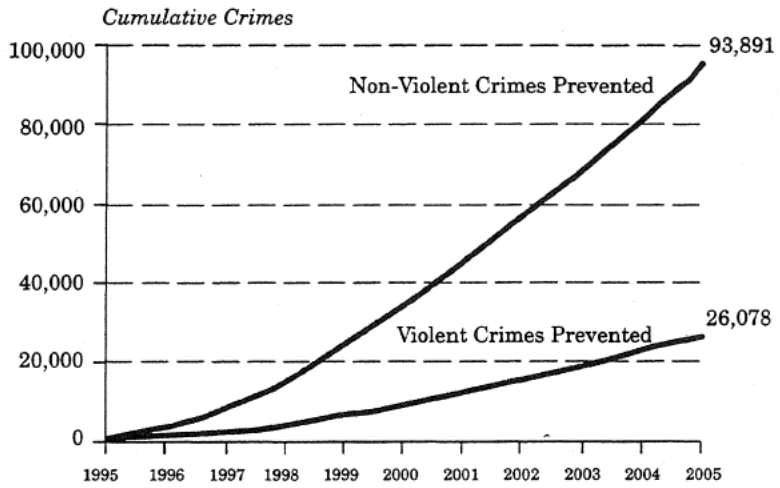
An analysis by the Department of Criminal Justice Services Research Center has determined that the increases in prison time recommended by the Commission would — if adopted eight years ago — have prevented more than 4,300 identifiable crimes for which repeat offenders were convicted during 1986-1993. Each of these preventable crimes had a real victim — a Virginian who was murdered, raped, robbed or otherwise victimized by a felon who should have been behind bars, and who would have been behind bars under the Commission's plan. (See Appendix B).

This study also highlights the disproportionately severe impact borne by our minority communities. According to these statistics, two-thirds (66%) of the preventable murders involved a non-white victim, nearly two-thirds (63%) of the preventable felony assaults were upon non-white victims, and almost one-half (45.6%) of the total of preventable crimes claimed non-whites as their victims.

Display 9

Forecast of Preventable Felony Cases* Under the Commission's Plan (1995 - 2005)

From 1995-2005 an estimated 119,969 felony crimes would be prevented under the Commission's Plan.



**** Based on index crimes reported to the police, this excludes many violent and non-violent crimes.***

The 4,300 crimes for which previously released criminals actually were convicted represents only the tip of the iceberg. Typically, only a fraction of all crimes leads to arrest and conviction. When preventable crime is computed based on all reported offenses, and then is projected out over the next ten years, the real impact of the Commission's proposal becomes apparent.

During the next ten years, according to the Department of Criminal Justice Services Research Center, the increased sentences in the Commission's plan will prevent more than 26,000 violent crimes. (See Display 9).

When non-violent victimization is added, the number of crimes that will be prevented by the Commission's proposed reforms climbs to approximately 120,000 crimes.

II. PREVENT VIOLENT CRIME BY DRAMATICALLY INCREASING TIME SERVED BY VIOLENT AND REPEAT OFFENDERS

By assigning values derived from data collected from the Federal Bureau of Investigation, the Virginia State Police, the National Council on Compensation Information, Jury Verdict Research, Inc., and the National Fire Incident Reporting System, the Research Center has been able to develop a very conservative estimate of the costs, to victims, of the crimes that would have been prevented. Focusing on homicide, rape, robbery, assault, arson, burglary, and larceny, the Center concluded that the crime that would have been prevented if the Commission's recommendations been implemented in 1986, represented a cost to victims of crime of $209 million. This analysis does not include 1,769 crimes - about 40% of those which would have been prevented - for that cost data is not available.

A conservative forecast of the costs attributable to this preventable crime predicts a cumulative savings to victims and society of $2.7 billion over the next ten years. (See Appendix C for additional data).

Geriatric Release and Clemency

In proposing sharply longer sentences for violent and repeat offenders, the Commission recognizes that some of the worst criminals with the longest sentences may remain incarcerated past the point at which, by virtue of their age and physical condition, they have ceased to pose a threat to the community. In some circumstances, the interests of the law-abiding citizenry may not be served by continued incarceration of such inmates.

There are various ways to address this situation, which is likely to involve a relatively small number of inmates and will not materialize until well into the future. One option is a geriatric release provision, such as that inserted into the "three strikes" legislation passed by the General Assembly and signed by the Governor earlier this year. Another option is the adoption of special executive clemency rules for exemplary geriatric inmates.

The Commission recommends that the Secretary of Public Safety continue to study this issue and develop recommendations for action in the future.

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS

The Commission believes that getting *tough* is the answer when it comes to violent and repeat offenders. When it comes to first-time non-violent offenders, we need to be *innovative.*

Currently, non-violent offenders are scattered throughout the corrections system, occupying expensive beds in medium and even maximum security facilities that could be used to incapacitate dangerous violent offenders.

Since the non-violent offenders are the ones for whom intervention and rehabilitation hold some promise, the present arrangement is doubly wasteful. Non-violent offenders are incarcerated in costly facilities where they have minimal opportunities to redirect their lives to productive, law-abiding activity.

Recommendation 10

APPLY TRUTH-IN-SENTENCING TO NON-VIOLENT OFFENDERS

The Commission proposes no increase or decrease in time served for non-violent offenders who have no prior convictions for violent offenses. The sentencing guidelines recommended by the Commission have been crafted so that the proposed guideline sentences for these non-violent criminals will mirror the average time served for the same offenses during the 1988-1992 base period.

By holding constant the prison time served by non-violent offenders while dramatically increasing the time served by violent criminals, the Commission's plan will use the Commonwealth's resources far more effectively than would be the case if the parole grant rate were merely reduced across-the-board while leaving the sentencing system unreformed.

The question then arises: *Why abolish parole for non-violent offenders if they are not going to serve any longer sentences on average?*

The Commission considered and rejected the idea of retaining the current parole system solely for non-violent offenses for the following reasons:

- First, truth-in-sentencing is as important for non-violent felonies as for violent felonies.

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS

The Commission's plan not only addresses the need for violent criminals to serve longer — it also addresses the need for juries and judges to know the real impact of their sentences when they pronounce them. Both objectives are critical, and the latter applies equally to non-violent and violent offenses.

When a sentence handed down in the courtroom is rendered meaningless by the subsequent effects of generous "good-time" credits and discretionary parole, the deception is the same regardless of the type of offense. Judges and juries need to know the truth about what time will be served when they sentence a non-violent drug offender just as much as they need real numbers when sentencing violent criminals.

- Second, a system that is a hodge-podge of real-time sentences for violent offenders and misleading parole-eligible sentences for non-violent offenders would be extremely confusing.

Even if there were some good reason to retain parole for certain less serious offenses, the task of operating a system with truth-in-sentencing for some crimes and parole eligibility for others would be hopelessly complicated. The Commission heard from judges and prosecutors that such an approach would be extremely difficult to administer, and that it likely would leave victims and the general public even more perplexed and frustrated than they are now.

Moreover, the Commission does not propose to treat all non-violent offenders the same. Those convicted for an instant offense deemed non-violent, but who have a prior violent offense in their record, are targeted for significantly enhanced penalties under the Commission's proposed guidelines. These enhancements would be virtually impossible to accomplish if non-violent offenses were subject to a sentencing system that featured parole reductions rather than real-time sentences.

- Finally, it is important to recognize that many non-violent criminals entering the state correctional system are recidivists.

Many citizens do not realize that in Virginia it often takes several non-violent convictions before an offender even sets foot in prison. A non-violent offender who reaches the prison gate has likely slept through several wake-up calls and passed by many doors which lead to rehabilitation.

It was partly because of this reality that the Commission rejected suggestions that sentences for non-violent offenders

actually be reduced to allow for increased incarceration of violent criminals at less cost. The same reality led the Commission to reject the idea that non-violent offenders be exempted from parole abolition. Judges and juries need to know when they sentence a recidivist — even a completely non-violent recidivist — that the time will be served.

Juries and judges have to be able to stop the revolving door that allows non-violent offenders to pursue costly careers of property crime and return again and again to the community after short stints in prison.

Recommendation 11

USE WORK CAMPS TO SAVE MONEY AND PREVENT FUTURE CRIME

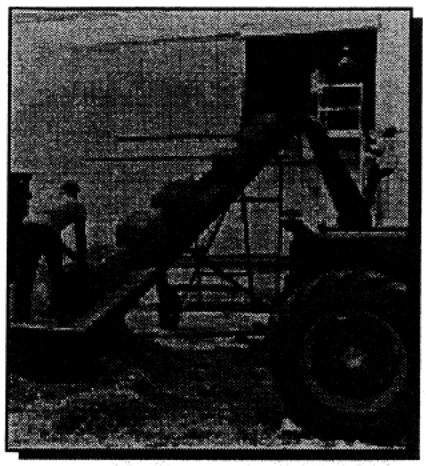
The Commission recommends the construction of low-cost work centers designed to house certain low-risk offenders. The offenders in these facilities will be required to participate in constructive projects that will aid them and benefit the larger community.

Such work centers will meet a variety of correctional needs — chief among them, reducing the idleness that tends to make inmate populations more difficult to control, and alleviating both capital and operating costs. Work centers will also serve a positive purpose for inmates by providing a prison setting in which educational, treatment, counselling, and work-related activities are feasible.

Currently, opportunities for inmates to receive help and to help themselves are simply not available because the population that could benefit from such programs has not been isolated in facilities designed for the programs. Many inmates who would qualify for educational, drug treatment and work activities today are scattered throughout various maximum and medium security prisons. Their presence there among some of the most incorrigible inmates in the system often makes any meaningful rehabilitative programming virtually impossible.

One of the chief complaints that members of the Commission heard repeatedly from the public was that inmates ought to do more than sit in their cells. The Commission agrees. While opportunities for recreation are provided in every penal system in the country — in part, because such opportunities serve as incentives with which to control inmate behavior — future crime can be prevented by requiring participation in work, training,

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS



and other productive activity as a condition for assignment to work centers. In addition, as noted earlier, the Commission recommends that inmates' qualification for earned sentence credits be conditioned on satisfaction of work and other program requirements.

The Commission believes the focus of the work centers should be inmate labor. While treatment and education programs will become more practical at these facilities, a majority of the inmates' day should be spent working. Farming and light construction work on-site are expected to be a major source of increased labor opportunity. The Commission also recommends increased use of carefully screened low-risk inmates for road work and other public works projects, such as tearing down abandoned buildings and digging ditches for wastewater systems.

The Commission recommends that a survey be developed by the Department of Corrections to identify community and public works projects that are amenable to inmate labor. The survey should be sent to all sheriffs, chiefs of police, city managers, county administrators, and other officials who can inform the Department of the types of projects in their communities that are suitable for inmate labor.

The Commission expects the cost savings from use of work centers to be significant. Recognizing that public safety is its primary responsibility, the Commission worked closely with the Director of Corrections and his staff in developing criteria to be used in determining whether an inmate should be placed in a work center. To qualify for such an assignment, the offender (i) must have received a sentence of three years or less, (ii) must have been incarcerated for a non-violent offense, (iii) must have no prior violent offense convictions, and (iv) must pass review under a Department of Corrections (risk assessment) procedure. This last criterion includes factors used by corrections professionals to determine whether an inmate poses a risk of flight or harm to the public or other inmates.

The Commission recommends the use of prefabricated facilities that could be easily and quickly constructed by private contractors. Already, the Department Of Corrections has been directed by the Secretary of Public Safety to develop a Request For Proposals (RFP) for the construction of the work centers.

The capital cost for these facilities is projected to be approximately $20,000 per inmate, and the operating cost is estimated to be $13,000 per year. This compares favorably with the average $69,000 and $19,800 in per-inmate capital and

operating costs, respectively, for maximum security facilities. It is also less expensive than the average $24,000 in capital costs and $17,100 in annual operating costs that the state currently spends on medium security prisons.

A major benefit of the short construction time for the proposed work centers is the relief it would provide for the persistent problem of jail overcrowding resulting from the backlog of state-responsible inmates. The relief provided by the work centers would be realized well before the impact of parole abolition would be felt.

Recommendation 12

PROVIDE SUBSTANCE ABUSE SERVICES IN APPROPRIATE DESIGNATED FACILITIES

The Commission recommends the designation of several work centers or other appropriate facilities for the focused provision of substance abuse services to inmates.

Recognizing the limitations on state resources, the Commission further recommends that the Department of Corrections aggressively seek out charitable and other privately funded inmate services organizations, and promote public-private partnerships, to assist in making effective drug treatment programs available to inmates at these designated facilities.

The continued use and abuse of controlled substances by inmates and probationers remains a stubborn obstacle to rehabilitation and crime prevention. Inmate surveys show that approximately 80% of all incarcerated individuals have some kind of substance abuse problem. This situation cannot be ignored without dire consequences for society.

The Commission has concluded that to achieve even modest success through work, education and other programs, inmates must first overcome their chemical dependency. Effective treatment must, of course, begin with a sincere commitment on the part of the offender. Mechanisms must be developed to identify such inmates effectively.

During the course of its work, the Commission heard from numerous organizations and individuals who would be interested in providing such treatment and counselling services to Virginia inmates. Currently, they are impeded by the lack of an effective screening mechanism to identify the inmates who could benefit

IV. EXPAND PRISON CAPACITY TO ENSURE SECURE INCARCERATION

Recommendation 16

INCREASE DOUBLE-CELLING IN EXISTING AND PLANNED FACILITIES

Shortly after taking office, the Governor directed the Department of Corrections to conduct a study of how many inmates could be double-celled or double-bunked in order to get the maximum use of current facilities. The criteria for this double celling/bunking were that it must not result in any adverse impact on security or operations, and that it could be carried out without extensive modification to the affected facilities.

The Department has reported to the Governor and to the Commission that the total population in the state correctional system can be increased by approximately 2,100 inmates through double celling/bunking. While there will be some resulting increase in cost for food services and staff supervision, the savings will far outweigh these costs. With most prisons having a capacity of about 700 inmates, double celling/bunking means a savings of three prisons — or about $150 million in capital costs alone.

The Commission supports the Department's double celling/bunking proposal and recommends that future facilities be planned with the expectation that there will be the maximum double celling/bunking feasible in light of safety and security considerations.

The Commission notes that increased double celling/double bunking of existing facilities has the added advantage of providing speedy relief for persistent jail overcrowding resulting from the backlog of state-responsible inmates in local facilities.

Recommendation 17

PURSUE PRIVATIZATION AND USE OF INMATE LABOR TO REDUCE COSTS

The Commission understands that the Governor's Commission on Government Reform, the Stosch Subcommittee on Privatization, and the Department of Corrections have all been actively pursuing the prospect of savings through private construction, ownership and even operation of prison facilities. The General Assembly has also expressed its support for this concept.

While the Commission has avoided duplicating the extensive efforts already underway in this area, the Commission wishes to acknowledge its support for these innovations.

The Commission also endorses the concept of using inmate labor to assist in prison construction and hold down construction costs wherever possible, and is encouraged that the Director of Corrections is already developing plans to implement this sensible program. In the Commission's view, the use of inmate labor for prison construction in appropriate circumstances is a winning proposition for the inmates, for prison administrators, and for the taxpayers.

Recommendation 18

CONSTRUCT ADDITIONAL PRISONS TO MEET ANTICIPATED NEEDS

The Commission has been advised by the Department of Planning and Budget that, under the plan set forth in this Report, the ten-year capital cost for new prison construction will total $800-850 million, and the operating cost in the tenth year will have increased by $350-400 million. The anticipated number of prison beds needed in 2005 throughout the system will be 52,064.

While this cost is significant, only about a fourth of it is attributable to the Commission's proposals. Because of the imminent decade-long increase in the crime-prone age group, Virginians will need to invest at least $600 million in prison construction and a corresponding amount of increased operating funds over the next ten years just to keep pace with the bed space demands of the current sentencing system.

The Commission recommends that Virginians make the long-term investment necessary to implement the recommendations contained in this Report. This investment will yield the most precious return of all — enhanced safety.

Lives will be saved.

Costly crime will be prevented.

Fewer Virginians will fall prey to violent predators.

Fewer Virginians will live in fear.

IV. EXPAND PRISON CAPACITY TO ENSURE SECURE INCARCERATION

By targeting violent criminals, and especially repeat violent criminals, for sharply increased penalties, the Commission's proposal ensures that Virginians will get their money's worth for their investment in new prison space.

The new cells will be occupied by violent criminals. And every violent criminal behind bars is one less predator free to claim new victims.

POSTSCRIPT: MATTERS FOR FUTURE ACTION

During the course of its work, the Commission received numerous suggestions for reform of other aspects of the criminal justice system. Many of the concerns voiced and suggestions offered went beyond the scope of the Commission's sentencing reform mandate, but appeared to have considerable merit to various Commission members.

The Commission believes that it is critical that the General Assembly focus on sentencing reform at the upcoming special session.

The Commission nevertheless wishes to identify some of the criminal justice issues raised at public hearings and through other channels during the period of the Commission's work. These matters should be considered as part of the unfinished agenda of criminal justice reform awaiting attention at the 1995 session of the General Assembly. These include: a crime victims' bill of rights; more restrictive pre-trial detention; reform of juvenile justice laws, facilities and programs; and expansion of the death penalty to embrace additional heinous homicides.

The Commission has also identified the need for improved coordination and consolidation of the research and data analysis functions currently scattered among Virginia's public safety agencies. A similar conclusion was reached by the Governor's Commission on Prison and Jail Overcrowding in 1989.

The Commission recommends that the Governor and General Assembly address each of these important criminal justice issues at the earliest opportunity.

Appendices

- **Appendix A: Sentencing Practices in Virginia**
- **Appendix B: Sentence Enhancements**
- **Appendix C: Preventable Crime**
- **Appendix D: Commission Members**
- **Appendix E: Staff and Acknowledgements**

Appendix A

Sentencing Practices in Virginia

Sentencing in Virginia

Felony Class	Penalty Range
1	Life - Death
2	20 yrs - Life
3	5 - 20 yrs
4	2 - 10 yrs
5	1 - 10 yrs
6	1 - 5 yrs
Unclassed	Varies

Misdemeanor Class	Penalty Range
1	0 - 12 mo
2	0 - 6 mo
3	Fine Only
4	Fine Only
Unclassed	Varies

- Jail sentence options available for class 5 and class 6 felonies.
- Judges may suspend all or portion of sentence imposed, except for certain specified mandatory minimum sentences.
- Judges may order terms of probation in lieu of or along with jail or prison sentences.
- Virginia is one of six states with jury sentencing; judges may reduce but not increase recommended jury sentences.
- Time spent in jail prior to sentencing is deducted from time to be served, if specified by court order (§53.1-187).

Offenders Sentenced to 12 Months or Less

Good Conduct Credit

- **Statutory Good Conduct Credit**
  - **1 day for each day served (§53.1-116)**
- **Exemplary Good Conduct Credit**
  - **5 days served for every 30 days served**
  - **granted by jailer for those performing institutional assignments (§53.1-116)**
- **Judicial Good Conduct Credit**
  - **any amount specified by the court**
  - **granted for work in the community (§53.1-129)**

- Offenders sentenced to 12 months or less are not eligible for parole (§53.1-116)
- Time spent in jail prior to trial and sentencing earns good conduct credit at a rate of 15 days for every 30 served (§53.1-116)
- Mandatory minimum sentences of twelve months or less are not eligible for good time (§53.1-116)
- Good conduct credit may be taken away by jailer for rule violations (§53.1-116)

Offenders Sentenced to 1 Year or More

Good Conduct Allowance (GCA)

- **Class I - 30 days for every 30 served**
- **Class II - 20 days for every 30 served**
- **Class III - 10 days for every 30 served**
- **Class IV - 0 days for every 30 served**

■ Inmates receive 15 days for every 30 served prior to being assigned GCA class, including pre-trial detention time (§53.1-116)

■ Inmates are initially assigned to GCA Class II (20 days for every 30 served) (DOC policy)

■ Inmates' good conduct allowance class assignment is reviewed yearly (DOC policy)

■ Institutional Infractions can result in loss of good conduct allowance which can later be restored (§53.1-189)

■ Those convicted of 1st degree murder, certain sexual assaults or those with a life sentence receive no more than 10 days for every 30 served (§53.1-199)

■ Those convicted of escape forfeit all good conduct allowance earned (§53.1-189)

■ No good conduct allowance earned for those not completing program assignment (effective July 1, 1994) (§53.1-32.1)

Additional Considerations Related to Good Conduct

Good Conduct Allowance (GCA) Adjustments (DOC Policy)

- Conviction of new offense committed in prison: no good conduct allowance earned for 12 months.
- Return to confinement after completed or attempted escape: no good conduct allowance earned for 12 months.
- Refusal to provide blood sample for DNA tests: portion of earned good conduct allowance revoked.
- Assignment to isolation for rule violation: no good conduct allowance earned while in isolation.

Good Conduct Time (GCT) Statute (§53.1-192 thru 197)

- Inmates who committed crimes prior to July 1, 1981 fall under old good conduct time system (less than 3% of inmates).
- Statutory good conduct time earns 10 days for every 20 served.
- Extraordinary good conduct time earns 5 additional days for every 30 served.

Discretionary Parole

Number of Prior Commitments:	Eligible After Satisfying:
0	1/4 of sentence of 12 yrs.
1	1/3 of sentence of 13 yrs.
2	1/2 of sentence of 14 yrs.
3 or more	3/4 of sentence of 15 yrs.

Sentence:	Eligible After Satisfying:
Life	15 yrs.
Life (Class 1 Felony)	25 yrs.
Life (1st degree murder of child under age 8)	25 yrs.
2 or more life sentences	20 yrs.
2 or more life sentences with one Class 1 felony	30 yrs.

Mandatory Parole

Mandatory Parole Features

- **Granted 6 months prior to the expiration of their sentence**
- **Minimum of 6 months supervision (§53.1-159)**

■ Inmates must serve a minimum of three months prior to being released on mandatory parole

■ Department of Corrections may release inmates up to 30 days prior to their mandatory parole release date (§53.1-28)

■ Inmates not eligible for mandatory parole
- Life sentences
- Death sentences
- Inmates revoked while on mandatory parole

■ All of earned good conduct credit is credited toward mandatory parole release date

■ Parole Board has authority to deny release on mandatory parole for up to six months for inmates posing clear and present danger

■ **Inmates committed for 1st degree murder or certain sexual assaults (§53.1-151):**

Number of Prior Commitments	Eligible after Satisfying
0	2/3 or 14 yrs.
1 or more	3/4 or 15 yrs.

■ **Inmates not eligible for discretionary parole (§53.1-151):**

- Death sentences
- Death commuted to life without parole (§53.1-230)
- "Three time loser"
- "Three strikes" (§19.2-297.1)
- Inmates with life sentences convicted of escape
- Life sentence after being paroled on life sentence
- Boot Camp inmates (§19.2-316.1)
- Certain prostitution and other "morals" offenses sentenced under §18.2-351

■ **Incarceration time not eligible for parole:**

- Sentences for escapes (§53.1-203)
- Mandatory 20 years for conviction as a drug kingpin (§18.2-248)

■ **Inmates who will serve their natural lives in prison:**

- Death sentences
- Death commuted to life without parole
- "Three time losers" who receive life sentences

Additional Considerations Related to Parole

■ Definition of Prior Commitments (§53.1-151)

- Offender must have been "at liberty" between commitments
  - "At Liberty" includes:
    - release pending trial, sentencing or appeal
    - release on probation or parole
    - escape
    - no other legal restraints
  - Prior commitments include those which resulted from commission of a felony while in a correctional facility
- In-State Commitments
  - Offender must have been committed to the Department of Corrections with a felony sentence of 1 year or more
  - Offender need not have been physically received at a Department of Corrections facility
- Out-of-State Commitments
  - Commitments to any correctional facility in any state, the District of Columbia, or any Federal correctional facility count as prior commitments for determining parole eligibility for the following offenses:
    - murder
    - certain sexual assaults
    - robbery
    - abduction
    - kidnapping
    - burglary
    - felonious assault
    - drug sales

■ Definition of Three-Time Loser (§53.1-151)

- Convictions for three separate felony offenses of murder, rape, or armed robbery, when not part of a common act.
- Convictions for three separate felony offenses of drug sales; offender must have been at liberty between convictions.
- Initial determination made by Department of Corrections; Parole Board may review and decide inmate is parole eligible.

■ Parole Violators Recommitted to Prison

- Technical Violators (§53.1-151; §53.1-199)
  - are still parole eligible and receive good conduct allowance
- New offense
  - new sentence added to unserved time on previous sentence
  - mandatory parole release date based on total time sentenced
  - discretionary parole release date based on new sentence only
  - assigned new Good Conduct Allowance class
- Discretionary parolees whose parole is revoked may not be released to mandatory parole for at least 6 months (§52.1-159)

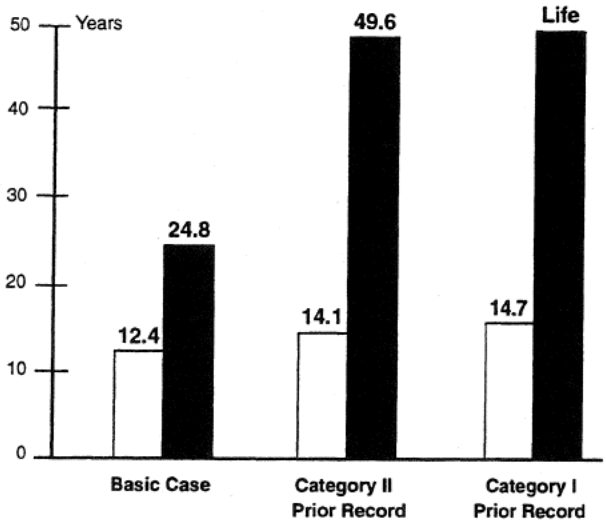
Appendix B

Sentence Enhancements

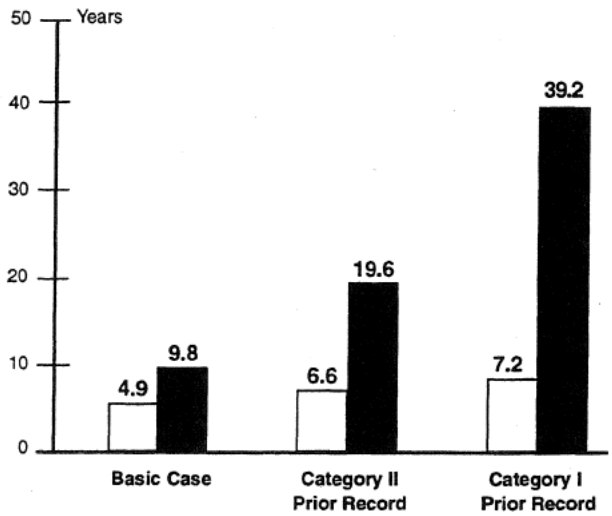
Normative Adjustments to Prison Time Served

Time Served Midpoints
1988 - 1992

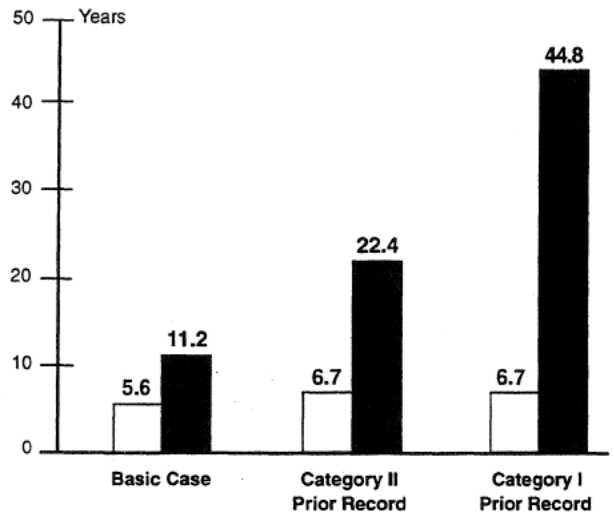
■ First Degree Murder



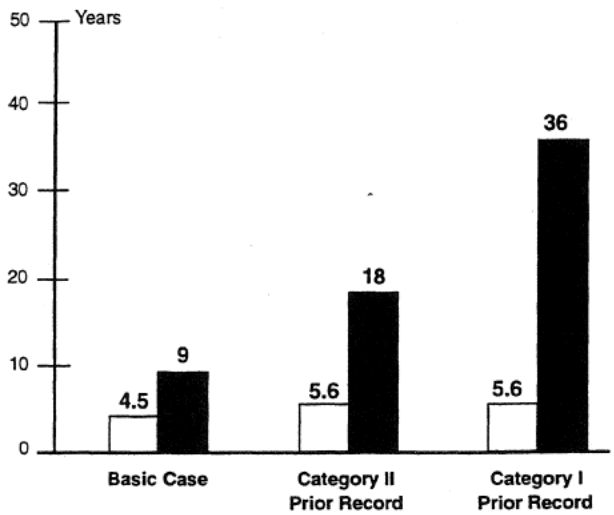
■ Second Degree Murder



■ Forcible Rape



■ Forcible Sodomy



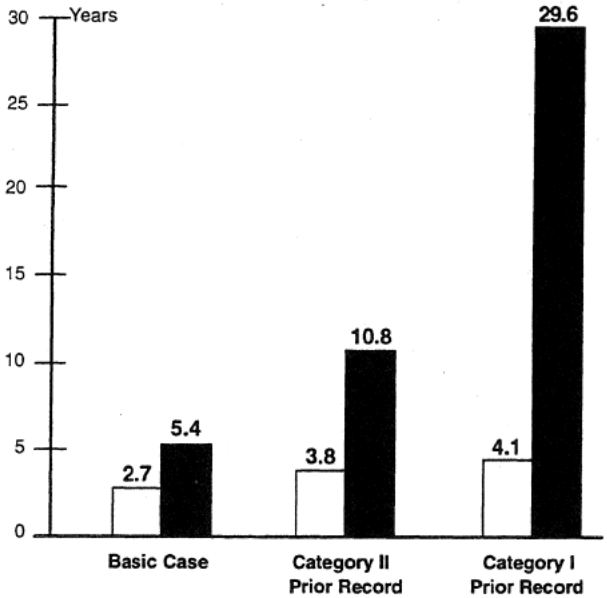
□ 1988-92 Practice ■ Proposed Practice

- A basic case is a case with no aggravating circumstances (i.e., no multiple counts, no additional offenses, no weapon use and no prior record).
- Category II is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty less than 40 years.
- Category I is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty of 40 years or more.

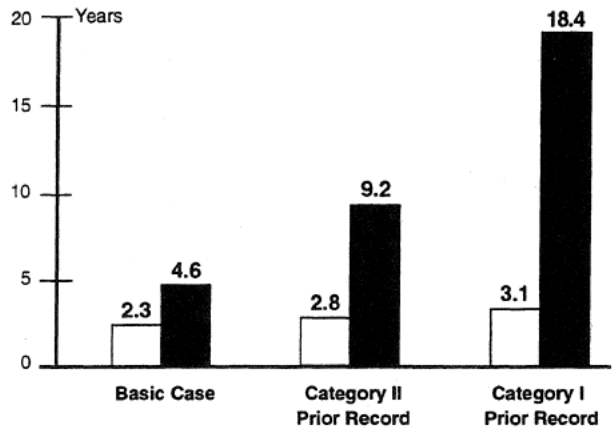
Normative Adjustments to Prison Time Served

Time Served Midpoints
1988 - 1992

■ **Robbery with Firearm**



■ **Burglary of a Dwelling at Night with Deadly Weapon**



□ 1988-92 Practice ■ Proposed Practice

- A basic case is a case with no aggravating circumstances (i.e., no multiple counts, no additional offenses, no weapon use and no prior record).
- Category II is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty less than 40 years.
- Category I is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty of 40 years or more.

Appendix C

Preventable Crime

Preventable Felony Convictions Under the Commission's Plan
(1986 - 1993)

Preventable Violent Convictions = 1,644

Original Conviction	New Conviction Offense					
	Homicide	Rape	Robbery	Assault	Other	TOTAL
Homicide	10	5	6	12	6	39
Rape	2	49	11	15	34	111
Robbery	4	6	84	58	30	182
Assault	9	12	22	36	19	98
Burglary	19	40	110	122	404	695
Drugs	5	5	17	28	17	72
Other Felony	29	34	149	142	93	447
TOTAL	78	151	399	413	603	1,644

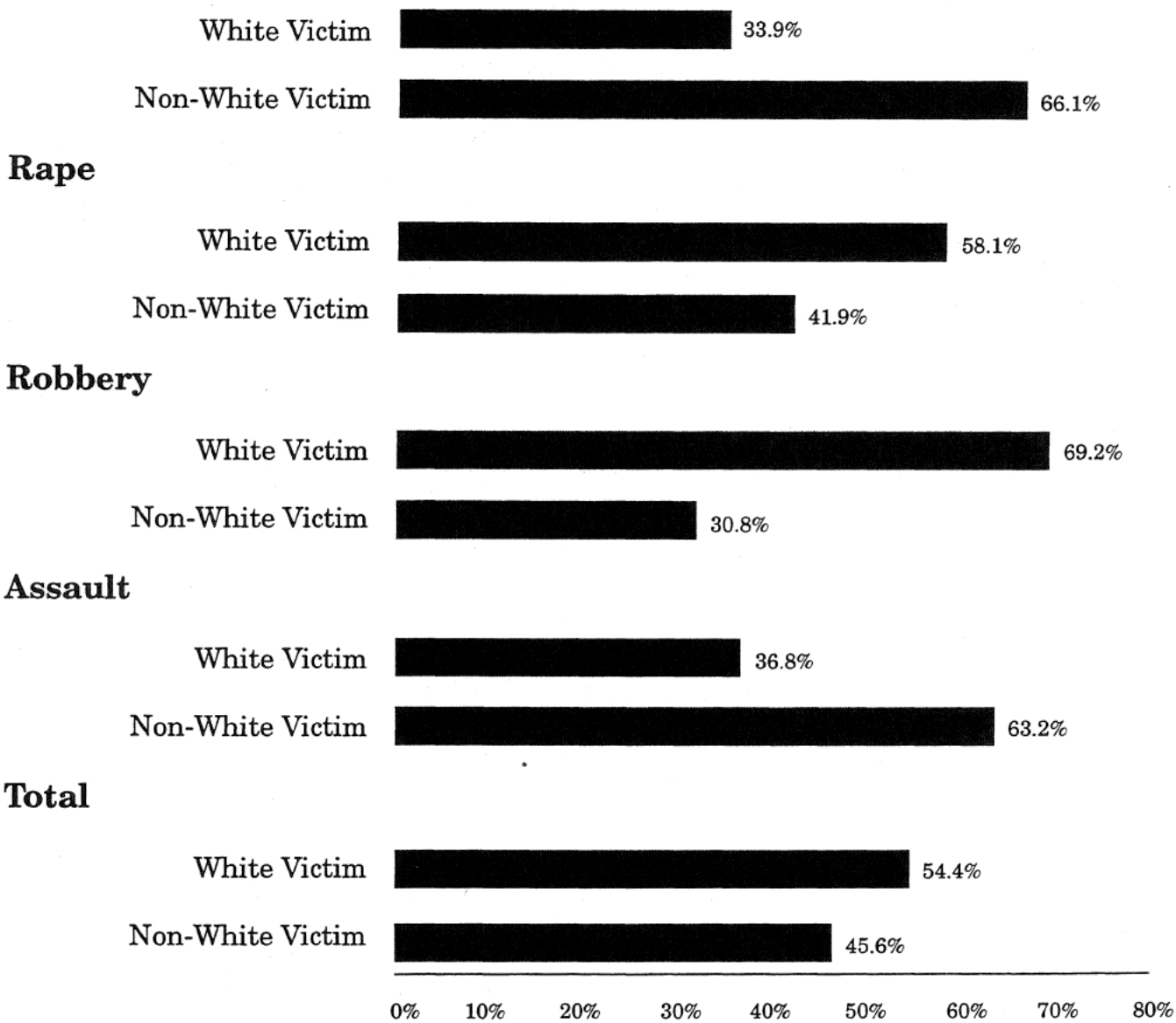
Preventable Non-Violent Convictions = 2,729

Original Conviction	New Conviction Offense				
	Other Burglary	Fraud	Grand Larceny	Other*	TOTAL
Homicide	2	5	15	19	41
Rape	28	28	35	18	109
Robbery	8	93	47	31	179
Assault	13	19	28	40	100
Burglary	329	329	675	116	1449
Drugs	5	22	32	41	100
Other Felony	53	245	271	182	751
TOTAL	438	741	1103	447	2,729

* Excludes felony drug offenses

Note: Results are based on 1986-1991 releases for offenders affected by Commission's Plan and a minimum two year follow-up period. Preventable convictions represent offenses that would have been prevented had the time served mid-point under the Plan been served.

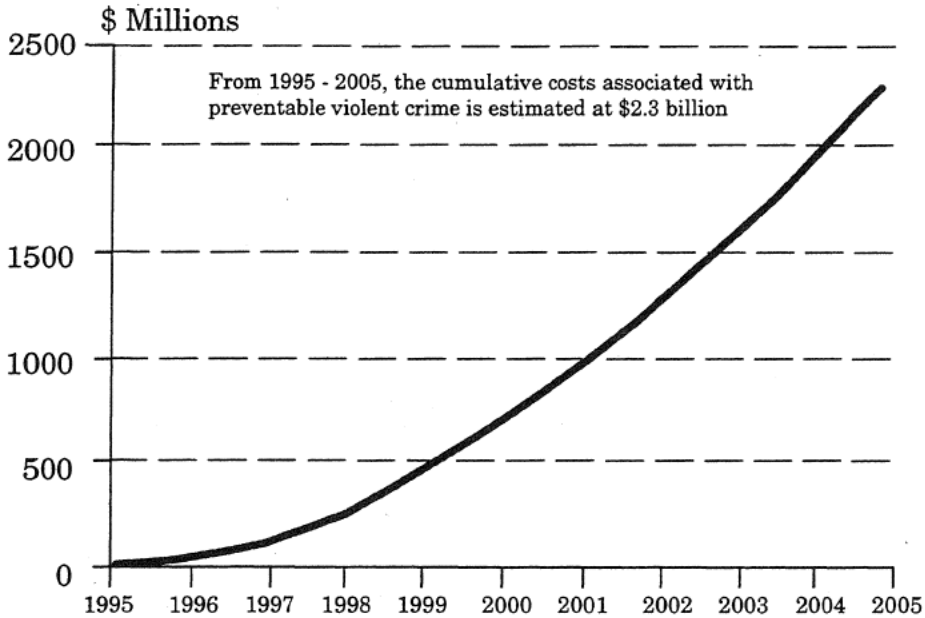
Percent of Felony Convictions Prevented Under the Commission's Plan By Victim Race (1986 - 1993)



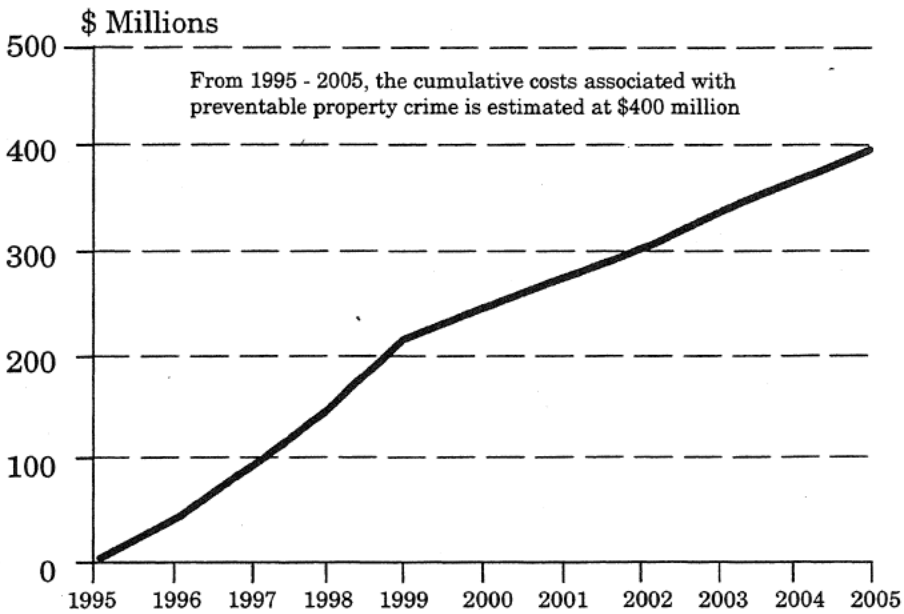
Note: Results are based on 1986-1991 releases for offenders affected by the Commission's Plan and a minimum two year follow-up period. Prevented convictions represent offenses that would have been prevented had the time served mid-point under the Commission's Plan been served.

Estimated Victim Costs* Associated With Preventable Crime Under the Commission's Plan
(1995 - 2005)

Violent Crime



Non-Violent Crime



* 1989 dollars adjusted for inflation.

Sources: Virginia PSI, OBSCIS and UCR databases. "Victim Costs of Violent Crime and Resulting Injuries," *Health Affairs,* (1993). "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," *Law and Society Review,* (1988).

Appendix D

Governor's Commission on Parole Abolition and Sentencing Reform

Commission Members

William P. Barr - Chair
Former U.S. Attorney General - McLean

Richard Cullen - Chair
Former U.S. Attorney Eastern District of Virginia - Richmond

Subcommittee Membership

Subcommittee on Implementation

Senator Ken Stolle, Chair
Virginia Beach

Delegate J. Randy Forbes
Chesapeake

William Fuller
Commonwealth's Attorney - Danville

Howard Gwynn
Commonwealth's Attorney - Newport News

Justice Leroy Hassell
Supreme Court of Virginia

Senator Edward Holland
Arlington

Henry Hudson
Former U.S. Attorney - Alexandria

Robert Humphreys
Commonwealth's Attorney - Virginia Beach

Paul Larkin
Former U.S. Associate Solicitor General - Alexandria

Ilene Nagel
U.S. Sentencing Commission - Fairfax

Subcommittee on Prison Capacity

Penny Kyle
Vice-President - CSX - Richmond

Delegate James Almand
Arlington

William Broaddus
Former Virginia Attorney General - Richmond

Jane Nady Burnley, Ph.D.
Executive Director
Victims' Legal Assistance Organization. Inc. - Fairfax

Subcommittee on Prison Capacity
continued

Danny Chichester
Commonwealth's Attorney - Stafford County

William Cleveland
Vice-Mayor - Alexandria

Senator Mark Earley
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JoAnn Bruce
Crime Victims Advocate - Ashland

Jack Collins
Crime Victims Advocate - Springfield

Kathy Hayden
Community Activist - Roanoke

Jose Santaballa
InterAmerican Bank - Great Falls

Appendix D Staff and Acknowledgements

Governor's Commission on Parole Abolition and Sentencing Reform

Eric J. Finkbeiner, Executive Director
Paul R. Hedges, Manager, Policy & Communications
Paul J. McNulty, Consultant
Juanita Balenger, Administrative Assistant
Bill Cimino, Communications Coordinator
Jamie Powers Munno, Administrative Assistant

Office of the Governor

Frank B. Atkinson, Counselor to the Governor
Mark C. Christie, Deputy Counselor to the Governor

Office of the Attorney General

David E. Anderson, Chief Deputy Attorney General
Walter S. Felton, Jr., Deputy Attorney General
Frank S. Ferguson, Counsel to the Attorney General
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Jerry W. Kilgore, Secretary of Public Safety
Fred L. Finkbeiner, Deputy Secretary of Public Safety
Carl Baker, Deputy Secretary of Public Safety
Annie Mae Martin, Executive Secretary
Rosanna Bencoach, Executive Assistant
Donna Shelhorse, Constituent Affairs

Criminal Justice Research Center

Richard Kern, Ph.D., Director

Jim Creech, Ph.D.
Don Faggiani, Ph.D.
Meredith Farrar-Owens
Joseph Fridley
Lynette Greenfield
Kim Hunt, Ph.D.
Anne Jones
Neal Kauder
Jim McDonough, Ph.D.
Stan Orchowsky, Ph.D.
Jacqueline Smith-Mason
Sanjeev Sridharan, Ph.D.
Carolyn Williamson

Department of Corrections	**Ron Angelone,** Director
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Department of Finance	**Paul W. Timmreck,** Secretary of Finance
	John Mahone, Deputy Secretary of Finance
Department of Planning and Budget	Barry Green Michael Maul
Layout and Design	Carlie Merritt Judith Sullivan

GEORGE ALLEN
GOVERNOR

July 1993

Dear Fellow Virginian:

Violent crime has become an epidemic in Virginia.

In only four years, the violent crime rate increased by 26%. Most violent crimes – three out of every four, in fact – have been committed by repeat offenders. Clearly, the only way to begin to solve the problem of violent crime is to keep violent offenders behind bars and off of our streets.

As Governor, I will introduce a comprehensive plan to reform our criminal justice system in Virginia. And the centerpiece of my plan will be to abolish parole for violent criminals.

We cannot afford to ignore the problem any longer. The federal government has acted decisively by abolishing parole. Other states have adopted similar plans. It's time for Virginia to be a leader in the fight against violent crime.

My goal is to make Virginians feel safe again. Public safety is one of the top responsibilities of state government and I will make it one of the top priorities of my administration. This publication, "Violent Crime in Virginia: The George Allen Plan for Abolishing Parole," represents my plan on how to achieve that goal.

The answer to the problem of violent crime in Virginia is abolishing parole for violent criminals. The time to act is now.

Sincerely,

George Allen

TABLE OF CONTENTS

Executive Summary

The document which follows is George Allen's program for criminal justice reform – the centerpiece of which is the **abolition of parole** and the adoption of **truth-in-sentencing** reforms.

George Allen has declared that protecting Virginians from violent crime is one of the two most important responsibilities of state government, and that making Virginia a safe place to live, work and raise a family again will be his top priority as Governor.

By far the most critical element in fulfilling this obligation to Virginia's citizens is the abolition of Virginia's liberal parole policies and the implementation of comprehensive sentencing reforms that will keep violent repeat criminals behind bars for significantly longer periods of time.

Part I of this paper identifies the problem, which has reached crisis dimensions during the tenure of Attorney General Mary Sue Terry. Part II identifies the solution, the plan which will be implemented in the Allen Administration. Part III describes the difference between the Allen and Terry records and proposals.

I. THE PROBLEM: *Violence Committed By Paroled Criminals*

- The overall violent crime rate in Virginia increased 26% from 1987 to 1991. Over the past five years, the violent crime rate grew by 20% in suburban and rural communities and by 41% in the central cities.

- Virginia is experiencing a sharp increase in violent crime *even though the 15 to 24 age group, demographically the group most prone to violence, is declining in number.*

- The sharp increase in violent crime in Virginia also runs counter to national trends.

- 75% or more of violent criminals convicted in Virginia are repeat offenders.

- Because of Virginia's liberal parole policies, violent criminals are routinely released after serving as little as one-sixth of their sentences, and even the most violent criminals rarely serve even half of their sentences.

- 67% of all criminals released from Virginia prisons were released on parole – *a rate twenty percentage points higher than the national average.*

- The result of Virginia's lenient parole policies is astoundingly short average periods of time served by first-time offenders convicted of drug trafficking – one year; rape – four years; murder – five years.

II. THE SOLUTION: *The Allen Plan To Abolish Parole And Adopt Truth-In-Sentencing So That Violent Criminals Stay Behind Bars*

- Abolish the existing liberal parole system.
- Comprehensively restructure sentences to increase time actually served by violent offenders.
- Enact "Jury's-Right-to-Know" legislation to provide for bifurcated trials so juries can be informed of prior offenses at sentencing.

III. THE DIFFERENCE: *The Terry Record Of Neglect Versus The Allen Plan For Strong Action Against Violent Criminals*

- George Allen supports abolishing parole so that violent offenders stay behind bars for their full terms, subject only to conditional good-time; Mary Sue Terry is against abolishing parole and supports a more liberal good-time policy than proposed in the Allen plan.
- Under the federal Truth-in-Sentencing system on which the Allen plan is modeled, a second-degree murderer could not be released in less than 9.4 years. Under the Terry plan, the same murderer could be released in as little as 1.25 years.
- Under the Allen plan, criminals would receive conditional good-time credits at a maximum rate of one day off for every six served with good behavior. Additional credits may be earned only by engaging in work activity to cover the cost of incarceration. Mary Sue Terry supports good-time credits at a maximum ratio of one day off for every three served with good behavior.
- George Allen believes juries, after determining the guilt of a violent criminal, should be informed of the prior criminal record of the individual being sentenced, so that repeat offenders can be sentenced to longer incarceration in order to prevent further crime. Terry opposes this "Jury's Right-to-Know" reform, and proposes instead policies that would diminish Virginia's time honored jury sentencing system.

Part I. THE PROBLEM

Violence Committed By Paroled Criminals

Virginians do not feel safe, and with good reason. The early release of violent criminals — including convicted murderers, rapists, armed robbers, and drug dealers — is fueling a surge in violent crime in Virginia.

The Real People Who Are Victims

Too often, political leaders talk about the crime problem only in terms of statistics — crime rates, incarceration rates, bed space, and cost per inmate. These factors, while critical, often obscure the impact of violent crime on the real people who are, or in the future will become, the victims. Sadly, tragic stories such as these have become common in Virginia:

- A police detective, the father of two pre-school daughters, was killed on Father's Day seven years ago when he approached the vehicle of a murderer released on early parole.

- A 29-year-old woman in Chesterfield County was brutally raped in her own home while her two young children slept upstairs. Arrested was a man who was out on parole after serving less than one-fourth of his sentence for a prior rape — a man paroled despite **four** separate convictions for rape in addition to **four** convictions for abduction and breaking and entering with intent to commit rape.

- A 33-year-old assistant manager of a McDonald's restaurant in Henrico County was shot at point blank range in the parking lot during an attempted robbery. He suffered brain damage and remains paralyzed. A convicted murderer, out on parole, was arrested for the shooting.

- In July 1993, a Roanoke man who was paroled after serving 4 years for sodomizing a 9-year-old girl was convicted for sodomizing a 4-year-old girl he was baby-sitting.

Freedom from Violence and Fear: The Most Basic Human Right

Our government was formed by the people in a civilized society of laws designed to protect the life, liberty and property of each citizen. Indeed, the most fundamental civil right of every Virginian is to live free from fear and free from harm inflicted by violent criminals.

Yet, we are far from safe. Increasing numbers of Virginians have joined the rapidly swelling ranks of violence victims. And none of us are able to live, work, or travel today without fear that we, or a member of our family will become the next target.

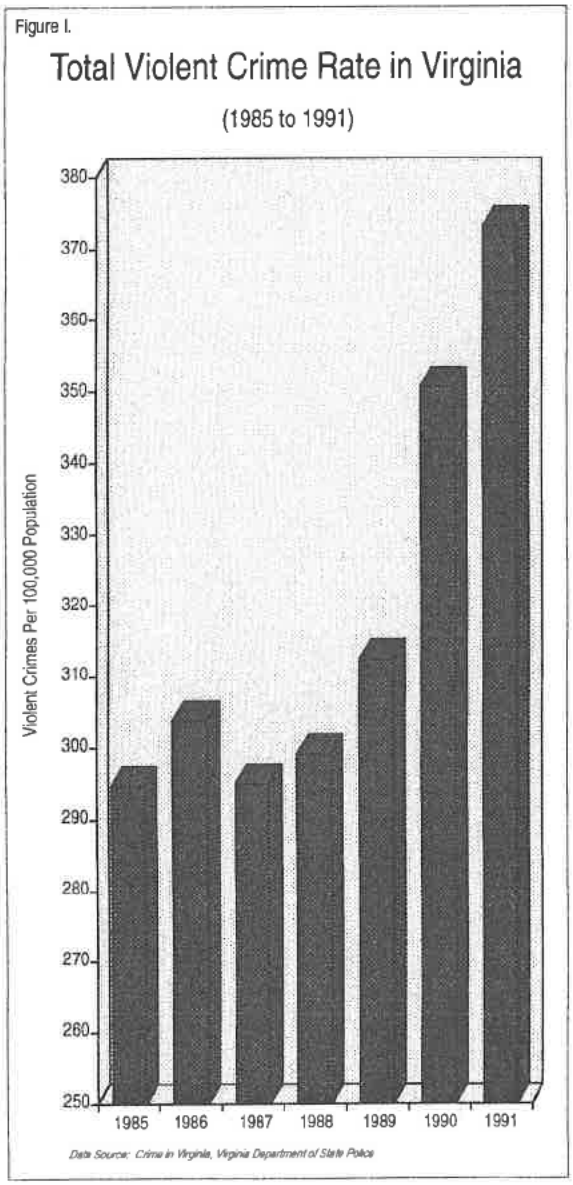
In urban neighborhoods, wracked by a 40% increase in violence in the last five years alone, fear is extinguishing hope for a whole generation of young Virginians. In many inner-city areas, young males have a greater prospect of becoming a homicide victim than becoming a college graduate.

Women in Virginia are especially vulnerable to violence. As the toll mounts in sexual assaults by repeat criminals, women grow increasingly fearful of attack on the way to work, at shopping malls, and even in their homes.

More and more, Virginians are retreating to their homes as fortresses. Tragically, *fear is replacing freedom* — in the state that gave birth to freedom.

Is this overblown rhetoric or a harsh reality confronting Virginians? Consider the evidence below. You be the judge.

Figure I.



Virginia's Explosion of Violent Crime

Figure I is a dramatic depiction of violent crime trends in Virginia since 1985, the year Mary Sue Terry was elected Attorney General. Just a few months ago, the Governor's Commission on Violent Crime provided this sobering confirmation of what Virginians already know from experience in their own communities:

> The total level of violent crime — murder, rape, robbery and aggravated assault — is in the midst of a surge in Virginia. The overall violent crime rate . . . in Virginia was relatively steady from 1972 to 1987. However, since 1987 the overall crime rate has increased by 28%. The 1991 overall violent crime rate in Virginia was . . . *by far our highest rate in the past twenty years.*
>
> The dramatic recent growth in violent crime in the Commonwealth has not been confined to our urban centers. Over the past five years, the violent crime rate grew by over 20% in our suburban and rural communities and by 41% in our central cities.[1]

Virginia Violence Defies Favorable National Trends

Virginia's violent crime crisis is the product of state policies, not demographic factors or national trends beyond our control.

Demographics. Based on demographic patterns, Virginia should be experiencing a *decrease* in violent crime, as the Governor's Commission explained:

> This recent growth in violent crime comes somewhat unex-

> pectedly. Criminologists have consistently found a strong relationship between age and violent criminality. The great majority of arrests for violent crimes involves those in the 15 to 24 year-old age group — commonly referred to as the "crime prone" age group. Currently, the number of people in the crime prone age group is *declining* in Virginia. . . . *Given this demographic trend, Virginia should be enjoying a relatively low level of violent crime.*[2]

Unfortunately, data provided by the Virginia Department of State Police demonstrates sharp increases in aggravated assault and murder in spite of the more favorable demographic patterns (**Figure II** and **Figure III**).

The sobering fact is that Virginia's violent crime rate is expected to rise even faster after 1995, when the demographic pattern will change and the crime prone age group will begin to *climb*.

National Trends. If demographics do not explain Virginia's crime surge, neither does any national pattern.

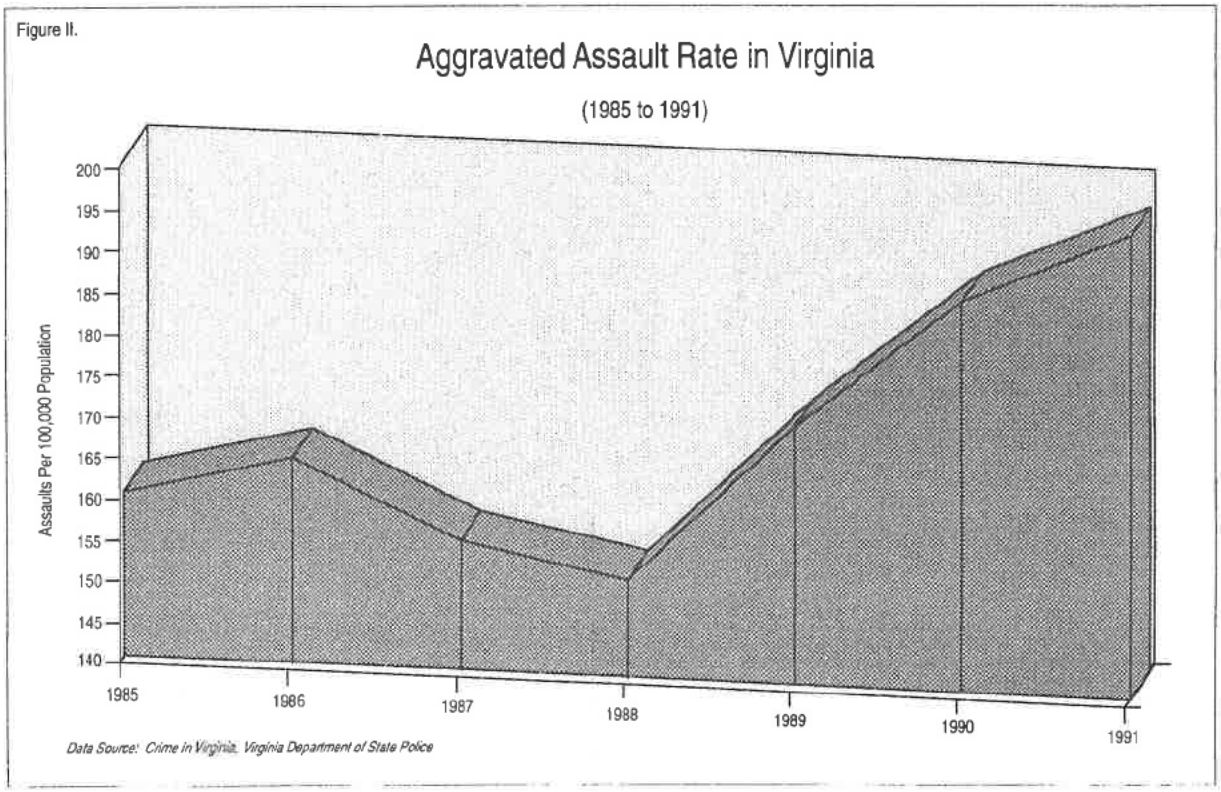
Though the rate of violent crime in Virginia today is "by far our highest rate in the past twenty years," according to the Governor's Commission on Violent Crime, the same is not true nationally.

According to a 1991 report by the U.S. Department of Justice, the homicide rate nationally was lower at the end of the 1980s than it had been twenty years earlier. Even more important, the national homicide rate in 1988 was 16% *lower* than it was at its 1980 peak. According to the National Crime Survey, the rate of rape, robbery and assault dropped during the same period.

The Early Release of Violent Criminals in Virginia

The early release of violent criminals is a primary cause of the surge in

Figure II.



violent crime in Virginia. According to the state's Department of Criminal Justice Services, 75% or more of violent criminals convicted in Virginia were repeat offenders.[3]

Yet, under Virginia's liberal parole and good-time rules, violent criminals are routinely released after serving as little as one-sixth of their terms, and even the most violent criminals rarely serve half their sentences.

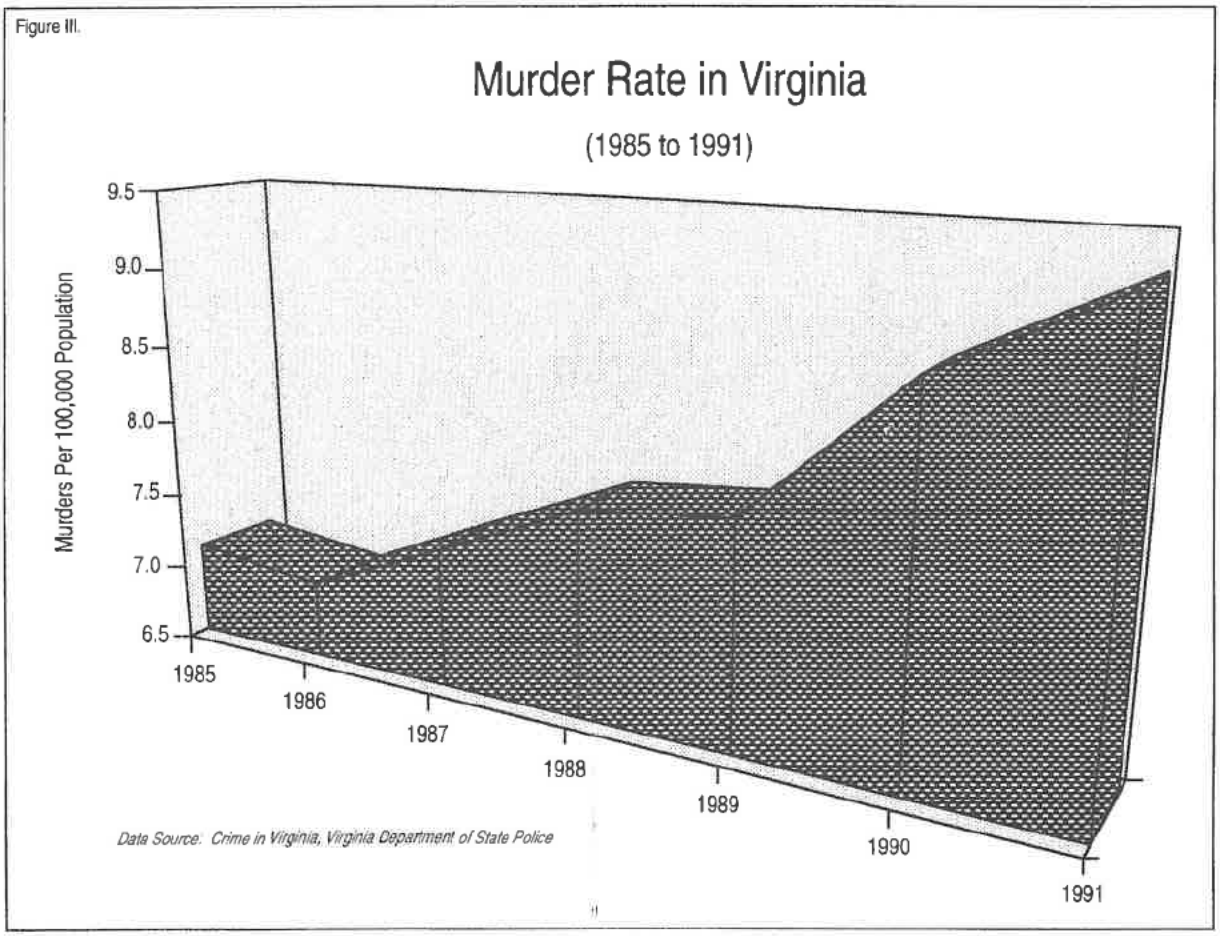
Indeed, Virginia ranks among the most liberal states in paroling criminals. According to the federal Bureau of Justice Statistics, *the rate of parole release in Virginia in 1991 was 20 percentage points higher than the national average.* Nationwide, 47% of all sentenced prisoners released in 1991 were paroled, while in Virginia during the same period, parolees made up 67% of all releases.

Not surprisingly, the Wilder-Terry administration officials who have presided over Virginia's liberal parole regime have been speaking out in recent months against longer periods of incarceration. They say a tough law-and-order approach will not work. But, a comprehensive 1992 report by the U.S. Department of Justice entitled *The Case for More Incarceration* is only the latest study to document the close correlation over the last 40 years between length of incarceration and incidence of violent crime.[4]

Years of experience here in the Commonwealth confirm what Virginians instinctively know: The shorter the average time served by violent criminals, the higher the rate of violent crime.

Police and prosecutors understand that liberal parole policies are under-

Figure III.



The gaping disparity between sentences and actual time served is a common feature of Virginia's current criminal justice system (**Figure IV**).

Juries are Denied the Truth

Virginia is one of a handful of states that provides for sentencing by juries rather than judges. This salutary system of sentencing by a representative jury of one's peers *should* mean that sentences imposed in Virginia reflect the sense of the community as to the appropriate punishment for a particular crime. Unfortunately, this is far from true.

Every day in courtrooms across the Commonwealth, juries conscientiously deliberate and impose the punishment they think is deserved — *the incarceration they think will protect our citizens by keeping violent criminals away from our communities* — only to have their judgments quietly undermined by an unelected and unaccountable Parole Board.

Worse still, these jurors are never told the truth about how the system works. They are never informed that the violent criminal they are sentencing will actually serve only a small fraction of the prison time they impose.

But as bad as that is, it is not the worst part of the story: *Juries in Virginia are also denied any information about the prior crime record of the criminal they are sentencing.*

As a result of this outrageous rule, every time a jury sentences a violent criminal in Virginia, it treats that criminal as if it were sentencing him for his first offense. Since 75% of violent offenders in Virginia are repeat criminals, the jury is under this false impression in three out of every four cases.[7]

It is no wonder that Virginians increasingly feel frustrated and defenseless in the face of a cresting wave of violent crime. The deck seems hopelessly stacked against the law-abiding citizens in our society. Not only do the system and its bureaucratic manipulators conspire to undermine the sentences imposed by Virginia juries; they also deny those juries any information about the violent history of the criminals they sentence.

The end result is a revolving-door criminal justice system in which violent predators — more than 75% of whom are repeat offenders — are systematically returned to the community to murder, rape, rob and maim more innocent Virginians.

For the sake of our citizens, this cycle of violence must stop.

Part II. THE SOLUTION

The Allen Plan To Abolish Parole And Adopt Truth-In-Sentencing So That Violent Criminals Stay Behind Bars

With Virginia in the midst of a violent crime surge not explainable by national trends or demographic factors, it is hardly surprising that the Robb-Wilder-Terry Democrats who have controlled all three branches of Virginia's government for a decade would seek to convince our citizens that nothing meaningful can be done to stop the cycle of repeat crime by paroled violent criminals.

The excuses for inaction run the gamut, from cost to long-disproved liberal claims that the incarceration of violent criminals actually causes crime. What the apologists for the failed status quo never say is that it costs society and innocent citizens far more to release violent criminals early than to keep them in prison for their full terms. *According to the U.S. Department of Justice, the societal cost of early release runs 5 to 17 times higher than the cost of incarceration.*[8]

The people of Virginia must not allow the naysaying and hand-wringing by the failed ruling politicians to make them feel helpless or powerless in the face of this onslaught of violent crime. *We are not powerless in the fight against violent criminals, and we should not become resigned to the violent status quo. We can make our communities safe again, and with new leadership and decisive action, we will.*

The Allen plan proceeds from this straight-forward premise, which has been borne out in study after study:

> *The great majority of violent crime is committed by a relatively small number of career criminals — violent predators who rarely can be rehabilitated and who will begin to prey again on innocent Virginians almost as soon as they are released. We can reduce crime significantly by keeping these violent repeat offenders in prison for significantly longer periods of time.*

As U.S. Attorney General William Barr wrote last year in the Justice Department's publication, *The Case for More Incarceration*, "There is no better way to reduce crime than to identify, target and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets."[9]

Virginians realize that they need not accept the violent legacy of the Wilder-Terry administration as an inevitability, and they are looking for a comprehensive reform package that promises realistically to keep violent criminals behind bars. George Allen has a plan to get the job done:

1. *ABOLISH THE LIBERAL PAROLE SYSTEM.*

The chief culprit in the early release of violent criminals into Virginia's com-

munities today is an unelected, unaccountable and inscrutable Parole Board. Though the existing board's liberal approach has exacerbated the problem, the real defect is the concept of discretionary parole itself. It is inherently subjective, often arbitrary, and too frequently driven by space considerations rather than the overriding objective of protecting the public from violent offenders.

If the public safety of our citizens is the foremost goal — and it must be — then the system fails when it releases one violent criminal early just to make room for a different one. We must make space for violent criminals, because if they are not in prison, they will be in our communities committing more violent crimes.

That is why parole must be abolished and replaced with a system that is predictable and effective in deterring crime to the extent possible and in keeping violent criminals off the street once they are apprehended and convicted.

Precedent for Abolishing Parole

Those who dismiss parole abolition as radical or prohibitively expensive are either unaware of the innovation underway around the country or, more likely, are simply trying to mislead the voters in order to excuse their own inaction.

Abolishing parole is hardly a new or radical reform proposal.

In 1976, California abolished parole and adopted a statutory system of presumptive sentences. Maine adopted sweeping sentencing reform, including abolishing parole, at roughly the same time.

Between 1976 and 1984, more than 20 states revised their sentencing laws, some abolishing parole entirely in favor of sentencing guidelines, and others drastically curtailing parole and sentencing discretion. The reforms instituted varied widely from state to state, but the common denominator was movement away from the concepts of broad judicial discretion in sentencing and discretionary parole.

In 1980, Minnesota abolished parole entirely and adopted a comprehensive Truth-in-Sentencing program, including a sentencing commission to establish sentence guidelines. By early 1992, at least 13 states had moved to a similar guideline system, either eliminating parole or greatly reducing it. The Minnesota experience has been widely regarded as among the most positive nationally; that model has been adopted by Washington State and Oregon, with Florida and Michigan recently enacting changes to more nearly resemble the Minnesota system.

In 1984, the Federal Government abolished parole and replaced it with a comprehensive Truth-in-Sentencing system. Since November 1987, all federally convicted criminals have been sentenced under the new guidelines and have been ineligible for parole. Good-time credits, which are regarded by corrections professionals as essential to control inmate populations, were curtailed to a maximum of approximately one day off for every six days of good behavior.

2. *COMPREHENSIVELY RESTRUCTURE SENTENCES TO INCREASE TIME SERVED BY VIOLENT OFFENDERS.*

While no state's criminal justice system is exactly like Virginia's — so none provides a *perfect* model —

Virginia must build on the experience that has been gained around the country. The federal government's model is straight-forward, tough on violent criminals, and workable. A wealth of published literature is available concerning its strengths and weaknesses, and its progress is being carefully monitored by federal agencies.

Thus, while it must be tailored to Virginia's needs — and especially our sound policy of sentencing by jury — the federal Truth-in-Sentencing model provides a road-map that Virginia should follow.

Unlike a system that releases prisoners on parole, criminals under a Truth-in-Sentencing system serve their full sentences, with allowances only for conditional good-time. Therefore, in changing from a parole system to Truth-in-Sentencing, sentence lengths must be adjusted to reflect the sense of the community as to the time that actually should be served.

The federal experience demonstrates that this approach increases the length of time criminals serve in prison. After three years under its new Truth-in-Sentencing program, the Justice Department reported in 1991 that 65% of all federal prisoners had entered the prison system since November 1987 and accordingly were subject to the new guidelines. With only two-thirds of inmates subject to the rules, the average time served by all prisoners upon release had increased by 29%. For the most violent criminals, the increases in time served were much greater.

In designing a Truth-in-Sentencing system for Virginia, our overriding objective must be to keep violent offenders incarcerated longer and to find innovative alternative punishments where appropriate for non-violent offenders.

Sentencing Commission. In establishing new sentencing parameters, it is essential that representatives of the public at large, crime victims, and the law enforcement community have direct participation. The Allen plan, therefore, includes creation of a Sentencing Commission in which each of these groups will be well-represented. It will help cure the alienation that many Virginians feel today and will ensure that comprehensive sentencing restructuring reflects the sense of the people of Virginia as to the punishment appropriate to the crime.

The Sentencing Commission will be responsible for evaluating the relative seriousness of offenses, the rates of recidivism for offenses, the age group most prone to commit offenses, and other relevant factors, and it will present to the General Assembly and the Governor a comprehensive recommended structure of permissible sentencing ranges for all criminal offenses. It will have ongoing responsibility for recommending changes in sentencing parameters as necessary.

The Sentencing Commission will be urged not only to recommend an increase in the time actually served by violent offenders, but to put forward steeply graduated minimum sentences for repeat violent offenders. One violent crime is too many, but two or three is a symptom of a criminal justice system that is failing to protect its citizens.

Under the Allen plan, violent offenders also will continue to be subject to a mandatory period of post-release supervision.

Alternatives for Non-Violent Offenders. Where incarceration is necessary in order to deter and punish serious non-violent offenses, it will be required under the Allen plan. But

much of the non-violent crime can be addressed more effectively through alternatives to traditional forms of incarceration. These include correctional "boot camps" for juvenile and other younger offenders and home incarceration with electronic monitoring in appropriate circumstances.

While additional prison capacity will inevitably be necessary to meet the need for longer incarceration of violent criminals under this plan, some of this cost can be avoided by using these more appropriate forms of alternative punishment for non-violent offenders. Virginia has been slow to move in this direction and, though concerns for public safety do counsel caution, it is time to implement these sensible reforms. This reform plan therefore contemplates evaluation and adoption of such alternatives to incarceration for non-violent offenders by the proposed Sentencing Commission and the General Assembly.

3. *ENACT JURY'S RIGHT-TO-KNOW LEGISLATION.*

An essential component of Truth-in-Sentencing reform in Virginia is allowing sentencing juries to know the convicted criminal's prior record of offenses.

In virtually all American criminal justice systems, the determination of guilt or innocence is made by a judge or jury which does not know the prior criminal record of the accused in most circumstances. That is proper because of the principle that guilt or innocence for a particular crime should be determined according to the evidence of that crime, not assumed based on a record of past crimes.

But when it comes to sentencing, it is widely accepted that prior criminal conduct is among the most relevant factors and should be considered. After all, a principal purpose of incarceration is to protect the law-abiding community by taking criminals out of the community, and it is most important to remove from the community those criminals likely to commit crimes again. A pattern of repeat crimes, especially violent crimes, is among the best evidence that a person will commit more violent crimes upon release.

Yet, under present Virginia law, the same jury convicts and sentences a criminal, and in making the decision about sentence length, the jury is not told the prior criminal record of the accused. The effect, as noted above, is that juries treat all offenders as if they were sentencing them for their first crime. The three-time murderer or the four-time rapist will receive the same treatment accorded the first offender, because the jury is not permitted to know.

Under the Allen plan, the Sentencing Commission's evaluation will include the delineation of those offenses which, because of their seriousness and the likelihood of recidivism, should result in a bifurcated trial. In those cases, the jury will be advised of the criminal's prior offenses during the sentencing phase of the trial.

4. *LIMIT GOOD-TIME CREDITS TO THE MINIMUM NECESSARY FOR INMATE CONTROL AND TIE CREDITS TO WORK ACTIVITY DURING INCARCERATION.*

Except for criminals convicted of a handful of the most serious offenses, violent criminals in Virginia today can, and often do, receive as much as one day off their sentence for every day served with good behavior during a given

30-day period. This is an extremely liberal policy that is utterly unjustified by any prison population control rationale.

The federal government has determined that a maximum ratio of one day of good-time credit for every six days served with good behavior is adequate to control prison populations. This ratio should be adopted in Virginia, and credits should be conditioned on successful completion of educational, training and/or rehabilitation programs.

As an incentive for work, however, inmates convicted for other than the most serious violent crimes would be subject to a special provision. Those who perform work to pay for the annual cost of their incarceration should be eligible for an additional day for every six days served with good behavior. Thus, for an inmate who helps to pay the cost of his own incarceration, the maximum good-time credits would be one for every three days served with good behavior.

5. *USE EXISTING PRISON CAPACITY TO HOUSE A LARGER PERCENTAGE OF VIOLENT CRIMINALS AND EXPAND CAPACITY TO THE EXTENT NECESSARY TO KEEP VIOLENT OFFENDERS BEHIND BARS.*

Virginia's prison capacity will increase significantly in the coming years as the nine scheduled new institutions come on line. In order to house more violent criminals longer, additional prison capacity will be needed.

Making Incarceration of Violent Criminals a Budgetary Priority

Virginians are prepared to pay the price of removing violent criminals from their communities. But they deserve to have a lean and efficient state government whose spending practices reflect their priority of personal safety.

The very same politicians who have presided passively over the soaring growth of violent crime in Virginia managed to double the entire state budget in the 1980s and to outpace even the rate of spending growth by the federal government. With that record, it is clear that the problem is largely one of misplaced priorities. Indeed, the large number of new prisons in the pipeline today is a late response to the extreme neglect of corrections.

In the Allen administration, public safety will be a top priority. We will make the investment necessary to make our citizens safe again.

Funding Alternatives for New Construction and Operations.

In addition to re-prioritizing state spending to address this critical need, the following are important elements in addressing the cost of implementation:

- By using available and planned prison space for more violent and fewer non-violent criminals, the amount of additional prison capacity required can be reduced.

- The notion that abolition of parole and the move to Truth-in-Sentencing will immediately push correctional costs through the roof is simply false. Because the new rules necessarily apply only to persons entering the system after the effective date of the new legislation, the costs are automatically phased in gradually, affording time for new construction and creating the ability to spread the increased costs over time.

- It is also misleading to estimate the increased costs associated with abolishing parole without taking into account the restructuring of sentences that is inherent in a comprehensive Truth-in-Sentencing reform package. That is not to say that there will be no increased costs under the plan; clearly, costs will rise, since more violent criminals will be in prison and for longer periods. But estimates that only consider the effects of parole abolition on prison space and ignore the other elements of the plan will grossly overstate the actual cost.

  Because crime rates and prison capacity can be the product of many factors, it is virtually impossible to isolate the cost associated with Truth-in-Sentencing in those jurisdictions where it has been implemented in one form or another. The fact that other jurisdictions are moving in this direction even in tight budgetary times, however, is a strong indication that facile assertions about skyrocketing costs are overblown and self-serving excuses from the ruling establishment — including Mary Sue Terry.

  While it is fair to ask the cost of these reforms, those who declare that abolishing parole and adopting Truth-in-Sentencing are hopelessly unaffordable should be called upon to explain how and why some 20 other states and the federal government have already adopted systems based in whole or in part on that model.

- By requiring inmates to work and creating incentives for productive work, those in prison can help defray the cost of their incarceration.

- By exploring avenues for privatization of prisons, additional costs savings can be achieved.

- After all funding sources have been exploited and action has been taken to eliminate waste in state government and re-order priorities, the need for new prison construction may still exceed existing and expected resources. In such circumstances, it would be advisable to place before the people of Virginia the decision whether, and to what extent, to fund the increased capital costs during the useful life of the prisons through the issuance of general obligation bonds. While a last resort, such long-term capital costs are the traditional purpose for bond financing, and permitting the incarceration of violent criminals is a compelling public purpose.

Finally, it cannot be overlooked that one of the chief rationales for abolishing parole is strengthening the deterrent to violent crime. Obviously, the great disparity that currently exists between sentences and actual time served makes a mockery of our penalties for violent crime. The increased deterrent effect of truthful sentences will work to partially offset the demand for prison space associated with the longer time served by incarcerated criminals.

The Far Greater Cost of Inaction

The cost to Virginians of not implementing these truth-in-sentencing reforms will far exceed the expenditures necessary to implement this sound and sensible plan.

Economic Costs

Economic costs of violent crime should be viewed from both a public and private perspective. Currently, costs for prevention as well as the failure to deter crime are rising with no end in sight.

Individuals and families are forced with ever increasing frequency to modify their behaviors, shopping patterns, travel patterns, or even their employment to escape violent crime. The costs associated with such changes in lifestyles represent an indirect burden of violent crime. Rising crime rates have also spawned whole new industries which market home and personal security devices. Those least able to afford such costs of prevention often bear a disproportionate share of this burden.

Medical and psychological related costs are other by-products of violent crime, which can be either short term or long term. In many cases, a crime victim's insurance carrier pays for the cost of treatment, resulting in higher premiums for all insureds. Unfortunately, some victims of violent crime have no insurance safety net, and the cost of violent crime depletes family savings. In these cases, medical costs result in increased demands for public assistance. Violent crime thereby affects all citizens, whether directly or indirectly, urban or suburban.

Violent crime costs business as a result of decreased sales and increased prevention costs such as increased lighting, security systems and increased insurance premiums. If a merchant is located in a high violent crime area, the public will be less willing to patronize that merchant and retail sales will be limited to residents within the immediate vicinity. In order to not place themselves at risk of encountering a violent crime, residents may avoid certain malls, stores and shopping areas after dark. As a consequence, destination retailers will tend to locate away from areas known to experience high rates of crime.

As a result, economic development suffers directly from the loss of existing employers and from the opportunity cost of employers siting jobs in other areas with lower violent crime rates. In a recent study by *Area Development* in December 1992, a low crime rate was listed by 492 companies surveyed as one of their top considerations and *the most important quality of life factor* in selecting an area in which to locate. Loss of economic development opportunities directly translates into the loss of real estate taxes, sales taxes, user fees, and other forms of local revenue.

Costs to the public sector include law enforcement patrols and investigation, administration of the judiciary system, and corrections.

According to a 1992 U.S Department of Justice study on violent crime, the total direct costs associated with a rape were $51,000; robbery, $12,500; and assault, over $12,000. In the most recent year studied, 1991, just these three categories of crime, excluding murder, cost the Commonwealth over $352 million in direct economic loss, pain and suffering. This aggregate cost is based on the total number of rapes, 1,879; robberies, 8,651; and assaults, 12,346, that occurred in 1991. The aggregate amount also does not include costs associated with lost jobs, lost sales, and other opportunity costs.[10]

The cost of murder — in lost wages and medical costs, and in the loss of a loved one — is virtually incalculable. In 1991, alone, there were 583 murders in Virginia.

Non-Economic Costs

The non-economic loss to society and community, while impossible to quantify, is still a concern associated with violent crime. Increased fear among neighbors in the community may foster increased tensions and mistrust, which causes a degradation in the quality of life and an unweaving of the social fabric within the community. The heightened level of tension within a community can often perpetuate itself unless the cycle is broken and violent crime within the community is substantially reduced.

Part III. THE DIFFERENCE

The Terry Record Of Neglect Versus The Allen Plan For Strong Action Against Violent Criminals

For Virginians who want positive change to keep violent criminals away from our neighborhoods and out of our communities, the choice in this year's election for Governor could not be more clear. There are two critical differences.

- ***The Plan.*** George Allen has proposed decisive action and comprehensive reform that builds on the concrete successes of the federal government and innovative state governments. Mary Sue Terry wants to softly tinker with good-time and leave Virginia's failed, liberal parole system in place.

- ***The Record.*** The best way to judge the future is by the past. With a record of neglect and failure in confronting violent crime as Attorney General, Mary Sue Terry has scant credibility as a candidate calling for criminal justice reform. In contrast, George Allen has a record of leadership and commitment in fighting crime.

The Difference is Keeping Violent Criminals Behind Bars

Even if Mary Sue Terry could be trusted after seven years of neglect to follow through on her campaign rhetoric, her recently announced plan would preserve the worst of the present liberal parole system.

After ignoring the subject of the early release of violent criminals in her campaign policy booklet released earlier this year, Ms. Terry on July 19, 1993, announced what some reports have described as "sweeping" parole reform. The hype is unjustified.

Consider the fundamental and far-reaching differences between the Allen and Terry plans:

ABOLISHING PAROLE

ALLEN: *FOR*
TERRY: *AGAINST*

- *The Allen plan would abolish parole and comprehensively restructure sentences so that violent offenders are incarcerated for their full terms, subject only to conditional good-time for inmate control purposes.*

- *The Terry plan would reduce good-time credits, but would not affect parole eligibility apart from good-time. Thus, the vast majority of violent criminals would continue to be eligible for release on parole after serving one-fourth of their terms.*

The following comparison is based on current federal and state sentences for the same or comparable crimes:

MINIMUM TIME SERVED - *MURDER*

ALLEN: *9.4 YEARS*
TERRY: *1.25 YEARS*

- *Under the federal Truth-in-Sentencing system upon which the Allen plan is modeled, a person convicted of second-degree murder could not be released in less than 9.4 years.*

- *Under the Terry plan, a second-degree murderer — a person convicted of a malicious, intentional killing — could be released after serving as little as 1.25 years in prison. (Even the average first-time, second-degree murderer in Virginia would be eligible for release after 4.7 years under the Terry plan.)*

MINIMUM TIME SERVED - *RAPE*

ALLEN: *7.5 YEARS*
TERRY: *3.3 YEARS*

- *Under the federal Truth-in-Sentencing system upon which the Allen plan is modeled, a person convicted of rape could not be released in less than 7.5 years.*

- *Under the Terry plan, a criminal convicted of rape could be released after serving as little as 3.3 years in prison.*

GOOD-TIME CREDITS

ALLEN: *1:6 RATIO*
TERRY: *1:3 RATIO*

- *Under the Allen plan, criminals would receive conditional good-time credits at a maximum ratio of one day off for every six served with good behavior. Inmates could gain an additional day off for every six served with good behavior (for a maximum ratio of 1:3) only by engaging in work activity to cover the cost of their incarceration.*

- *Under the Terry plan, criminals would receive conditional good-time credits at a maximum ratio of one day off for every three served with good behavior. The Terry plan would routinely give prisoners twice the good-time credits currently awarded criminals in the federal prison system.*

JURY'S RIGHT-TO-KNOW

ALLEN: *FOR*
TERRY: *AGAINST*

- *Under the Allen plan, juries would be advised of the prior criminal record of the criminal being sentenced, including juvenile convictions for serious violent crimes, so that repeat offenders could be sentenced to appropriately longer incarceration.*

- *Under the Terry plan, judges would have the discretion to raise or lower a jury's sentence, effectively rendering the jury's verdict as only advisory. Juries would continue to be denied the right to know the prior criminal convictions of the person they are sentencing.*

COST TO SOCIETY

ALLEN: *DOWN*
TERRY: *UP*

- *Under the Allen plan, Virginia will comprehensively address the problem of early release of violent criminals and realize the savings to society which federal studies show are the sure result of longer incarceration rates.*

- *Under the Terry plan, Virginia will continue to return violent and repeat offenders to society after alarmingly short periods of incarceration, resulting in a continuation of the vicious cycle of escalating violence and skyrocketing costs that characterized Mary Sue Terry's tenure as Attorney General.*

The Difference is Credibility.

What better opportunity could someone have to reform Virginia's deeply flawed criminal justice system than to serve for two terms as Attorney General — the state's chief law enforcement officer, and the statewide official most responsible for providing leadership in developing anti-crime policy?

Yet, Attorney General Terry presided over this travesty of justice for seven years without initiative, and seemingly without concern.

For the third straight statewide election, Ms. Terry is again promising the people of Virginia that she will lead a fight against violent crime. But where has she been?

Because of Virginia's liberal parole policies, the average time — the *average* time — actually served by a first-time murderer in Virginia was just 5.4 years. For a rapist, the average was 4 years.

That means that if you were sentenced for a murder or a rape in Virginia on the day Mary Sue Terry was inaugurated attorney general, the odds were you would serve less time in prison than she would serve as Attorney General. And that is for the worst of crimes — murder or rape.

It is fair to ask who received the worst punishment — the violent criminals sentenced during this time or the people of Virginia who counted on Attorney General Terry to provide leadership to protect them from these violent predators? Clearly, the people of Virginia served the longer sentence.

Virginia's explosion in violent crime paralleled the tenure of Mary Sue Terry as Attorney General.

But even as the evidence of a violent crime crisis mounted, Mary Sue Terry did nothing. When Governor Wilder last year finally assembled a Violent Crime Commission to address the crisis, Ms. Terry, the state's chief law enforcement officer, did not participate. Indeed, she did not even appear before the Commission to offer a single suggestion.

This neglect is not new. With her eye always on the next election and campaign fund-raising, Attorney General Terry was careful never to confront the influential Democrats who control the House and Senate Courts of Justice Committees. Exhibiting the opposite of leadership, she carefully avoided any initiative that would run the risk of defeat.

More unabashedly partisan than any Attorney General in Virginia's modern history, Ms. Terry was consistently hostile to Republican initiatives that

would have introduced broad and urgently needed reforms to Virginia's criminal justice system.

- She consistently ignored GOP-sponsored bills for bifurcated trials that would have permitted juries to know the prior records of the violent criminals they sentence. George Allen sponsored such bills for eight years in the Virginia General Assembly.

- As recently as the 1993 session of the General Assembly, she declined to support Republican-sponsored legislation to abolish parole and move to longer, more predictable sentences for violent criminals.

- Ms. Terry also stood by as the Democrat majority defeated a GOP-sponsored "three-strikes-and-you're-out" law which would have put the most dangerous felons — the violent three-time losers — behind bars for life without any prospect of parole.

Indeed, so unconcerned was Ms. Terry about the early release of violent criminals that parole reform is not even mentioned in the campaign policy booklet which she released earlier this year.

In contrast to the Terry record of self-serving neglect, George Allen strongly supported the GOP's criminal justice reform proposals, and also provided leadership on a range of anti-crime fronts:

- Last year, George Allen successfully fought in the U.S. House of Representatives against an effort to redirect the proceeds from seized assets. The liberal Democrats, including Joseph Kennedy (D-MA), wanted to take the money away from state and local law enforcement efforts and transfer it elsewhere.

- As a member of the General Assembly, George Allen helped to strengthen Virginia's death penalty law by working to enact a capital murder charge for killing someone during an attempted robbery.

- George Allen proposed a Constitutional amendment to take proceeds from the sale of drug dealer assets and allocate them to local law enforcement. This amendment was passed and ratified by Virginians after a seven-year fight in the General Assembly. Although she has tried to take credit for this measure, Mary Sue Terry only supported this legislation after it proved to be politically popular and local Virginia law enforcement was cut off from the federal asset sharing program.

- George Allen proposed and supported measures to impose tough minimum mandatory sentences on those who use guns to commit crimes.

- George Allen's amendment made Virginia's instant criminal record check apply to purchases of all guns, not just short-barrel handguns.

- George Allen sponsored bills for bifurcated jury trials for eight years in the General Assembly.

- George Allen introduced legislation for minimum mandatory fines for drug users.

Virginia's soft and lenient parole laws are a national disgrace, and Mary Sue Terry must be held accountable for her failure to act during this ongoing assault on the safety of the people of Virginia. George Allen will tackle this serious problem through a comprehensive reform of the criminal justice system — the cornerstone of which is abolishing parole.

ENDNOTES

[1] Governor's Commission on Violent Crime, *Interim Report* (December 1991).

[2] Governor's Commission on Violent Crime, *Interim Report* (December 1991).

[3] Virginia Department of Criminal Justice Services, *Violent Crime in Virginia* (May 1989).

[4] U.S. Department of Justice, *The Case for More Incarceration* (October 1992).

[5] Virginia Department of Criminal Justice Services, *Drugs in Virginia: A Criminal Justice Perspective* (October 1991).

[6] Virginia Department of Criminal Justice Services, *Violent Crime in Virginia* (May 1989).

[7] Virginia Department of Criminal Justice Services, *Violent Crime in Virginia* (May 1989).

[8] National Institute for Justice (1987).

[9] U.S. Department of Justice, *The Case For More Incarceration* (October 1992).

[10] U.S. Department of Justice, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice* (July 1992).

George Allen Profile

George Allen is the Republican nominee for Governor of Virginia. Married to the former Susan Brown, the Allens have two children: daughter Tyler is 5 years old, and son Forrest is 2. Susan Allen is a constant campaigner for her husband and the GOP. The Allens reside in their log home in Earlysville, in Albemarle County.

George Allen

George Allen attended the University of Virginia, where he graduated with Distinction in 1974, with a B.A. in History, and earned his Juris Doctorate in 1977. During law school, George Allen spent one summer as a clerk for two respected law firms and lived in Northern Virginia during that time.

After law school, he clerked for U.S. District Court Judge Glen Williams in the Western District of Virginia. During his tenure with Judge Williams, George Allen lived in Abingdon. He later moved to Charlottesville, where he bought an historic building to personally renovate and set up his new law practice.

George Allen has served the people of Virginia in the House of Delegates and as a U.S. Representative from the 7th Congressional District (as constituted before the 1991 redistricting).

Prior to his Congressional service, George Allen served the people of Virginia in the House of Delegates for nine years, where he was chosen by his colleagues to serve as Assistant Minority Leader. His district became known as Mr. Jefferson's District - because it included Jefferson's Monticello and because of George Allen's dedication to the principles of Thomas Jefferson.

As a Delegate, George Allen led a successful seven-year effort for adoption of a Constitutional Amendment to direct proceeds from the sale of confiscated drug dealer assets to local law enforcement agencies. The plan was passed and ratified by Virginia voters in 1990.

Elected to Congress on November 5, 1991 in a Special Election, he won with 62% of the vote in a three-way contest. During his term in Congress, George Allen was recognized as the ***5th Most Fiscally Responsible*** Member of the entire 102nd Congress (out of 439 members) by the National Taxpayer's Union.

George Allen's Congressional District was divided among five other Congressional Districts as a result of the partisan redistricting plan passed by the General Assembly in 1991. The plan effectively limited George Allen's tenure in Congress to 14 months.

He was nominated for Governor with 64.1% of the vote in a three-way race at the Republican State Convention in June.

U.S. Department of Justice
Office of Policy and Communications
Office of Policy Development

The Case for More Incarceration

1992

U.S. Department of Justice
Office of Policy and Communications
Office of Policy Development

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The Case for More Incarceration

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Office of the Attorney General

Washington, D.C. 20530

October 28, 1992

In July, I released a report entitled *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, setting forth a comprehensive strategy for making state criminal justice systems more effective in achieving their central purpose -- the protection of our citizens. As I stated then, there is no better way to reduce crime than to identify, target, and incapacitate those hardened criminals who commit staggering numbers of violent crimes whenever they are on the streets.

Of course, we cannot incapacitate these criminals unless we build sufficient prison and jail space to house them. Revolving-door justice resulting from inadequate prison and jail space breeds disrespect for the law and places our citizens at risk, unnecessarily, of becoming victims of violent crime.

As part of the preparation of *Combating Violent Crime*, the Office of Policy and Communications circulated this report, *The Case for More Incarceration*, as an internal working paper. Because it discusses in detail the reasoning behind some of the most important recommendations in *Combating Violent Crime*, I have now asked the Office to publish it.

I would like to acknowledge the efforts of Steven R. Schlesinger and Edward Himmelfarb in preparing this significant document.

William P. Barr
Attorney General

Table of Contents

Introduction

Ask many politicians, newspaper editors, or criminal justice "experts" about our prisons, and you will hear that our problem is that we put too many people in prison. The truth, however, is to the contrary; we are incarcerating too *few* criminals, and the public is suffering as a result.

Every violent criminal who is in prison is a criminal who is not committing other violent crimes. Too many violent criminals are sentenced to probation with minimal supervision. Too many violent criminals are sentenced to prison but are released early on parole or simply to relieve the pressure of prison crowding. None of us is naive enough to think that these criminals will suddenly become upstanding, law-abiding citizens upon release. And indeed they do not. Much violent crime is directly attributable to our failure to sentence violent criminals to prison and our failure to keep them in prison beyond a fraction of their sentence.

Yes, we would have to build more prisons to implement a policy of more incarceration. Yes, this would cost money. But it would plainly reduce crime and help to protect the public -- which is the first responsibility of any government. State and local governments are spending a growing but still modest portion of their budgets on corrections, and it is time to consider our priorities. How much does our failure to incarcerate cost our communities when released offenders commit new crimes? How much does it cost in victims' medical expenses and lost wages, in lost opportunities in inner cities, in lost jobs for the community? How much do government treasuries suffer from the resulting lost tax revenues?

The argument for more incarceration makes three basic points. First, prisons work. Second, we need more of them. Third, inadequate prison space *costs* money. Correspondingly, the most common objections to incarceration do not hold up under scrutiny. Prisons do not create criminals. We are not over-incarcerating. In fact, we could reduce crime by simply limiting probation and parole -- by putting criminals in prison for a greater portion of their sentences.

Finally, amid all the concern we hear about high incarceration rates for young black

men, one critical fact has been neglected: The benefits of increased incarceration would be enjoyed disproportionately by black Americans living in inner cities, who are victims of violent crime at far higher rates than whites and persons who live outside the inner cities.

I. *Prisons work.*

How do we know that prisons work? To begin with, historical figures show that after incarceration rates have increased, crime rates have moderated. In addition, when convicted offenders have been placed on probation or released early from prison, many of them have committed new crimes. One can legitimately debate whether prisons rehabilitate offenders; one can even debate whether, and how much, prisons deter offenders from committing crimes. But there is no debate that prisons incapacitate offenders. Unlike probation and parole, incarceration makes it physically impossible for offenders to victimize the public with new crimes for as long as they are locked up.

A. *Incarceration rates and crime rates.*

In the 1960's violent crimes reported to police more than doubled, but the nation's prison population declined by almost 8% from about 213,000 to under 197,000 in 1970.[1] If the prison population had simply kept pace with the crime rate during this period, the population would have been over 495,000 by 1970 -- about 2½ times the actual figure.[2] How can it be that so few persons were in prison during a period of soaring crime rates? The answer is that the chances of imprisonment for serious crimes fell dramatically. At the beginning of the decade, for every 1,000 adults arrested for a violent crime or burglary, criminal courts committed 299 offenders to a state prison; by 1970, the rate had dropped to 170.[3]

Table 1

Prisoners sentenced to more than one year

Year	Total Prisoners (State and Federal)	Imprisonment Rate (per 100,000)
1960	212,953	117
1970	196,441 (- 8%)	96 (- 18%)
1980	304,692 (+ 55%)	134 (+ 38%)
1990	713,216 (+134%)	282 (+110%)

SOURCE: Bureau of Justice Statistics

This drop in the incarceration rate was no accident. The prevailing attitude among policy-makers at the time was that social spending and not imprisonment was the answer to crime.

By the 1970's, it had become painfully apparent that the anti-punishment policies of the 1960's had failed. There was a change of direction in criminal justice toward tough law enforcement -- arrest, prosecution, *and incarceration* -- a change that continued through the 1980's and continues today.

This change was reflected in two different ways. First, there were more inmates sentenced to prison (traditionally measured by the rate per 100,000 population). In 1960, the rate of imprisonment (state *and* federal) per 100,000 was 117. This rate fell during the 1960's, and by 1970 was 96 per 100,000. As a result of the new direction in criminal justice during the 1970's and 1980's, the imprisonment rate rose to 134 per 100,000 in 1980 and to 282 per 100,000 in 1990.[4] (Table 1)

Second, the changed attitude toward incarceration was reflected in an increase in the chance of incarceration after arrest. In an article in *Science* magazine, a scholarly journal published by the American Association for the Advancement of Science, Patrick A. Langan, a Bureau of Justice Statistics statistician, has shown that the most important factor in the increased prison population between 1974 and 1986 was the greater likelihood that an arrest would result in a conviction and a sentence to prison. This factor was far more important than any increases in crime-prone populations, increases in reported crime and arrest rates, or increases in drug arrest and imprisonment rates.[5]

SIDEBAR

Prosecutors in Arizona have come to similar conclusions about the relationship of tough punishment policies and crime rates:

"Fact: Over the past three decades the rate of serious crime in Arizona has tended to move up as we imprisoned proportionately fewer offenders and down when we imprisoned proportionately more offenders."

"Fact: Since 1980 the rate at which we commit offenders to prison for serious crime has increased substantially and our rate of such crime has evidenced a general decline."

SOURCE: Arizona Prosecuting Attorneys' Advisory Council, *The Facts about Crime and Punishment in Arizona 1980-1990*, May 1992, at 21-22.

The increase in incarceration has been accompanied by a significant slowing of the increase in reported crime and by a decrease in estimates of total crime (reported and unreported crime combined). Using rates of crime *reported to police*, measured by the

Federal Bureau of Investigation's Uniform Crime Reports, we see that from 1960 to 1970, the murder rate per 100,000 Americans rose by 55%, and from 1970 to 1980, it rose by 29%. From 1980 to 1990, however, it dropped by 8%. From 1960 to 1970, the number of rapes reported to police per 100,000 Americans increased by 96%, and by 97% from 1970 to 1980. From 1980 to 1990, the increase was only 12%. The same pattern can be shown for rates of reported robbery, which increased by 186% from 1960 to 1970 and increased by only 2% from 1980 to 1990. The FBI's "crime index" offense rate, which includes not only violent crimes but also burglary, larceny-theft, and motor vehicle theft, has seen an even more pronounced trend. From 1960 to 1970, the crime index rate more than doubled, increasing by 111%; from 1970 to 1980, it rose by 49%; but from 1980 to 1990, it actually *declined* by 2%.[6] (Table 2)

Table 2

Uniform Crime Reports
(crime rates per 100,000 population)

	1960	1970	1980	1990
Murder	5.1	7.9 (+ 55%)	10.2 (+29%)	9.4 (- 8%)
Rape	9.6	18.7 (+ 95%)	36.8 (+97%)	41.2 (+12%)
Robbery	60.1	172.1 (+186%)	251.1 (+46%)	257.0 (+ 2%)
Aggravated assault	86.1	164.8 (+ 91%)	298.5 (+81%)	424.1 (+42%)
All Violent	**160.9**	**363.5 (+126%)**	**596.6 (+64%)**	**731.8 (+23%)**
All Index	**1887.2**	**3984.5 (+111%)**	**5950.0 (+49%)**	**5820.3 (- 2%)**

NOTE: Figures do not include unreported crimes. Definitions are given in Appendix A.

The National Crime Victimization Survey, sponsored by the Bureau of Justice Statistics, estimates total crime against persons age 12 and above -- both reported and unreported -- based on interviews with a representative sampling of households. In 1973, the first year in which the survey was taken, there were an estimated 94.7 rapes per 100,000 population. This rate remained virtually unchanged in 1980 but had dropped by 32% by 1990. Similarly, there were an estimated 674 robberies per 100,000 population in 1973. By 1980, that rate had dropped by 3% and by 1990, it had dropped by another 14%. Aggravated assaults, which occurred with an estimated frequency of 1006.8 per 100,000 population in 1973,

occurred at an 8% lower rate in 1980. By 1990, the rate had decreased by another 15%.[7] (Table 3)

Table 3

National Crime Victimization Survey
Crime Victimization Rates
(per 100,000 persons age 12 or older)

	1973	1980	1990
Rape	94.7	94.3 (-0.5%)	64.0 (-32%)
Robbery	674.0	656.0 (-3%)	565.7 (-14%)
Aggravated assault	1006.8	926.0 (-8%)	787.6 (-15%)
TOTALS	**1775.5**	**1676.3 (-6%)**	**1417.3 (-15%)**

NOTE: Figures include estimates of reported -- and unreported -- crimes, based upon interviews of a sampling of households nationwide. In 1990, approximately 95,000 people in 47,000 households were interviewed. Murders are not included. Survey began in 1973. Definitions are given in Appendix A.

Imprisonment and prison-construction policies have had a demonstrable effect in individual states. In the early 1980's, the Texas legislature adopted an approach that reduced the time that prisoners served, in an effort to open up space for the next class of felons. Between 1980 and 1989, the average prison term served fell from about 55% of the sentence to about 15% of the sentence, and by 1989 the parole population grew to more than 5 times its 1980 level. The "expected punishment" -- average time served, reduced by the probabilities of arrest, prosecution, conviction, and sentence to prison -- for serious crimes (murder, rape, robbery, aggravated assault, burglary, theft) fell 43% in Texas between during the 1980's while it was increasing by about 35% in the nation as a whole, and the rate of these serious crimes reported in Texas rose by about 29%, while national rates fell by almost 4%.[8]

In Michigan, when funding for prison construction dried up in the early 1980's, the state instituted an early-release program and became one of only two states whose prison population declined from 1981 to 1984.[9] Between 1981 and 1986, the rate of violent crimes reported to police in Michigan rose by 25% at the same time national crime rates were de-

clining. In 1986, however, when Michigan embarked on a major prison-building effort, the state's violent-crime rate began to fall and by 1989 had dropped by 12%.[10]

It strains credulity to believe that the lowered crime rates have been unrelated to the unprecedented increases in the nation's incarceration rates, even if there may have been other causes as well. As Langan put it in his *Science* article:

> Whatever the causes, in 1989 there were an estimated 66,000 fewer rapes, 323,000 fewer robberies, 380,000 fewer assaults, and 3.3 million fewer burglaries attributable to the difference between the crime rates of 1973 versus those of 1989 [*i.e.*, applying 1973 crime rates to 1989 population]. If only one-half or even one-fourth of the reductions were the result of rising incarceration rates, that would still leave prisons responsible for sizable reductions in crime.[11]

B. *A failure to incarcerate leads to increased crime.*

One proposition is abundantly clear: *Failure* to incarcerate convicted criminals will lead to additional crimes. There are two sources of direct evidence of this proposition. First, offenders placed on probation commit new crimes while on probation. Second, offenders who are released early commit new crimes during the period when they would otherwise have been confined in prison.

1. *Crimes by probationers.*

In theory, probation is a sentence meted out to an otherwise law-abiding person who has gone astray. The idea is that such a person deserves a stern warning, with the threat of more serious punishment if the person offends again. There are two main problems when this theory is put into practice. First, considerable evidence indicates that many "first-offenders" have committed crimes in the past for which they have not been caught and convicted, or for which they were treated as juveniles with the adult criminal justice system prohibited by law from seeing their records. Second, about one-fourth of probationers have prior adult felony convictions and are not "first-offenders" under any definition. Nevertheless, some states have determined that probation is a suitable, cost-effective alternative to incarceration. Let us consider what happens to the population of felons on probation.

A recent Bureau of Justice Statistics study found over half of the estimated 583,000 state felony convictions in 1986 -- or 306,000 -- resulted in a sentence of probation. Of these, about three-fifths received straight probation, and about two-fifths received probation combined with a period in jail or prison (a so-called "split sentence"). Based on a survey of 79,000 felons sentenced to probation in 17 states -- over one-fourth of the nation's total -- BJS estimated that 12% of all probationers had been sentenced to probation after being convicted of a violent offense (one out of every 40 probationers among this 12% had been convicted of murder); 34% of a drug offense; 29% of burglary or larceny; and 3% of a weapons offense.[12]

SIDEBAR

We are concerned here only with convicted offenders, but high rates of recidivism have also been found among persons arrested on felony charges and released pending trial. In one sample, during the first year after pretrial release, one in six violent felony defendants released in 1988 and one in five drug felony defendants were rearrested on felony charges. Thirty percent of felony defendants with 5 or more prior convictions were rearrested on felony charges, while 15% of those with no prior convictions were rearrested. Nearly two-thirds of all rearrested felony defendants were rearrested within 3 months.
SOURCE: Bureau of Justice Statistics

BJS estimated that 43% of the 79,000 probationers studied were arrested at least once on a felony charge within 3 years after being placed on probation, and that 62% had either a felony arrest or a disciplinary hearing during that period. The 34,000 arrestees counted for a total of 64,000 arrests, with about 8,000 having 2 felony arrests in the 3-year period, and about 7,500 having 3 or more felony arrests. About 8.5% of probationers were arrested for violent crimes; those arrests represented 20% of felony arrests of probationers.[13] Extrapolating the 43% arrest rate and the proportions of multiple arrests and violent crime arrests in the sample to the group of all 306,000 felons sentenced to probation in 1986, this means almost 132,000 probationers were arrested on felony charges about 248,000 times (including nearly 50,000 times for violent felonies) over the following 3 years.

Although these figures sound high, the number of crimes actually committed by felony probationers is almost certainly higher. The most important reason for this is that the survey tallied only *arrests* of probationers, not the total crimes they committed. Arrests on multiple

charges were listed only under the most serious charge. Considering that arrests account for only a portion of all crimes, it is likely that the probationers committed other unreported or unsolved crimes as well. In addition, the survey did not include either out-of-state arrests or arrests after 3 years from the start of probation. Also, some probationers were deported, had absconded, or had died.

Even after a person on probation for a felony conviction is convicted after a new felony arrest, there has been a lukewarm reaction by the courts. Of probationers who were convicted after a first new felony arrest while on probation, 42% were sentenced to prison, 10% to jail, 36% to probation with some jail (split sentence), and 9% to straight probation (3% were "other"). Thus, a full 45% of these repeat offenders received a new sentence of probation.[14]

2. *Crime by prisoners released early.*

Quite a few states have parole systems that release prisoners before they have served their full sentences. Others have implemented early-release programs -- either on their own or pursuant to a court order -- that are specifically designed to keep down their prison populations. As a result of all these arrangements, crimes are committed by prisoners released early that would not have been committed if the prisoners had remained in prison for the duration of their sentences. These are avertable crimes.

In 1989, the Orlando *Sentinel* conducted a survey of almost 4,000 prisoners released early in Florida because of prison crowding and found that nearly one-fourth were rearrested for a new crime at a time when they would otherwise have been in prison. (In a follow-up survey, the number rose to about 31%.) The 950 prisoners rearrested were charged with 2,180 new crimes, including 11 murders or attempted murders, 63 armed robberies, 6 sexual assaults, 7 kidnapings, 104 aggravated assaults, 199 burglaries, and 451 drug offenses. Some were rearrested more than once; 33 were released early, rearrested, convicted, incarcerated, released early again, and rearrested again, all within a two-year period.[15]

This experience in Florida should not be surprising. In a study of the effects of incapacitation on crime, sponsored by the National Academy of Sciences and published in

1986, a research panel concluded that incarceration has a definite incapacitative effect on crime:

> Under 1970 incarceration policies, incapacitation was estimated to have reduced the number of FBI index crimes by 10 to 20 percent. For robberies and burglaries, incapacitation is estimated to have reduced their number by 25-35 percent in 1973; in 1982, after the national inmate population had almost doubled, the incapacitative effect for these offenses is estimated to have increased to about 35-45 percent.[16]

This general conclusion is bolstered by other evidence. The Bureau of Justice Statistics surveyed a sampling among the approximately 108,000 persons released from prison in 11 states in 1983, and found that 62.5% were arrested for a new felony or serious misdemeanor within 3 years. The estimated 68,000 prisoners who were rearrested in these 11 states were charged with over 326,000 new offenses, including about 50,000 violent offenses, 141,000 property offenses, and 46,000 drug offenses. Of those who were rearrested, 40% (representing one-fourth of all prisoners released in those states) were rearrested within the first 6 months of release.[17]

Another BJS study looked at male prisoners entering state prisons in 1979 and found that approximately 28% of all males admitted to prison that year (or 46% of the male recidivists admitted to prison) would still have been in prison at the time of their new admission if they had served the maximum of the sentence range imposed by the court instead of being paroled.[18] For example, if those prisoners who had been sentenced to 3 to 5 years in prison had served the full 5 years instead of one-third of that time, they would still have been in prison at the time they reentered prison after having been convicted of a new crime committed while on parole. Notice that we are not talking about persons who would have been in prison at the time they *committed* their new crimes; nor are we talking about persons who would have been in prison at the time they were *arrested*, or *convicted*. These numbers would be even higher. The figure we have cited -- 28% of all persons admitted to prison in 1979, or over 43,000 offenders out of a total of about 153,500 -- represents persons who had committed crimes, had been arrested, prosecuted, and convicted, and had been recommitted to prison, all within the time they would have served on their original sentences.

Further evidence comes from a BJS study of recidivism among young-adult parolees. Based on a sampling of 17- to 22-year-olds paroled from prison in 22 states in 1978, the study estimated that about 69% of all such persons were rearrested and charged with a felony or serious misdemeanor within 6 years of release from prison, and that about 29% of new arrest charges occurred before the parolees were first eligible for discharge from parole on the original conviction.[19] In other words, had these offenders remained in prison pursuant to their original sentences instead of being paroled, they would not have been able to commit the new crimes.

A different way of estimating the extent of crime prevention through incapacitation is based on self-reporting of offenders in prison. In 1982, the Rand Corporation conducted a sophisticated survey of a sampling of inmates incarcerated in California and Michigan prisons and jails, as well as in Texas prisons. The survey contained a variety of internal and external checks in an effort to validate inmates' responses. According to the inmates' self-reports, inmates on average committed between 187 and 278 crimes per year, *excluding drug deals*. But the distribution was skewed; about half the population claimed to have committed fewer than 15 crimes per year, while about 25% claimed more than 135 crimes and about 10% claimed more than 600 crimes per year.[20] A more recent study by the Treasury Department's Bureau of Alcohol, Tobacco and Firearms showed, similarly, that a group of career criminals had committed an average of about 160 crimes a year.[21] These individual crime rates represent the incapacitative effect of prison on the particular offender. Even if we reduce these numbers by one-half or two-thirds on the theory that the inmates were simply boasting of their criminality, incapacitation of such offenders would, by their own admission, prevent them from committing numerous crimes. If released early, however, they would become free to return to wholesale criminality.

This "avertable recidivism" -- crime that could have been avoided simply by following through on a sentence of imprisonment on an earlier conviction -- proves that prisons work.

C. *Prisons do not create criminals.*

We hear all the time that prisons create crime -- that imprisonment turns first-time

offenders into hardened criminals. If this argument were true, then two other propositions would have to be true as well: first, that many offenders sentenced to prison are not already hardened criminals; and second, that the rate of recidivism increases with the length of time served in prison. Both of these propositions are false.

First, so-called "first-offenders" are often nothing of the sort. In some cases, "first-offenders" have lengthy juvenile records that are unavailable by law to the adult criminal justice system. These "first-offenders" are already hardened criminals. In other cases, offenders get probation for their first adult offense, and sometimes, as we have seen, even for subsequent offenses committed while on probation. In a report on inmates in state prisons in 1986, the Bureau of Justice Statistics found that only about 5% of all state prisoners were non-violent first-offenders.[22] This figure would have to be adjusted downward to take into account those who had simply been *caught* for the first time. Former Attorney General Hal Stratton of New Mexico has summed it up: "I don't know anyone that goes to prison on their first crime. By the time you go to prison, you are a pretty bad guy."[23]

Second, as a BJS study of prisoners released in 1983 has shown, the rate of recidivism has little to do with the length of time served in prison before release. In fact, those who had served over 5 years before release had *lower* recidivism rates than those who had served less than 5 years.[24] (Table 4)

Table 4

Time served (in months)	% Rearrested within 3 years
0-6	61.2%
7-12	64.6%
13-18	63.0%
19-24	64.6%
25-30	60.7%
31-36	61.3%
37-60	59.0%
61 +	48.3%

SOURCE:
Bureau of Justice Statistics

In the BJS study, the recidivism rate was linked most closely with the offender's age when released and the number of prior arrests. For example, in the 18- to 24-year-old age-of-release group, 48.6% of prisoners with one prior arrest were rearrested within 3 years after release, whereas 94.1% of prisoners with 11 or more prior arrests were rearrested within 3 years. Among inmates with the same number of prior arrests, the rearrest rate declined as the release age of the releasee increased. For example,

among prisoners with 4-6 prior arrests, 72.8% of 18- to 24-year-olds were rearrested within 3 years, whereas 57.9% of 25- to 29-year-olds, 51.0% of 30- to 34-year-olds, 41.6% of 35- to 39-year-olds, and 30.1% of those 40 or older were rearrested.[25]

Prisons simply aren't responsible for turning unsophisticated young wrongdoers into hardened criminals. To put it differently, prisons don't commit crimes; criminals do.

II. *More prisons are needed.*

It is not news to anyone familiar with prisons that many state prison systems are seriously overcrowded. Nor is it news that many other systems that are *not* overcrowded have kept their inmate populations low by letting criminals go free -- either by not incarcerating them in the first place or by releasing them early from prison to make room for the next group of criminals. It is also not news that there is a solution to this problem: Build more prisons.

A. *Prison crowding.*

As we have seen, prison population has increased enormously in recent years. Although this increase has been accompanied by a considerable amount of construction of new prison space, the building has not kept pace with the expanding inmate population. As of the end of 1991, state prisons in the aggregate were at about 123% of average capacity.[26]

In a real sense, this figure understates the problem. Some of the states with populations at or below capacity have reached that position only after being put under court order. Instead of building new prisons to house their prisoners, these states have chosen (or been ordered) to create a revolving door by releasing enough prisoners to meet a cap on population. The "real" inmate population of these states would have to be computed by including in the total those inmates who are released early to make room for others.

B. *Prisons are a critical link in the criminal justice system.*

When crime rates are intolerably high, the public and many elected officials say that more police are needed. And indeed more police usually *are* needed. Yet this common re-

sponse focuses on only one part of the solution, at the front end of the criminal justice system, and ignores the need for prison space, which is a critical link in the system at the back end. Even if we have more police, and therefore more arrests, and even if we have more prosecutors and courts, and therefore more prosecutions, trials, and convictions, we will ultimately make no dent in crime if we have so little prison space that we have to send convicted offenders back out on the street well before they have completed their sentences.

Table 5

Time served: 1st Release from State Prison

Most serious offense	Max. sentence (median)	Time served (median)	
All crimes	4 yrs.	1 yr. 1 mo.	(27%)
Violent	5 yrs.	2 yrs. 2 mos.	(42%)
Murder	15 yrs.	5 yrs. 6 mos.	(37%)
Rape	8 yrs.	3 yrs. 0 mos.	(38%)
Robbery	6 yrs.	2 yrs. 3 mos.	(38%)
Drugs Trafficking	3 yrs.	1 yr. 0 mos.	(33%)
Weapons	3 yrs.	1 yr. 1 mo.	(36%)

NOTE: A sentence length is the median if half the sentences are longer and half are shorter.

SOURCE: Bureau of Justice Statistics

Table 5 is based on maximum sentence lengths and actual time served by persons released from state prison in 1988. One can see that the length of time served in prison was a mere fraction of the length of sentence imposed. The median offender received a maximum sentence of 4 years but the median time served was only 1 year and 1 month, slightly over one-quarter. (The *average* maximum sentence length is 5 years and 9 months, while the average time served in prison is 1 year and 10 months, or 32%.)[27] Parole decisions are, in theory, based on an evaluation that the offender has been adequately rehabilitated, but these figures show that such decisions are also driven by prison crowding. If prisons are already above capacity, it would be impossible to hold offenders for much longer without placing a severe strain on the prison system.

Given these circumstances, a state that fights crime by increasing arrests, prosecutions, and convictions, but refuses to build more prison space, will see one or more of three

possible outcomes: first, judges who are forced to grant probation to felons who deserve hard time; second, an increase in prison crowding that is difficult to manage; and third, earlier release of more prisoners. The choice, then, is simple: more prisons or more crime.

C. *We are not over-incarcerating.*

Table 6

Prior Sentences of State Inmates 1986

Probation and/or incarceration	percent of inmates
None	18.5%
Juvenile	10.6%
Adult	35.9%
Both	34.9%
Number of times	
0	18.5%
1	19.8%
2	16.5%
3-5	26.0%
6-10	12.6%
11 or more	6.6%

SOURCE:
Bureau of Justice Statistics

Opponents of incarceration often release studies purporting to show that we have too many people in prison or that our incarceration rate is too high. Typically, American incarceration rates are shown to be higher than those of most, if not all, other nations surveyed. These studies, however, take little notice of the high crime rates that plague our country, almost as if imprisonment were unrelated to crime. If differences in national crime rates were taken into account, much of the difference in incarceration rates among nations might disappear.

For example, *arrest*-based imprisonment rates yield results far different from those trumpeted by the opponents' studies. The rate of imprisonment among those who have been arrested for certain crimes does not vary greatly between the United States and comparable Western democracies. The Bureau of Justice Statistics estimated that arrest-based imprisonment rates for robbery were 49% in the United States, 52% in Canada, and 48% in England.[28] To the extent arrests are proportionate to crime, these data would suggest that we are not over-incarcerating, at least not in comparison with England or Canada.

In fact, as high as American incarceration rates appear to be, only a fraction of all criminals under supervision are in prison at any time. In 1990, an estimated 4.35 million

Americans were under correctional supervision, of whom about 745,000 were in prison, 403,000 in jail, 531,000 on parole, and 2.67 million on probation. In other words, nearly three-quarters of those under correctional supervision were being supervised in the community.[29]

Moreover, if we were actually over-incarcerating, surely we could find numerous prisoners who do not deserve to be in prison. When the Bureau of Justice Statistics examined profiles of inmates who were incarcerated in state prisons in 1986, it found that almost 55% were serving time for a violent offense and that another 11% had a prior conviction for a violent offense. Still another 29% were non-violent recidivists, having a prior sentence to probation or incarceration as an adult or juvenile. In sum, 95% of all state inmates were either violent or repeat offenders. Over half of the remaining 5% had been convicted of drug trafficking or burglary.[30] (Preliminary results for state inmates in 1991 are similar.[31]) Which of these offenders should we not incarcerate?

What is more, the word recidivist does not tell the whole story. Nearly 62% of state inmates had two or more prior sentences to probation or incarceration; about 45% had 3 or more; over 19% had 6 or more; and 6.6% had 11 or more.[32] (Table 6) Which of these offenders should we not incarcerate?

The problem, then, is not too much incarceration; the problem is too much crime, and the simple fact is that the best way to stop crime is to put criminals in prison.

III. *Failure to incarcerate costs money.*

Much of the opposition to prison construction is based on cost. But this concern about cost ignores the costs that are imposed on society by our failure to incapacitate convicted criminals.

A. *Expenditures on corrections.*

State and local expenditures on prisons, while increasing, are modest portions of the budget. In fiscal year 1990, per capita state and local direct spending on corrections -- including not just construction but all aspects of running prisons and jails -- was only

$94.50.[33] This represented only 2.4% of state and local direct spending. (States alone spent only 3.9% on corrections.)[34]

Construction costs per bed vary tremendously, from about $11,000 to close to $100,000. But whatever the cost, we must remember that prisons have a useful life of decades. On an annualized basis, construction costs are relatively small; they are a fraction of operating costs, which in fiscal year 1990 averaged $15,513 per inmate.[35]

More important, figures on expenditures for corrections inherently overstate the costs of building and operating prisons. The monetary benefits of prisons -- the expenditures that are saved and the revenues that are retained or increased -- are left out of the calculus. A proper evaluation of the cost of increasing prison space must include an analysis of the cost of *not* increasing prison space. This requires us to examine the cost of crime, and the cost of crime that could be averted.

B. *Cost of crime that could have been averted.*

It is not easy to give a precise figure for the true cost of crime, but we will suggest a few ways of putting together some estimates. The point to remember when reading this discussion is that even if our estimates are *twice* as high as the true figures, the cost of crime -- and in particular the cost of *avertable* crime -- is intolerably high. While prisons may be costly to build and operate, those who say they cost *too* much have the burden of showing that the cost of avertable crime is a price we should be willing to pay.

Let us begin with an estimate compiled by the Bureau of Justice Statistics of the direct economic costs to crime victims. (Table 7) In 1990, according to these estimates, victims had total out-of-pocket losses of $19.2 billion.[36] This sounds large, but it represents a modest cost per crime on average. What, after all, are the direct costs to the victim of a mugging (robbery) at gun-point? Perhaps some cash, maybe a watch or a ring. Suppose the victim loses one day of wages in working with police and prosecutors; this amounts to $120 for a person earning $30,000 a year. Let us make a crude estimate of $500 direct economic costs per mugging at gun-point. Does anyone seriously believe that $500 is the true value of such a crime -- that if the cost of averting the crime is over $500 we should affirmatively

Table 7

Total direct economic loss to victims of crime, 1990

Type of crime	Gross loss (in millions)
All crimes	$19,216
Personal crimes	4,575
Crimes of violence	1,338
Rape	63
Robbery	618
Assault	657
Crimes of theft	3,237
Personal larceny	
With contact	141
Without contact	3,096
Household crimes	14,641
Burglary	4,340
Household larceny	1,752
Motor vehicle theft	8,550

SOURCE:
Bureau of Justice Statistics

NOTE: Figures do not include justice system costs, pain and suffering, personal anti-crime expenditures, or "macro" costs, such as lost sales, lost jobs, or lost tax revenues.

choose to let the crime happen?

Suppose the mugger flees before taking the cash and goods. Is there *no* cost to this crime? Suppose the mugger takes no cash, but puts his gun to the victim's head, pulls the trigger, and the gun backfires. Should we spend *no* money to avert this crime? Plainly, there are other costs of crime.

One analyst, Mark Cohen, has tried to compute the costs of pain, suffering, and fear that the victims endure, based in part upon how juries have apportioned damages between direct economic losses and pain and suffering. While criminal justice professionals may never agree about methodology, we present some of Cohen's findings because his analysis includes some factors that are ordinarily left out of the estimation of costs of crime.

Cohen estimates the average per-crime cost to victims in 1984 (using 1985 dollars) as follows: rape, $51,058; robbery, $12,594; assault, $12,028; personal larceny, $181; motor vehicle theft, $3,127; burglary, $939; and household larceny, $173. In the aggregrate, he writes, the estimated total cost of these crimes to the victims in 1984 was $92.6 billion in 1985 dollars.[37] (Table 8) This figure would obviously be far higher if computed today. Between 1984 and 1990, the direct economic costs of crime to victims, as estimated by BJS, rose by 54%;[38] if intangible losses simply kept pace with victims' direct, out-of-pocket losses, the total cost of crime as computed by Cohen's method would have been over $140 billion by 1990.

Table 8

Per-Crime Cost of Crime to Victims (1985 dollars)

Crime	Direct Losses	Pain and Suffering	Risk of Death	Total Cost
Personal				
Rape	$4,617	$43,561	$2,880	**$51,058**
Robbery	1,114	7,459	4,021	**12,594**
Assault	422	4,921	6,685	**12,028**
Larceny	179	-----	2	**181**
Household				
Motor vehicle	3,069	-----	58	**3,127**
Burglary	939	*	*	**939***
Larceny	173	-----	-----	**173**

Aggregate cost of crime to victims in 1984: **$92.6 billion**

* For burglary Cohen values pain and suffering at $317 and risk of death at $116, but he excludes these because burglary with personal contact becomes a more serious crime, accounted for elsewhere in the table.

SOURCE: Mark Cohen, *Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims*, 22 Law and Society Review 537 (1988).

Consider what these figures mean. If it costs about $15,500 in operating costs plus a few thousand dollars in annualized construction costs to keep one rapist in prison for only one year, and we thereby prevent him from committing only one rape, we have prevented a crime at bargain-basement prices. This would remain true even if Cohen's figures were twice the "true" costs of the crime. And we are working on the assumption that one year of incarceration prevents only one rape; indeed, as noted earlier, studies indicate that most offenders, when out of prison, commit *numerous* crimes for which they are not caught.

The same kind of reasoning applies to crimes other than rape and to criminals other than rapists, although the precise cost savings of incarceration will differ. Incarceration of certain offenders will result in massive savings, whereas incarceration of others will simply reduce the *net* cost of incarceration. The fundamental point is that one cannot analyze the cost of incarceration without also considering the cost of *non*-incarceration.

Cohen's study shows that we tend to underestimate the cost of crime, but even Cohen leaves out some of the important, though indirect, costs of crime. These indirect costs are the larger societal costs, and they include:

- lost sales, when people are afraid to go out to do their shopping;
- lost jobs, when businesses move out of high-crime areas;
- lost opportunities, when schools become the playgrounds of gangs and drug dealers, rather than places where inner-city kids can learn their way out of poverty; and
- lost tax revenues, when sales, businesses, and jobs evaporate.[39]

Table 9

Summary of Costs and Benefits of Incarceration

Costs (Most Plausible Range)	Low	High
Annualized construction costs	$ 4,094	$ 5,333
Annual operating costs	18,826	20,912
Inmate's lost legitimate income	8,653	8,653
Annual avg. welfare costs	2,715	2,715
	$34,289	$37,614
Benefits		
Avg. annual costs to victims from crimes committed by a currently imprisoned felon	$ 49,019	$ 525,326
Est. social costs (250%-350% of direct costs to victims)	122,547	1,838,641
	$171,566	$2,363,967

SOURCE: David P. Cavanagh & Mark A.R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions*, May 1990.

Two years ago, David Cavanagh and Mark Kleiman of BOTEC Analysis Corporation, a Cambridge, Massachusetts consulting firm, performed a complex cost-benefit analysis of incarceration that tried to include as many indirect, societal costs and benefits as possible. Cavanagh and Kleiman estimated the most plausible range of costs for incarceration of one inmate per year at $34,000 to $38,000 and the benefits of incarcerating that *one inmate* for a year at between $172,000 and $2,364,000. They did not even include homicide (except where committed in the course of a felony), rape, or drug crimes when evaluating the

benefits of incarceration.[40]

Decisions about the cost of building prisons must necessarily take both intangible costs and the broader societal costs into account. Those who think that building prisons is too expensive have the profound moral burden of justifying the additional crimes -- and the costs of the additional crimes -- that will certainly result from a failure to build.

C. *A failure to incarcerate hurts black Americans most.*

Many well intentioned people argue that we are incarcerating too many blacks, particularly young black men. Some argue that reducing the numbers of blacks in prison is more important than pushing tough law enforcement policies -- indeed, that tough law enforcement has the effect, and perhaps the intent, of putting more blacks in prison. But a failure to incarcerate criminals would result in disproportionate harm to law-abiding black citizens.

SIDEBAR

The riots in Los Angeles last April have revived charges that the criminal justice system in this country treats blacks worse than whites. Various studies have been cited in support of this thesis, but the most reliable evidence tends to refute it. See Appendix B to this report.

Blacks are victims of crime at rates far in excess of their proportions in the general population. The FBI reported that in 1990 more blacks were murdered than whites.[41] This does not mean murder *rates*; it means actual murder victims. Blacks constitute only about 12% of the American population. In 1985, the lifetime risk of being a homicide victim was 1 in 179 for white men, but 1 in 30 for black men; it was 1 in 495 for white women, but 1 in 132 for black women.[42] In 1987, murder was the 12th leading cause of death in the United States but was the leading cause of death among young black men aged 15 to 24, accounting for 42% of all deaths in that group. Among persons aged 15 to 24, the 1987 murder rate for black men was 4.8 times the rate for black women, 7.7 times the rate for white men, and 21.9 times the rate for white women.[43]

Although the murder figures are the most striking, blacks for many years have been victims of almost all crimes at greater rates than whites. From 1979 to 1986, the rate of violent crime victimization was 44 per 1000 blacks, and 34 per 1000 whites.[44] In 1990, the rate

of violent crime victimization was 40 per 1000 blacks, and 28 per 1000 whites.[45] Robbery victimization rates from 1979 to 1986 were 7 per 1000 white men, but 18 per 1000 black men; they were 4 per 1000 white women, but 9 per 1000 black women.[46] In fact, black crime victimization rates were higher for each crime other than simple assault and personal larceny without contact.[47] In central cities, blacks suffered higher rates of robbery and burglary than whites regardless of age group or income group, and higher rates of aggravated assault in most age and income groups.[48]

The vast majority of violent crimes against blacks were committed by other blacks. For murders in 1990 in which there was a single offender and a single victim (about 53% of murders known to police), 93% of the black murder victims were murdered by a black offender.[49] In 1990, 83.9% of black violent crime victims reported that the offender was also black.[50] From 1979 to 1986, blacks were victims of about 13% of all single-offender violent crimes other than murder nationwide, but in about 11% of all cases (that is, in over 80% of black-victim cases) the offenders were also black. During that same period, blacks were victims of about 17% of all multiple-offender violent crimes other than murder, but in about 13% of all cases (over three-quarters of black-victim cases) all the offenders were black, and in another 1% (roughly 5% of black-victim cases) more than one race was represented in the offender group.[51] White offenders accounted for only 8.9% of violent crimes against blacks in 1990.[52]

Color-blind incarceration of violent offenders does not portend a disproportionate increase in black incarceration rates. These rates have changed little during the massive increase in incarceration during the 1980's. In 1980, 46.6% of state prisoners and 34.3% of federal prisoners were black. In 1990, 48.9% of state prisoners and 31.4% of federal prisoners were black.[53]

In short, while increasing incarceration might result in higher *numbers* of black men in prison (just as it would with white men), it would disproportionately benefit innocent black victims of their crimes. It is time that those who are concerned for the welfare of black Americans pay more attention to their right to be free from crime.

D. *How to pay for prisons.*

Recognizing that prisons reduce crime is easy. Finding the money to pay for them is sometimes more difficult. Likewise, it is easier to say that controlling crime is so important that existing budget priorities should be re-examined than it is to follow through. But that cannot relieve policy-makers from the hard work of finding the resources.

Many states have made commendable efforts to build prisons, and many have made a considerable effort to find cost-effective methods of prison construction. Much information about the successes (and failures) is available from the National Institute of Justice's Construction Information Exchange. NIJ and the National Institute of Corrections can also provide funds and technical assistance for the design and planning of new or enlarged state prisons. The responsibility for funding the construction remains with the states.

Some of the possible strategies that states have already used for keeping costs low include a direct supervision design, in which corrections officers are stationed inside housing units and have direct contact with inmates; modular construction, the use of prefabricated concrete units; and lease-purchase, or buying on installment.

Proper classification of inmates is also essential to keeping costs down, since costs increase as the level of security increases. Thus, if inmates are housed in higher-security facilities than warranted, the state is bearing unnecessary costs. (Conversely, if inmates are housed in lower-security facilities than required, the state is bearing unnecessary risks.)

States should make sure that they have adequate statutory authority for asset forfeiture. The Department of Justice has used hundreds of millions of dollars from its Asset Forfeiture Fund and the Office of National Drug Control Policy's Special Forfeiture Fund, to support construction of new federal prisons. There is true poetic justice in forcing criminals to pay for prisons.

The federal government does not supply direct funding for the construction of state prisons and local jails, a function that is fundamentally an obligation of state and local government. But we will continue to make available surplus federal properties at no cost, and

we stand ready to provide advice and assistance to encourage and facilitate this most important of state and local government responsibilities.

APPENDIX A

Uniform Crime Reports: Violent Crimes

Murder and nonnegligent manslaughter "is the willful (nonnegligent) killing of one human being by another. The classification of this offense, as for all other Crime Index offenses, is based solely on police investigations as opposed to the determination of a court, medical examiner, coroner, jury, or other judicial body. Not included in the count for this offense classification are deaths caused by negligence, suicide, or accident; justifiable homicides; and attempts to murder or assaults to murder, which are scored as aggravated assaults."

Forcible rape "is the carnal knowledge of a female forcibly and against her will. Assaults or attempts to commit rape by force or threat of force are included; however, statutory rape (without force) and other sex offenses are excluded."

Robbery "is the taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear."

Aggravated assault "is an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is usually accompanied by the use of a weapon or by means likely to produce death or great bodily harm. Attempts are included since it is not necessary that an injury result when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed."

Uniform Crime Reports: Nonviolent Crime Index Offenses

Burglary is "the unlawful entry of a structure to commit a felony or theft. The use of force to gain entry is not required to classify an offense as burglary. Burglary in this Program is categorized into three subclassifications: forcible entry, unlawful entry where no force is used, and attempted forcible entry."

Larceny-theft "is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. It includes crimes such as shoplifting,

pocket-picking, purse-snatching, thefts from motor vehicles, thefts of motor vehicle parts and accessories, bicycle thefts, etc., in which no use of force, violence, or fraud occurs. In the Uniform Crime Reporting Program, this crime category does not include embezzlement, 'con' games, forgery, and worthless checks. Motor vehicle theft is also excluded from this category inasmuch as it is a separate Crime Index offense."

Motor vehicle theft, "[d]efined as the theft or attempted theft of a motor vehicle, . . . includes the stealing automobiles, trucks, buses, motorcycles, motorscooters, snowmobiles, etc. The definition excludes the taking of a motor vehicle for temporary use by those persons having lawful access."

National Crime Victimization Survey: Violent Crimes

Rape -- "Carnal knowledge through the use of force or the threat of force, including attempts. Statutory rape (without force) is excluded. Both heterosexual and homosexual rape are included."

Robbery -- "Completed or attempted theft, directly from a person, of property or cash by force or threat of force, with or without a weapon."

Aggravated assault -- "Attack or attempted attack with a weapon, regardless of whether or not an injury occurred, and attack without a weapon when serious injury results. Serious injury includes broken bones, lost teeth, internal injuries, loss of consciousness, and any injury requiring two or more days of hospitalization."

APPENDIX B

Considerable evidence supports the view that blacks and whites are treated similarly within the criminal justice system -- that is, that they are charged on the basis of crimes they have committed and sentenced according to the nature of their crimes and the extent of their criminal history. The charge that systemic racial discrimination results in disproportionate incarceration of blacks and in longer sentences, a charge that is often accompanied by misleading statistics, is simply not sustainable. Nor is it more justifiable than the claim that the criminal justice system is biased against men and in favor of women because well over 90% of prisoners are men.

We will briefly summarize here the evidence that tends to refute the charge of bias against blacks.

1. Alfred Blumstein, *On the Racial Disproportionality of United States' Prison Populations*, 73 Journal of Criminal Law and Criminology 1259 (1982). Prof. Blumstein, a highly regarded criminologist, tried to find an explanation for the high black population of state prisons. He compared the racial arrest statistics in the Uniform Crime Reports for those crimes punishable by imprisonment with the racial composition of the inmate population. The arrest figures for blacks were far above their percentages in the general population but were within about 5% or 6% of their percentages in the prison population. Blumstein concluded that about 80% of the observed racial disparity in prison population was the result of differential involvement in crime. He acknowledged, however, that the decision to arrest could be infected with bias.

2. Patrick A. Langan, *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 Journal of Criminal Law and Criminology 666 (1985). Patrick Langan, a BJS statistician, tried to eliminate this possibility of bias at the arrest stage by relying on the description of offenders provided by crime victims in the National Crime Victimization Survey. He used the racial percentages from victims' reports to derive an estimate for the percentage of blacks among those admitted to state prison and then compared this estimate with the actual percentage of black prison admissions. The estima-

ted percentage was only a few points below the actual percentage:

Year	Est. Black Pct.	Actual Black Pct.
1973	48.1%	48.9%
1979	43.8%	48.1%
1982	44.9%	48.9%

3. Rand Corporation, *Race and Imprisonment Decisions in California* (1990). This study of sentencing decisions in California analyzed data on over 11,500 offenders. Rand attempted to control for factors that previous studies had not factored in, such as conviction offense, criminal record, and demographic factors. The study concluded that one could predict with 80% accuracy whether an offender would be sentenced to probation or prison. *Adding the offender's race to the equation did not improve the accuracy of this prediction.* Race was also unrelated to the length of prison term imposed. Rand, in discussing Langan's earlier study, said that Langan had not controlled for "legitimate sentencing factors (such as the offender's prior record and victim injuries) that might explain" even the small difference he found.

4. Rand Corporation, *Predicting Criminal Justice Outcomes: What Matters?* (1991). In a survey of robbery and burglary defendants in 14 large urban jurisdictions across the country, Rand found that a defendant's race or ethnic group "bore little or no relation to conviction rates, disposition times, or other key outcome measures."

5. Bureau of Justice Statistics, *Prison Admissions and Releases, 1983* (1986). BJS examined racial differences in sentence lengths for inmates admitted to state prison nationally in 1983. When criminal histories and geography (differences in state laws where black populations are high) were factored out, "the estimated mean sentence length for blacks is 63.6 months, nearly 3 months shorter than the actual mean observed for whites." More recent data are discussed immediately below.

6. Bureau of Justice Statistics, *National Corrections Reporting Program, 1988* (1992). Data recently published show fairly similar statistics on sentence length and time served for white and black state prisoners -- *without even factoring in criminal histories.* For

example, for violent offenses:

	White		Black	
	Median	Mean	Median	Mean
Sentence length	72 mos.	110 mos.	72 mos.	116 mos.
Time served	24	33	25	37

For additional information, see William Wilbanks, *The Myth of a Racist Criminal Justice System* (1987).

ENDNOTES

1. Figures are based on comparisons of 1960 and 1970 statistics from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1975*, August 1976, at 49; U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1979*, September 1980, at 41; and U.S. Department of Justice, Bureau of Justice Statistics, *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86*, May 1988, at 10-11 (NCJ-111098).

2. The FBI's Uniform Crime Reports show that the rate of "crime index" crimes (murder, rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft) rose by 111% from 1960 to 1970. To take account of the increase in population during this period, the 495,000 figure in the text is based on a hypothetical 111% increase in the incarceration rate.

3. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1990*, May 1991, at 7 (NCJ-129198).

4. *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86, supra* note 1, at 10, 11, 13 (figures for 1960, 1970, and 1980); U.S. Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States, 1990*, July 1992, at 81 (NCJ-134946) (1990 figures). All figures are based on prisoners in custody of the jurisdictions.

5. Patrick A. Langan, *America's Soaring Prison Population*, Science, March 29, 1991, at 1568.

6. *Crime in the United States, 1975, supra* note 1, at 49 (1960 rates); *Crime in the United States, 1979, supra* note 1, at 41 (1970 rates); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1989*, August 1990, at 48 (1980 rates); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1990*, August 1991, at 50 (1990 rates).

7. U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States: 1973-88 Trends*, July 1991, at 15, 20, 31 (NCJ-129392); U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States, 1990*, February 1992, at 16 (NCJ-134126).

8. *See generally* Eugene H. Methvin, *An Anti-Crime Solution: Lock Up More Criminals*, Wash. Post, October 27, 1991, at C1. Figures for parole population are from U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1981*, August 1982, at 2-3, and U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1990*, November 1991, at 3. Figures for "expected punishment" are taken from Morgan O. Reynolds, *Crime in Texas*, National Center for Policy Analysis Report No. 102, at 4 (1991), and Morgan O. Reynolds, *Why Does Crime Pay?*, National Center for Policy Analysis Policy Backgrounder No. 110, at 5 (1990). Figures for reported crime rates are taken from U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1980*, September 1981, at 57 (1980 Texas rates), and *Crime in the United States, 1989, supra* note 6, at 48, 54 (1989 Texas rates and 1980 and 1989 national rates).

9. *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86, supra* note 1, at 13.

10. U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1981*, August 1982, at 50 (1981 figures); U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 1986*, July 1987, at 56 (1986 figures); *Crime in the United States, 1989, supra* note 6, at 62 (1989 figures).

11. Patrick A. Langan, *supra* note 5, at 1573.

12. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Felons on Probation, 1986-89*, February 1992, at 2 (NCJ-134177).

13. *Id.* at 5-6.

14. *Id.* at 8.

15. Mark Vosburgh & Sean Holton, *Florida Prison Failure Churns Out Crime Before Its Time*, Orlando Sentinel, August 13, 1989, at A-12; Mark Vosburgh, *Florida's Early Releases: Flood of Rearrests May Sink Crowded Prisons*, Orlando Sentinel, December 17, 1989, at A-1.

16. 1 *Criminal Careers and "Career Criminals"* 6 (Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth & Christy A. Visher eds. 1986).

17. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*, April 1989, at 3 (NCJ-116261).

18. U.S. Department of Justice, Bureau of Justice Statistics, *Examining Recidivism*, February 1985, at 4 (NCJ-96501).

19. U.S. Department of Justice, Bureau of Justice Statistics, *Recidivism of Young Parolees*, May 1987, at 3 (NCJ-104916).

20. Jan M. Chaiken & Marcia R. Chaiken, *Varieties of Criminal Behavior* 215 (1982).

21. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Protecting America: The Effectiveness of Federal Armed Career Criminal Statutes*, May 1991, at 27.

22. U.S. Department of Justice, Bureau of Justice Statistics, *Profile of State Prison Inmates, 1986*, January 1988, at 2 (NCJ-109926).

23. Panel discussion during Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties, March 5, 1991.

24. *Recidivism of Prisoners Released in 1983, supra* note 17, at 9.

25. *Id.* at 8.

26. U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 1991*, May 1992, at 7 (NCJ-134729). Capacity can be measured in several different ways. Average capacity refers to the average of the highest and lowest capacity figures reported by the jurisdictions.

27. U.S. Department of Justice, Bureau of Justice Statistics, *National Corrections Reporting Program, 1988* May 1992, at 28 (NCJ-134929).

28. U.S. Department of Justice, Bureau of Justice Statistics, *Imprisonment in Four Countries*, February 1987, at 2 (NCJ-103967). The report lists a range for West Germany (23%-58%) because that country does not have a practice exactly equivalent to an arrest. *Id.*

29. U.S. Department of Justice, Bureau of Justice Statistics, *Probation and Parole 1990*, November 1991, at 4-5 (NCJ-125833).

30. *Profile of State Prison Inmates, 1986, supra* note 22, at 2-5.

31. Of inmates in state prison in 1991, 20.6% had no prior conviction; 8.1% had at least one prior conviction as a juvenile; 41.1% had at least one prior conviction as an adult; and 30.3% had prior convictions both as a juvenile and as an adult. About 20% had one prior sentence to probation or incarceration; about 16% had two prior sentences; and about 44% had three or more prior sentences. About 45% had a current conviction for a violent offense (note that drug crimes are considered non-violent), and about another 14% had at least one prior conviction for a violent offense. Still another 33% were non-violent recidivists. Thus, about 93% of state inmates in 1991 were either violent or repeat offenders. (Figures do not add up because of rounding.) U.S. Department of Justice, Bureau of Justice Statistics, *Prisons and Prisoners in the United States*, April 1992, at 15-16 (NCJ-137002).

32. *Profile of State Prison Inmates, 1986, supra* note 22, at 4.

33. U.S. Department of Justice, Bureau of Justice Statistics, *Justice Expenditure and Employment 1990* (forthcoming).

34. *Id.*

35. U.S. Department of Justice, Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 1990*, May 1992, at 17 (NCJ-137003).

36. *Criminal Victimization in the United States, 1990, supra* note 7, at 148.

37. Mark A. Cohen, *Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims*, 22 Law & Society Review 537, 539 (1988).

38. BJS estimated that the direct economic costs of crime to victims in 1984 were $12.473 billion. U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization the United States, 1984*, May 1986, at 123 (NCJ-100435).

39. *See, e.g.*, James K. Stewart, *The Urban Strangler: How Crime Causes Poverty in the Inner City*, Policy Review, Summer 1986, at 6.

40. *See generally* David P. Cavanagh & Mark A.R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions*, May 1990 (prepared under contract with the National Institute of Justice).

41. *Crime in the United States, 1990, supra* note 6, at 11.

42. U.S. Department of Justice, Bureau of Justice Statistics, *Report to the Nation on Crime and Justice* 28 (2d ed. 1988) (NCJ-105506).

43. Centers for Disease Control, *Homicide Among Young Black Males -- United States, 1978-1987*, 39 Morbidity and Mortality Weekly Report 869-73 (December 7, 1990).

44. U.S. Department of Justice, Bureau of Justice Statistics, *Black Victims*, April 1990, at 2 (NCJ-122562).

45. *Criminal Victimization in the United States, 1990, supra* note 7, at 24.

46. *Black Victims, supra* note 44, at 4.

47. *Id.* at 2.

48. *Id.* at 6.

49. *Crime in the United States, 1990*, *supra* note 6, at 11.

50. *Criminal Victimization in the United States, 1990*, *supra* note 7, at 61.

51. *Black Victims*, *supra* note 44, at 9. Figures showing percentages of black-victim cases with black offenders were derived from these same data.

52. *Criminal Victimization in the United States, 1990*, *supra* note 7, at 61. According to victim reports, white offenders account for 71.5% of violent crimes against whites. *Id.*

53. *Prisoners in State and Federal Institutions on December 31, 1981*, March 1983, at 35 (NCJ-86485) (1980 figures); *Correctional Populations in the United States, 1990*, *supra* note 4, at 83 (1990 figures).

DEPARTMENT OF ENERGY PROCEDURES FOR INTELLIGENCE ACTIVITIES

APPROVED BY THE ATTORNEY GENERAL
UNDER EXECUTIVE ORDER 12333
OCTOBER 19, 1992
Washington, DC 20585

Office of the Attorney General

Washington, D.C. 20530

October 7, 1992

Honorable James D. Watkins
Secretary of Energy
Department of Energy
Washington, D.C. 20585

Dear Admiral Watkins:

Attached are procedures I have approved to govern the Department of Energy's limited intelligence activities. These procedures are consistent with relevant law and the policies reflected in Executive Order 12333 and were developed by representatives of your Office of Intelligence in conjunction with the Department of Justice Office of Intelligence Policy and Review.

Consistent with the previously developed practice of presenting approved procedures for Congressional review seven working days in advance of their effective date, the procedures will take effect ten days from the date you approve them.

I understand that upon our joint approval the Department of Energy will furnish the procedures to the Senate and House Intelligence Committees. Upon your approval, please provide this Department with an executed copy of the procedures.

Sincerely,

William P. Barr
Attorney General

Attachments

AS REQUIRED BY EXECUTIVE ORDER 12333, THESE PROCEDURES GOVERN CERTAIN ACTIVITIES CONDUCTED BY OR ON BEHALF OF INTELLIGENCE COMPONENTS OF THE DEPARTMENT OF ENERGY. ACTIVITIES SUBJECT TO THESE PROCEDURES INCLUDE --

- THE COLLECTION, RETENTION AND DISSEMINATION OF INFORMATION,
- THE PROVISION OF ASSISTANCE TO OTHER AGENCIES,
- PARTICIPATION IN U.S. ORGANIZATIONS,
- CONTRACTING FOR GOODS AND SERVICES, AND
- THE REPORTING OF QUESTIONABLE INTELLIGENCE ACTIVITIES.

THESE PROCEDURES MAY BE SUPPLEMENTED FROM TIME TO TIME BY ADDITIONAL DIRECTIVES.

PROCEDURES FOR INTELLIGENCE ACTIVITIES

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PROCEDURES FOR INTELLIGENCE ACTIVITIES

I. INTRODUCTION

Executive Orders (E.O.) 12333 and 12334 of December 4, 1981, govern the conduct of intelligence activities by all agencies within the Intelligence Community (IC) and are intended to ensure the protection of constitutional and other individual rights. Section 2.3 of E.O. 12333 requires the head of each IC member agency to establish procedures governing the collection, retention, and dissemination of information concerning United States persons.

Section 2.9 requires that procedures be established and approved before anyone acting on behalf of an intelligence component may participate in an organization within the United States without disclosing his or her intelligence affiliation. Section 2.4 likewise requires approved procedures before certain intelligence information collection techniques may be used. E.O. 12334, which establishes the President's Intelligence Oversight Board (PIOB), and section 1.7 of E.O. 12333 delineates the obligations of members of the IC with respect to the PIOB.

These Department of Energy (DOE) Procedures For Intelligence Activities (these "Procedures"), which are adopted pursuant to E.O. 12333, are intended to enable DOE Intelligence Components to carry out effectively their authorized functions and to provide appropriate assistance to other member agencies of the IC; and to ensure that DOE intelligence activities and programs do not violate constitutional protections and other individual rights of "U.S. persons" as defined in E.O. 12333, applicable laws, other Executive Orders, Presidential Directives, or applicable DOE policy.

II. APPLICABILITY AND SCOPE

A. Unless specified otherwise, these Procedures apply to all activities, in the United States or abroad, relating to the collection, retention, or dissemination of foreign intelligence and counterintelligence information, and any other activities authorized by E.O. 12333. These Procedures also apply to all DOE Management & Operating (M & O) contractors, their subcontractors and employees engaged in intelligence-related, non-DOE funded work, including:

- Work sponsored by an organization identified in E.O. 12333 as an intelligence component; or

- Work funded by either the National Foreign Intelligence Program (NFIP) or the Tactical Intelligence and Related Activities (TIARA) Program; or

- Work for which the cognizant technical DOE Headquarters official is the Director of Intelligence.

B. These Procedures apply to "DOE Intelligence Components," as defined below, and include DOE Field Intelligence Elements as designated by the Director of the Office of Intelligence; and to DOE employees, detailees, contractor, and subcontractor employees acting on behalf of those Intelligence Components and field elements, when those components, elements, detailees, or employees are engaged in intelligence activities authorized by Executive Order 12333. In no event shall DOE Intelligence Components or employees undertake or request any person or entity to undertake any activity forbidden by Executive Order 12333.

C. When DOE employees, contractors, contractor employees, or persons assigned or detailed to DOE, engage in the collection of foreign intelligence information or the conduct of counterintelligence operations at the request or tasking of another IC member agency, approved in accordance with section VIII hereof, the Procedures of the requesting IC member agency govern the activity.

D. Domestic threat assessments are governed by the Office of Threat Assessment's "Threat Assessment Procedures for Collecting, Maintaining, & Disseminating Information," approved in October 1989. Nuclear emergency response is governed by E.O. 12656, dated November 18, 1988.

III. DOE INTELLIGENCE COMPONENTS

DOE Intelligence Components subject to these Procedures include:

A. The Secretary of Energy as Senior Official of the Intelligence Community, when acting in that role.

B. The Office of the Director of the Office of Intelligence.

C. The Office of the Deputy Director of the Office of Intelligence.

D. The Office of the Associate Director of the Office of Intelligence.

E. The Office of Foreign Intelligence (OFI). OFI is responsible for producing and disseminating the foreign intelligence necessary for the Secretary to carry out his responsibilities; collecting foreign intelligence information as authorized by E.O. 12333 and these Procedures; maintaining liaison and providing support in foreign intelligence matters to IC member

agencies, particularly the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI).

F. The Office of Threat Assessment (OTA). OTA is responsible for providing the Secretary with timely analyses of potential threats to DOE facilities and property; analyses of domestic and international criminal and terrorist activities that could affect DOE security interests; and information on threats to international energy systems. The OTA domestic threat assessment program is a law enforcement support responsibility not subject to these Procedures. All other OTA activities, including foreign intelligence, counterintelligence and assessments of international terrorist threats, are subject to E.O. 12333 and these Procedures.

G. The Office of Counterintelligence (OCI). OCI is responsible for identifying and neutralizing the foreign intelligence threat to classified and sensitive DOE programs, information, and activities; counterintelligence awareness and training; briefing and debriefing regarding DOE foreign contacts and travel; counterintelligence investigations and production of intelligence on hostile and foreign intelligence; and maintaining liaison with the Federal Bureau of Investigation and other Federal agencies on counterintelligence matters.

H. The Office of Intelligence Security and Support (OISS). OISS provides special security, computer support, management services, and ADP support to all DOE Intelligence Components. It manages the Department's intelligence-related reimbursable work conducted for other U.S. Government agencies and departments. OISS also develops and manages DOE's foreign intelligence requirements and ensures they are expressed adequately in appropriate Intelligence Community collection requirements registers and tasking mechanisms.

I. The Nevada Intelligence Center (NVIC) is a Federally-owned and operated intelligence element in support of the Field Office Manager and DOE/NV mission. The NVIC is responsible for developing local policies, procedures, budget, program development, and implementation strategies and for the conduct of foreign intelligence, counterintelligence, and special security programs mission.

J. DOE Field Intelligence Elements as designated by the Director of the Office Of Intelligence.

K. DOE representatives to committees, subcommittees, panels, and boards of the Director of Central Intelligence and other Intelligence Community bodies when these individuals are acting in that capacity.

IV. RESPONSIBILITIES OF THE DEPARTMENT OF ENERGY WITH RESPECT TO THE UNITED STATES INTELLIGENCE EFFORT

A. Part 1 of E.O. 12333 defines the duties and responsibilities of the various Executive Branch agencies with respect to the national intelligence effort.

1. Section 1.4 of E.O. 12333 outlines the general authority of agencies within the Intelligence Community to conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States, in accordance with applicable U.S. laws and the other provisions of the Order. Authorized intelligence activities include:

   a. Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities.

   b. Production and dissemination of intelligence.

   c. Collection of information concerning, and the conduct of activities, to protect against intelligence activities directed against the United States, international terrorist and international narcotics activities, and other hostile activities directed against the United States by foreign powers, organizations, persons and their agents.

   d. Special activities, although only the CIA may conduct special activities in peacetime unless the President determines that another agency is more likely to achieve a particular objective.

   e. Administrative and support activities within the United States and abroad necessary for the performance of authorized activities.

   f. Such other intelligence activities as the President may direct from time to time.

2. Under section 1.7 of E.O. 12333, the Secretary of Energy as the Senior Official of the Intelligence Community for DOE, or his designee, shall:

   a. Report to the Attorney General possible violations of Federal criminal laws by employees and of specified criminal laws by any other person as provided in

procedures agreed upon by the Attorney General, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures;

b. In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

c. Furnish the DCI and the National Security Council (NSC), in accordance with applicable law and these Procedures, the information required for the performance of their respective duties;

d. Report to the PIOB, and keep the DCI appropriately informed, concerning any intelligence activities that he has reason to believe may be unlawful or contrary to Executive order or Presidential directive;

e. Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the DCI;

f. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the DCI;

g. Instruct employees to cooperate fully with the PIOB; and

h. Ensure that the Inspector General and General Counsel have access to any information necessary to perform their duties assigned by this order.

The Secretary has designated the Director of the Office of Intelligence as the Senior Intelligence Official for DOE to perform these functions.

3. Section 1.13 outlines the primary responsibilities of the Department of Energy, as a member of the Intelligence Community, directing that the Secretary of Energy shall:

a. Participate with the Department of State in overtly collecting information with respect to foreign energy matters. This inter alia authorizes the Department to post personnel overseas in coordination with the Department of State.

b. Produce and disseminate foreign intelligence necessary for the Secretary to carry out his responsibilities. In addition, the Department may contribute to intelligence production efforts, either as directed by the NSC or as

requested by other IC member agencies. "Intelligence production" refers here to "finished intelligence" or collated information evaluated and interpreted.

c. Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute.

d. Provide expert technical, analytical, and research capability to other agencies within the Intelligence Community.

B. In addition, the Department may provide support and assistance to the authorized foreign intelligence and counterintelligence collection activities of other IC member agencies. The approval of requests for such support and assistance is governed by Part VIII of these Procedures; the conduct of the activities is governed by the approved Procedures of the requesting agency.

V. GENERAL PRINCIPLES

A. ADMINISTRATION

These Procedures shall not apply to the processing by DOE Intelligence Components of information concerning U.S. persons necessary for administrative purposes, including contracting, building maintenance, construction, fiscal matters, internal accounting procedures, or disciplinary matters.

B. MEANS USED TO COLLECT INFORMATION CONCERNING U.S. PERSONS

Where collection of information concerning U.S. persons by DOE Intelligence Components is authorized, DOE Intelligence Components must utilize the least intrusive lawful collection techniques feasible, provided that all collection activities shall be carried out in accordance with E.O. 12333 and these Procedures, or, where applicable, the procedures of the IC member agency that has requested the support and assistance of the DOE Intelligence Component.

C. RESTRICTIONS

E.O. 12333 prohibits or restricts DOE intelligence components and elements from engaging in the following activities:

1. Electronic surveillance of United States persons unless authorized by the Attorney General of the United States in accordance with the Foreign Intelligence Surveillance Act of 1978, 50 U.S.C. 1801-11 and Executive Orders 12139 and 12333;

2. Physical surveillance of United States persons except as permitted by E.O. 12333 in the case of physical surveillance of present or former employees, contractors or their present or former employees;

3. Unconsented physical searches of United States persons;

4. Mail surveillance;

5. Undisclosed participation in organizations within the U.S. for the purpose of influencing their activities, except as specified in section XII.D.3 hereof; and

6. Experimentation, testing, and research on human beings except with the subject's informed consent and in accordance with Executive Order 12333.

D. PRESUMPTIONS

Where the subject of information collected by or on behalf of a DOE Intelligence Component is present in the United States, but his or her status is unknown, there shall be, for purposes of applying these Procedures, a presumption that the subject is a U.S. person. Where the subject of such information is not present ir the United States, and his or her status is unknown, there shall be a presumption that the subject is not a U.S. person.

VI. DEFINITIONS

The following definitions apply to these Procedures:

1. Analytical Assistance means the provision of support or assistance in the form of analytical capability by DOE employees and employees of DOE contractors where their technical expertise, knowledge, abilities, capabilities, training, contacts, or associations will facilitate the United States intelligence effort, and includes evaluation of "raw" information from other IC member agencies and/or the production of "finished" intelligence.

2. Collection means the active gathering by an employee, a detailee, a contractor or an employee of a contractor of a DOE Intelligence Component, of intelligence information for use in the course of his official duties.

   a. It does not include the routine receipt of "raw" information or of "finished" intelligence from other members of the Intelligence Community.

b. In the case of intelligence information volunteered to a DOE Intelligence Component by a cooperating source, such information is "collected" when an employee of the component officially accepts such information for use by that component.

3. Cooperating Sources mean persons or organizations that knowingly and voluntarily provide intelligence information, or access thereto, to a DOE Intelligence Component at the request of such component or at the sources' initiative.

4. Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communications security programs.

5. Domestic Activities mean activities that take place within the United States that do not involve a connection with a foreign power, organization, or person.

6. Experimentation means any research or testing activity, involving human subjects, whether U.S. persons or otherwise, that may expose such subjects to the possibility of permanent or temporary injury (including physical or psychological damage or damage to reputation) beyond the risks of injury to which such subjects are ordinarily exposed in their daily lives.

7. Foreign Intelligence means information relating to the capabilities, intentions, and activities of foreign powers, organizations, or persons, but not including counterintelligence except for information on international terrorist activities.

8. Foreign Power means:

a. A foreign government or any component thereof, whether or not recognized by the United States;

b. A faction of a foreign nation or nations, not substantially composed of United States persons;

c. An entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

d. A group engaged in international terrorism or activities in preparation therefor;

e. A foreign-based political organization, not substantially composed of United States persons; or

f. An entity that is directed and controlled by a foreign government or governments.

9. Incidental Collection means the receipt of information that is not itself the object of collection activities or that concerns individuals who are not targets of collection activities, but that is received incidentally or as a result of a collection activity authorized in these Procedures. Such information may be collected whether or not it relates to an authorized activity or function of a DOE Intelligence Component but may be retained and disseminated only in accordance with Sections X and XI hereof.

10. Intelligence Activities means all activities that agencies within the Intelligence Community are authorized to conduct pursuant to Executive Order 12333.

11. Intelligence Community and Agencies Within the Intelligence Community mean the following agencies or organizations:

a. The Central Intelligence Agency (CIA);

b. The National Security Agency (NSA);

c. The Defense Intelligence Agency (DIA);

d. The offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

e. The Bureau of Intelligence and Research of the Department of State;

f. The intelligence elements of the Army, Navy, Air Force, Marine Corps, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy; and

g. The staff elements of the Director of Central Intelligence (DCI).

12. Join means to become a member of, or become associated with, an organization, with or without the payment of dues or membership fees.

13. Organization means corporations and other commercial entities, academic institutions, clubs, professional societies,

associations, and any other group whose existence is formalized or which otherwise functions on a continuing basis.

14. Organization Within the United States means any organization physically located within the geographical boundaries of the United States whether or not it constitutes a United States person. A branch, subsidiary, or office which is physically located outside the United States, is not considered an "organization within the United States."

15. Overt means open, done without attempt at concealment. Overt collection means the acquisition of intelligence information from public media, observation, government-to-government dialogue, elicitation, and from the sharing of data openly acquired; the process may be classified or unclassified; the target, host governments or the sources involved are normally aware of the general collection activity although not necessarily of the specific acquisition, sites and processes involved.

16. Participation means taking any action within the structure or framework of the organization involved. Such actions include, but are not limited to, joining or participating in an organization; serving as a representative or agent of the organization; attending meetings; attending social functions of the organization; carrying out the work or functions of the organization; and contributing funds to the organization other than in payment for goods or services. Actions taken outside the organizational framework, however, do not constitute participation. Attendance at meetings or activities which are not functions or activities sponsored by the organization itself, does not constitute participation.

17. Participation on Behalf of a DOE Intelligence Component means that a DOE employee or contractor employee is tasked or requested to participate as defined above in an organization for the benefit of the tasking or requesting Intelligence Component. Such an employee may already be a member of the organization or may be asked to join. Actions undertaken for the benefit of an Intelligence Component include collecting information, identifying potential sources or contacts, or establishing and maintaining cover. Participation on behalf of a DOE Intelligence Component may also occur when a DOE employee or contractor employee acts upon his own initiative but for the benefit of that component. If a cooperating source voluntarily furnishes information to an Intelligence Component which he or she obtained by participation in an organization, but was not given prior direction or tasking by the Intelligence Component to collect such information, then such participation is not on behalf of the Intelligence Component.

18. Participation Solely for Personal Purposes means that the participation is undertaken at the initiative and expense of the employee solely for the employee's benefit.

19. Questionable Activity, as used herein, means any conduct that constitutes, or is related to, an intelligence activity that may violate E.O. 12333, applicable law, any other Executive order, Presidential directive, or applicable DOE policy, including these Procedures.

20. Research Assistance means the provision of support or assistance in the form of research capability by DOE employees and employees of DOE contractors where their technical expertise, knowledge, abilities, capabilities, training, contacts or associations will facilitate the United States intelligence effort.

21. Retention means that a conscious decision has been made to retain information after review. Retention may be temporary or permanent.

22. Special Activities mean activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions. For related definition of "covert action," see Intelligence Authorization Act of 1991, P.L. 102-88, section 602, 105 Stat. 443.

23. Technical Assistance means the provision to other IC agencies of support or assistance in the form of personnel, equipment, or both where the technical expertise, knowledge, abilities, capabilities, training, contacts, or associations of DOE employees or contractor personnel will facilitate the United States intelligence effort, and includes the provision of technical devices and training.

24. United States Person or U.S. Person means a United States citizen, an alien known by the intelligence agency concerned to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed or controlled by a foreign government or governments.

VII. COLLECTION OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE INFORMATION BY DOE INTELLIGENCE COMPONENTS

A. GENERAL

In conformance with E.O. 12333 and in accordance with these Procedures, DOE Intelligence Components may collect information in support of departmental missions as set forth in the Atomic Energy Act, the DOE Organization Act, the Nuclear Nonproliferation Act, E.O. 12333, other Executive orders, Presidential Directives and DCI Directives. Activities conducted in support of authorized collection activities of other IC member agencies are governed by Part VIII hereof.

B. COORDINATION

The collection of foreign intelligence and counterintelligence information by DOE Intelligence Components within the United States shall be coordinated with the FBI and other IC member agencies as appropriate. The collection of such information outside the United States shall be coordinated with the CIA and other IC member agencies as appropriate.

C. INFORMATION THAT MAY BE COLLECTED CONCERNING U.S. PERSONS

Information under this section concerning a U.S. person may be collected by a DOE Intelligence Component only if it falls within one or more of the following categories:

1. Information obtained with the consent of the person the information concerns.

2. Information that is publicly available.

3. Foreign intelligence. Foreign intelligence information pertaining to foreign energy matters and concerning a U.S. person may be collected, provided that the intentional collection of such information must be overt and limited to persons who are:

   a. Reasonably believed to be officials or employees of, or otherwise acting for or on behalf of, a foreign power;

   b. Members of an organization reasonably believed to be owned or controlled directly or indirectly by a foreign power;

   c. Persons or organizations reasonably believed to be targets, hostages, or victims of international terrorist organizations;

d. Persons or organizations reasonably believed to be engaged or about to engage in international terrorist activities; or

e. Corporations or other commercial organizations believed to be acting for or on behalf of foreign powers, organizations, or persons engaged in clandestine intelligence activities, sabotage, assassinations, or international terrorist activities.

4. Administrative Inquiries and Investigations. DOE Intelligence Components may conduct administrative inquiries and investigations at DOE facilities, DOE-owned, contractor-operated facilities, and contractor-owned DOE facilities engaged in DOE contracts, to include personnel, programs and contractors, to determine the existence of clandestine relationships, contacts with foreign intelligence services, and other hostile activities directed against DOE facilities, property, personnel, programs and contractors by foreign powers, organizations and their agents, as follows:

a. Information may be collected concerning a DOE employee, a contractor employee or other U.S. person, provided that the intentional collection of such information must be based upon:

(1) Indications that the subject DOE employee or contractor employee may be engaged in such intelligence, terrorist or other hostile activities; or

(2) Indications of contact between a subject DOE employee or contractor employee and U.S. persons who may be engaged in any of the foregoing activities.

b. As soon as the DOE administrative inquiry or investigation reveals clandestine activity or a relationship with foreign intelligence services, the DOE Intelligence Component must promptly advise the FBI. The FBI will conduct and coordinate all subsequent counterintelligence or criminal investigative activities regarding clandestine activities, suspect relationships, or contacts with foreign nationals at DOE facilities. The FBI will determine whether:

(1) It will assume responsibility for continuing the investigation, and/or

(2) Request that DOE Intelligence Components assist the FBI in collecting additional information.

c. Under section 2.6(b) of E.O. 12333, DOE Intelligence Components may participate in law enforcement activities to investigate or prevent clandestine intelligence activities by foreign powers or international terrorist or narcotics activities.

d. Subject to section VII.c.4. above, nothing in these Procedures shall be deemed to prevent DOE from exercising its authority and responsibility under the Atomic Energy Act to pursue administrative inquiries and investigations regarding personnel, physical, document or communications security matters.

5. Special Nuclear Material, Restricted Data, or other classified and unclassified sensitive information. Subject to section VII.C.4.b. above, information concerning a U.S. person may be collected that is necessary to protect Special Nuclear Material, Restricted Data, Formerly Restricted Data, National Security Information and Unclassified Controlled Nuclear Information, as defined in the Atomic Energy Act 42 U.S.C. 2014.

6. Potential sources of assistance to intelligence activities.

   a. With the prior approval of the Director of the Office of Intelligence, information may be collected concerning U.S. persons reasonably believed to be potential sources of intelligence regarding foreign energy matters, or potential sources of assistance to DOE intelligence activities, for the purpose of assessing their suitability, personal reliability or credibility.

   b. Information may not be so collected or retained for more than 1 year without the official concurrence of the Director of the Office of Intelligence. Information collected for this purpose is limited to publicly available sources, Federal agency records checks, and inquiries of DOE and DOE contractor employees. This category does not include investigations undertaken for personnel security purposes.

7. Protection of intelligence sources and methods. Subject to section VII.C.4.b. above, information may be collected concerning a U.S. person who has access to, had access to, or is otherwise in possession of, information which reveals foreign intelligence or counterintelligence sources or methods, when collection is reasonably believed necessary to protect against the unauthorized disclosure of such information;

provided that intentional collection of such information shall be limited to persons who are:

a. Present or former DOE employees; or

b. Present or former employees of present or former DOE contractors.

Otherwise, collection within the United States of such information shall be undertaken only by the FBI.

8. Information acquired by overhead reconnaissance not directed at specific U.S. persons.

9. Incidentally obtained information that may indicate involvement in activities that may violate Federal, State, local, or foreign laws.

10. Threats to safety. Information may be collected concerning a U.S. person when the information is needed to protect the safety of DOE facilities, personnel, programs, contractors, or official visitors, including those who are targets, victims or hostages of foreign or international terrorist organizations.

11. Physical security. Information may be collected concerning a U.S. person reasonably believed to threaten the physical security of DOE facilities, personnel, programs, contractors or official visitors. Information may also be collected in the course of a lawful physical security investigation.

12. Personnel security. Information may be collected concerning a U.S. person in the course of a lawful DOE personnel security investigation.

13. Communications security. Information may be collected concerning a U.S. person in the course of a lawful DOE communications security investigation.

14. Administrative purposes. Information may be collected concerning U.S. persons that is necessary for DOE administrative purposes, including information:

a. Necessary for the purpose of oversight, accountability, or redress; or

b. Required by law to be retained for the purpose of determining that the requirements of these Procedures are satisfied.

VIII. DOE SUPPORT OF AUTHORIZED FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE COLLECTION ACTIVITIES OF OTHER IC MEMBER AGENCIES

A. GENERAL

DOE is authorized, upon request, to support, assist and cooperate with the foreign intelligence and counterintelligence collection activities of other IC member agencies so long as the collection activity is in accordance with all applicable U.S. laws, is within the authority of the requesting IC member agency, and is conducted in accordance with the approved intelligence procedures of that agency.

B. PROCEDURES FOR APPROVAL

In order for DOE to provide support and assistance to the foreign intelligence or counterintelligence collection activities of a requesting IC member agency, the following procedures must be followed:

1. The request for assistance or support must be in writing from an authorized official of the intelligence component of the requesting IC member agency.

2. Written assurance must be provided by the requesting agency that the activity for which support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with E.O. 12333, all applicable U.S. laws, other Executive orders, Presidential directives, Director of Central Intelligence Directives (DCIDs), and the approved intelligence procedures of the requesting agency.

3. Written approval of the Director of the Office of Intelligence must be obtained.

4. Written assurance must be provided by the requesting agency that any cooperating DOE employee or DOE contractor employee will not be exposed to any unreasonable or undisclosed risks to his or her health or safety by reason of participation in the intelligence activity for which support is requested.

C. RETENTION AND DISSEMINATION OF INFORMATION

Approval of DOE support and assistance is to be conditioned upon agreement of the requesting agency that all foreign intelligence or counterintelligence information collected with DOE assistance and support will be retained and disseminated only in accord with the approved intelligence procedures of the requesting agency. The

requesting agency shall be responsible for any dissemination to DOE as appropriate.

IX. PROVISION OF TECHNICAL, ANALYTICAL AND RESEARCH ASSISTANCE TO OTHER IC MEMBER AGENCIES

A. GENERAL

E.O. 12333 recognizes the unique expert technical capabilities of the Department of Energy, its employees, and contractors. Provision of technical, analytical, and research assistance is expressly authorized in section 1.13(d) of the order.

B. PROCEDURES FOR APPROVAL

In order for DOE to provide technical, analytical, or research assistance to the intelligence activities of a requesting IC member agency, the following procedures must be followed:

1. The request for assistance must be in writing from an authorized official of the Intelligence Component of the requesting IC member agency.

2. Written assurance must be provided by the requesting agency that the activity for which support or assistance is requested is within the authority of the requesting agency and will be conducted in accordance with E.O. 12333, all applicable U.S. laws, other Executive orders, Presidential directives, DCIDs and the approved intelligence procedures of the requesting agency.

3. Written approval of the Director of the Office of Intelligence must be obtained.

4. Written assurance must be provided by the requesting agency that any DOE employee or DOE contractor employee will not be exposed to any unreasonable or undisclosed risks to his or her health or safety as a result of providing the assistance requested.

X. RETENTION OF INFORMATION CONCERNING U.S. PERSONS BY DOE

A. APPLICABILITY

This section governs the retention of information concerning U.S. persons that may be retained by a DOE intelligence component without the consent of the person whom the information concerns.

B. CRITERIA FOR RETENTION

Information concerning a U.S. person may be retained in manual or automated systems, if the Department has a legitimate foreign intelligence or counterintelligence purpose to retain the information, it was lawfully collected or is the subject of routine receipt from another IC member agency, and it falls within one or more of the following categories:

1. The information is publicly available or obtained with the consent of the person concerned.

2. The information is foreign intelligence or counterintelligence; information concerning international terrorist activities; information needed to protect the safety of DOE facilities, personnel, programs, contractors, or official visitors; or information needed to protect foreign intelligence or counterintelligence sources and methods from unauthorized disclosure.

3. The information is collected in the course of an administrative inquiry or investigation.

4. The information is needed to protect Special Nuclear Material, Restricted Data, or other classified or unclassified sensitive information.

5. The information concerns persons who are reasonably believed to be potential sources or contacts and is for the purpose of determining their suitability or credibility.

6. The information is incidentally collected, and

   a. It indicates involvement in activities that may violate Federal, State, local, or foreign laws; or

   b. It could have been collected intentionally; or

   c. It is necessary to understand or assess foreign intelligence or counterintelligence.

7. The information was acquired by overhead reconnaissance not directed at U.S. persons.

8. The information arises from a lawful personnel, physical, or communications security investigation.

9. The information is necessary for administrative purposes, including information:

a. Necessary for the purpose of oversight, accountability, or redress; or

b. Required by law to be retained for the purpose of determining that the requirements of these Procedures are satisfied.

10. The information has been disseminated by another IC member agency to a DOE Intelligence Component for the purposes of allowing that component to determine whether the information is relevant to DOE responsibilities and can be retained.

C. REVIEW OF RETAINED INFORMATION

1. Temporary Retention - Information concerning U.S. persons may be retained temporarily, for a period not to exceed 1 year, solely for the purpose of determining whether that information may be permanently retained under these Procedures.

2. Each DOE Intelligence Component retaining any information collected under these Procedures shall conduct periodic reviews to assure that all such information is being retained in accordance with these Procedures and that the information is relevant, timely, and necessary for the performance of its functions.

3. Such periodic reviews must be conducted at least once each calendar year.

XI. DISSEMINATION OF INFORMATION CONCERNING U.S. PERSONS BY DOE

A. DISSEMINATION TO OTHER AGENCIES AND ENTITIES WITHIN THE INTELLIGENCE COMMUNITY

Subject to any other applicable regulations, information, other than information derived from signals intelligence, may be disseminated to appropriate entities within the Intelligence Community, even if the information identifies United States persons, but the receiving organization is responsible for determining whether the information may be retained in accordance with their Procedures.

B. DISSEMINATION OUTSIDE THE INTELLIGENCE COMMUNITY

Information concerning United States persons that identifies those persons may be disseminated outside the Intelligence Community without the consent of those persons only under the following conditions:

1. The information was collected or retained or both in accordance with these Procedures;

2. The identity of the United States person is or may reasonably become necessary to understand or assess the importance of the information; the recipient is reasonably believed to have a need to receive such information for the performance of a lawful governmental function; and the recipient is one of the following:

   a. An employee of DOE or an employee of a contractor of DOE who has a need for such information in the course of his or her official duties;

   b. A Federal, State, or local law enforcement entity, and the information appears to indicate involvement in activities which may violate laws which the recipient is responsible to enforce; or

   c. An agency of the Federal Government authorized to receive such information in the performance of a lawful governmental function; and

3. The dissemination is in accordance with the Privacy Act of 1974, 5 U.S.C. 552a.

C. OTHER DISSEMINATION

Any other dissemination that does not conform to the conditions set forth above must be approved by the legal office responsible for advising the DOE Intelligence Component concerned after consultation with the Office of Intelligence Policy and Review of the Department of Justice. Such approval shall be based upon a determination that the proposed dissemination complies with E.O. 12333, applicable laws, other Executive orders, Presidential directives, DCIDs, and regulations.

XII. UNDISCLOSED PARTICIPATION IN ORGANIZATIONS WITHIN THE UNITED STATES

A. APPLICABILITY

This section applies to participation by employees of DOE Intelligence Components and to those acting on behalf of DOE Intelligence Components, as defined herein, in any organization within the United States.

B. PERMITTED PARTICIPATION AND APPROVALS REQUIRED

1. NO SPECIFIC APPROVAL REQUIRED - Subject to subsection B.2 below, no specific approval is required for the following:

a. Participation in meetings open to the public, the sponsors of which do not expect disclosure of affiliation as a condition of attendance.

b. Participation solely for personal purposes as defined herein. If there is any question about the nature of the participation or whether it is on behalf of a DOE Intelligence Component, the employee should disclose his or her intelligence affiliation or request specific approval to participate without disclosure in accordance with section XII.B.2., below.

c. Participation in educational or professional organizations for the purpose of enhancing the professional skills, knowledge, or capabilities of employees.

d. Participation in an organization that is an official establishment of a foreign government.

e. Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings, sponsored by organizations in which the employee is a member, or has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, for the purpose of collecting significant foreign intelligence that is generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members.

f. To obtain publications of organizations whose membership is open to the general public.

2. SPECIFIC APPROVAL REQUIRED - Undisclosed participation may be authorized by the Director of the Office of Intelligence, in accordance with section VII of these Procedures, for the following purposes:

a. For counterintelligence purposes, at the written request of the Federal Bureau of Investigation or other authorized U.S. counterintelligence agency, provided that the activity is properly coordinated as required by E.O. 12333;

b. To collect significant counterintelligence about non-United States persons, provided any such participation that occurs within the United States shall be coordinated with the Federal Bureau of Investigation or other authorized U.S. counterintelligence agency;

c. To collect information necessary to identify and assess non-U.S. persons as potential sources of assistance for foreign intelligence and counterintelligence activities, except as provided in subsection D.2 below; or

d. Participation in seminars, forums, conferences, exhibitions, trade fairs, workshops, symposiums, and similar types of meetings sponsored by organizations in which the employee is a member, or has been invited to participate, or when the sponsoring organization does not require disclosure of the participants' employment affiliations, when the employee is specifically tasked to collect foreign intelligence that is not generally made available to participants at such meetings, and does not involve the domestic activities of the organization or its members;

e. At the request or tasking of another IC member agency, so long as the participation is in accordance with the Intelligence Procedures approved by the Attorney General for that agency and so long as the request has been approved by the Director of the Office of Intelligence in accordance with these Procedures.

In all instances in which specific, prior approval of the Director of the Office of Intelligence is required, a written record of such approval shall be maintained.

C. DISCLOSURE REQUIREMENT

1. When required by these Procedures, disclosure of the intelligence affiliation of an employee of a DOE Intelligence Component, or of a person acting on behalf of a DOE Intelligence Component, shall be made to an executive officer of the organization in question, or to an official in charge of membership, attendance, or the records of the organization concerned.

2. When required by these Procedures, disclosure may be made by the DOE Intelligence Component involved, an authorized DOE official, or by another official authorized to take such action on behalf of the DOE Intelligence Component concerned.

3. When disclosure of intelligence affiliation is required by these Procedures, the disclosure must be sufficient to apprise the appropriate official of the organization of the fact of affiliation with the DOE intelligence component or field element, e.g., by identifying the particular component or field element where the name of the component or field element itself reveals the intelligence affiliation, or by stating the fact of

intelligence affiliation where the name does not reveal the underlying affiliation.

4. A record shall be kept of the date, time, and manner of any disclosure of intelligence affiliation required by these Procedures, which shall include the name of the person to whom the disclosure was made.

D. LIMITATIONS ON UNDISCLOSED PARTICIPATION

1. Lawful purpose. Such participation shall be authorized only if it is essential to achieving a lawful foreign intelligence or counterintelligence purpose.

2. Undisclosed participation for foreign intelligence purposes within the United States. Undisclosed participation may not be authorized within the United States for the purpose of collecting foreign intelligence information about a United States person, or to collect information necessary to assess United States persons as potential sources of assistance to foreign intelligence activities. This does not preclude the collection of information about such persons, volunteered by cooperating sources participating in organizations to which such persons belong, however, if otherwise permitted by section VII hereof.

3. Participation for the purpose of influencing the activities of an organization or its members. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members except in cases where:

   a. The participation is undertaken on behalf of the FBI or other authorized U.S. agency in the course of a lawful activity; or

   b. The organization is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power.

   Any such participation must be approved by the Director of the Office of Intelligence with the concurrence of the DOE General Counsel.

4. Duration. Authorization to participate under section XII.B.2. shall be limited to the period covered by such participation, which shall be no longer than 12 months. Participation which lasts longer than 12 months shall be re-approved by the appropriate official on an annual basis in accordance with these Procedures.

XIII. PROVISION OF ASSISTANCE TO LAW ENFORCEMENT AGENCIES

A. APPLICABILITY

This procedure applies to the provision of assistance by DOE Intelligence Components to law enforcement authorities. It incorporates the specific limitations on such assistance contained in E.O. 12333.

B. PROCEDURES

1. Cooperation with law enforcement authorities. Consistent with the limitations of E.O. 12333, applicable laws, other Executive orders, Presidential directives and these Procedures, DOE Intelligence Components are authorized to cooperate with law enforcement authorities as follows:

   a. To protect DOE and DOE contractor facilities, property, personnel, and information;

   b. Unless otherwise precluded by law or E.O. 12333, to participate in investigating or preventing clandestine intelligence activities by foreign powers, international narcotics activities, or international terrorist activities;

   c. To provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of the assistance of expert personnel shall be approved in each case by the Director of the Office of Intelligence and the DOE General Counsel;

   d. To provide assistance to law enforcement agencies and security services of foreign governments or international organizations in accordance with established policy. Included in this category are credibility assessments of threatened nuclear incidents; and

   e. To render any other assistance and cooperation not precluded by applicable law.

2. DOE Intelligence Components may not assist or participate in activities undertaken against U.S. persons that would not be permitted under E.O. 12333.

XIV. CONTRACTING FOR GOODS AND SERVICES

A. GENERAL

This procedure applies to contracting or other arrangements with U.S. persons for the procurement of goods and services by DOE Intelligence Components within the United States. It does not apply to contracting with government entities.

B. PROCEDURES

1. Contracts or other arrangements with academic institutions. DOE Intelligence Components may directly or indirectly enter into a contract or other arrangement for goods or services with an academic institution only if, prior to contracting, the Intelligence Component has disclosed to appropriate officials of the academic institution the fact of sponsorship by the Intelligence Component.

2. Contracts or other arrangements with commercial entities, private institutions, and individuals. DOE Intelligence Components may directly or indirectly enter into contracts or other arrangements for goods or services with commercial entities, private institutions, and individuals without revealing the sponsorship by the Intelligence Component if:

   a. The contract or other arrangement is for published, publicly available material or for routine goods or services necessary for the support of approved activities, such as credit cards, car rentals, travel, lodging, meals, rental of office space or apartments, and other items incident to approved activities; or

   b. There is a written determination by the Director of the Office of Intelligence that the sponsorship of the DOE Intelligence Component must be concealed to protect the activity concerned.

XV. EMPLOYEE CONDUCT

A. GENERAL

DOE and DOE contractor employees shall conduct intelligence activities only in accordance with Executive Order 12333, applicable laws, other Executive orders, Presidential directives, DOE policy, these Procedures when acting on behalf of a DOE Intelligence Component, and the applicable Procedures of another IC member agency when acting on behalf of that IC member agency in response to a tasking.

B. FAMILIARITY WITH RESTRICTIONS

1. Each DOE Intelligence Component shall familiarize its personnel with the provisions of Executive Order 12333, these Procedures, and any instructions implementing these Procedures which apply to the activities of such component.

2. The Director of the Office of Intelligence shall ensure that training is conducted to achieve the requisite familiarity.

C. RESPONSIBILITIES OF HEADS OF DOE INTELLIGENCE COMPONENTS

The Heads of DOE and DOE contractor elements that constitute or contain Intelligence Components shall:

1. Ensure that no adverse action is taken against any employee for reporting activities pursuant to section XVI hereof.

2. Impose such sanctions as may be appropriate under DOE regulations and orders upon any employee who violates the provisions of these Procedures or any instructions promulgated thereunder.

3. In any case involving a breach of security regulations and guidelines by either DOE or non-DOE employees, recommend to the Director of Security Affairs appropriate investigative actions.

4. Ensure that, to the extent permitted by law, the General Counsel and the Inspector General have access to all information concerning the intelligence activities of that component necessary to perform their oversight responsibilities.

5. Ensure that employees cooperate fully with the President's Intelligence Oversight Board (PIOB) and its representatives.

XVI. IDENTIFYING, INVESTIGATING AND REPORTING QUESTIONABLE ACTIVITIES

A. GENERAL

This section provides for the identification, investigation, and reporting of questionable activities.

B. THE PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD

In Executive Order 12334 the President established the PIOB in order to enhance the security of the United States by assuring the legality of the activities of the IC. All employees of DOE shall cooperate fully with the PIOB. The Director of the Office of

Intelligence shall, to the extent permitted by law, provide the PIOB with all information necessary to carry out its responsibilities. Under Executive Order 12334 and PIOB guidelines, the General Counsel and the Inspector General are to keep the PIOB appropriately informed concerning any intelligence activities that they have reason to believe may be unlawful or contrary to Executive order, Presidential directive, or DOE policy, including these Procedures.

C. OFFICE OF INSPECTOR GENERAL

The Office of Inspector General independently executes the duties and responsibilities assigned to that office for programs and operations of, or those financed by, the Department, including intelligence programs and activities. Such duties and responsibilities are executed pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3; Executive Order 12333 and Executive Order 12334.

D. PROCEDURE

1. Identification

a. Each employee of a DOE Intelligence Component shall report any questionable activity to the Director of the Office of Intelligence and to either the General Counsel or the Inspector General. The Director of the Office of Intelligence shall report any questionable activity to the General Counsel and the Inspector General.

b. The Heads of DOE and DOE contractor elements that constitute or contain Intelligence Components shall report any questionable activity within the element to either the General Counsel or the Inspector General and to the Director of the Office of Intelligence.

2. Investigation

a. Each report of questionable activity shall be investigated to the extent necessary to determine the facts and assess whether the activity is legal and consistent with applicable policy.

b. Investigations shall be conducted expeditiously. The officials responsible for these investigations may, in accordance with established procedures, obtain assistance from the component concerned, or from other DOE components as necessary to complete the investigations in a timely manner.

3. Reporting

a. Under Executive Order 12334 and PIOB guidelines, the General Counsel and the Inspector General report promptly to the PIOB all activities that come to their attention that they have reason to believe may be illegal or contrary to Executive order, Presidential directive, or applicable DOE policy, including these Procedures. Such special reports should be made without delay in order to permit the PIOB to make the determination whether the matter is serious enough to warrant immediate reporting to the President and the Attorney General or whether the matter may be resolved within DOE. Notwithstanding the foregoing, violations which are minor and inadvertent may be deferred until the next formal report to the PIOB.

b. The PIOB guidelines provide for quarterly reports to the PIOB on questionable activities, whether previously reported or otherwise, any corrective actions taken, and significant oversight activities undertaken. Separate, joint or consolidated reports may be submitted by the General Counsel and the Inspector General.

c. All reports made pursuant to subsections D.3.a. and b. above, which involve a possible violation of Federal criminal law shall be sent to the Attorney General in accordance with the procedures adopted pursuant to section 1.7(a) of Executive Order 12333.

XVII. APPROVAL AND EFFECTIVE DATE

I approve the foregoing Procedures in accordance with Executive Order 12333. In my opinion, intelligence activities conducted pursuant to and in accordance with these Procedures are lawful.

10/7/92
Date

Attorney General

I approve and establish the foregoing Procedures in accordarce with Executive Order 12333. The Procedures shall take effect ten days following the date of approval by both the Attorney General and the Secretary of Energy,

10/9/92
Date

Secretary of Energy

U.S. Department of Justice
Office of the Attorney General

Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice

Office of the Attorney General

Washington, D.C. 20530

July 28, 1992

MEMORANDUM

TO: The President

FROM: William P. Barr
Attorney General

SUBJECT: Recommendations for State Criminal Justice Systems

The problem of violent crime in America is largely the problem of the repeat, violent offender. A small segment of our population is responsible for a large share of the violent crime. Study after study has identified a small group of hardened, chronic offenders who commit a staggering number of crimes -- well over one hundred per year for many of these violent predators.

The primary goal of the criminal justice system must be to identify and incarcerate this hard core group of chronic offenders.

Common sense tells us that incapacitating these chronic offenders will reduce the level of violence in society. While we can debate the rehabilitative and deterrent effect of imprisonment, there can be no doubt that chronic criminals are not committing crimes while they are in prison.

Moreover, the experience of the past thirty years supports the common sense notion that tough law enforcement works. The permissiveness of the 1960s and early 1970s resulted in skyrocketing crime rates. As incarceration rates fell, violent crime rates soared, nearly quadrupling from 1960 to 1980. The tougher approach of the 1980s turned this around -- dramatically slowing the increase in crime and even bringing about some decreases, notwithstanding the wave of violence associated with drug trafficking during this period. There is little doubt that there is less crime today than there would have been had we not substantially increased incarceration of criminals in the 1980s.

The challenge for the 1990s is to build upon and increase these partial successes of the 1980s. We have within our grasp the opportunity to bring about real reductions in the level of violent crime in this country. We must continue to target and incapacitate the chronic violent offender.

This will take a continued increase in resources and continued legal reform. The criminal justice system is a pipeline, ranging from investigation, to arrest, to prosecution, to punishment. Resources are needed at every stage of the system, particularly the last, where a shortage of state prison space is resulting in the premature release of violent offenders, with tragic results for society.

As you have recognized, protecting public safety is the first duty of government. Even in times of tight budgets, adequate resources must be provided for law enforcement. However, tough law enforcement is not only morally right, and right in terms of public safety; it is also a good investment. The cost of apprehending and incarcerating a career, violent offender is only a small fraction of the economic costs such an individual imposes on society through the scores of crimes he commits each year. And that is not even considering the incalculable value to the law abiding public of a safe and secure community.

In addition to adequate budgets, the law enforcement community also needs the right tools in terms of tough laws and reasonable procedures. Our law enforcement professionals put their lives on the line every day to protect the public. They deserve our full support.

We also need to be smarter in coordinating law enforcement and social spending so they reinforce each other. Neither can do the job alone; rather, they must work together in a coordinated fashion. But social programs, while essential, are not a substitute for law enforcement, and spending for such programs cannot be at the expense of law enforcement. Social rehabilitation simply is not possible in an atmosphere of crime and violence. Progress is not possible in the midst of chaos. Tough law enforcement can create the atmosphere in which real progress in our inner cities is achievable and in which education, job training and other programs can succeed and break the tragic cycle of poverty that affects too many of our citizens.

Although more remains to be done the federal government has accomplished much in law enforcement over the last decade. Our accomplishments include:

Enhanced Resources

Over the last decade, we have substantially increased resources at all stages of the federal law enforcement system. The Department of Justice has experienced nearly a 50% increase in authorized personnel from FY 1981 to FY 1992, and over a 345% increase in its budget. Since 1989 alone, the Department has added 813 FBI agents, 735 DEA agents, and 1,237 Federal

prosecutors. There has also been an increase in the number of federal judges during this period. And the budget of the Federal Bureau of Prisons has increased 470% from FY 1981 to 1992. From 1988 to date, federal prison capacity has increased 62%, on its way to a 228% increase.

Legal Reform

The Federal system also experienced significant legal reforms during the 1980s. A critical step was the ability to keep dangerous defendants in jail before trial. The 1980s also witnessed the abolition of parole in the Federal system and the adoption of sentencing guidelines. We now have "truth in sentencing" in Federal court -- by law, prisoners must serve at least 85% of the sentence they receive. Federal law also now imposes tough mandatory minimum sentences for serious firearm, drug and repeat offenders.

We have also achieved great success in stripping criminals, especially drug traffickers, of their ill-gotten gains and the instrumentalities of their trade. Since the inception of the federal asset forfeiture program in 1985, over 2.5 billion dollars in such assets have been forfeited. Of that amount, we have returned over one billion dollars to state and local law enforcement agencies to be reinvested in law enforcement programs.

Focusing the Effort on Violent Crime

We are deploying these new resources and using these new tools in innovative ways to assist our state and local colleagues in helping law abiding citizens take back their streets. Project Triggerlock is a cooperative effort among state and federal prosecutors to target the most dangerous armed offenders. In its first year of operation, Project Triggerlock has produced over 6,450 arrests. Tough federal sentencing laws are resulting in thousands of armed dangerous offenders being behind bars, preventing countless crimes. And this is just the first year of this effort.

We have taken advantage of the changed international situation to redeploy substantial investigative assets from counterintelligence work to the fight against violent crime.

And your Weed and Seed initiative represents a coordinated approach among federal, state and local law enforcement, social programs, and, most critically, the community itself, to help law abiding citizens reclaim their communities. Our demonstration projects are already showing that this approach can work. It is the wave of the future.

Protecting Victims' Rights

The 1980s also saw the emergence of a strong victims movement that assisted in bringing about much needed recognition of, and protection for, the basic rights of victims of crimes. The landmark Victims of Crime Act in 1984 created the crime victims fund, which has provided hundreds of millions of dollars to the States for victim assistance and victim compensation programs. We have also supported additional victims legislation such as the Child Abuse Act of 1990, the Victims' Rights and Restitution Act, and the Federal "Bill of Rights" for victims. The victims movement has proven to be an indispensable ally of law enforcement in the fight against violent crime, and deserves a large measure of credit for the successes of the last decade.

* * *

As a result of these efforts, in many important respects the Federal criminal justice system has been revamped and retooled to fight the battles of the 1990s. While additional investments in resources and legal reforms are still needed, fundamental change has occurred.

Violent crime is, however, still primarily a state and local problem. Although the federal role is an important one -- especially in areas of particular federal interest such as organized crime (including gangs), drugs, and firearms -- 95% of violent crime is prosecuted by state and local authorities.

Unfortunately, although many states have done much, most have, at least to some degree, lagged behind the major enhancements made at the Federal level in the 1980s. A primary challenge for the 1990s is to work with state and local law enforcement to help them identify, prosecute and incapacitate chronic violent offenders. To that end, I have consulted with a group of law enforcement experts and developed the attached set of recommendations for state criminal justice systems.

These recommendations are divided into six groups: establishing pretrial detention; providing for effective deterrence and punishment of adult offenders; providing for effective deterrence and punishment of juvenile offenders; providing efficient trial, appeal and collateral attack procedures; providing for effective prevention and detection of crime; and providing adequate protection for victims' rights.

I would like to thank the following individuals, among others, for their valuable comments and suggestions in the development of these recommendations:

- William F. Weld, Governor of Massachusetts
- Robert Miller, Governor of Nevada
- Robert J. Del Tufo, Attorney General of New Jersey
- Ernest Preate, Attorney General of Pennsylvania
- Daniel Morales, Attorney General of Texas
- Richard P. Ieyoub, Attorney General of Louisiana
- Daniel E. Lungren, Attorney General of California
- J. William Roberts, United States Attorney for the Central District of Illinois and Chairman, Attorney General's Advisory Committee of United States Attorneys
- Michael M. Baylson, United States Attorney for the Eastern District of Pennsylvania
- Jean Paul Bradshaw II, United States Attorney for the Western District of Missouri
- Marvin Collins, United States Attorney for the Northern District of Texas
- Jeffrey R. Howard, United States Attorney for the District of New Hampshire
- J. B. Sessions III, United States Attorney for the Southern District of Alabama
- Thomas J. Charron, District Attorney, Cobb County, Georgia, and President, National District Attorneys Association
- Jack O'Malley, State's Attorney, Cook County Illinois
- Johnny L. Hughes, Chairman, Legislative and Congressional Affairs, National Troopers Coalition
- William M. Rathburn, Chief of Police, Dallas, Texas
- Roland Vaughn, Chief of Police, Conyers, Georgia
- Willie Williams, Chief of Police, Los Angeles Police Department
- John Walsh, "America's Most Wanted".

The first duty of government is the protection of its citizens, and it is incumbent upon us to take the necessary steps to fulfill that responsibility. By working cooperatively with state and local law enforcement we can build on the progress of the 1980s and achieve substantial, real reductions in violent crime in the United States. We owe our citizens no less.

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2. Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.

3. Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.

4. Provide sufficient prison and detention capacity to support the criminal justice system.

5. Provide an effective death penalty for the most heinous crimes.

6. Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.

7. Adopt drug testing throughout the criminal justice process.

8. Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

III. Effective deterrence and punishment of youthful offenders

9. Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.

10. Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.

11. Provide for use of juvenile offense records in adult sentencing.

IV. Efficient trial, appeal, and collateral attack procedures

12. Enact and enforce realistic speedy trial provisions.

13. Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.

14. Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

V. Detection and prevention of crime

15. Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.

16. Maintain computerized criminal history data that are reliable, accurate and timely.

17. Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.

18. Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

VI. Respecting the victim in the criminal justice process

19. Provide for hearing and considering the victims' perspective at sentencing and at any early release proceedings.

20. Provide victim-witness coordinators.

21. Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.

22. Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.

23. Permit victims to require HIV testing before trial of persons charged with sex offenses.

24. Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

I. Protecting the community from dangerous defendants

No failure of a criminal justice system is more tragic than the release of a demonstrably dangerous criminal defendant back into the community. A citizen who is victimized by such a defendant has a right to question society's commitment to ensuring the safety of its law-abiding members. Every State should authorize its judges to order the detention, without bail, of defendants who are a proven danger to witnesses, victims, or the community at large. States should also provide that convicted violent offenders will be detained during their appeals absent special circumstances.

Recommendation 1

Provide statutory and, if necessary, State constitutional authority for pretrial detention of dangerous defendants.

One of the most pressing problems of public safety in this country is the release of major drug traffickers and those accused of violent crimes back into our communities pending trial. Providing authority for pretrial detention of defendants charged with serious offenses is a key step States can take to improve their criminal justice systems. The Hernando Williams case in Illinois illustrates in graphic terms the tragedies that pretrial detention can avoid. Williams was released after being arrested on charges of aggravated kidnaping, rape, and armed robbery. While on release, he kidnaped another woman, raped her, and held her in the trunk of his car for several days. He actually drove to his appearance on the prior charges with his second victim locked in the trunk of his car. After his court appearance, Williams committed further sexual assaults on his second victim and then shot and killed her. *See Williams* v. *Chrans*, 945 F.2d 926, 929-30 (7th Cir. 1991).

Had Williams been detained before trial on the serious charges he then faced, his second victim might be alive today.

Unfortunately, cases like this are all too common. Every law enforcement official — indeed every casual reader of newspapers — knows of cases of individuals who commit crimes while awaiting trial for other crimes. A study of pretrial release in 75 of the Nation's most populous counties in 1988 found that 18% of released defendants were known to have been rearrested for the commission of a felony while on pretrial release. Two-thirds of those rearrested while on release were *again* released.[1] In many jurisdictions, arrest is little more than an inconvenience for the recidivist criminal, who is back on the streets plying his illicit trade within hours.

Moreover, this revolving-door justice has a devastating impact on the public's confidence in the criminal justice system and on the ability of the police to obtain the cooperation from the community they need to do their jobs effectively. As law enforcement officers know from experience, the best way to combat crime is for the community and the police to cooperate closely with each other. When the government fails to protect the community through pretrial detention, this essential cooperation breaks down. Communities are reluctant to provide police with information or assistance when they see that those arrested will be back on the street within days or even hours. Citizens fear that criminals will retaliate against them if they help the police. Where citizens see pretrial detention put into effect for dangerous defendants, the grip of fear is loosened and community cooperation is substantially increased.

[1] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Pretrial Release of Felony Defendants, 1988*, p. 1 (1991). *See* also Lazar Institute, *Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact*, p. 48 (1981) (reporting similar rates of pretrial rearrest).

Congress responded to this problem on the Federal level with the Bail Reform Act of 1984 [18 U.S.C. §§ 3141-56]. The Act gives Federal judges the authority to deny bail or pretrial release to defendants who pose a danger to a particular individual or to the community at large. Under the Act, criminal defendants with serious prior records that include the commission of crimes while on release and those charged with serious drug felonies are presumed to be a danger to the community and therefore unsuitable for release [18 U.S.C. § 3142(e)]. The Act also creates a strong presumption that a convicted offender will remain imprisoned during any post-conviction appeal [18 U.S.C. § 3143].

In the hands of Federal prosecutors, pretrial detention has proven an extremely effective tool for dismembering organized crime and drug enterprises. Participants in criminal enterprises are taken from the streets, and they do not return. This sends a powerful message to these groups and is highly disruptive of their operations. In addition, pretrial detention is critical to effective witness protection and to protecting both the physical and psychological security of victims.[2]

Despite the success of the Federal statute and its validity as a matter of Federal constitutional law,[3] few States have adequate provisions for detaining dangerous defendants before trial. Numerous State constitutions provide an absolute right to bail, thus making pretrial detention

[2] As one United States district judge noted in an organized crime case:

The activities of a criminal organization such as the Genovese Family do not cease with the arrest of its principals and their release on even the most stringent of bail conditions. The illegal businesses, in place for many years, require constant attention and protection, or they will fail. Under these circumstances, this court recognizes a strong incentive on the part of its leadership to continue business as usual. When business as usual involves threats, beatings, and murder, the present danger such people pose to the community is self-evident. [*United States* v. *Salerno*, 631 F. Supp. 1364, 1375 (S.D.N.Y. 1986), *aff'd*, 481 U.S. 739 (1987).]

[3] The Supreme Court rejected a constitutional challenge to the pretrial detention provisions of the Bail Reform Act in *United States* v. *Salerno*, 481 U.S. 739 (1987).

impossible. States should provide trial judges with authority to detain potentially dangerous defendants before trial and should make detention pending appeal the norm, with only narrow exceptions for extraordinary cases. Where State constitutional reform is necessary, it should be undertaken. In addition, States should consider other important provisions found in the Bail Reform Act of 1984. Chief among these are serious penalties for bail jumping and enhanced penalties for crimes committed while on release. *See* 18 U.S.C. §§ 3146, 3147.

By way of example, recent experience in Philadelphia graphically demonstrates both the effectiveness of pretrial detention in reducing crime and the danger to the community if pretrial detention is not available. Philadelphia jails are subject to a court-imposed population cap that requires release of arrestees who otherwise would likely be held without bail or on very high bond. City officials report that those released as a result of the cap have committed thousands of additional crimes, including numerous murders.

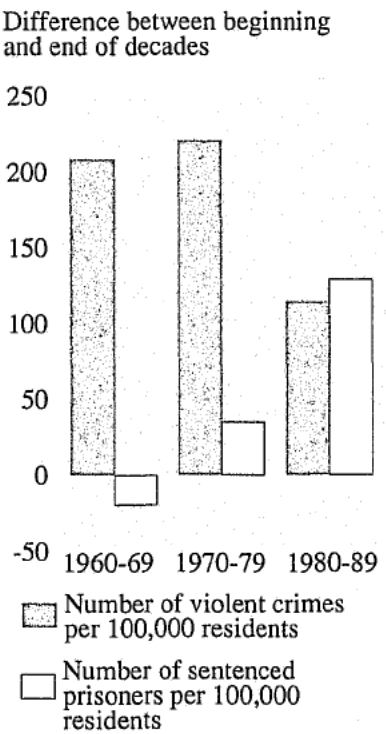
This inability to impose effective pretrial detention essentially resulted in revolving-door justice for many criminals in Philadelphia. Recognizing the danger to the community posed by this situation, the Federal Government stepped in to use Federal pretrial detention law in conjunction with a Federal-State initiative. Over 600 members of local gangs were arrested and held, the number of defendants held in pretrial detention status doubled, and the homicide rate in Philadelphia has declined.

II. Effective deterrence and punishment of adult offenders

Common sense dictates that imprisonment of chronic violent offenders will reduce the amount of violent crime. When these criminals are on the streets, they are preying on society. When they are in prison, they are not committing crimes.

The experience of the last 30 years confirms this common-sense notion. In the 1960's and early 1970's incarceration rates fell and crime rates skyrocketed. By contrast, when incarceration rates increased substantially in the 1980's, the rate of increase of crime was substantially reduced.[4]

When incarceration rates dropped in the 1960's, crime rates skyrocketed; increasing rates of incarceration have largely checked that increase

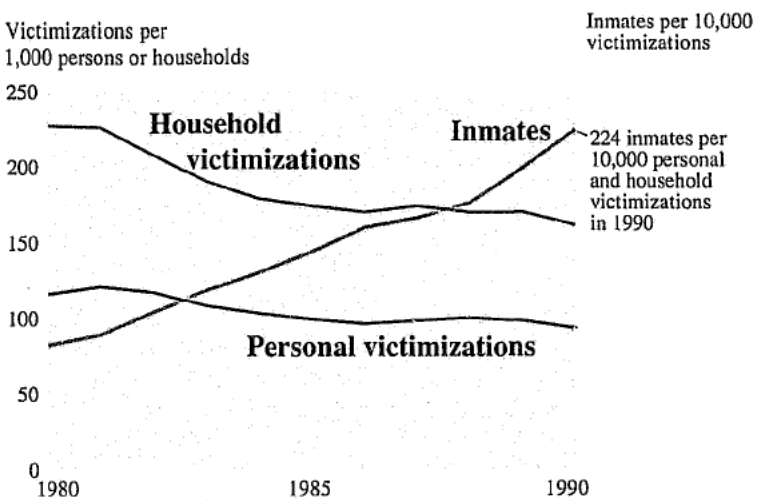


Sources: See footnote 4.

There is no question but that crime rates today are lower than they would have been if the low-incarceration policies of the 1960's and 1970's had been continued into the 1980's. If we are to make further

[4] *See* Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, Uniform Crime Reports* 1959-90; Bureau of Justice Statistics, U.S. Department of Justice, *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-86* (1988) and *Prisoners in 1989* (1990).

From 1980 to 1990, the number of criminal victimizations per 1,000 persons or households decreased as the number of inmates per 10,000 victimizations more than doubled



Sources: Bureau of Justice Statistics, U.S. Department of Justice, *Criminal Victimization 1990*, p. 4 and *Prisoners in 1990*, p. 1. Personal victimizations include rapes, robberies, assaults, and personal thefts experienced by persons 12 years old or older. Household victimizations include burglary, household theft, and motor vehicle theft. The inmates were serving sentences for all categories of crimes, including drug offenses.

progress in reducing violent crime, we need to incarcerate more of the violent offenders who prey on our society.

It is no mystery why this is the case. Again and again, studies have indicated that a relatively small portion of the population is responsible for a large part of the criminal violence in this country. One California study found that 3.8% of a group of males born in 1956 was responsible for 55.5% of all serious felonies committed by the study group.[5]

[5] These numbers are derived from Robert Tillman, *Prevalence and Incidence of Arrest among Adult Males in California* (1987). This study traced the criminal records of more than 236,000 California men born in 1956 from age 18 to age 29. The study counted all FBI Index Crimes committed by the group — murder, nonnegligent manslaughter, rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft.

A Philadelphia cohort study conducted by Professor Marvin Wolfgang of the University of Pennsylvania found that about 7% of males in two birth cohorts (1945 and 1958) accounted for over two-thirds of all violent crimes committed by each group.[6]

Identification and neutralization of this hard-core criminal element is the key to reducing violent crime, and incarceration has a critical role to play in this battle. Preventing a large portion of this group from committing more crimes by putting them in prison for long periods of time after conviction for a second or third serious offense is the most effective way to reduce violent crime rates. In addition, there is evidence that certain and firm punishment early in a criminal career can reduce recidivism (and in contrast, leniency can actually encourage additional criminal behavior).[7]

Recommendation 2

Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.

In many jurisdictions in this country, punishment is not swift enough, not certain enough, and not severe enough. The fact that sentences imposed by many State systems bear almost no resemblance to time actually served breeds disrespect for the criminal justice system on the part of criminals, the public, juries, and the victims of crime.

Most violent offenders who are sentenced to State prison serve only a fraction of their sentence. Research concerning release practices in 36 States and the District of Columbia in 1988 found that although violent offenders received an average sentence of 7 years and 11 months imprisonment, they actually served an average of only 2 years

[6] *See* P.E. Tracy, M.E. Wolfgang, and R.M. Figlio, *Delinquency Careers in Two Birth Cohorts*, pp. 279-80 (1990).

[7] *See* generally P.E. Tracy, *et al.*, *Delinquency Careers.*

and 11 months in prison — 37% of their imposed sentences.[8] Overall, 51% of the violent offenders in the survey were discharged from prison in 2 years or less, and 76% were back on the streets in 4 years or less.[9] In 1988, the median sentence and time served in prison for those released for the first time on a sentence[10] were:

Offense	Median sentence length	Median time served in prison
Murder	15 years	5.5 years
Rape	8	3.0
Robbery	6	2.25
Assault	4	1.25

States can increase the certainty and honesty of sentencing and both its deterrent and incapacitative effects by restricting parole practices. Parole rests on the flawed notions that the primary purpose of incarceration is rehabilitation and that success in reforming inmates can be measured by their behavior in prison. These notions overlook the fact that deterrence, incapacitation, and retribution are independent reasons for incarceration and that each deserves consideration in sentencing. All three of these important goals of sentencing are served by a clear sentence and are disserved by the uncertainty that parole creates.

Parole is also a failure in practice, and that failure has had significant costs for public safety. An 18-year-old honor student, 3 weeks away from graduation, left her home in Texas with two friends, 19 and 20 years old, on May 4, 1986. Her body was found the next day after she had been raped, beaten, and strangled. Her two companions were shot to death; their bodies were found 10 days later in a ditch. Charged

[8] *See* Bureau of Justice Statistics, U.S. Department of Justice, *National Corrections Reporting Program, 1988*, table 2-7 (1992).

[9] *See* Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-4.

[10] *See* Bureau of Justice Statistics, *National Corrections Reporting Program, 1988*, table 2-7.

and convicted for the capital murder of Suzanne Harrison was Jerry Walter McFadden, who was on parole at the time of the killing.

McFadden had been convicted of two 1973 rapes and sentenced to two 15-year sentences in the Texas Penitentiary. Paroled in December 1978, he was again sentenced to 15 years in 1981 for a three-county crime spree in which he kidnaped, raped, and sodomized a Texas woman. Released on parole again in July of 1985 even though his record now contained three sex-related convictions and two prison commitments, McFadden was convicted of a capital murder that occurred less than a year after his parole.

McFadden, who calls himself "Animal," was sentenced to death in July of 1987 for killing Ms. Harrison. That is the one sentence under Texas law that is not parolable. This example is all too common. All studies show that parolees have a high recidivism rate. A 1987 study that traced a sample of young adult parolees from prisons in 22 States found that 69% were rearrested for serious crimes within 6 years of being paroled.[11] In 1989, 10% of inmates in local jails, or about 39,000 persons, committed the crimes for which they were being held while on parole.[12] In short, conduct in prison has not proven to be an accurate predictor of behavior after prison, and the costs of indeterminate sentencing in reduced deterrence and incapacitation have not been justified.

The sole remaining justification for parole is an illegitimate one. In some States, parole is employed as a response to prison overcrowding, resulting in the premature release of dangerous offenders into the community. The proper response to insufficient prison space is to build more prisons, not to release dangerous criminals. Misusing parole or early release to deal with lack of prison space only increases crime.

[11] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Recidivism of Young Parolees*, p. 1 (1987).

[12] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Profile of Jail Inmates, 1989*, p. 5 (1991).

The Texas prison system, which until recently added very little new capacity, is illustrative of this problem. Under Federal court order to remain at a maximum of 95% of capacity, the Texas prison system has been releasing 150 inmates each day to make room for new convicts. The number of felons on parole increased by 430%.[13] Inmates in Texas serve an average of only 62 days for each year of their sentence.[14] As a result, reported crime rates in Texas increased 29% in the 1980's while they fell for the Nation as a whole.[15]

In Florida, early release measures have been adopted to make room for newly sentenced felons. One measure is mandatory grants of "basic gain-time" to all but a limited category of prisoners, essentially deducting a third of the sentence imposed.[16] Another measure is the discretionary award of "control release time" to some inmates, a weekly cumulative reduction of an offender's sentence. In just the first 6 months of this year, control release credits of more than 6½ years have been awarded to many prisoners.[17]

States should adopt "truth in sentencing." Parole should be limited so that the sentence served closely approximates the sentence assessed. This guide should apply to parole or any other mechanism that affects early release. While "good-time" accrual might be retained to modify or control institutional behavior, it should not exceed Federal standards that require 85% of the sentence to be served.

[13] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Probation and Parole 1981*, p. 2 (1982); *Probation and Parole 1989*, table 1 (1990).

[14] *See* Texas Department of Corrections, *1991 Fiscal Year Statistical Report*, Summary Table 4 (1992).

[15] *See* Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, Uniform Crime Reports, 1980*, table 3 (1981) and *1989*, table 5 (1990).

[16] Fla. Stat. Ann. §944.275(4)(a) (West 1985).

[17] See Fla. Stat. Ann. §947.146 (West Supp. 1991). The control release days are issued each Tuesday by the Control Release Authority of the Florida Parole Commission. From January 7, 1992, through June 30, 1992, the authority granted 2,350 days of control release time.

Recommendation 3

Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.

In many jurisdictions, the sentences for crimes of violence are too short. In the eyes of many repeat offenders, crime offers much and the criminal justice system punishes little. For example, in 1988, of an estimated 100,000 persons convicted of murder, rape, robbery, and aggravated assault in State court, 17% — or about 17,000 violent offenders — received sentences that included no prison or jail time at all. Of all convicted rapists, 13%, or about 2,000 offenders, received a sentence involving no incarceration. In that same year, almost 30% of all those convicted of drug distribution felonies in State court received no prison or jail time.[18]

States should adopt mandatory minimum penalties for aggravated crimes of violence. In particular, imprisonment should be mandatory where a firearm is used or possessed in the commission of certain serious felonies.[19]

Every State should also have a statute similar to the Federal armed career criminal law [18 U.S.C. § 924(e)], which is designed to target and incapacitate repeat violent offenders who possess a firearm. The Federal statute provides that any person who has been convicted of three violent felonies or serious drug offenses and is in illegal possession of a firearm shall be sentenced to at least 15 years imprisonment without possibility of parole. A graduated punishment scheme

[18] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 2 (1990).

[19] *See* 18 U.S.C. § 924(c)(1).

can be utilized that imposes a mandatory minimum for a person possessing a firearm who has one prior violent conviction and increases the mandatory minimum for each additional prior violent conviction. The President has proposed such a graduated scheme for the Federal system — it would impose mandatory minimums of 5, 10, and 15 years for armed felons with one, two, or three or more prior convictions, respectively.

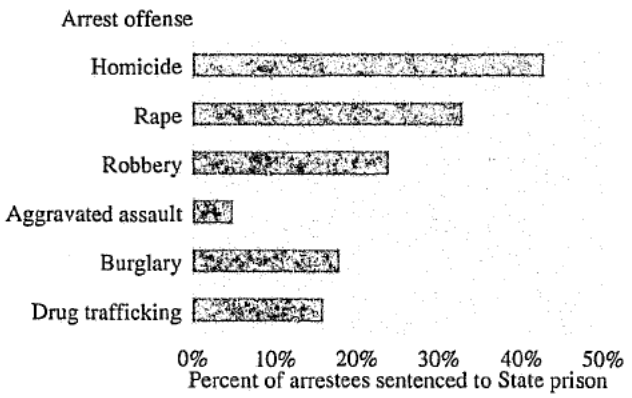
In addition to mandatory minimums tied to firearm violations, States should also adopt mandatory minimum statutes that are based on prior convictions for crimes of violence. Repeat offenders demonstrate by their own actions that rehabilitation is not an achievable goal for them. Public safety requires their incapacitation.

Recommendation 4

Provide sufficient prison and detention capacity to support the criminal justice system.

Adequate prison and detention space is critical to the effectiveness of a State criminal justice system. Jail and prison space is necessary to detain dangerous defendants before trial and to incapacitate, often through the use of mandatory minimum sentences, repeat and violent offenders. Any criminal justice system that absolves prisoners of their sentences because of a lack of space, or makes lack of space a factor in sentencing or parole, is cheating its citizens. When a violent offender is prematurely released after conviction because of lack of prison space, all the criminal justice resources used in apprehending, trying, and convicting the offender are wasted. Instead, the offender is returned to

Less than half of persons arrested for murder and a third or less of those arrested for other offenses were sentenced to prison



Source: Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 4 (1990).

the community to commit further crimes. Moreover, failure to adequately punish the criminal the first time due to lack of prison space breeds lack of respect for the law and can lead to a career of crime.

The case of Texas, documented above, is illustrative. A shortage of prison space resulted in the premature release of numerous violent offenders. As a result, reported crime rates in Texas increased significantly at the same time they were declining for the Nation as a whole.

The choice is clear: More prison space or more crime. However, building more prisons is not only the morally right thing to do and the best way to protect the community from violent criminals, it is also the right thing to do in purely economic terms. Simply put, prisons are a sound investment. The premature release of violent offenders costs society far more than the expense of building and operating adequate prison space. Although incarceration is not cheap, the cost to society of *not* incarcerating criminals is far greater.

A study published in 1988 by Mark Cohen, formerly on the staff of the U.S. Sentencing Commission, estimated the 1984 aggregate cost of crime to victims — including direct losses, pain and suffering, and risk of death — at $92.6 billion in 1985 dollars.[20] This total did not include some of the larger costs to society of crime, such as lost sales, when people are afraid to go out to do their shopping; lost jobs, when businesses move out of high-crime areas; lost opportunities, when schools become the playgrounds of gangs and drug dealers, rather than places where inner-city kids can learn their way out of poverty; and lost tax revenues, when sales, businesses, and jobs evaporate.

Similarly, one study by the Bureau of Alcohol, Tobacco and Firearms (BATF) of a group of career criminals found that each had committed an average of 160 crimes per year.[21] A 1982 Rand Corporation study found that about 24% of inmates surveyed admitted to having committed more than 135 crimes a year apiece, and about 10% claimed responsibility for over 600 crimes a year apiece.[22] Mark Cohen's 1988 study looked at the costs of victimization and estimated the cost of a rape at over $51,000, the cost of a robbery at over $12,500, and the cost of an assault at over $12,000.[23] A 1987 National Institute of Justice study estimated that the *average* societal cost per crime in the Nation was slightly more than $2,300.[24] When these costs are associated with the multiple crimes committed by the habitual offenders identified above, the cost to society per criminal of not incarcerating them could exceed $300,000 per year.

[20] *See* Mark A. Cohen, "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," vol. 22 *Law and Society Review*, p. 539 (1988).

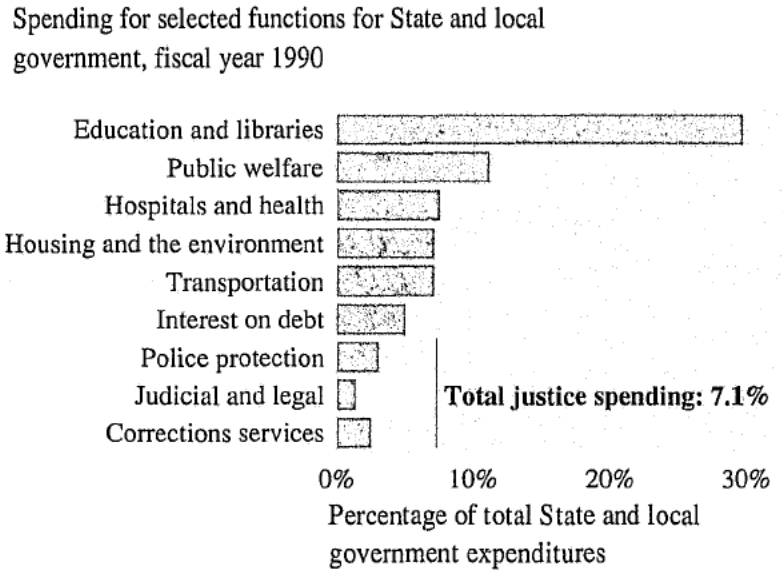
[21] *See* Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Protecting America: The Effectiveness of the Federal Armed Career Criminal Statute*, p. 29 (1992).

[22] *See* Jan M. Chaiken and Marcia R. Chaiken, *Varieties of Criminal Behavior*, p. 215 (1982).

[23] *See* Mark A. Cohen, "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," p. 539.

[24] *See* National Institute of Justice, U.S. Department of Justice, *Making Confinement Decisions*, p. 4 (1987).

Corrections services are only 2.5% of State and local government spending



Source: Bureau of the Census, U.S. Department of Commerce, *Government Finances, 1989-90*, p. 2 (1991).

Despite the fact that lack of adequate prison space actually costs States money, we have underinvested in this critical component of the criminal justice system. According to one estimate, more than 120,000 additional prison beds were needed across the Nation at the close of 1990.[25] While there are those who will argue that we are using prison space for people who do not belong there, the simple fact is that 93% of those in prison are repeat or violent offenders.[26] Despite the enormous need for additional prison space, spending on corrections remains a very small percentage of State and local budgets. In fiscal year 1990, only 2.5% of the $975.9 billion in total expenditures by State and local governments was for corrections (about $24.7 billion). Investment in new prison construction is only a small fraction of that figure.[27]

[25] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Prisoners in 1990*, table 9 (1991).

[26] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Prisons and Prisoners in the United States*, p. 16 (1992).

[27] *See* Bureau of the Census, U.S. Department of Commerce, *Government Finances: 1989-90*, p. 2 (1991).

States must commit adequate resources to prison construction and operation or risk presiding over the collapse of their criminal justice systems. Every State should review its incarceration needs for the next decade and seek funds through appropriation or bond initiatives to meet those needs. To do less is to fail in government's first duty — protecting its citizens.

Recommendation 5

Provide an effective death penalty for the most heinous crimes.

The death penalty has an important role to play in deterring and punishing the most heinous violent crimes. Our entire criminal justice system is shaped by the common sense notion that the more severe the penalty the greater its deterrent effect on would-be offenders. Studies indicate that this general proposition holds true in the area of capital punishment.[28] Beyond its deterrent value, the death penalty serves to permanently incapacitate extremely violent offenders who cannot be controlled even in an institutional setting. Finally, the death penalty serves the important societal goal of just retribution. It reaffirms society's moral outrage at the wanton destruction of innocent human

[28] *See* generally Stephen J. Markman and Paul G. Cassell, "Protecting the Innocent: A Response to the Bedau-Radelet Study," vol. 41 *Stan. L. Rev.*, pp. 121, 154-156 (1988) (collecting studies that demonstrate deterrent effects of the death penalty); Stephen K. Layson, "Homicide and Deterrence: A Reexamination of the United States Time-Series Evidence," vol. 52 *Southern Economics Journal*, pp. 68, 75-80 (1985) (estimating that each execution in the United States deters approximately 18 murders).

life and assures the family and other survivors of murder victims that society takes their loss seriously.[29]

There are a number of situations when the death penalty is an appropriate sanction, and the Federal Government and a number of States have been moving to expand its use. At the very least, there are three situations where penological considerations compel the death penalty as an available sentence. At a minimum, States should make the death penalty an option for the jury to consider in these three situations.

The first is the killing of a law enforcement officer. Society owes those who put their lives on the line for public safety every measure of protection it can offer. The death penalty sends the strongest possible message that the killing of a peace officer to avoid detection or apprehension is not worth it—no matter how long a prison term the suspect faces.

Second, the death penalty should be available for those who kill in the course of serious felonies. Rapists, armed robbers, and other felons often have an incentive to eliminate witnesses to their crime to avoid detection. The death penalty raises the stakes for these criminals and thus gives the victims of these crimes an added protection. Reported cases indicate that the availability of the death penalty does influence felons' decisions to carry or use firearms while committing another felony.[30]

[29] *See*, for example, *Senate Comm. on the Judiciary, Establishing Constitutional Procedures for the Imposition of Capital Punishment*, S. Rep. No. 251, 98th Cong., 1st Sess. 13 (1983) ("Murder does not simply differ in magnitude from extortion or burglary or property destruction offenses; it differs in kind. Its punishment ought to also differ in kind. It must acknowledge the inviolability and dignity of innocent human life. It must, in short, be proportionate.").

[30] *See*, for example, *People* v. *Love*, 366 P.2d 33, 41-42 (Cal. 1961) (McComb J., dissenting) (collecting convicts' statements from police files and other sources indicating that their decisions to use toy guns during felonies, not to use firearms to resist arrest, and not to kill hostages were motivated by fear of the death penalty).

The third is killing in prison. Offenders who will spend large portions of the remainder of their lives behind bars may feel that they have little to lose by killing a correctional officer or a fellow inmate. Loss of privileges or temporary isolation is simply not an adequate punishment for taking the life of another human being.[31]

Effective procedures to implement the death penalty are equally important. In particular, State death penalty laws should bind the jury to its conclusions concerning aggravating and mitigating factors. Where the former outweigh the latter, a sentence of death should be required. *See Blystone* v. *Pennsylvania*, 110 S. Ct. 1078 (1990); *Boyde* v. *California*, 110 S. Ct. 1190 (1990). State laws should also provide for the consideration of evidence relating to the victim and the harm to the victim's family at the penalty phase of a capital trial. *See Payne* v. *Tennessee*, 111 S. Ct. 2597 (1991). In a capital sentencing hearing, the defendant is free to present any sympathetic aspect of his character or background to the jury as justification for a sentence other than death. Victim-impact evidence ensures that the jury sees the victim and the victim's family as unique individuals as well, whose loss is relevant to proper punishment.

[31] In the 5-year period from 1982 to 1987, five Federal prison officials were killed by inmates. Inmates involved in at least three of these killings were already serving life sentences for murder. *See* W. Weld and P. Cassell, *Report to the Deputy Attorney General on Capital Punishment and the Sentencing Commission* , p. 28 (Feb. 13, 1987).

Recommendation 6

Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.

Law-abiding citizens have a right to expect that those who have violated the law will not lead a life of leisure in prison. Taxpayers provide for prisoners' room, board, medical care, and other expenses. In return, prisoners should perform some labor useful to the public. In addition to maintenance of the prison facility itself, inmates can perform tasks such as sorting trash for recycling, and doing nonhazardous environmental cleanup. (In identifying suitable projects for prison labor, care should be taken to avoid reducing opportunities for employment by law-abiding workers.)

Requiring prisoners to work is consistent with the punitive function of imprisonment. Prison work also teaches discipline and prepares prisoners for reintegration into the community. Prison work may also assist in reducing crime by lowering recidivism rates. The Office of Research at the Federal Bureau of Prisons recently published preliminary findings from its Post Release Employment Project (PREP). The PREP study is designed to compare Federal convicts who received training and work experience while in prison with a control group of inmates who did not. The study's preliminary findings offer strong support for prison labor programs: Inmates who worked in prison were less likely to engage in prison misconduct, less likely to commit crimes after release, and significantly more likely to be gainfully employed 1 year after release.[32]

[32] *See* Federal Bureau of Prisons, U.S. Department of Justice, *Post Release Employment Project, Preliminary Findings*, pp. 6, 10-11 (1991).

Every State should provide by statute or regulation that, as a general matter, able-bodied felony offenders incarcerated in the State must perform some labor useful to the public. States should also consider enacting laws that make a specified percentage of the cost of each prisoner's incarceration part of a mandatory fine levied as part of the sentence. While many prisoners are indigent, some can and should pay for their incarceration.[33] Proceeds from this fine should be used for correctional costs.

Recommendation 7

Adopt drug testing throughout the criminal justice process.

Elaboration of the correlation between drugs and violent crime is unnecessary. Study after study confirms what any urban dweller in America knows to be true: Violence is a way of life for those who use and distribute narcotics. More than a third of State prisoners serving time for a violent offense said they were under the influence of drugs at the time the offense occurred.[34] Data from drug testing in major urban centers indicate that between 50% and 90% of all male arrestees use drugs.[35] A 1988 survey of State prisoners incarcerated for murder indicated that over 28% were intoxicated by drugs when they committed the killing.[36]

[33] The Department of Justice is implementing such a proposal on the Federal level.

[34] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics, 1988*, p. 624 (1988).

[35] *See* Bureau of Justice Assistance, U.S. Department of Justice, *1988 Report on Drug Control*, p. 2 (1989).

[36] *See* Bureau of Justice Assistance, *1988 Report*, p. 19.

States should consider drug testing of at least certain felony arrestees to allow judges to make more informed decisions about conditions for pretrial release and sentencing after conviction. Random drug testing of those in prison would help ensure that drugs are not being smuggled into the institution. And, given the clear connection between drug use and criminal violence, periodic drug tests should generally be required of individuals on any form of supervised release after conviction for a serious felony. Use of drugs during probation or parole should result in automatic revocation of release. Where possible, the cost of drug testing of arrestees and those on supervised release should be offset by fees. However, even if small costs result, States will reap large gains in safer streets and neighborhoods.

Recommendation 8

Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

Asset forfeiture is a valuable tool in removing the profit from crime and converting criminals' assets to law enforcement purposes. Asset forfeiture is a double-barreled weapon. First, it deprives criminals of their ill-gotten gains and the instrumentalities of their crimes — making sure that crime does not pay. Second, the proceeds from the sales of these assets are reinvested in law enforcement as premium funding for priority programs and to cover the costs of asset forfeiture program administration. Thus, the criminals foot the bill for both the forfeiture program and the expanded law enforcement operations it makes possible.

It is critical that the integrity of these funds, seized from drug traffickers and other criminals, be maintained for law enforcement purposes, and that they should not be viewed as a substitute for adequate law enforcement funding, but rather as augmentation to existing efforts. It is also critical that asset forfeiture laws be applied consistently with constitutional principles and that the rights of innocent parties be fully protected. The Federal forfeiture statutes have been amended to provide timely seizure and minimal procedural delays consistent with due process.

Asset forfeiture has proven to be an extremely effective law enforcement tool. In fiscal 1991 alone, the Department of Justice deposited $643.6 million into the DOJ Asset Forfeiture Fund and equitably shared $266.8 million in cash and $21.2 million in property with State and local law enforcement as a result of joint operations.[37]

States are encouraged to utilize this sanction as a complement to criminal prosecution in drug trafficking and appropriate violent crime cases. States should review their asset forfeiture laws to ensure that they do not contain loopholes such as that in the California statute, which makes forfeiture of land used to grow marijuana difficult. The Department of Justice, in conjunction with the National District Attorneys Association and the National Association of Attorneys General, has developed the Model Asset Seizure and Forfeiture Act that contains a comprehensive set of recommendations.

[37] Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, U.S. Department of Justice, *Annual Report of the Department of Justice Asset Forfeiture Fund, Fiscal Year 1991*, pp. 53, 55 (1992).

To deter and punish adult criminals:

- Adopt truth in sentencing by restricting parole practices and increasing time actually served by violent offenders.

- Adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders.

- Provide sufficient prison and detention capacity to support the criminal justice system.

- Provide an effective death penalty for the most heinous crimes.

- Require able-bodied prisoners to work or to engage in public service to offset the costs of their imprisonment.

- Adopt drug testing throughout the criminal justice process.

- Utilize asset forfeiture to fight crime and to supplement law enforcement resources.

III. Effective deterrence and punishment of youthful offenders

To a large extent, the success or failure of the criminal justice system will depend upon its effectiveness in handling youthful offenders — ensuring that for the vast majority of juvenile offenders their first brush with the law is the last, and ensuring that the small group of chronic hardened youthful offenders are incapacitated for extended periods.

Juvenile crime, especially violent juvenile crime, is on the increase. Between 1965 and 1989 the arrest rate for juveniles for murder almost tripled, the arrest rate for aggravated assault tripled, and the arrest rate for weapons violations by juveniles increased 2½ times.[38] Indeed, the increase in crimes by juveniles is responsible for a large share of the increase in violent crime.

The long-term solution to the problem of juvenile crime falls largely outside of the law enforcement system. It requires strengthening those basic institutions — the family, schools, religious institutions, and community groups — that are responsible for instilling values and creating law-abiding citizens.

From the law enforcement standpoint, however, we must deal better with two groups of juveniles. The larger group have only one or two brushes with the law and then straighten out as they mature, and the smaller group, the hardened chronic offenders, commit the majority of all violent juvenile crime.[39]

[38] *See* Federal Bureau of Investigation, U.S. Department of Justice, *Age-Specific Arrest Rates and Race-Specific Arrest Rates for Selected Offenses, 1965-1989*, pp. 31, 73, 213 (1990).

[39] *See* generally P.E. Tracy, *et al.*, *Delinquency Careers in Two Birth Cohorts* (1990).

With respect to the first, larger group of juvenile offenders, the juvenile justice system must be better designed to deter them from committing additional crimes. The goal is to prevent juveniles in this group from becoming chronic offenders. Indeed, the success of the criminal justice system in preventing these juvenile offenders from becoming career criminals is perhaps the single greatest determinant of future levels of criminality. The best way to accomplish this is by imposing tough, smart sanctions that are carefully tailored for the first-time juvenile offender and are designed to instill the values of discipline and responsibility that are necessary to prevent further criminality. Such punishment actually benefits the juvenile more than lenient sanctions, or no sanctions at all. Excessive leniency can result in additional transgressions, culminating in a life of crime. The juvenile does not get the message that crime does not pay because he is not made to pay for his crime. A juvenile justice system that is too lenient can become, in effect, a conveyor belt for career criminals. In contrast, tough but fair sanctions can turn the juvenile around and stop the all too common pipeline from juvenile offender to adult offender.[40]

States need a range of such sanctions that are designed to instill discipline and responsibility and ensure that the juvenile does not commit further offenses. These should include structured institutional settings such as boot camps.

[40] *See* P.E. Tracy, *et al.*, *Delinquency Careers in Two Birth Cohorts*, p. 295 (1990). ("We know that the chronic offender is detached from the schools and other community-based socialization and control agents. Failure to impose sanctions at all, or failure to impose necessary controls early on, can encourage further delinquency.")

The challenge for the juvenile justice system is different with respect to that small segment of the juvenile population that commits most of the violent juvenile crime and progresses to become hardened career criminals. The task for a successful juvenile justice system is to identify this group of chronic offenders and incapacitate them through extended periods of incarceration.

The juvenile justice system needs to become tougher and smarter in its handling of both groups. With respect to the larger group of juveniles, excessive leniency wastes the opportunity to salvage the youth and instead encourages them to become career criminals. As to the group of chronic offenders, excessive leniency fails to adequately protect society from these violent criminals. Tough, smart sanctions tailored to the particular offender will both reduce the number of juveniles who become chronic offenders and better protect society from those who do.

Recommendation 9

Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.

One of the key challenges for a State juvenile justice system is to deter the youthful offender from further transgressions. For the vast majority of juveniles, this should be possible if we are smart in imposing sanctions. To this end, States should develop a range of tough but fair sanctions for nonviolent first-time juvenile offenders, where the emphasis is on instilling values of discipline and responsibility. These sanctions should include the option of institutional settings.

One promising possibility is boot camps. Another is mandatory, highly structured community service or public works programs. A

sentence to a boot camp or a public works program, rather than probation, could change a first-time offender's attitude toward himself and society, thereby preventing the commission of further crimes.

It must be remembered, however, that boot camps and similar sanctions involve attempts to change behaviors that have often been learned over a period of years. This cannot be accomplished overnight. Rather, commitment must be for a sufficiently long period to affect behavior patterns. The discipline of the boot camp, or similar sanction, may also need to be followed by a period of regimented work to underscore the behavior modification and commitment.

By imposing tough but carefully tailored sanctions on juvenile offenders, the justice system can deter the vast majority from further crime. Excessive leniency, on the other hand, is a misguided attempt at kindness that all too often will simply result in additional crime and hardened criminals.

Recommendation 10

Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.

Unfortunately, there is a small group of juvenile offenders who are as hardened as any adult criminal. One of the most troubling statistics of the 1980's is the sharp increase in juvenile arrests for murder. The number of juveniles arrested for murder increased by 60% between 1981 and 1990. The corresponding adult increase was 5.2%. In 1990, more than a third of all murders in this country were committed by individuals under the age of 21.[41]

[41] *See* Federal Bureau of Investigation, U.S. Department of Justice, *Crime in the United States, FBI Uniform Crime Reports, 1990*, tables 27 and 36 (1991). The data also suggest an increased percentage of forcible rapes by offenders under 18 in the 1980's.

Anecdotal evidence suggests that the emergence of new violent youth gangs and the tendency of criminal drug enterprises to use young teens as drug couriers, enforcers and even hired killers have contributed to this trend. The notorious leniency of many juvenile justice systems has led to an attitude of "Let the kid do it" among criminals on the street.[42]

The criminal justice system must recognize that some youthful offenders are simply criminals who happen to be young. Every experienced law enforcement officer has encountered 15- or 16-year-olds who are as mature and as criminally hardened as any adult offender. Although this group represents only a small fraction of our youth, they commit a large percentage of all violent crimes. As painful as this fact may be, public safety demands that law enforcement recognize and respond to this criminal element. The challenge for a State's juvenile justice system is to identify this group of hard-core offenders and to treat them as adults.

This may require some reform of existing juvenile justice systems. Discretionary waiver or certification of juveniles into adult court is often a cumbersome process, filled with delays. The uncertainty of waiver reduces any deterrent effect that the threat of adult punishments might have on juveniles. States should ensure that their systems permit treatment of juveniles as adults in appropriate circumstances. One approach is to create a legislative presumption that any juvenile age 14 or older who commits an enumerated crime of violence (for example, murder, rape, kidnaping, or armed robbery) will be tried as an adult. The presumption could be rebutted by showing mitigating factors that justify juvenile treatment of the offense. Where the juvenile has a

[42] Last year a 14-year-old drug runner in the District of Columbia shot and killed three people on the same day. The drug dealer for whom the juvenile worked was convicted of felony murder, but the juvenile served a total of only 26 months in juvenile detention for the three killings. He was back out on the streets taunting local police before his 17th birthday. *See Washington Post*, July 31, 1991, p. A20, col. 1.

previous adjudication for an enumerated offense, then the certification would be automatic. Where violence is involved, a firearm is used, or multiple offenses have occurred, the juvenile has through volitional criminal conduct moved outside the intended focus of the juvenile system.

Recommendation 11

Provide for use of juvenile offense records in adult sentencing.

A major problem in dealing with young offenders is lack of information about, and accountability for, serious crimes committed before the age of 18. Many apparent first-time offenders in this country have in fact committed numerous serious crimes as juveniles, yet evidence of these crimes may not be available or, by law, may be considered legally irrelevant to sentencing for adult offenses. While the desire to forgive a youthful indiscretion and not saddle an otherwise law-abiding adult with a criminal record is commendable, that rationale simply does not apply to a juvenile offender who continues a life of crime in adulthood.

This lack of adequate juvenile criminal histories creates a void with respect to the criminal conduct of certain offenders. For example, the Bureau of Justice Statistics estimates that 38% of inmates incarcerated for murder in State prison in 1986 had a prior juvenile conviction. Thirteen percent of those inmates had no adult record and thus only prior juvenile convictions.[43] To address this problem, the Department of Justice has authorized the FBI to accept juvenile records from the States for inclusion in the national criminal records system.

[43] The figures are similar for other violent crimes. For example, 54% of State prisoners convicted of robbery as adults had a juvenile record — 15% had only prior juvenile convictions. (These figures are based on the raw data underlying the BJS Special Report, *Profile of State Prison Inmates, 1986* (1988).)

States are urged to forward juvenile criminal history information for serious offenses to the FBI. States should review their expungement and confidentiality statutes concerning juvenile offenses to ensure that they are able to provide such information. States should also ensure that State law allows for the fingerprinting of juveniles convicted of serious offenses. Records are useless without a reliable means of identification. Finally, States should amend their career criminal statutes to provide that juvenile convictions for serious drug and violent crimes are relevant factors for sentence enhancement.

To deter and punish young criminals:

- Establish a range of tough juvenile sanctions that emphasize discipline and responsibility to deter nonviolent first-time offenders from further crimes.

- Increase the ability of the juvenile justice system to treat the small group of chronic violent juvenile offenders as adults.

- Provide for use of juvenile offense records in adult sentencing.

IV. Efficient trial, appeal, and collateral attack procedures

The primary purposes of a criminal trial are to ascertain the truth and to impose just punishment on the wrongdoer. Society's ability to identify and punish wrongdoers is at the very heart of the social compact with its citizens. A criminal justice system that loses sight of its primary goal will quickly — and deservedly — lose the confidence of its citizens.

Other sections of this report have discussed methods for increasing the certainty and severity of punishment. Whatever its content, punishment must occur within a reasonable time after the crime to be effective. This means that the criminal justice system must move as swiftly as possible in adjudicating guilt or innocence. The system must also speak with reasonable finality. Endless reopening and reexamination of a determination of guilt and sentence serves only to undermine the effectiveness of punishment. The changes suggested in this section would substantially enhance the efficiency of State criminal justice systems and the deterrent effect of the punishments they dispense.

Recommendation 12

Enact and enforce realistic speedy trial provisions.

Justice delayed may be justice denied — for society, for the victims of crime, and for the accused. All three have substantial interests in bringing criminal cases to trial as quickly as possible. Society has an interest in maximizing the deterrent effect of its punishments and in quickly identifying and removing offenders from society. The victims of crime have a strong interest in seeing justice done and in bringing emotional closure to a terrifying experience. The defendant has an

interest in clearing his name if innocent, or in knowing his punishment and beginning to serve his sentence if guilty. Finally, all three have an interest in determining the facts while physical evidence and the memories of witnesses are still fresh.

Despite the shared interest in speedy trials, and despite the existence of some form of speedy trial provision in 45 States,[44] delays in prosecution in many State systems are too long. Many State laws set extremely lax standards for a speedy trial—up to 1 year from the date of arrest. As a result, a 1988 study of felony convictions in 300 counties across the country found that the average time between arrest and sentencing was 208 days. Delays were even higher in violent felony and drug trafficking cases. For example, the average delay from apprehension to trial for murder is 347 days, the delay for rape is 253 days, and the delay for drug distribution offenses is 211 days. All these figures include cases disposed of by pleas as well as those that go to trial.[45]

Delays in bringing criminals to trial benefit no one except the guilty, and they particularly hurt victims, who suffer prolonged anguish while awaiting the trial. States should take all necessary steps to ensure the trial of criminal charges at the earliest possible date. Many docket-management techniques are available to help States meet this important goal.

[44] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Prosecution of Felony Arrests, 1981*, table 30 (1986).

[45] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Felony Sentences in State Courts, 1988*, p. 7 (1990).

Recommendation 13

Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.

States should undertake a complete review of their evidence codes and rules to ensure that they operate to promote the search for truth. The cost of keeping probative evidence from juries in criminal cases is extremely high, and can include the release of guilty offenders to victimize innocent citizens. As Justice O'Connor has written:

While Federal courts must and do vindicate constitutional values outside the truth seeking function of a criminal trial, where those values are unlikely to be served by the suppression remedy, the result is positively perverse. Exclusion in such a situation teaches not respect for the law, but casts the criminal system as a game and sends the message that society is so unmoved by the violation of its own laws that it is willing to frustrate their enforcement for the smallest of returns. [*Duckworth* v. *Eagan*, 492 U.S. 195, 211-12 (1989) (O'Connor, J., concurring)].

In recent years, the Supreme Court has identified a number of situations where it has declined to apply the exclusionary rule to enforce the Fourth Amendment. Primary among these is *United States* v. *Leon*, 468 U.S. 897 (1984), which held that where police act in reasonable, good faith reliance on a warrant issued by a neutral magistrate, evidence will not be suppressed even where it later turns out that probable cause was lacking or that the warrant suffered from some other defect. Two Federal courts of appeals have extended the "good faith" principle to warrantless searches. *See*, for example, *United States* v. *Williams*, 622 F.2d 830, 840 (5th Cir. 1980), cert. denied, 449 U.S. 1127 (1981); *United States* v. *Beck*, 729 F.2d 1329, 1331 (11th Cir.), *cert. denied*, 469 U.S. 981 (1984).

States should ensure that their own law allows for admission of evidence seized by officers acting with an objectively reasonable belief that they are obeying the law. This rule should apply in both warrant and warrantless situations. One approach is to provide by statute that whenever police officers act in good faith, but commit a technical error of law or fact, evidence should nevertheless be admitted in court. *See*, for example, Colo. Rev. Stat. 16-3-308 (1986) (codifying good faith exception for both warrant and warrantless cases). In several States, this may require constitutional change.[46]

States should also review evidence rules concerning the use of prior convictions or acts in two settings. The first is the impeachment of a defendant who takes the stand. Under the traditional approach to impeachment, any past conviction for either a felony or a crime involving dishonesty was admissible to impeach the credibility of a witness.[47] At present, Federal Rule of Evidence 609 imposes a general 10-year time limit on admissible convictions and requires a special determination by the judge that the probative value of a defendant's felony convictions outweighs any prejudicial effect.

Several States have adopted impeachment rules that are even more restrictive than the Federal rule. Alaska and Iowa limit the general category of admissible offenses to those involving dishonesty. Montana completely prohibits the admission of prior offenses for impeachment purposes.

[46] Six States appear to suppress evidence as a matter of State constitutional law even where the police have reasonably relied upon a facially valid warrant. *See State* v. *Oakes*, 598 A.2d 119 (Vt. 1991); *Commonwealth* v. *Edmunds*, 586 A.2d 887 (Pa. 1991); *State* v. *Marsala*, 579 A.2d 58 (Conn. 1990); *State* v. *Carter*, 370 S.E.2d 553 (N.C. 1988); *State* v. *Novembrino*, 519 A.2d 820 (N.J. 1987); *People* v. *Bigelow*, 488 N.E.2d 451 (N.Y. 1985). Two additional States have statutory exclusionary rule provisions that have been interpreted to preclude application of the *Leon* "good faith" exception in the State. *See Mason* v. *State*, 534 A.2d 242 (Del. 1987); *Commonwealth* v. *Upton*, 476 N.E.2d 548 (Mass. 1985).

[47] At common law, felons were not allowed to testify at all. As this prohibition eased, the rule arose that felons could testify, but the jury was to be made aware of their criminal record.

States are urged to adopt the traditional impeachment rule by providing for the admission of all felony convictions and convictions of crimes involving dishonesty against all witnesses, including a defendant. At a minimum, State evidence codes should be no more restrictive than Federal Rule 609.

Second, many State evidence codes are also unduly restrictive and unnecessarily frustrate the search for truth through limitations on the use of past criminal conduct of the defendant as evidence of guilt. Evidence that the defendant has committed offenses of the same type on other occasions is particularly probative and critical in the area of sex crimes such as rape and child molestation. Studies suggest that a substantial percentage of sex offenders have a strong disposition to recidivism.[48] In addition, because the victim is often the only eyewitness in these cases, evidence that the defendant has committed other sexual offenses can be critical to informed evaluation of the relative credibility of the complaining witness' allegations and the defendant's denial.

Judicial decisions in many jurisdictions have recognized the utility of past crimes evidence in sex offense cases despite the absence of explicit statutory authority for its admission. *See* generally 1A *Wigmore's Evidence* § 62.2 (Tillers ed. 1983). However, this view is not unanimous, and cases have been lost because of the exclusion of such evidence under State law.[49] States should provide clear statutory

[48] *See*, for example, Bureau of Justice Statistics, U.S. Department of Justice, *Special Report, Recidivism of Prisoners Released in 1983*, table 10 (1989).

[49] The examples of convictions reversed because of the admission of relevant past crimes evidence are striking. *See*, for example, *People* v. *Ogunmola*, 701 P.2d 1173 (Cal. 1985) (conviction of gynecologist for raping patients during medical examinations reversed due to admission of evidence of same conduct toward other patients); *People* v. *McMillan*, 407 N.E.2d 207 (Ill. App. 1980) (conviction of defendant for molesting his 13-year-old daughter reversed because evidence was admitted at trial of similar abuse of his 15-year-old daughter).

authority for the admission of evidence of past sex offenses whenever a crime of sexual assault or child molestation is charged.[50]

Recommendation 14

Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

Abuse of both State and Federal habeas corpus laws has reached crisis proportions. Traditionally, habeas corpus was a remedy for detention without trial, an important protection against government overreaching. In recent years, the writ of habeas corpus has been converted from a bulwark of individual liberty into a device employed by prisoners to endlessly reexamine issues decided at trial and on appeal. The constant relitigation of criminal convictions saps judicial and prosecutorial resources, while diminishing the deterrent and retributive effect of punishment. Repetitive habeas corpus proceedings also needlessly reopen the wounds of victims and survivors.[51] The abuse is particularly troubling in the death penalty area, where it is not

[50]The President's proposed Comprehensive Violent Crime Control Act of 1991 (S.635 and H.R.1400) in § 801 calls for a general rule of admissibility in sexual assault and child molestation cases for evidence that the defendant has committed offenses of a similar nature on other occasions.

[51] More than 20 years ago, Justice Harlan expressed his concern over the negative effects that repetitive habeas corpus filings have on the administration of justice:

At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definite answer to the questions litigants present or else it never provides an answer at all. . . . No one, not criminal defendants, not the judicial system, not society as a whole is benefitted by a judgment providing that a man shall tentatively go to jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved. [*Mackey* v. *United States*, 401 U.S. 667, 690-91 (1971) (Harlan, J., dissenting)].

unusual for condemned prisoners to file two or three applications for habeas corpus relief in both State and Federal court.

States should undertake a thorough review of their habeas corpus systems to guard against needless relitigation and to close loopholes that can be abused. Four specific reforms are strongly recommended:

1. States should allow only truly collateral claims (such as ineffective assistance of counsel) to be raised on State habeas corpus. Any claim that was or could have been brought forward in a prisoner's direct appeals should be explicitly barred in habeas corpus proceedings.

2. States should adopt explicit time limits for the filing of State habeas corpus petitions, running from the time the petitioner has concluded his direct appeals. Every cause of action, from tort suits to contract claims, has a statute of limitations. In most States, there is no time limit on the filing of a habeas corpus petition challenging a final criminal judgment entered years, and sometimes decades, ago.

3. States should bar successive habeas corpus petitions except where sufficient cause is shown for the previous failure to raise the claim and the claim, if proved, would undermine the court's confidence in the prisoner's factual guilt.

4. States should adopt the retroactivity approach of *Teague* v. *Lane*, 489 U.S. 288 (1989), and subsequent cases in State habeas proceedings. *Teague* provides that changes in the law after trial and appeal will not apply retroactively unless they prohibit a particular crime or sentence entirely or significantly enhance the truth seeking function of the trial.

In addition, States may wish to consider the adoption of "unitary review" procedures in capital cases, like those in effect in California, which allow direct review and the adjudication of collateral claims to take place concurrently. This approach potentially provides additional economies of time by avoiding successive direct review and collateral proceedings.

To enable courts to find the truth and to punish wrongdoers:

- Enact and enforce realistic speedy trial provisions.
- Reform evidentiary rules to enhance the truth-seeking function of the criminal trial.
- Reform State habeas corpus procedures to put an end to repetitive challenges by convicted offenders.

V. Detection and prevention of crime

State and local governments must give police and prosecutors the tools they need to apprehend and convict violent offenders. These tools include proper equipment, proper training and appropriate legal authority to get the job done. For many States this may require an increased budgetary commitment to the fight against violent crime. On the Federal level, the Department of Justice has increased its full-time personnel by nearly 50% from 1981 to 1992. In the last 3 years, the Department's budget has increased by almost 60%. Increases of similar magnitude are necessary in all critical areas of the criminal justice system in many States and localities.

In 1989, State and local direct spending for law enforcement and criminal justice was only 6.9% of all State and local spending. Recognizing that conditions in the States vary greatly and that efficient use of resources is more important than measures of absolute expenditures, it nonetheless appears that some States and jurisdictions are underinvesting in public safety. Creating an environment where law-abiding citizens are free from fear and violence is the primary duty of government, and this should be reflected in budgetary priorities.

There are those who will say that rather than increase funding for law enforcement, it is better to invest in programs that address the so-called "root causes" of crime. This view mistakenly sees social programs as an alternative to law enforcement. While it is true that law enforcement cannot do the job of community revitalization alone, it is even more certain that social programs cannot succeed without effective law enforcement. The best schools and the finest housing programs will have little positive impact if they are overrun by violent crime. The challenge of the 1990's is to coordinate our social programs with tough law enforcement to help law-abiding citizens reclaim their communities.

Recommendation 15

Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.

Law enforcement personnel deserve the full support of the public in their work. A high quality police force is central to the safety of any community. Moreover, police work itself involves substantial risk, long hours and much personal sacrifice. Prosecutors make substantial economic sacrifices by foregoing often lucrative private practices for government service. Judges work long hours and often risk retaliation from criminal defendants. Correctional officers put their lives on the line in a hostile environment every day. The public has a substantial interest in retaining the services of seasoned professionals in each of these critical areas, and compensation for law enforcement personnel at all levels should be sufficient to recruit and retain such professionals. Adequate training and equipment are also essential.

Police deserve top quality equipment. This includes adequate firepower to defend themselves and body armor to protect themselves from armed criminals. As of 1990, 73% of local police departments and 80% of State police departments authorized officers to carry semiautomatic sidearms.[52] Only a quarter of all local police departments required personnel to wear body armor on the job and only 12% of State police forces had such a requirement.[53] States should make sure their officers have adequate firepower and should make body armor available to every officer. Use of body armor should be mandatory for execution of arrest and search warrants.

[52] *See* Bureau of Justice Statistics, U.S. Department of Justice, *State and Local Police Departments, 1990*, p. 1 (1992).

[53] *See* Bureau of Justice Statistics, U.S. Department of Justice, *State and Local Police Departments, 1990*, p. 1 (1992).

Prosecutors deserve and require adequate training. This includes basic clinical training as well as specialized training in particularly difficult or complex areas such as capital punishment or the law of search and seizure. State and local prosecutors are overextended in many jurisdictions, and continue to face increasingly complex cases involving money laundering, racketeering, and intricate drug distribution schemes. Adequate training is essential if they are to continue to meet these challenges.

Judges require adequate support staff and equipment. This includes law clerks and computer equipment for case management. It also includes the use of magistrates and judicial adjuncts within constitutional strictures.

While prison space appears to be the most pressing need in many State criminal justice systems, States should assure that other aspects of their criminal justice systems are adequately funded.

States should also ensure that use of their law enforcement resources is coordinated with other public health and welfare expenditures. Investment in law enforcement and investment in social programs should not be viewed as alternative or competing strategies. Both are needed and, to be effective, they must be coordinated. If the streets are not safe, if they are controlled by a criminal element, neighborhood rehabilitation programs are doomed to failure. By the same token, sporadic "sweeps" by law enforcement, without a sustained commitment to neighborhood redevelopment, result in little, if any, permanent improvement in a community's security or quality of life. Enterprise zones, rehabilitation of public housing, and strengthening of community groups must be combined with tough law enforcement to successfully reduce violence and enhance the quality of urban life.

The "weed and seed" concept, adopted as a model program by the Department of Justice, involves a coordinated approach to reclaiming our communities. Federal, State, and local law enforcement officials

pool their resources to take out street gangs and drug dealers. Once this is accomplished, social programs have a fighting chance. Law enforcement remains on the scene, assisting in the rehabilitation effort and building a new relationship with community leaders.

An essential component of Weed and Seed is an effective community policing program. Under community policing, law enforcement works closely with residents of the community to develop solutions to the problems of violent and drug-related crime. Rather than simply responding after the fact to crime, the police build a productive relationship with the community to prevent crime from occurring. As such, community policing serves as the bridge between the "weed" and the "seed" side of the program. However, because it relies upon a more established police presence in the community, community policing takes adequate resources. States and localities should invest sufficient amounts in their police departments to permit community policing.

In addition to its model program, the Department of Justice will assist State and local leaders in establishing their own "weed and seed" sites in urban areas.

Recommendation 16

Maintain computerized criminal history data that are reliable, accurate and timely.

Ready access to reliable criminal history records is essential to an efficient criminal justice system. First, criminal history records are necessary to the effective use of pretrial detention. A history of violence or failures to appear is often the key to convincing a judge to detain a defendant before trial. The inability to provide detailed criminal histories at a first appearance can result in the release of a dangerous defendant.

In addition, accurate criminal history records are critical to effective use of career criminal statutes and for general sentencing purposes. A criminal history data base can also form the basis for a point of sale check prior to the purchase of a firearm. This type of system, which has been adopted in Virginia, Delaware and several other States, can make a contribution to public safety by preventing those with criminal records from purchasing firearms through legitimate channels. Reliable criminal history data is also essential for long-term planning for criminal justice resource needs from police to prisons.

Although many States have made substantial progress in improving and automating criminal history records in recent years, there is much yet to do. Disposition reporting continues to be a serious problem. Only eight States in the Nation have final dispositions recorded for as many as 80% of all their arrest records. There also is a serious problem with delays and backlogs. Ten States reported in 1989 that there was a delay of three months or longer between a trial court disposition and the entry of that information into the State data base. In a recent survey representing over 2,300 chief prosecutors, two-thirds said that incomplete criminal history information was a major problem for them.[54]

States should invest in updating and computerizing their criminal history records. States should also consider adopting point of sale systems for firearms purchase checks. In this regard, the Department of Justice recently has set aside $27 million to be made available to the States over 3 fiscal years to upgrade the quality of their criminal history systems. In addition, beginning in late 1992, all States must dedicate at least 5% of Federal formula grants from the Department of Justice to improve their criminal justice records. At present funding levels, this would total more than 21 million additional Federal dollars per year dedicated to improvement of State criminal justice records.

[54] *See* Bureau of Justice Statistics, U.S. Department of Justice, *Prosecutors in State Courts, 1990*, p. 1 (1992).

Recommendation 17

Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.

Selective grants of immunity are the prosecutor's method of lifting the veil of secrecy from drug enterprises, violent gangs, and organized crime associations.[55] Accomplices are often the only witnesses to suspected criminal acts. The testimony of lower-echelon members of criminal organizations is critical to establishing the guilt of leaders and organizers, and thus to putting the whole organization out of business for good.

At present, State laws are a patchwork on the subject of immunity. Despite the fact that the Supreme Court has held that use immunity is constitutionally sufficient,[56] several State statutes still provide for only transactional immunity.[57] This reduces the effectiveness of immunity as an investigatory tool and can result in a windfall for the clever witness.

In addition, several States provide for automatic immunity, thus taking the immunity decision and the substantial leverage that goes with it out of the hands of the prosecutor. For example, New York provides for automatic transactional immunity for all witnesses

[55] Grants of immunity to compel the testimony of witnesses are made necessary by the Fifth Amendment, which provides: "No person shall . . . be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V.

[56] *Kastigar* v. *United States*, 406 U.S. 441 (1972).

[57] "Use" immunity prohibits the government from using the compelled testimony, either directly or indirectly, to build a case against a witness. Prosecution remains possible based on other evidence. "Transactional" immunity protects an immunized witness from prosecution for *any* criminal transaction mentioned in the compelled testimony. Prosecution is barred by transactional immunity even where independent evidence of criminality is uncovered.

appearing before its grand juries. A 1988 report by the New York State District Attorneys Association documents at least six occasions in recent years where the New York rule has literally allowed a witness to "get away with murder" by testifying about it under mandatory transactional immunity.[58] Alabama courts will not grant immunity without the consent of the witness, thus eliminating the effectiveness of immunity as an investigatory tool.[59]

State immunity statutes should be comparable to 18 U.S.C. § 6002. They should vest authority to request immunity in the prosecutor and give him or her the choice between use or transactional immunity.

Recommendation 18

Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

Electronic surveillance of suspects is an essential tool for the investigation and prosecution of large-scale drug trafficking and organized crime cases. The leaders of these organizations are often able to avoid direct involvement in criminal acts while planning and coordinating criminal activity over the telephone. Use of electronic surveillance can build an extremely effective case based on the wrong-doers' own words, while avoiding the risks of using undercover agents or informants.

Congress provided Federal wiretap authority in the Omnibus Crime Control and Safe Streets Act of 1968. *See* 18 U.S.C. §§ 2510-21. The statute provides for the granting of applications for wire surveillance upon specific findings of probable cause and necessity, and places

[58] *See* New York State District Attorneys Association, "The Case for a New Immunity Law in New York," p. 6 (1988).

[59] *See* Ala. R. Crim. P. 12.7(b) (only transactional immunity available and only with consent of the witness).

careful limits on the scope and duration of electronic surveillance. The statute also explicitly authorizes the consensual monitoring of electronic communications where a law enforcement officer is a party to a conversation.

Another important tool in the investigation of sophisticated criminal networks is the pen register. A pen register records the numbers dialed from a telephone by monitoring the electrical impulses caused by dialing. In *Smith* v. *Maryland*, 442 U.S. 735 (1979), the Supreme Court held that the use of a pen register is not a search within the meaning of the Fourth Amendment, and thus neither probable cause nor a warrant is necessary to employ such a device.

Congress has provided a detailed statutory scheme for the use of pen registers and "trap and trace" devices[60] by Federal investigators. 18 U.S.C. §§ 3121-27. The statute requires application to a court and a demonstration that "the information likely to be obtained is relevant to an ongoing criminal investigation" [*Id.* at § 3123(a)]. The statute also creates a legal obligation on the part of telephone companies, landlords and other third parties to assist law enforcement personnel in the installation of authorized pen registers. Finally, the statute insulates both the providers of communications services and law enforcement officers from civil and criminal liability for actions undertaken pursuant to the statute.

State law on the subject of electronic surveillance, pen registers and trap and trace devices is presently a hodgepodge. At present, 15 States make no provision for court-ordered electronic surveillance. Other States, such as California, have weak electronic surveillance laws. And in several States, the courts have held that the use of a pen register is a search under the State constitution for which a warrant supported by probable cause is required. *See*, for example, *People* v. *Sporleder*, 666 P.2d 135 (Colo. 1983); *State* v. *Hunt*, 450 A.2d 952 (N.J. 1982). At

[60] A "trap and trace" device reveals the telephone number of the source of all incoming calls to a particular number.

least one State supreme court has held that a pen register should be treated as if it were a wiretap for purposes of the State's electronic surveillance law, thus requiring a warrant as a statutory matter. *See Ellis* v. *State*, 353 S.E.2d 19 (Ga. 1987). States should thoroughly review their laws in this area to ensure that statutory authority exists for electronic surveillance and for the effective use of pen registers and "trap and trace" devices. Statutory and constitutional change should be sought where necessary.

To detect and prevent crime:

- Invest in quality law enforcement personnel and coordinate the use of social welfare resources with law enforcement resources.
- Maintain computerized criminal history data that are reliable, accurate, and timely.
- Provide statutory authority for prosecutors to grant "use" and "transactional" immunity.
- Provide statutory authority for electronic surveillance, pen registers, and trap and trace devices.

VI. Respecting the victim in the criminal justice process

To be both effective and humane, a criminal justice system must respond to the needs of victims of crime at all stages of the criminal justice process. From the time law enforcement officers arrive at the scene of a crime, through apprehension of a suspect, the trial, sentencing, appeals and punishment, victims are profoundly affected, and their perspective deserves consideration. It is incumbent upon all criminal justice professionals to think of the victim and to evaluate how their decisions affect the victim and the victim's family.

One way to ensure appropriate consideration of victims' rights is to codify and enforce a "Victims' Bill of Rights." Congress took this step in the Victims' Rights and Restitution Act of 1990 ("Victims' Rights Act"), Pub. L. No. 101-647, 104 Stat. 4820, and at the same time urged the States to follow suit.

Victims should not have to wait until they are attacked to have effective recourse. States should enact "stalking" laws that would make it a crime to repeatedly harass or follow a person if it places the victim in reasonable fear of death or serious bodily injury. If, in addition, a restraining order or similar order is in effect at the time of an offense, an enhancement of the penalty should be considered.

Victims' needs can include protection from further violence or retribution, restitution to cover economic loss, and information about and participation in the criminal justice process. Victims should have the right to place their story before sentencing authorities and parole boards. Victims' views should be given consideration in both sentencing and release decisions. Finally, the criminal justice system should do all it can to minimize the pain of victims and victim-witnesses. This includes the provision of adequate compensation and the protection of victim-witnesses from further emotional trauma.

Recommendation 19

Provide for hearing and considering the victims' perspective at sentencing and at any early release proceedings.

In most States, the defendant has the right to address the tribunal after conviction and before sentencing. At this point, the defendant is allowed to tell his or her story, to offer any facts in mitigation of his crime, and to ask for mercy. States should provide the victim with a similar right of allocution, that is, a right to inform the sentencing authority about the impact of the crime on his or her life.[61] States that retain a system of parole or early release should afford victims a right of allocution at parole hearings. Parole statutes should provide that the impact of early release on the victim and the victim's family or survivors should be a consideration bearing on early release.

States should also provide for the use of victim-impact evidence in capital cases. In the penalty phase of a capital case, the defendant is allowed to present any evidence of his character or background in mitigation. Where survivors desire it, the State should compile and present evidence from survivors detailing the loss suffered by the victim's family and friends. The jury should know the victim as well as the defendant as a unique human being, worthy of its consideration in passing sentence.

Finally, the victim should have a right to be present at all public court proceedings related to the offense, including pretrial motions, voir dire and trial, appeals, and collateral litigation. For most victims, the

[61] In just over half the States, the victim now has the right of allocution. The President's violent crime bill would establish a right of allocution for the victim in Federal criminal proceedings.

crimes committed against them or their loved ones are the most traumatic events of their lives. They deserve the right to watch the criminal justice system as it addresses the wrong committed against them.

Recommendation 20

Provide victim-witness coordinators.

One of the greatest innovations in victims' rights in Federal cases was the establishment of a victim-witness coordinator in each United States Attorney's Office. These officials can provide an important liaison between victims and the criminal justice system. They can keep victims and survivors apprised of the status of proceedings, as well as whether or not the defendant has been released on bail before trial. They can also make victims aware of restitution or other remedies available to them. Victim-witness coordinators should be aware of the State programs funded through the Victims of Crime Act and administered by the Office for Victims of Crime in the Department of Justice. These programs offer such services as victim compensation and assistance, counseling, and housing for battered women.

Recommendation 21

Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.

While all 50 States have some form of victim restitution law, in many cases these laws are not adequately enforced. Mechanisms must exist for monetary fines and restitution payments to be collected during imprisonment and after release. These mechanisms should be structured so as to relieve victims of the burden of pursuing the offender for restitution.

States should also ensure that profits a criminal derives directly or indirectly from his criminal activity are made available to the victim for restitution. This includes profits from literary or other depictions of the crime. Crime victims should not have to watch criminals reap fame and fortune from their victimization. The Department of Justice has prepared new Federal "Son of Sam" legislation that addresses the constitutional concerns expressed by the Supreme Court in *Simon & Schuster, Inc.* v. *N.Y. State Crime Victims Bd.*, 112 S. Ct. 501 (1991). The Department will assist States in reviewing and, if necessary, revising their forfeiture and victim compensation statutes in light of the Court's decision in *Simon & Schuster.*

States should also provide for adequate compensation for victim-witnesses. This should include payment for travel, loss of work time, and assistance with day care and other needs. The victim should not suffer an additional economic and emotional blow dealt by the criminal justice system itself. States should consider placing victim-witnesses in a category separate from other witnesses, allowing the former more services and compensation for costs incurred as a result of cooperation in the prosecution.

Recommendation 22

Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.

Every State should have two evidentiary protections for complaining witnesses. The first is a rape-shield law. Federal Rule of Evidence 412 provides a model. It makes reputation or opinion evidence concerning the past sexual behavior of the alleged victim inadmissible in the trial for a sexual offense. It also makes evidence of the past sexual behavior of the complaining witness generally inadmissible, unless that behavior occurred with the defendant or the defendant seeks to show

that another individual was responsible for the sexual contact or the victim's injuries.

Evidence of reputation and past sexual conduct of the victim generally has no place in the trial for a sexual offense. Past consensual activity of the victim has little or no relevance to whether the defendant sexually assaulted the complainant. Its admission violates the victim's privacy, increases the trauma of trial, and discourages victims from cooperating in prosecution. Too often this kind of evidence is used by the defense to embarrass and intimidate the victim.

Every State should also protect child witnesses, where necessary, from traumatic confrontations with their alleged abusers. As the Supreme Court has noted, placing a child witness in close proximity to an alleged abuser or molester may do serious psychological damage. In addition, it may actually disserve the truth-seeking function of the trial by so overwhelming the child as to prevent him or her from accurately remembering and testifying to painful events. *See Craig* v. *Maryland*, 110 S. Ct. 3157, 3168-70 (1990). The Maryland statute, upheld by the Supreme Court in *Craig*, provides a good model. If the trial judge finds that courtroom testimony will result in serious emotional trauma to a child witness, such that the child will not reasonably communicate the facts by direct testimony, the testimony is taken by closed-circuit television with only the attorneys and, if necessary, a guardian present [Md. Cts. & Jud. Proc. Code Ann. § 9-102 (1989)].

Recommendation 23

Permit victims to require HIV testing before trial of persons charged with sex offenses.

With the advent of the deadly HIV infection, sex offenses have become even more painful and traumatic for victims. Now victims must confront the possibility that they have contracted an incurable disease. The uncertainty alone is terrifying. The criminal justice system must respond to this added trauma for victims of sexual offenses.

States should provide, at the request of the victim, for the mandatory HIV testing of defendants in sexual offense cases *before* trial.[62] The latest medical evidence indicates that early testing and treatment can delay the onset of AIDS in those who test HIV-positive and prolong survival of those with AIDS.[63] Moreover, the victim is entitled to end the dread and uncertainty that surrounds this question. Test results should be provided to the victim and to the court. States should also require that, at the request of the victim, the defendant be tested again periodically, for example, after 6 months and 12 months given the latency period of the virus. Finally, States should provide enhanced penalties for offenders infected with HIV who commit sexual offenses that may transmit the virus to the victim.

All such testing, and the use of test results, should be done in a manner that safeguards the victim's confidentiality.

[62] At least 11 States now provide for HIV testing of *accused* sex offenders, in addition to those States providing for testing of convicted offenders. The Administration has proposed similar legislation to the Congress for Federal sex crimes. In 1990, Congress provided a funding incentive to encourage States to adopt HIV testing for convicted sex offenders and to reveal the results to victims.

[63] *See* Massachusetts Medical Society, vol. 326 *The New England Journal of Medicine*, "The Effects on Survival of Early Treatment of Human Immunodeficiency Virus Infection," p. 1037 (1992).

Recommendation 24

Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

As the party directly harmed by the crime, the victim has a keen interest in understanding the criminal justice process and knowing its results. Victims and survivors of victims need to bring their traumatic experience to closure. The criminal justice system has an important role to play in this process.

Victims of crime should also be apprised of any change in a convicted offender's status, such as entrance into work release, weekend furlough or community incarceration. Many victims of crime live with the fear (often justified) that they may be victimized by the same offender again after release. States should also ensure that adequate protective measures are taken before release, where objective facts create a legitimate fear of further victimization.

To respect the victim's needs in the criminal justice process:

- Provide for hearing and considering the victim's perspective at sentencing and any early release proceedings.

- Provide victim-witness coordinators.

- Provide for victim restitution and for adequate compensation and assistance for victims and witnesses.

- Adopt evidentiary rules to protect victim-witnesses from courtroom intimidation and harassment.

- Permit victims to require HIV testing *before* trial of persons charged with sex offenses.

- Notify the victim of the status of criminal justice proceedings and of the release status of the offender.

Citizen's checklist: Questions about criminal justice to ask your State and local leaders

How well does your State and local government stack up against the Federal Government and other States in the area of public safety? Do your police and prosecutors have the tools they need to combat violent street gangs, drug dealers and gun-toting criminals? Does your State invest enough in prisons to keep violent repeat offenders in prison instead of in your neighborhood?

Ask those responsible for law enforcement and public safety in your State and local community these questions:

☐ Do our courts have authority to detain dangerous defendants without bail or are these defendants released back into the community before trial?

☐ How much of the sentences they are given in court do violent offenders in our State actually serve in prison on average? Does our State still have parole? Why?

☐ Are there mandatory minimum penalties in our State for the use of a firearm in the commission of a felony for repeat offenders who are caught in illegal possession of a firearm and for repeat violent offenders?

☐ What percentage of the State budget is devoted to prisons? Can profits from the seizure of criminals' property be used for prison construction in our State?

☐ Does State law provide the death penalty for those who kill law enforcement personnel, for those who kill while committing another felony such as rape or robbery, and for those who kill in prison?

☐ Are prisoners convicted of felonies required to perform some labor in our prisons?

☐ Are persons arrested for serious crimes in our State drug-tested? Are probationers and parolees in our State drug-tested? Is drug use while on probation or parole grounds for mandatory revocation of release?

☐ Do our State and local law enforcement agencies use asset forfeiture against drug traffickers and other violent criminals? Are assets seized used to supplement law enforcement funding?

☐ Does our State provide a range of criminal sanctions that emphasize discipline and responsibility for the nonviolent first-time juvenile offender?

☐ Are juveniles over the age of 14 who commit serious crimes, like murder and rape, prosecuted in adult court unless special circumstances are shown by the defense?

☐ Does our State keep detailed records of juvenile offenses and share them with the FBI? Does our State provide that an offender's serious juvenile crimes should be considered at sentencing? Can juvenile offenders be fingerprinted for law enforcement records in our State?

☐ What is the average delay from time of arrest to time of trial for violent felonies in our State? Do we have a speedy trial law with specific limits on delay?

☐ Do our courts exclude evidence from trial even where the police act in a good faith attempt to follow the law? Do our

courts exclude more evidence than is required by the Federal Constitution?

☐ If a defendant testifies in his defense, can our prosecutors let the jury know that the defendant has a prior criminal record?

☐ Are prior rape and child molestation offenses admissible in our courts to show that a defendant has a disposition to commit those crimes?

☐ Is there a time limit on filing a petition for habeas corpus in our State courts to prevent months and even years of delay? Are prisoners limited to one habeas corpus challenge to their convictions in State court?

☐ Are our police and sheriffs provided with protective body armor and adequate weaponry to defend themselves against well-armed criminals? Are our law enforcement personnel adequately compensated?

☐ What percentage of State and local budgets are spent on law enforcement and criminal justice? Is it less than 6.9% (the national average)?

☐ Does our State maintain complete, accurate, and up-to-date computerized criminal history records?

☐ Do our prosecutors have authority to grant "use" and "transactional" immunity?

☐ Can police in our State obtain court orders for wiretaps or use pen registers and trap and trace devices on phone lines to investigate large-scale drug rings and organized crime networks?

☐ Do victims have the right to address the court at sentencing in our State, or may only the defendant do so? Do victims have the right to attend all court proceedings in our State? Is the victim's perspective considered before early release is granted to a convicted felon?

☐ In a death penalty case where the defendant puts on evidence of his background and family life to evoke sympathy, can our prosecutors present evidence about the victim and the victim's family to give the jury a sense of their loss?

☐ Does our State have victim-witness coordinators?

☐ Does our State provide for victim restitution and assistance for victims and witnesses?

☐ If a criminal profits from his crime by writing a book or giving a paid interview, does our law require that some of that money go to the victim?

☐ Does our State provide professional assistance or counselors to assist victims and witnesses in the criminal process? Are adequate witness fees paid to cover food, travel, and lost work time?

☐ Do our evidence laws protect rape victims against courtroom attacks on their reputations and revelation of irrelevant details of their private sex lives? Does our State provide for protection of child witnesses by allowing closed-circuit televised testimony where testifying in the presence of the defendant would cause the child serious emotional trauma?

☐ Can victims of sex offenses in our State require HIV testing of the accused before trial?

☐ Are victims in our State notified of the status of criminal justice proceedings and the release status of the offender?

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Andrew G. McBride
Assistant to the Attorney General

Rider Scott
Deputy Director for Liaison
Office of Policy and Communications

Steven R. Schlesinger
Deputy Director for Policy
Office of Policy and Communications

Steven D. Dillingham
Director
Bureau of Justice Statistics

Robert B. Bucknam
Deputy Assistant Attorney General
Criminal Division

U.S. Department of Justice

Project Triggerlock:
Incarcerating the Armed Criminal

Year One
May 1991 - April 1992

July 1992

Project Triggerlock:

Incarcerating the Armed Criminal - - The First Year

"A common sense approach to crime means that if we're going to affect people's behavior we must have a criminal justice system in which there is an expectation that if you commit a crime you will be caught; and if caught, you will be prosecuted; and if convicted, you will do time. For far too long, a privileged class of violent and repeat offenders have calculated that crime really does pay, that our criminal justice system is a crapshoot where the risks are worth the rewards. Well it's time we change the odds and up the stakes enormously."

President George Bush
May 15, 1989
National Peace Officers'
Memorial Day Ceremony

Foreword

The American standard of living has long been the envy of the rest of the world. A blot on our society, however, is violent crime. For far too long, many Americans have been held hostage in their own homes, afraid to venture out for fear of violent crime.

When violent crime is an ever present reality, a decent standard of living becomes an illusion. Babies who sleep in bathtubs to avoid stray bullets, elderly who are shut in their own homes, women who fear rape, all are robbed of the fundamental right to safety in their homes and communities.

We cannot and must not stand idly by and watch our society deteriorate. Measures can be taken to stem the tide of violent crime. It has become increasingly clear that the "revolving door" system of justice that is typical of far too many of our communities simply does not work. What does work is the swift and certain incarceration of society's most heinous and violent criminals.

Study after study has shown that a relatively small group of chronic violent offenders are responsible for a huge proportion of all violent crimes committed in America. By removing these felons from society, we can prevent them from committing future crimes.

In our fight against violent crime, the Department of Justice has adopted a multi-faceted approach, working in close coordination with state and local law enforcement. This includes: (i) additional resources for law enforcement across the board, including more police, more prosecutors and more prisons; (ii) reform of criminal justice systems to stop "revolving door" justice; (iii) joint operations to target and incarcerate the most dangerous chronic offenders; and (iv) Operation Weed and Seed which brings together tough law enforcement and social programs to rehabilitate communities and help law abiding citizens take back their streets.

As part of our joint operations with state and local law enforcement, the Department of Justice has begun Project Triggerlock, which targets for federal prosecution and incarceration armed offenders who violate federal firearms laws. By working closely with state and local authorities, federal officials are able to identify and incapacitate America's worst violent criminals.

The participation of state and local law enforcement officials is an essential feature of Project Triggerlock. Triggerlock gives these officials access to tougher federal tools such as pretrial detention, mandatory minimum sentencing and a functioning federal prison system.

Project Triggerlock is a strong weapon in the war against crime. Once we have established civil order in our neighborhoods and communities, we can truly begin to rebuild our cities and raise the quality of life for all Americans.

William P. Barr
Attorney General

Overview

Last year the Department of Justice initiated a nationwide program to combat the crimes the public fears most - violent offenses committed by criminals armed with guns. This program relies on stiff federal penalties and the dedicated joint efforts of federal, state, and local law enforcement officials.

In its first full year of operation, Project Triggerlock successfully mobilized federal, state and local law enforcement efforts to accomplish the following:

- **6454 defendants have been charged with federal firearms violations.**
- **Federal firearms prosecutions have more than doubled.**
- **More than one out of ten of all federal prosecutions now include firearms charges.**
- **84% of Triggerlock defendants are felons, drug dealers or violent criminals in possession of a firearm.**
- **The average sentence received by an armed career criminal under Project Triggerlock is 18 years without parole.**

"[Triggerlock is] a superlative example of coordinated efforts among local, state, and federal officials. [It] has enabled us to identify and bring to justice many of those persons who pose the greatest threat to our communities."

- Thomas J. Charron, District Attorney, Cobb Judicial Circuit, Georgia. President, National District Attorneys Association

Project Triggerlock targets armed criminals, utilizing the tough penalties contained in federal firearms laws. While Project Triggerlock includes all federal firearms prosecutions, the program emphasizes the use of federal firearms statutes against violent repeat offenders whose criminal behavior has not been deterred by state or local prosecutions.

Project Triggerlock is a long-term crime prevention program. Not only are armed criminals brought to justice, but that justice means incapacitation for the worst offenders for extended periods of time. Career criminals or persons who use firearms to deal drugs or commit other violent crimes will not soon be released to commit more crimes. Project Triggerlock is an investment that will pay dividends for years to come.

Launching Project Triggerlock

The Department of Justice announced Project Triggerlock on April 10, 1991. While federal efforts to combat violent crime have increased significantly during the previous decade, Triggerlock represents the culmination of these efforts - with resources meeting strategy. Tough federal gun and drug laws, more prison space and more investigative resources are being brought to bear under the Triggerlock strategy of coordinated state and local involvement. Project Triggerlock is the most extensive cooperative effort ever undertaken to combat violent crime.

"Project Triggerlock has had a positive impact on this community by taking violent criminals off of the streets for substantial periods of time. It is a substantial step in the right direction. We need to continue such efforts in order to ensure the protection of our community."

- Captain Alfred Broadbent, Commander, Homicide Branch, Metropolitan Police Department, Washington, D.C.

A. Removing Armed Criminals

The goal of Project Triggerlock is quite simple: **Incarcerate those violent and repeat offenders who violate federal firearms statutes.** Career criminals are Triggerlock targets for the specific reason that by removing the worst offenders from society we can prevent the crimes which they would undoubtedly commit if allowed to roam free.

The Bureau of Alcohol, Tobacco and Firearms study of career criminals, Protecting America, released in March 1992, documents the devastating impact of career criminals. In studying inmates incarcerated under the Armed Career Criminal Act, ATF discovered that the typical inmate surveyd had committed an average of 160 crimes a year, or three crimes a week: a tremendous cost to society. Using National Institute of Justice data, it has been estimated that Americans save $323,000 net per inmate, per year, by incarcerating these criminals. This is to say nothing of the incalculable human toll that violent crime takes on its victims.

Although historically violent "street crime" has been the province of state and local criminal justice systems, two factors have led the federal government to assume a greater role. First, sophisticated drug trafficking networks and violent gangs, which have spawned much of the violence on our streets, often operate across state and even international boundaries. Combating organized criminal activity has traditionally been an area of particular federal success. Second, law enforcement efforts in many states are hampered by legal and resource limitations, such as overcrowded prison systems. With the passage of tough federal firearms statutes and bail and sentencing reforms, the federal criminal justice system has become far tougher on armed criminals. Until state legislatures act,[1] if armed career criminals are to be taken off the street and incarcerated for long periods of time, there is often no better way to do this than by "making a federal case" of these crimes.

[1] The Attorney General, in consultation with state and local law enforcement officials, has complied a list of recommendations for action by the states. See, Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice, July 28, 1992.

One Triggerlock defendant came to the attention of an Assistant United States Attorney in the Western District of North Carolina through a newspaper article. The article quoted Mike Flory, Statesville, North Carolina Police Narcotics Investigator as saying, "I'm sick and tired of it. They get four years and serve a few months and even when they are out on parole they're breaking the law." Flory's comments came after learning that Caper Strickland had again been arrested - this time for cocaine trafficking and three counts of carrying a concealed weapon. Strickland's arrest occurred after service of a warrant for a parole violation only five weeks after his release from state prison. Strickland had been on parole after serving 18 months of a four year sentence resulting from a previous cocaine arrest by Investigator Flory in 1989. Strickland's criminal history included several drug convictions.

Then Strickland became a Triggerlock defendant. He was charged with and pled guilty to possessing a firearm in the course of a drug felony, drug trafficking and being a felon in possession of a firearm. Strickland has not yet been sentenced, but faces 15 years to life.

Lt. John F. Goshert, Commander of the Organized Crime and Vice Control Unit of the Harrisburg, Pennsylvania, Police Department wrote to the U.S. Attorney for the Middle District of Pennsylvania extolling the cooperative efforts in the prosecution of Triggerlock cases. "One of the many times that comes to mind is an individual who was arrested over 40 times for various offenses, including: robbery, burglary, assault, firearms violations and drug law violations. In each of these past arrests the suspect did not serve any significant prison sentence. However, his last arrest for carrying a firearm was prosecuted by your office under the Armed Career Criminal Statute. The suspect received 15 years in prison without parole to be served consecutively with his local prison sentence."

B. The Strengths of the Federal Criminal Justice System

Project Triggerlock applies the strengths of the federal criminal justice system to the problem of violent crime. These strengths include: stiff penalties, no parole, pretrial detention, available prison space, and speedy trials.

1. Stiff Penalties

Underlying the enforcement strategy of Project Triggerlock are federal firearms statutes that provide substantial penalties for gun violations.

"These extra tough sentences are a real surprise to the people we charge."

- Lt. L. H. Brown,
Assistant Commander,
Narcotics and Intelligence Bureau
Montgomery, Alabama, Police Department

Although Triggerlock encompasses the full spectrum of firearms violations, three statutes form its core:

- Possession of a Firearm by a Felon or Fugitive, 18 U.S.C.§ 922(g): Maximum term of imprisonment 10 years.
- Possession of a Firearm by an Armed Career Criminal, 18 U.S.C. § 924(e): Applies to defendants with three prior felony convictions for violent crimes or serious drug offenses. Minimum term of imprisonment 15 years, maximum of life imprisonment.
- Carrying or Using a Firearm during a Federal Crime of Violence or Drug Trafficking Crime, 18 U.S.C. § 924(c): First conviction carries mandatory minimum imprisonment of 5 years (10 years for a short barrel rifle and 30 years for a machine gun) consecutive to all other sentences. Subsequent convictions carry mandatory terms of imprisonment ranging from 20 years to life, consecutive to all other sentences.

"Federal courts are needed to prosecute repeat offenders because prison terms are not stiff enough under state law."

- Dale E. Kitching,
Supervising Deputy District Attorney,
Sacramento County, California

2. *No Parole*

Perhaps the most significant advantage of the federal system is that parole is not available in the federal system for any offense committed after November 1, 1987. As a result, there is "truth in sentencing." The only possible reduction is a credit of not more than 54 days per year for satisfactory compliance with prison disciplinary regulations. In contrast, in many states, prisoners regularly serve only one-third - or even less - of their imposed term of imprisonment because of early release or parole.

"Gary Lewis Davis will spend more time in federal prison for drug and weapons violations than he will in state prison for killing a man three years ago."

- Charlotte Observer, March 5, 1992

3. *Pretrial Detention*

Another important tool in the federal system is the Bail Reform Act of 1984, which gives federal prosecutors the ability - using pretrial detention of violent offenders - to curtail witness harassment and the commission of crimes by offenders who are awaiting trial. Further, once convicted, violent criminals are detained pending sentencing and appeal, except in very limited circumstances.

"Last summer, the Atlanta Police received an emergency call reporting a man wielding a sawed-off shotgun. We responded and notified BATF. Within seven hours, a felon with multiple convictions was once again behind bars. The sawed-off shotgun, a 9mm semi-automatic and a submachine gun were recovered from his apartment. I am proud of that success and believe it is one example of the promise of the combined local federal perspective of Triggerlock. . . . Triggerlock is an essential tool in our efforts against violence in our streets."

- Eldrin Bell,
Chief of Police, Atlanta, Georgia

Taking into account the ATF finding that the average armed career criminal commits 3 crimes per week, pretrial incarceration of defendants immediately spares the community the trauma of additional victimization.

4. Availability of Prison Space

The federal system also provides the certainty of prison space availability. The federal battle against violent crime has been supported by a commitment to expend the necessary resources. In addition to assigning hundreds of federal agents and prosecutors to this mission, the federal government has undertaken an aggressive federal prison construction program to assure that convicted offenders "do the time." The budget of the Bureau of Prisons has increased 470% from FY 1981 to 1992. Since 1989 alone, federal prison capacity has increased 44%. In contrast, due to lack of facilities, many states regularly are forced to release prisoners before they have completed even the minimum period of incarceration.

5. Speedy Trial

In the federal system, both the defendant and the public are entitled to a fair and speedy trial. Very often, cases proceed to trial within 70 days of indictment. As a consequence, cases are resolved in the federal system much faster than in many states, where crowded dockets and rules of procedure prevent expeditious resolution.

"I have found a benefit working with federal authorities in that the defendant is processed with expediency. The person is arrested, tried and convicted in the federal system oftentimes before a state defendant gets to the state superior court for arraignment."

- Paul Brodeur,
Chief of Detectives,
Manchester, New Hampshire,
Police Department

C. Working in Partnership with State and Local Law Enforcement

Project Triggerlock depends on the effective cooperation of law enforcement agencies at all levels of government. State and local police officers play a particularly important role, as they serve as the initial investigators and intake point for a large number of potential Triggerlock defendants. While federal investigative agencies develop many Triggerlock targets in carrying out their law enforcement responsibilities, many Triggerlock cases originate from state or local arrests.

Implementing Triggerlock

With the announcement of Project Triggerlock in April 1991, each of the 93 United States Attorneys throughout the country established a Triggerlock Task Force, comprised of representatives from the U.S. Attorney's Offices, the offices of state and local prosecutors, and federal, state, and local investigative agencies. The federal participants include the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, the United States Marshals Service, and the Drug Enforcement Administration. A senior Assistant U.S. Attorney is designated to work with state and local counterparts to insure coordination and effective prosecution.

"Operation Triggerlock is an excellent example of practical, in the trenches, assistance federal law enforcement can provide state and local law enforcement."

- Bryant Mixon,
Sheriff,
Dale County, Alabama

Task Force functions include the sharing of information and evidence, coordination of prosecutive decisions, and joint investigative operations. In such operations, agents from one or more federal investigative agencies work hand-in-hand with local police gang units or drug units to target particular types of firearms offenders. Similarly, in some instances federal, state, and local fugitive units have combined their operations.

Illegal possession of a firearm is a misdemeanor carrying a $50 fine in Tennessee. On average, criminals who are sentenced to state prison serve one month for every year sentenced because of prison overcrowding. On the federal level, however, the response to violent crime has been significantly tougher. Federal prosecutors in the Western District of Tennessee formed a Violent Crime Task Force which also includes two local law enforcement officers who are detailed full-time to Triggerlock. Lt. Steve Crouch, a 17-year veteran of the Shelby County Sheriff's Department and Sgt. Mark Collins, Memphis Police Department, say that the payoff for the task force members is seeing people who have thwarted the state justice system for years receive substantial prison terms from a federal judge.

"It's like a bolt of lightning" when a Triggerlock defendant hears the amount of prison time he faces, Collins says. "They don't know exactly what it (Triggerlock) is, but they know they don't want it." Collins continued, "It's a great feeling when you can go back and tell the field officer 'you'll never have to see this guy again.'"

As part of its effort to meet its expanding responsibilities in the violent crime area, the Justice Department's Criminal Division created the Terrorism and Violent Crime Section in 1991. That Section was instrumental in the initial development of Project Triggerlock and in the formulation of model enforcement strategies for consideration by the newly-created task forces. As the program has continued, the Section regularly provides legal and policy assistance to United States Attorneys on Triggerlock issues.

Since enforcement strategies are tailored to the needs of particular communities, there are a wide variety of strategies in place. Examples include:

- Screening state and local arrests to identify persons who are convicted felons and who thereafter:
  - possess a firearm at the time of an arrest;
  - commit any crime by use of a firearm; or
  - commit a crime of violence or drug trafficking crime, prosecutable in federal court, by use of a firearm.
- Institutionalizing this screening process by making it a routine part of the processing of every state and local arrestee. This has been done by incorporating questions concerning the involvement of firearms and the existence of a prior felony record on fingerprint card booking forms.
- Reviewing state prison records or parole decisions to identify persons who qualify for prosecution as armed career criminals.
- Reviewing state and federal fugitive warrants to identify fugitives who qualify for prosecution as armed career criminals, if apprehended in possession of a firearm.

"Not only will [Project Triggerlock] result in the incarceration of dangerous criminals, it will also serve to build and enhance good working relations between the many diverse elements of the criminal justice system."

- Terrance W. Gainer,
Director, Illinois
State Police

Louis "Big Lou" Samuels had been arrested 40 times since 1975, including 25 arrests for violent crimes such as rape, assault with a deadly weapon, assault on a child under 12, and other violent offenses. His last conviction in 1986 for felony riot stemmed from his role as the key combatant in a shoot-out when his drug gang and a rival gang traded more than 100 shots one afternoon. The shoot-out left seven persons wounded - including a 14 - year old pregnant bystander. Samuels served only 3 1/2 years of the fifteen year sentence.

Based on this extensive criminal history, Samuels was charged with four counts of violating the Armed Career Criminal Statute, including one count based on the repetitive rape of an 18-year old at gunpoint.

Other evidence of Samuels' violence offered in court by the United States Attorney included four other rapes, an ice pick stabbing, a shooting which caused permanent paralysis, assault with a deadly weapon and numerous attempts by Samuels to threaten and intimidate victims and witnesses to his crimes.

Samuels' prosecution in federal court in the Western District of North Carolina for illegal possession of firearms resulted in a prison sentence of 45 years.

Results to Date: Triggerlock's First Year

A. Doubling the number of Firearms Prosecutions

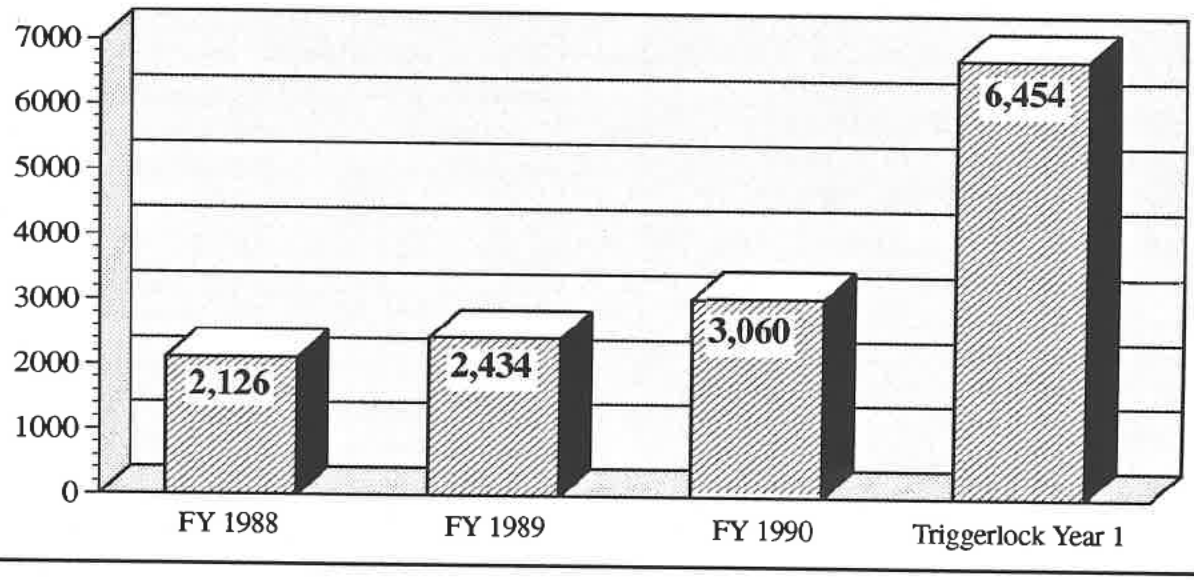
Project Triggerlock has resulted in a dramatic increase in federal firearms prosecutions. In the first 12 complete months of Project Triggerlock (May 1, 1991, to April 30, 1992), federal prosecutors initiated firearms prosecutions against 6,454 defendants.

Prosecutions initiated in Project Triggerlock's first year more than doubled the firearms prosecutions in recent years.[1] Triggerlock prosecutions account for more than one out of every ten federal prosecutions.[2]

The firearms charges against 84% of the Triggerlock defendants involved violations of one of two tough federal statutes:

- 18 U.S.C. § 922(g)—felon or fugitive in possession of a firearm; this statute also encompasses prosecutions which receive enhanced, mandatory minimum sentencing under the armed career criminal sentencing provision contained in 18 U.S.C. § 924(e).
- 18 U.S.C. § 924(c)—carrying or using a firearm in the commission of a federal crime of violence or drug trafficking crime.

Firearms Defendants Prosecuted
Prior Fiscal Years v. Triggerlock Year (May 1, 1991-April 30, 1992)



1. Sources: Statistical Reports, Executive Office for United States Attorneys (EOUSA), Department of Justice, Fiscal Years 1988-1990, Table 3;. TVCS, Criminal Division. The cited figures exclude non-firearms cases from the "weapons control" data contained in these reports and include armed bank robberies; to approximate Triggerlock cases. Statistical Reports may understate actual prosecutions in FY 88 - 90 and should be viewed as approximations.

2. In Fiscal Year 1991, federal charges were initiated against a total of 57,828 defendants. Source: Statistical Reports, EOUSA, Fiscal Year 1991.

Firearms charges against the remaining Triggerlock defendants were brought under a variety of firearms statutes, such as possession of a machine gun, or gun trafficking.

The average convicted Triggerlock felon receives a sentence of seven years with no parole. That is the equivalent of a 21 year sentence under the old federal system and many state systems. The average sentence of an armed career criminal under Project Triggerlock is 18 years with no parole.

B. Impact on Communities

Violent crime erodes the quality of life in many communities throughout the United States. As noted earlier, repeat offenders are responsible for much of the problem. Many violent recidivists and career criminals are nothing short of individual crime waves. The trauma of victimization that is spared by the incarceration of such individuals is almost incalculable. Death, injury, and loss of property are averted. A review of specific Triggerlock cases prosecuted to date reflects the long-term potential of the program.

1. Removing Chronic Offenders

Project Triggerlock protects communities by achieving long-term incarceration of habitual violent criminals. Too often, these criminals have served brief terms for heinous crimes. Triggerlock evens the scales.

- Despite a significant prior criminal history, in 1990, James Charles Minefield was sentenced in state court to only five to 10 years for a homicide which he committed while dealing crack. Minefield shot his victim in the head with a handgun. Because he had numerous other prior felony convictions, including two for robbery (one using a sawed-off shotgun) and two for aggravated assault, his possession of the pistol used in the homicide violated federal law. As a result of a federal firearms prosecution in theWestern District of Pennsylvania, Minefield will serve a prison sentence of 27 years *after* his state homicide sentence is completed.

Charles Fredrick Walker, age 42, exemplifies the need for Project Triggerlock. Walker was convicted of numerous juvenile offenses including grand theft, battery and resisting arrest. He received a probation sentence for his first adult conviction -- armed robbery. Within a year, Walker had been convicted of 12 armed robberies. After serving 8 years in prison, he was released on parole. Within 2 years of his release, Walker plead guilty to 22 armed robberies. After serving 9 years for these crimes, Walker was again paroled. Within two months into his parole, Walker had to be subdued with a taser gun because he refused to leave a woman's house, lay down an 8 inch knife and submit to arrest. Walker was paroled within months again and committed three bank robberies within four months of his release. As he fled the last bank, Walker "carjacked" a 61-year old man and shot him in the neck and shoulder. Under Project Triggerlock, Walker was convicted in state and federal courts of attempted murder, three counts of armed robbery and three counts of using a firearm during a crime of violence. Walker received a 72 year federal sentence, to run consecutive to his state sentence for attempted murder.

- At age 17, Charles Frazier was convicted of battery and sentenced to one year probation. On his 5th day of probation, Frazier committed an armed robbery. While awaiting trial, he was charged with attempted murder and aggravated battery. Frazier was sentenced to four years for these three offenses. He served 22 months and was released. In 1986, Frazier pled guilty to voluntary manslaughter and received a 13 year sentence. He served four years and was released. Within a year, Frazier, then a reputed Chicago gang "shooter", visited Mississippi and bragged to local residents about his violent exploits. Shortly thereafter, local police, responding to a call reporting gunfire, were aggressively confronted by Frazier. He was arrested for possession of a .25 caliber semi-automatic he carried in his waistband. Frazier became a Triggerlock defendant. He was convicted at trial of violating the Armed Career Criminal Act and was sentenced to 19 years with no parole.

- David Fleming Montgomery's criminal history, dating back 30 years, includes killing a bank robbery partner whom Montgomery believed had revealed information about the robbery. Montgomery shot him in the head. Montgomery was also previously convicted of two felony thefts, grand larceny, bank robbery, and escape. While incarcerated on armed robbery charges in Tennessee, Montgomery learned that Danny Bostic had provided information to law enforcement about a racially-motivated arson committed by Montgomery. Montgomery was released on bail in Tennessee, went to Bostic's house and shot him in the face, killing him and wounding his wife. Montgomery was arrested and pled guilty to using a fire to commit a civil rights violation and two counts of arson. Montgomery was convicted at federal trial in Roanoke, Virginia of obstruction of justice by killing Bostic, using a firearm to commit a crime of violence and being an armed career criminal. Montgomery was sentenced to life plus thirty-five years with no possibility of parole. After learning of this Triggerlock conviction, Bostic's widow said, "No one will ever again have to go through the terror we have been through . . . Everyone's life he's touched, he's ruined."

2. *Removing Gang Offenders*

Criminal gang activity often centers on firearms and drugs, with violence a routine method for enforcing control, settling disputes, and terrorizing the public. Federal firearms statutes are proving to be a particularly valuable tool in gang prosecutions.

- In the Northern District of Illinois, 11 defendants identified as members or associates of a notorious Chicago street gang, the Vice Lords, have been convicted of federal violations. Charges against individual gang members include firearms, narcotics, money laundering, and criminal tax violations. Weapons used by the organization include revolvers, semi-automatic pistols, and sawed-off shotguns. Twenty-seven other gang members await trial.

- Dunning R. Wells, an "enforcer" for the Renegades motorcycle club in North Ft. Myers, Florida, received a sentence of 42 years on drug and firearms violations that included use of a firearm during the commission of a federal drug trafficking offense.

- James Thomas, a member of a street gang, was convicted in the Western District of Oklahoma and received a sentence of 24 years imprisonment for his involvement in the gang's trafficking in narcotics and use of firearms. Thomas was apprehended following a gun battle with police that erupted when officers attempted to serve a search warrant on the gang's drug distribution center.

"[Project Triggerlock] is going to work out real well. The enhancements make it more advantageous to prosecute federally. Section 924(c) helps our gang unit immensely."

- Sgt. Bill Agnew,
Omaha, Nebraska,
Police Department Gang Unit

3. *Removing Drug Dealers*

Drug dealing and the violence associated with it also pose a major problem to many communities in this country. The stringent sentencing provisions of federal firearms and narcotics statutes provide a valuable tool for the long-term incapacitation of major drug dealers.

- In the Northern District of Florida, Michael Prikakis was sentenced to 46 years on cocaine charges and three counts of using firearms during federal drug trafficking offenses. He carried a machine gun and a 9 mm semi-automatic pistol in the course of his drug trafficking.
- In the District of Arizona, Donald L. Simpson received a sentence of life imprisonment on firearms and narcotics charges. He had been involved in smuggling tons of cocaine into the United States and supporting that activity with numerous firearms and explosives. This case is of special note because Simpson had no prior convictions. It reflects the fact that federal law is designed to deal severely not only with recidivists, but also with first offenders whose conduct is particularly egregious.

4. *Gun Running*

A significant number of Triggerlock cases involve seizures of large quantities of firearms. Some of these cases involve gun running, including the use of "straw purchasers" to buy quantities of weapons for resale on the street to drug dealers or other violent criminals. Other cases involve the use of firearms to establish "fortresses" to protect unlawful businesses, usually major narcotics operations.

For example, at the time Gardner Earnest Flockhart was arrested on cocaine trafficking charges, he was found to be in possession of 125 firearms, including shotguns, rifles, pistols, and machine guns. The weapons were seized, and after a trial in the Central District of California, Flockhart received a sentence of 17 years imprisonment. A search warrant in the Western District of Texas on the premises of drug dealer David Gregory Surasky yielded, in addition to drugs and cash, 29 long guns, 39 handguns, and three machine guns. The weapons were seized and Surasky has been sentenced to 15 years imprisonment.

"[Triggerlock] has proven to be one of the most effective tools law enforcement has at its disposal for the removal of guns from the city streets."

- Leroy Martin, Superintendent,
Chicago, Illinois,
Police Department

5. *Influencing Future Behavior*

It is, of course, too soon to assess either the deterrent effect or the overall crime reduction achieved by Project Triggerlock. It is clear, however, that an increase in incapacitation can only increase the level of deterrence and reduce the level of criminal activity.

"[I] believe that the Triggerlock program will, over time, have a dramatic impact on crime in this and other districts."

- John H. Harrell,
Chief of Police,
Andalusia, Alabama

Many criminals have ceased to fear the impact of the criminal justice system: Experience has taught them that even if apprehended, they will be back on the streets that same day as a result of insufficiently tough bail laws; if convicted, they will be able to avoid incarceration through lax sentencing provisions; and if incarcerated, they will soon gain release through parole or other early release procedures.

This frequent lack of concern by criminals about the ramifications of arrest and prosecution is concisely reflected in a recent statement made to an undercover police officer in the Northern District of Georgia by Ricky Junior Smith. Smith told the officer that he was not worried about being "set-up" because he "never does time" and "never will."

"[A]s these laws become known to the drug dealers and career criminals, we will find fewer of them with weapons in their possession during drug deals, which, in turn, will make dealing with them safer for us."

- Lt. L. H. Brown, Assistant Commander,
Narcotics and Intelligence Bureau,
Montgomery, Alabama, Police Department

Project Triggerlock is designed to end this perception by putting violent criminals behind bars for long periods of time. The program permits the law enforcement system to have the last word in cases of offenders such as Ricky Junior Smith. He was recently apprehended and convicted as an armed career criminal; Smith was sentenced to a 15 year mandatory period of incarceration.

"The Armed Career Criminal statute and Project Triggerlock have added an unprecedented dimension to enforcement operations in Pennsylvania. In some cases, drug dealers have literally been disarmed 'before the fact.' As word spreads that the Federal Government is prosecuting armed drug traffickers who are, upon conviction, receiving penalties of mandatory minimum five-year consecutive sentences, some drug violators are avoiding the possession or use of guns."

- Colonel Glenn A. Walp,
Commissioner,
Pennsylvania State Police

Role of Federal, State, and Local Law Enforcement Agencies

A. State and Local Agencies

The goal of Triggerlock is to focus investigative and prosecutive resources on the worst offenders to maximize law enforcement efforts. Some cases are referred to the states for prosecution and some to the federal system for prosecution. Federal law is particularly suited to prosecuting the worst felons, drug dealers and other violent criminals who use firearms.

Pursuant to the Triggerlock Task Force concept, if a defendant is arrested while in possession of a firearm - or if he is known to have been involved in a crime utilizing a firearm - the arresting agency should evaluate his potential as a Triggerlock target. This involves, among other things, a check of the defendant's criminal history to determine whether he has a prior felony conviction. For example, Melvin Arthur had been convicted of two shootings and two stabbings, but had served only four years for these four crimes. When he was found with a .32 caliber pistol, his case was referred to the United States Attorney in the Eastern District of Wisconsin. District Court Judge J. P. Stadtmueller called the case a "bellweather" of the type of case warranting federal involvement and sentenced Arthur to over 17 years.

As the Triggerlock program progresses, a growing number of state and local law enforcement organizations are screening their arrests for potential Triggerlock referrals. The involvement of local law enforcement agencies in Triggerlock will likely continue to increase as word spreads of the benefits the program can provide to local communities. State and local law enforcement officials who have actively participated in Triggerlock are carrying the message to their colleagues through their praise for the program.

"Over the past three years they [federal law enforcement] have seemed to be more willing to cooperate with the little people like us. Several years ago it was kind of unheard of for us to even think about going to federal court. Now they are constantly offering to help."

- Sgt. Daniel Hawley,
Gaston County, North Carolina
Police Department

B. Federal Law Enforcement Agencies

1. Bureau of Alcohol, Tobacco and Firearms

ATF has traditionally played the lead role in investigating federal firearms violations. In 1986, the agency instituted a program called Achilles in a number of jurisdictions. That program was designed to identify potential targets for federal firearms prosecution. It served as an important precursor to Project Triggerlock. Triggerlock builds on and expands the ideas of Achilles and applies them nationwide. Since 1990, ATF has implemented 20 Achilles task forces located in cities with high violent crime rates. These task forces are

made up of ATF agents and state and local law enforcement officers. Each task force works only in a specific portion of the city, generally limited to one or two police precincts, targeting armed career criminals, armed drug traffickers, and violent gangs. Under Project Triggerlock, ATF is a key agency developing federal firearms cases. Further, ATF provides critical assistance to other agencies with the firearms aspects of their cases.

In August 1991, ATF launched "Operation Achilles Heel," a national roundup of firearms violators. This Triggerlock roundup included gang members, armed career criminals, armed narcotics traffickers, and a violator of the gun-free school zone statute. A total of 504 defendants were arrested in 83 federal judicial districts during the two day operation. Over 50% of those defendants had prior felony convictions and over 25% were gang members or associates.

2. *Federal Bureau of Investigation*

The FBI is supporting Project Triggerlock with a comprehensive violent crime initiative named "Safe Streets." The "Safe Streets" initiative coordinates a variety of existing FBI programs to attack street violence, gang violence, and drug-related violence. As with Triggerlock, the Safe Streets strategy utilizes a task force concept. It therefore integrates well with Triggerlock.

The FBI currently has 48 Safe Streets Task Forces in place, 40 of which were initiated in 1992, and more are in the planning stage. As part of these operations, the FBI and its associated state and local law enforcement agencies remain vigilant for potential candidates for Triggerlock prosecution.

Another aspect of the FBI's Safe Streets programs which interrelates closely with Project Triggerlock is its fugitive apprehension program.

ATF - Operation Achilles Heel Top 10 Offenders

Offender	District	Number of Prior Felony Convictions	Charges	Sentence (Yrs.)
A	Puerto Rico	37	18 U.S.C. §§924(e)	Pending
B	E.D. Tennessee	25	18 U.S.C. §§924(c), 922(a)(6)	16 Yrs./8 Mos.
C	E.D. Tennessee	21	18 U.S.C. §924(e), 21 U.S.C. §841(a)(1)	27 Yrs./6 Mos.
D	E.D. North Carolina	19	18 U.S.C. §§922(g)(1), 922(j), 924(e)	19 Yrs./7 Mos.
E	E.D. North Carolina	18	18 U.S.C. §924(c)	10 Yrs.
F	W.D. Tennessee	18	18 U.S.C. §§922(g)(1), 924(e)	Pending
G	North Dakota	16	18 U.S.C. §§922(g)(1), 924(e)	15 Yrs.
H	W.D. Pennsylvania	19	18 U.S.C. §924(e)	15 Yrs.
I	S.D. Florida	12	18 U.S.C. §§922(g), 924(e)	25 Yrs.
J	N.D. Ohio	12	18 U.S.C. §922(g)(1)	5 Yrs.

The Bureau's jurisdiction under the federal Unlawful Flight to Avoid Prosecution statute places it in a position to arrest a large number of interstate fugitives who have fled state prosecution. Any such fugitive arrested in possession of a firearm is a potential Triggerlock target. Further, in some cases the criminal violation from which the individual fled may itself provide a basis for a Triggerlock prosecution.

The FBI has historically incorporated firearms violations into its sophisticated organized crime investigations. The unique experience gained during these traditional organized crime investigations has translated effectively into investigations of criminal street gangs, including armed street gang members. The Bureau has reallocated its resources to meet the rise in street gang violence and criminal activity.

3. U.S. Marshals Service

Like the FBI, the U.S. Marshals Service is significantly involved in the apprehension of fugitives. In an effort to enhance its contribution to the federal attack on violent crime, the Marshals Service recently initiated Operation Gunsmoke, a program designed to increase its level of fugitive apprehensions.

More than 70 local, state, and federal law enforcement agencies joined the U.S. Marshals in cities across the country including ATF, FBI and DEA. During the 68 days of the Operation, over 3,300 fugitives were apprehended **and detained** awaiting trial in federal and state court. Three hundred and sixty-five defendants were armed at the time of capture. These armed fugitives had

an average of four prior convictions for violent offenses. Triggerlock cases are pending against the worst of these fugitives.

4. *Drug Enforcement Administration*

The Drug Enforcement Administration develops Triggerlock prosecutions as a byproduct of its drug trafficking investigations. In view of the documented frequency with which narcotics traffickers utilize firearms, DEA is in a position to identify a significant number of potential Triggerlock targets.

Additionally, DEA has engaged in local task force projects which focus on the violent activity of narcotics traffickers. For instance, prior to the initiation of Project Triggerlock, DEA joined with state and local law enforcement organizations in Philadelphia to undertake a Violent Traffickers Project (VTP). That program focuses on highly-organized drug gangs. Since the inception of Project Triggerlock, VTP has referred numerous firearms violations for Triggerlock prosecution.

Future Directions

Project Triggerlock has already demonstrated the effectiveness of the federal-state-local partnership in combating violent crime. The challenge now is to augment its achievements. Several areas are readily apparent.

First, current federal firearms laws must be strengthened with two provisions modeled after the 15 year mandatory minimum sentence in the Armed Career Criminal Act. One would mandate a five-year minimum prison sentence for a one-time violent felon who possesses a firearm. The other would mandate a ten-year mandatory minimum sentence for felons with two violent felony convictions who are in possession of a firearm. Possession of a firearm by a felon is already illegal, but the penalty typically imposed is less than these proposed mandatory minimums.

Second, legal loopholes that stymie some Triggerlock prosecutions under the Armed Career Criminal Act and the felon in possession statute must be closed. Under current federal and state laws, prosecutors and federal courts are barred in some cases from fully considering the prior criminal records of armed felons for these core Triggerlock statutes. As a result, some armed felons with three or more serious felony convictions cannot be prosecuted as armed career criminals. The Department of Justice will continue to ask Congress to close these loopholes so that all armed felons with long criminal records can be sentenced under the Act's 15 year mandatory minimum for possessing firearms.

Third, the Justice Department will also expand our own efforts under Project Triggerlock. Building on the success of Operation Gunsmoke and the Safe Streets initiative, we will step up efforts to apprehend armed fugitives. Federal law covers both fugitives from the federal criminal justice system and also those who flee state systems and cross state lines. Section 922(g)(2), which provides a penalty of up to ten years imprisonment for fugitives in possession, is being applied to these fugitives who are armed. These efforts must continue, as there are thousands of fugitives - many of whom are armed and pose a serious threat to public safety.

Likewise, section 922(g)(5) applies to illegal aliens who possess firearms. The Immigration and Naturalization Service will assist in identifying suitable cases for prosecution.

Fourth, continuing the federal commitment to prisons, prosecutors, and investigators is critical to make and keep our communities safer. Project Triggerlock is by design a joint effort, requiring the support of state and local law enforcement officers and prosecutors, federal agents, and U.S. Attorneys. Increased cooperation and added resources on all levels of law enforcement can only strengthen the fight against violent crime.

Finally, but most importantly, the states need to enhance their commitment to fight violent crime through legislative changes. The hard work of local law enforcement officials will not be fully effective until state legislators act to give them the proper tools to combat crime. This means implementation of bail reform, tightening up of the parole system, longer and mandatory prison terms for violent offenders and increased prison capacity. Where federal court decrees cap state prison space needlessly and worsen the "revolving door" problem, the Department of Justice has recently adopted a flexible approach to modifying such decrees.

There is no greater responsibility of government than the protection of its citizens. The growing federal response to violent crime demonstrates our commitment to fulfilling this responsibility. With the states as full partners, we can succeed in building an even better, safer America.

Appendix

Table 1 - Cumulative Monthly Total of Defendants Charged
May 1, 1991 - April 30, 1992

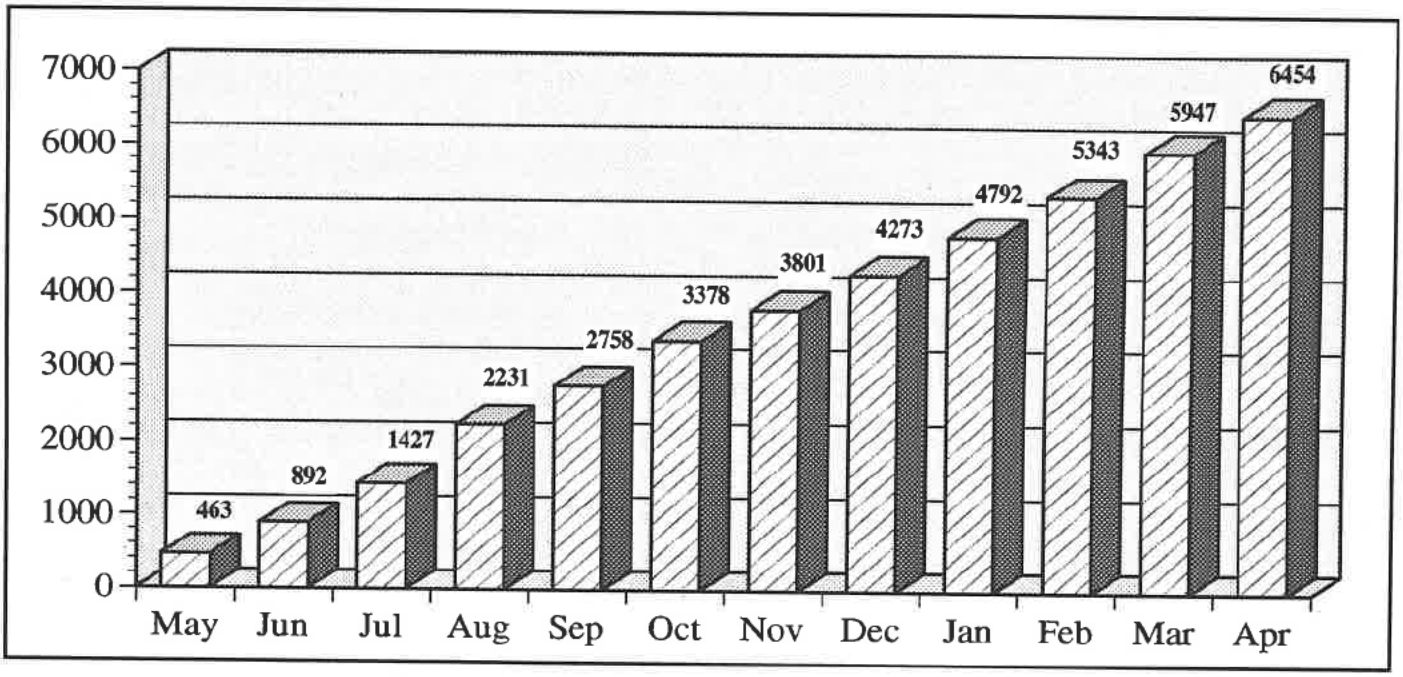


Table 2 - Prosecution Under Project Triggerlock

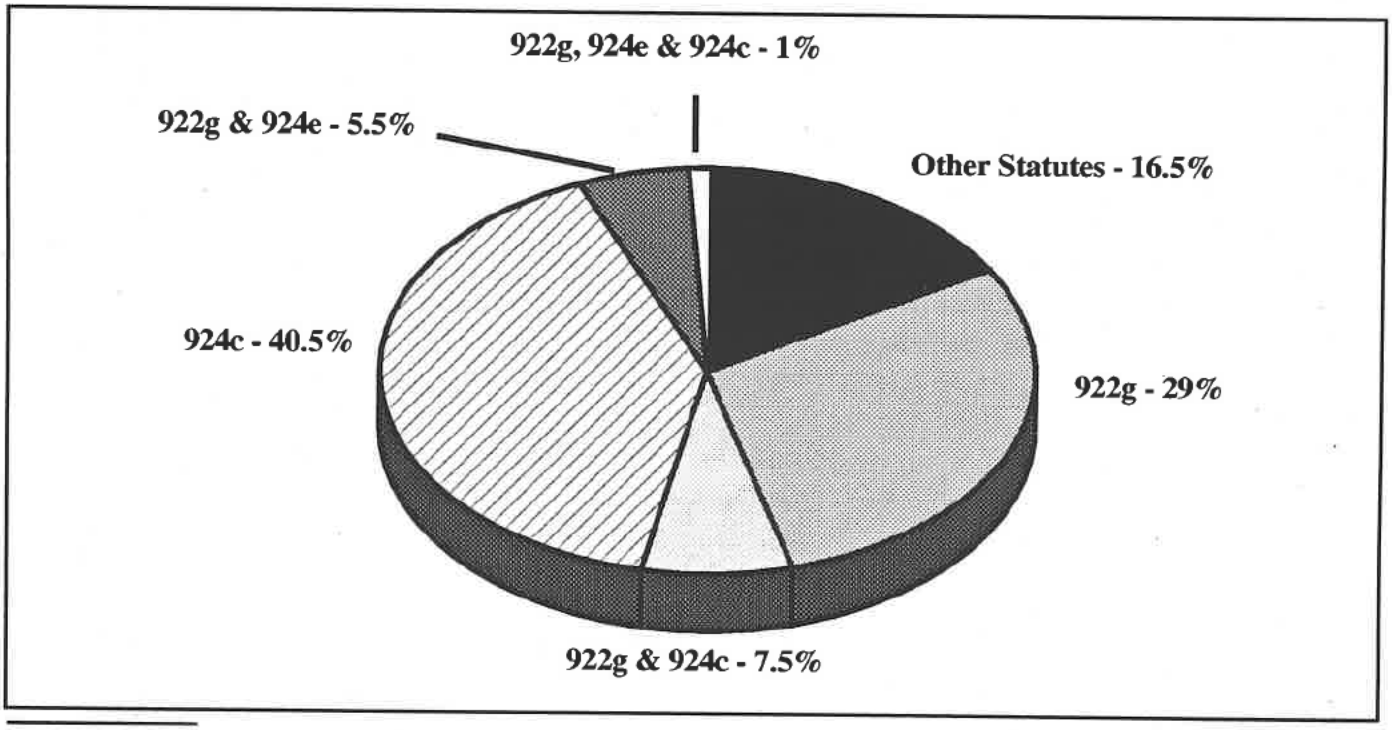


Table 3 - Triggerlock Prosecutions by District

April 10, 1991 - April 30, 1992*

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Alabama, M	31	38	4	1	0	0	74
Alabama, N	14	34	7	0	1	9	65
Alabama, S	33	20	1	1	2	6	63
Alaska	8	6	4	1	0	0	19
Arizona	51	73	9	0	0	51	184
Arkansas, E	14	38	2	1	0	8	63
Arkansas, W	4	6	1	0	0	1	12
California, E	16	16	6	7	0	4	49
California, N	23	11	8	3	0	5	50
California, C	44	101	16	2	0	31	194
California, S	16	37	5	10	3	11	82
Colorado	18	18	2	0	0	14	52
Connecticut	32	4	1	5	0	9	51
Delaware	14	2	1	1	0	1	19
District of Columbia	24	87	26	0	0	27	164
Florida, M	26	40	9	13	2	11	101
Florida, N	23	28	6	9	1	6	73
Florida, S	28	10	7	24	2	14	85
Georgia, M	22	24	0	22	1	6	75
Georgia, N	19	46	5	6	2	16	94
Georgia, S	8	34	6	0	2	4	54
Guam	9	0	0	1	0	1	11
Hawaii	14	5	0	3	0	5	27
Idaho	1	22	2	1	1	3	30
Illinois, C	31	19	5	11	0	5	71

* Project Triggerlock began on April 10, 1991.

Table 3 - Triggerlock Prosecutions (con't)

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Illinois, N	39	55	9	2	0	20	125
Illinois, S	19	22	4	3	0	5	53
Indiana, N	12	9	0	2	0	11	34
Indiana, S	13	23	4	4	0	0	44
Iowa, N	10	3	1	1	0	2	17
Iowa, S	4	5	0	1	0	1	11
Kansas	20	20	3	0	1	14	58
Kentucky, E	19	36	9	4	0	10	78
Kentucky, W	19	14	12	1	2	22	70
Louisiana, E.	11	23	8	3	0	8	53
Louisiana, M	4	0	0	0	0	2	6
Louisiana, W	7	23	8	3	0	6	47
Maine	15	4	2	6	1	20	48
Maryland	35	27	10	1	0	16	89
Massachusetts	32	7	4	14	2	9	70
Michigan, E	56	50	25	7	0	37	175
Michigan, W	3	15	2	0	0	0	20
Minnesota	11	20	1	5	0	6	43
Mississippi, N	10	14	10	0	0	12	46
Mississippi, S	19	32	8	2	0	3	64
Missouri, E	32	16	9	4	0	6	67
Missouri, W	10	25	6	6	1	5	53
Montana	18	4	2	0	0	3	27
Nebraska	7	8	2	1	1	2	21
Nevada	19	54	0	3	0	11	87

Table 3 - Triggerlock Prosecutions (con't)

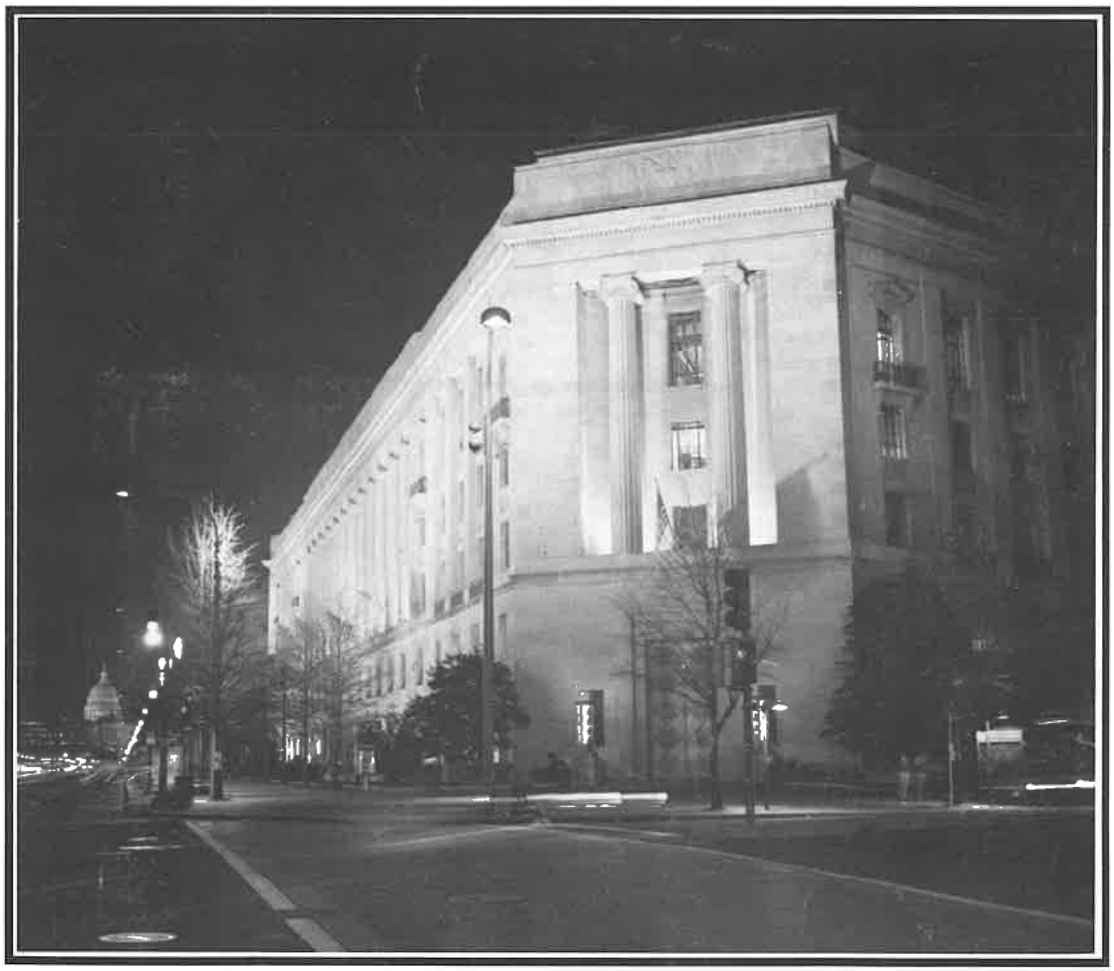
District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
New Hampshire	10	0	0	2	3	6	21
New Jersey	19	31	0	1	1	13	65
New Mexico	35	42	7	5	0	7	96
New York, E	16	21	3	2	0	14	56
New York, N	7	13	0	0	0	8	28
New York, S	16	81	14	2	1	34	148
New York, W	6	19	0	0	0	5	30
North Carolina, E	16	33	4	10	1	5	69
North Carolina, M	8	87	15	0	1	10	121
North Carolina, W	29	139	17	5	2	6	198
North Dakota	12	1	2	2	0	2	19
Ohio, N	34	42	5	7	0	6	94
Ohio, S	15	30	3	2	0	17	67
Oklahoma, E	7	9	5	0	0	2	23
Oklahoma, N	30	15	2	1	0	9	57
Oklahoma, W	25	11	5	7	1	13	62
Oregon	27	15	4	10	0	30	86
Pennsylvania, E	54	60	18	4	0	14	150
Pennsylvania, M	10	14	6	7	0	7	44
Pennsylvania, W	13	14	1	3	1	5	37
Puerto Rico	8	66	1	2	0	9	86
Rhode Island	12	8	3	1	0	11	35
South Carolina	30	49	6	1	1	13	100
South Dakota	15	9	2	0	0	10	36
Tennessee, E	33	29	25	8	0	14	109

Table 3 - Triggerlock Prosecutions (con't)

District	Only 922g	Only 924c	922g & 924c	924e & 922g	924 e+c & 922g	Other	District Total
Tennessee, M	11	21	2	2	0	7	43
Tennessee, W	33	83	10	10	0	7	143
Texas, E	16	44	9	7	2	4	82
Texas, N	66	89	22	15	2	16	210
Texas, S	50	72	15	8	2	47	194
Texas, W	124	84	5	12	0	46	271
Utah	15	19	1	1	0	20	56
Vermont	10	1	0	6	0	2	20
Virgin Islands	4	8	0	1	0	6	19
Virginia, E	44	49	7	2	0	127	229
Virginia, W	32	20	8	2	0	24	86
Washington, E	45	73	6	11	1	20	156
Washington, W	13	35	2	5	0	5	60
W. Virginia, N	19	4	0	1	0	7	31
W. Virginia, S	17	20	1	4	0	13	55
Wisconsin, E	13	22	3	4	0	3	45
Wisconsin, W	2	4	2	0	0	1	9
Wyoming	7	13	0	3	0	7	30
North Mariana Island	1	0	0	0	0	0	1
Grand Total	**1978**	**2727**	**514**	**371**	**44**	**1111**	**6745**

U.S. Department of Justice
Office of the Attorney General

1992 Annual Report of The Attorney General of the United States



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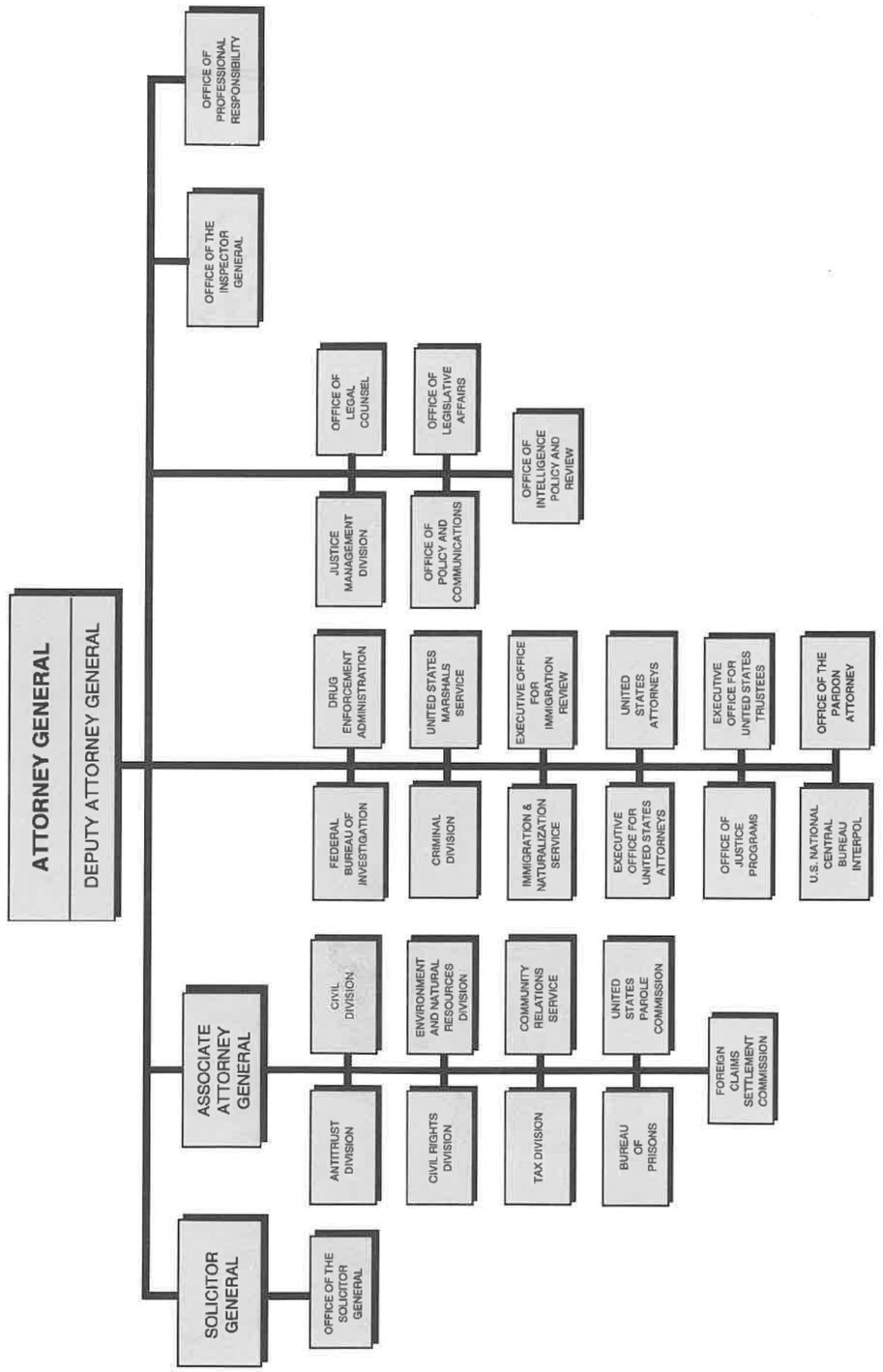

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Foreword

To the Senate and the House of Representatives of the United States of America in Congress Assembled:

This Annual Report highlights the many varied activities of the Department of Justice during fiscal year 1992. During the year, the Department's dedicated employees worked hard to meet the expanding demands of enforcing federal laws and ensuring the equal administration of justice.

Priorities in 1992 included combatting the growing menace of violent gangs and violent crime, dismantling large-scale drug trafficking organizations, addressing the serious problem of fraud and white collar crime, and ferreting out discrimination under our civil rights laws. In addition, the Department faced new challenges in the areas of immigration and asylum and the expanding population in our nation's prisons.

Recognizing that law enforcement requires the cooperation from other agencies, the Department successfully expanded programs with a multi-agency strategy. Through the Department's committed employees, we continued to be creative in our approach for effective law enforcement, crime prevention, crime detection, and prosecution and rehabilitation of offenders.

I am particularly proud of the Department's hard working, dedicated staff who serve our nation in an effort to protect our citizens and ensure equal protection under the law.

Respectfully submitted,

William P. Barr
Attorney General

Chapter I: Attacking Violent Crime

The Department dramatically stepped up its efforts to combat violent crime in 1992. [1] Initiatives such as Operation Weed and Seed and Project Triggerlock were expanded with significant and effective outcomes. The Department also launched a major new initiative against street gangs.

In a joint effort with state and local law enforcement agencies, the Department developed the Violent Crime Report of 1992 containing 24 specific recommendations for states to reform and strengthen their criminal justice systems to be more effective in reducing violent crime. Some recommendations included:

- protecting the community from dangerous defendants
- establishing more effective deterrence and punishment for both juvenile and adult offenders
- implementing efficient trial, appeal, and collateral attack procedures
- respecting the victim in the criminal justice process

The report emphasized the need for strengthened coordination between Federal, state and local law enforcement agencies in identifying, targeting, and incarcerating chronic, violent offenders.

Operation Weed and Seed

Operation Weed and Seed is a comprehensive, multi-agency, community-based approach to combatting violent crime, drug use, and gang activity in high crime neighborhoods. The goal is to "weed out" crime from defined, targeted neighborhoods and then to "seed" the targeted neighborhoods with a wide range of crime and drug prevention programs, human service agency resources, and private sector investment. In 1992, the Department expanded the pilot phase of this program to 20 demonstration sites, including a $19 million Weed and Seed operation designed to help resuscitate blighted and burned Los Angeles communities.

The United States Attorneys facilitate and coordinate implementation of Operation Weed and Seed. The Executive Office for Weed and Seed, in the Office of the Deputy Attorney General, functions as a clearinghouse and coordinates policy and national operational issues relating to Operation Weed and Seed. Interagency coordination on the Federal level is accomplished by an Interagency Council, whose members work to identify and target existing and new resources to Weed and Seed communities. The Interagency Weed and Seed Council is comprised of representatives from the Departments of Justice, Labor, Housing and Urban Development, Agriculture, Transportation, Health and Human Services, Education, and Treasury; the Office of National Drug Control Policy; the Small Business Administration, and others.

The Office of Justice Programs (OJP) and its Bureaus contributed significant funding and programmatic support to Operation Weed and Seed through its grant programs. In addition, the Bureau of Justice Assistance (BJA) entered into an interagency agreement with the Departments of Education and Housing and Urban Development to jointly establish "Safe Havens"—multi-service educational centers in high-crime neighborhoods in 20 Weed and Seed pilot demonstration projects throughout the Nation. Safe Haven is a primary "seeding" component to organize and deliver an array of educational and other youth and adult-oriented human services in an environment that is free from drugs and crime. Safe Haven programs operate before, during, and after-hours in neighborhood schools, community centers, or high-crime areas. The programs offer prevention, treatment, educational, recreational, cultural, and other activities for young

[1] This report covers Fiscal Year (FY) 1992, which began on October 1, 1991 and ended on September 30, 1992. All references to years indicate fiscal years unless otherwise noted.

people who are at high-risk of becoming involved in drug and alcohol abuse and delinquent activity.

OJP's National Institute of Justice (NIJ) is charged with evaluating the Weed and Seed program. NIJ will track the implementation process in all the participating jurisdictions and subsequently conduct an intensive assessment of the impact of the program in three to five of the demonstration sites.

Project Triggerlock

1992 marked the first full year of Project Triggerlock. The program emphasizes the use of Federal firearms statutes against violent repeat offenders whose criminal behavior has not been deterred by state or local prosecutions. Task forces were established in all 94 U.S. Attorneys' Offices to coordinate the efforts of Federal, state, and local law enforcement agencies to use Federal firearms laws to assure lengthy incarceration of armed criminals. Under the auspices of Project Triggerlock, 9,253 defendants were charged with Federal firearms violations from April 10, 1991 through September 30, 1992. The average sentence received by an armed career criminal under Project Triggerlock is 18 years without parole.

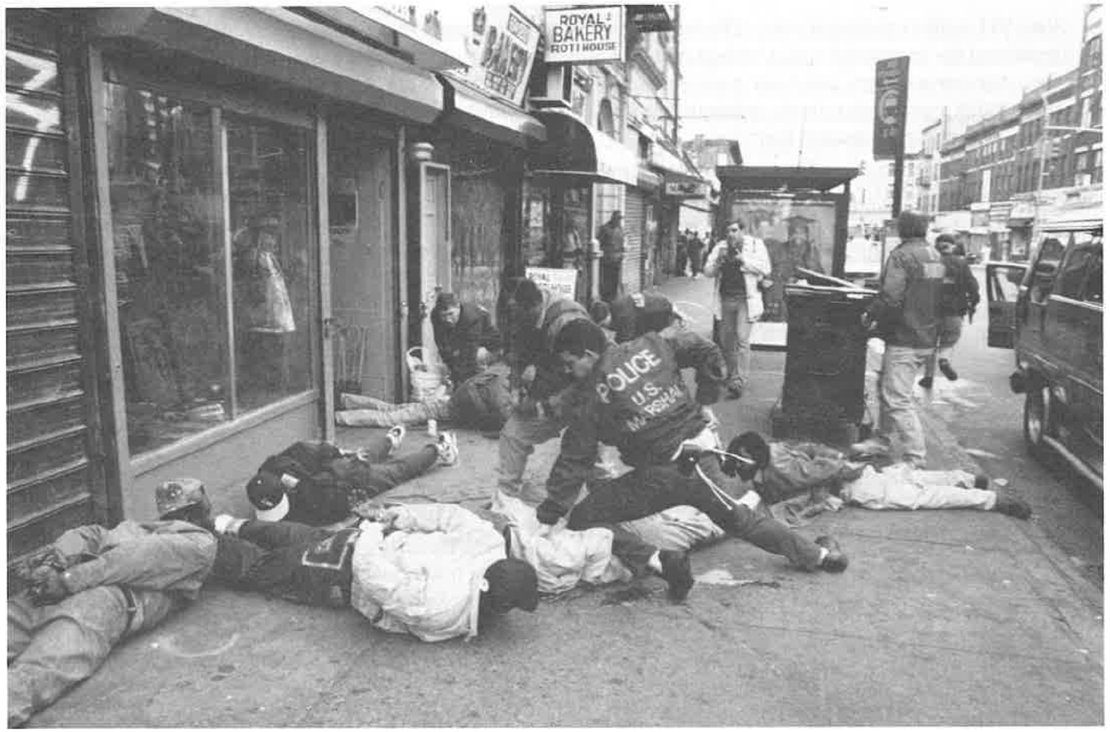
David Fleming Montgomery exemplifies the need for Project Triggerlock. Montgomery's 30-year criminal history includes the murder of his bank robbery partner whom Montgomery believed had revealed information about the robbery, two felony thefts, grand larceny, bank robbery, and escape. Montgomery was convicted in a Federal trial in Roanoke, Virginia, of obstruction of justice by killing his partner, using a firearm to commit a crime of violence, and being an armed career criminal; he was sentenced to life plus 35 years with no possibility of parole.

In an effort to boost the number of prosecutions under the stringent Project Triggerlock standards, the Attorney General directed the United States Marshals Service to conduct a special fugitive apprehension operation in 1992. "Operation Gunsmoke" teamed Marshals Service fugitive investigators with dozens of state and local law enforcement officers nationwide to locate and apprehend the most dangerous and violent fugitives on the streets. The operation focused on every state in the country and targeted fugitives with violent criminal histories who were believed to be carrying firearms. Of the more than 3,300 fugitives arrested, all were considered a violent threat to the public, 224 were wanted for homicide and 365 were armed at the time of their arrest. Nearly $2 million in illicit assets were seized during this operation.

Street Gangs

On January 9, 1992, the Attorney General announced an anti-gang initiative that significantly expanded Federal resources to combat gangs. Three hundred Federal Bureau of Investigation (FBI) agents were reassigned from counterintelligence work to assist state and local law enforcement efforts and to augment the 1,600 FBI agents already assigned to violent crime. By the end of 1992, 71 task forces of FBI, other Federal, state, and local law enforcement officers were operating in 45 cities to attack violent crime. Fifty new FBI agents have joined the anti-gang investigative teams in California as announced in the summer of 1992. Since their inception in January 1992, these task forces have effected the arrest of 10,777 felons.

The Immigration and Naturalization Service (INS) was also involved in anti-gang activity, and assigned 150 special agents in the spring of 1992 to special Violent Gang Task Forces in cities such as New York City, Los Angeles, Miami, Newark, and Chicago. The task forces focused on identifying, apprehending, and deporting aliens involved in crimes of violence. By the end of July, 25 major investigations had resulted in the arrest of 329 gang members, the seizure of more than $600,000 in drugs, and the prosecution of 37 defendants.



Operation Gunsmoke investigators in New York made a lightning strike on a fictitious health and clothing store in Brooklyn, New York. U.S. Marshals arrested 18 people for selling illegal drugs and firearms. After searching the store, marshals seized 23 pounds of marijuana worth $27,000, more than $6,000 cash, and 11 guns including a loaded AK-47 assault rifle and 60 rounds of ammunition. Source: United States Marshals Service

Both the Criminal Division and U.S. Attorneys' Offices were successful in prosecuting significant cases targeting gangs:

- Seven members of the Vietnamese Born To Kill gang were convicted of racketeering and related charges including three murders, an attempted murder and numerous armed robberies. David Thai, the leader of the Born To Kill gang in New York City, also was convicted of conspiracy to assault and murder in aid of racketeering, and sentenced to life in prison.
- Chen I. Chung and eight others were convicted on Racketeer Influence and Corrupt Organizations (RICO) charges for conducting the affairs of a violent Chinese gang called the "Green Dragons" through a pattern of crimes including murder, kidnapping, armed robbery, extortion, illegal gambling and bribery. Chung and six other defendants received multiple mandatory life sentences.
- In the Eastern District of Pennsylvania, three leaders of the Junior Black Mafia were convicted of Federal drug charges and agreed to return more

than $12 million in drug profits. The indictment portrayed the organization as a violent group of men who carried semi-automatic weapons and wore bulletproof vests or body armor, using violence and murder to control their turf.

During 1992, the National Center for the Analysis of Violent Crime received more than 2,500 cases, including requests from Federal, state, and local law enforcement agencies for operational support, as well as those cases meeting the criteria for entry into the Violent Criminal Apprehension Program computer database. The Center, through its Special Operations and Research Unit, provided training in Crisis Management, Crisis Negotiation, and Special Weapons and Tactics (SWAT) to 1,406 FBI Agents and 3,421 other law enforcement personnel. In the area of negotiations, the staff of the FBI Academy had provided assistance in several domestic hostage/kidnapping situations as well as being deployed overseas on two separate kidnapping cases.

The FBI Laboratory's DRUGFIRE system is a forensic information clearinghouse that supports investigations of gangs and drug-related activities. The Laboratory's goal is to increase the solution rate of shooting cases by associating the firearms evidence in shooting incidents with each other and with firearms recovered in other investigations. The prototype system serves the Washington/Baltimore metropolitan area with six forensic laboratories. In two months, the prototype system produced outstanding results, associating eight shootings from different jurisdictions. Traditional firearms examination techniques would not have associated these shootings.

The Office of Justice Programs continued support of gang prevention and intervention programs in 1992. BJA expanded its successful Urban Street Gang Drug Trafficking Enforcement Demonstration Project to two additional sites in 1992, bringing the total to seven. The strategy includes confidential informers to identify hard-core gang members and drug traffickers; videotaped street "buys"; and arrest sweeps involving local, state, and Federal law enforcement officials.

The NIJ focused significant research efforts on the problem of gang violence to provide criminal justice officials with practical information they can use to better address the problems gang members pose for the criminal justice community. Projects underway during 1992 included a national assessment of the nature and scope of gang activity; an assessment of law enforcement gang suppression strategies; and an examination of the impact of gang-related crime and gang members on the criminal justice system. Other NIJ projects are examining the problems of Asian gang violence in New York City, gang migration, and the involvement of street gangs in drug sales.

Organized Crime

The Department continued its aggressive attack against traditional organized crime groups in 1992. The attack on organized crime is also an essential part of the Department's overall fight against violent crime.

As a result of the Department's efforts, numerous La Cosa Nostra (LCN) families now lie in disarray while others have been weakened by Federal prosecutions. The Department's most significant LCN prosecution in 1992 was against John Gotti, boss of the Gambino LCN family and Gotti's co-defendant and consigliere, Frank Locascio. Gotti and Locascio were convicted of racketeering charges including murder, illegal gambling operations, loansharking and bribery, and obstruction of justice. Gotti was convicted of all 13 counts charged and Locascio was convicted of 12 counts and acquitted of one gambling charge. The defendants received sentences of life in prison without parole, crippling the management and influence of the Gambino Family.

Other important organized crime prosecutions in 1992 included:

- In a case prosecuted in the Western District of Missouri, the head of Kansas City's LCN organization, Anthony Thomas "Tony Ripe" Civella, 62, was sentenced to four years and six months in prison and fined $7,500 for eight felony convictions related to a scheme which diverted at least $2.5 million worth of prescription drugs. In addition to the financial loss to the drug manufacturers, the scheme posed serious health and safety risks to the public.

- Raymond J. Patriarca, boss of the Patriarca LCN family of New England, was sentenced to 97 months in prison, a $50,000 fine, and payment of all incarceration and supervised release costs, after pleading guilty to racketeering charges including murder, kidnapping, narcotics trafficking, and obstruction of justice. Five other members of the Patriarca family pled guilty to similar charges and received sentences ranging from 13 to 22 years of imprisonment.

- Vittorio Amuso, boss of the Lucchese family, was convicted of 54 counts including conducting the affairs of the Lucchese LCN family through a pattern of racketeering activity that included labor payoffs and extortions involving the window-installation industry and Ironworkers Local 580, as well as nine murders, three attempted murders, and 11 murder conspiracies.

- Victor J. Orena, acting boss of the Colombo LCN family, and Pasquale Amato, a captain in the Colombo family, were indicted for the murder of former Colombo family soldier Thomas C. Ocera. Orena and Amato were charged with conspiring to murder and murdering Ocera to maintain and enhance their positions in the Colombo LCN family.

During 1992, the Tax Division, the U.S. Attorneys, the FBI and the Internal Revenue Service continued the battle against criminals who have attempted to evade billions of dollars of motor fuel excise taxes. Evidence produced during recent prosecutions tied four of the five New York organized crime families (the Colombo, Luchese, Genovese and Gambino families), and several important members of Russian organized crime to these tax violations. Over the last three years, 45 convictions involving motor fuel excise tax evasion were obtained, including, most recently, those of Joseph Galizia, a soldier in the Genovese family, and Marat Balagula, the reputed head of Russian organized crime in the New York metropolitan area. More than 100 major investigations are pending in more than 20 cities nationwide.

Assistance to Victims and Witnesses

Victim-Witness Coordinators in the United States Attorneys' offices play an important role in providing assistance to victims of Federal crimes and to the government's witnesses who come forward to testify. The Coordinators are able to help victims and witnesses find their way through an unfamiliar criminal justice system, get a referral to social services, fill out state compensation forms, or be notified about the progress of the case. As violent crime cases increase and are more frequently prosecuted at the Federal level, more victims and witnesses need assistance from the Coordinators. For example, the District of Arizona estimates that in 1988 there were 4,214 victims and witnesses seen in their office, while in 1991 there were 18,710.

In an effort to assist child victims, the District of Utah was among the first districts in the Nation to prosecute a child sexual abuse case using closed circuit television testimony by a child victim. A motion to allow the child to testify via closed circuit television

was granted because it was ruled that she was unable to testify in court due to her fear of the defendant and the substantial likelihood that she would suffer additional emotional trauma. The jury, judge, defendant, and spectators were able to see and hear the child clearly at all times on a monitor in the courtroom, and the defendant's face was visible on a monitor in the room where the girl testified. The jury returned a guilty plea within 30 minutes, and the judge indicated that the closed circuit procedure was very effective.

The Eastern District of Wisconsin was the first district in the country in which a videotape was used to present a victim impact statement. The video was used in an arson case involving a defendant convicted of burning down a restaurant owned by the victim and his family. In the video, the victim related how he and his family felt as they watched their restaurant burn and how they felt when they found out the fire had been started purposely. In addition, the video showed how the restaurant looked before the fire, during the fire, and after the fire.

Judicial and Witness Security

Providing protection to Federal judges, court officials, witnesses, and jurors is extremely important in violent crime cases. The U.S. Marshals Service ensures security, maintains decorum within the courtroom, and provides personal protection for judicial officers, witnesses, and jurors away from the court facilities when warranted.

In 1992, Deputy Marshals provided security at 234 sensitive or high threat trials. The Marshals Service responded to 242 threats made against members of the judicial family, and Deputy Marshals provided 24-hour personal security details to 37 judicial officers in response to specific threats. A total of 73 personal security details for United States Supreme Court Justices were established by the Marshals Service during the year. Deputy Marshals also provided security for 140 Federal judicial conferences and committee meetings.

Because of the spiraling workload of the Federal judiciary, the construction and renovation of court facilities continued at a rapid pace. The Marshals Service, working with a security contractor, installed 276 security systems in new and renovated courthouses.

In an unusual case last year, the Marshals Service provided for the safety and security of participants in a trial involving the Acquasanto organized crime family. The trial, which originated in the Fifth Criminal Division of Law Court of Palermo, Italy, was transferred to the United States under the Mutual Legal Assistance Treaty (MLAT) that exists between the United States and Italy. The defendants allegedly were members of an organized crime family in Italy and were charged with drug trafficking. The escape risk in this case was rated as extremely high, as well as the threat of violence against the Italian judges and prosecutors. Due to the intense planning and coordination, the proceedings were carried out in a safe and secure environment.

Through a combined effort from the Marshals Service, Bureau of Prisons, and the Criminal Division, the Department also provides for the security, health, and safety of government witnesses and their immediate dependents whose lives are in danger as a result of their testimony against drug traffickers, organized crime members, terrorists, and other major criminal elements. During the year, 231 new principal witnesses entered the Witness Protection program, bringing to more than 13,500 the number of witnesses and family members for whom the Department provides protection and funding.

The District of Columbia's short-term witness protection pilot program, which began last year to protect witnesses who do not qualify for the long-term program, handled approximately 30 witnesses in 1992.

Chapter II: Countering Illegal Drug Activity

Drug enforcement remains a top Departmental priority. The Department's objectives are two-fold: to aggressively investigate and prosecute drug law violators; and to support efforts to reduce the demand for illegal drugs. Close cooperation among Federal, state and local law enforcement agencies is a key to meeting this goal.

Drug Enforcement Operations

Through the Organized Crime Drug Enforcement Task Forces (OCDETF), the Department continues to successfully identify, investigate and prosecute members of high-level drug trafficking organizations and to destroy their operations. The strength of the OCDETF Program is its ability to draw upon the diverse, specialized skills of the nine Federal participating agencies and their state and local counterparts. Prosecutors and law enforcement personnel at all levels are made a part of one cohesive team.

In 1992, OCDETF initiated more than 870 investigations, convicted more than 3,350 defendants, and seized more than $270 million in cash and property. OCDETF's high level of coordination has led to ten years of success in immobilizing drug trafficking and money laundering organizations by incarcerating, extraditing, or deporting their members and causing forfeiture of assets.

Coordination is also the linchpin of the Drug Enforcement Administration's (DEA) State and Local Task Force Program. Now in its 22nd year of operation, the program has increased intelligence generated at state and local levels and increased return on investment in terms of assets seized by U.S. Marshals. There are currently 100 task forces, 76 funded and 24 provisional, an increase of seven from 1991.

The International Criminal Investigative Training Assistance Program (ICITAP) provides law enforcement training and technical assistance to democracies in Latin America and the Caribbean to enhance and strengthen investigative capabilities. Besides centralized activities in Washington, D.C., ICITAP has active offices in Panama, El Salvador and Colombia, and expects to soon open an office in Bolivia.

During 1992, ICITAP conducted 50 courses for more than 1,525 students from more than 20 foreign countries, resulting in 3,400 student-weeks of training. Also, ICITAP arranged forensic internships at crime laboratories in the United States, Puerto Rico, and Costa Rica for 31 forensic specialists.

Drug Enforcement Administration (DEA)

The first priority of the DEA is to significantly reduce the availability of cocaine in the United States. Consequently, in 1992 the DEA established and began implementing its Kingpin Strategy. The Kingpin Strategy is DEA's method to disrupt, dismantle, and destroy the major trafficking organizations responsible for the production, transportation and distribution of illegal drugs. It is designed to destroy the entire drug trafficking infrastructure and the organizations' ability to operate by targeting their vulnerabilities.

The first area of vulnerability is the means of production, including cocaine labs and access to precursor chemicals. In 1992, the DEA and Bolivian authorities dismantled the Danilo Cocaine Trafficking Organization. This mammoth enforcement effort, entitled Operation Ghost Zone, shut down the Chapare Valley, the heartland of the Bolivian cocaine trade. This operation also accounted for the destruction of more than 195 cocaine base and cocaine HCl laboratories, the seizure of 15 metric tons of cocaine products, the arrests of more than 30 traffickers and the capture of 14 aircraft.

A team of 12 DEA Special Agents also worked with the Peruvian National Police Anti-Drug Unit conducting air mobile interdiction efforts throughout the Upper Huallaga Valley (UHV). The team, involved in an effort known as Operation Snowcap, lived and worked with their counterpart police officers at the Forward Operating Base at Santa Lucia. This base, which is centrally located in the UHV, enabled DEA to target illicit drug processing laboratories anywhere in the valley. During 1992, more than 72 illicit cocaine processing laboratories were destroyed; approximately three metric tons of cocaine paste, base and cocaine HCl were seized; 57 arrests were made; and six aircraft were impounded. These raids have put significant pressure on the Simeon Vargas-Arias (El Ministro) Organization, a major cocaine base supplier to the Cali Cartel.

In addition, DEA and the State Department have engaged in on-going diplomatic initiatives with European chemical source countries to encourage them to take action to prevent chemical diversion. An important aspect of this was the Chemical Action Task Force (CATF), an international task force chaired by the United States. As recommended by the CATF, the membership of the United Nations' Commission on Narcotic Drugs voted during the spring of 1992 to add ten important precursor and essential chemicals to the list of prohibited chemicals approved by the 1988 Vienna Convention.

A second vulnerability of drug trafficking organizations targeted by DEA is means of transportation. In April 1992, DEA sponsored the Tenth Annual International Drug Enforcement Conference at which high-level law enforcement officials from 26 countries throughout the Western Hemisphere and observers from nine European and Asian countries assembled in Santa Cruz, Bolivia. The conference agenda focused on the control of general aviation and denial of its use to narcotics traffickers. The delegates approved 18 initiatives regarding the control of general aviation aircraft, pilots and airports as well as chemical control measures and proposals for the increased exchange of information.

Operation Cadence was initiated in May 1991, in coordination with the Department of State, to disrupt the transshipment of cocaine through Central America. Cadence operations are centered in Guatemala, where teams of DEA Special Agents support host-nation law enforcement personnel in trafficker aircraft apprehension and road interdiction operations against illicit drug transportation organizations. Since its inception, Operation Cadence has been responsible for the seizure of more than 20.6 metric tons of cocaine, 67 arrests, and the seizure of 17 aircraft, seven vessels, and 10 vehicles.

DEA is also targeting drug-traffickers' means of communication and distribution. Title III wiretaps are DEA's most powerful investigative tool against traffickers. Tapping into their communications networks leads DEA to the command and control centers of the cartels, as well as to their major distribution cells and money laundering operations.

In an investigation of the Helmer "Pacho" Herrera organization, DEA intercepted more than 17,000 pertinent phone conversations from 100 phones over the course of an 18-month investigation. Between November and December 1991, more than 100 persons were arrested, including Herrera's brother and brother-in-law, as well as one of the key financial members of the organization in New York. Additionally, more than $20 million in assets and 1.4 metric tons of cocaine were seized. One month later, in January 1992, an additional 1.3 metric tons of cocaine belonging to Herrera were seized in New York.

A series of enforcement actions in the United States between November 1991 and early 1992 presented the greatest problems for the Herrera organization. Two of the group's distribution cells were dismantled in New York City through the effective use of intercepts of Herrera's command and control communications originating in Cali. In June, Bolivian authorities apprehended "Danilo," Herrera's Bolivian source of supply for thousands of kilograms of cocaine, further disrupting Herrera's operations.

The Cali-based Rodriguez-Orejuela organization suffered numerous setbacks during 1992, especially to their distribution networks. In November 1991, DEA, in a joint investigation with the U.S. Customs Service in Miami, seized 12.5 metric tons of this group's cocaine, which was hidden in cement posts. In April 1992, the Rodriguez-Orejuelas organization had 6.6 tons of cocaine seized in Miami from a shipment of frozen broccoli, and in July another 5.3 tons were seized in Panama from a shipment of ceramic tiles.

Federal Bureau of Investigation (FBI)

FBI drug investigations in 1992 resulted in 4,361 indictments, 3,419 arrests and 2,957 felony convictions. Significant cases included:

- The Houston Division Posada-Rios investigation culminated in Federal drug and money laundering indictments of one corporation and 29 members of the Posada-Rios organization, a United States-based cell of the Medellin Drug Cartel. This organization was engaged in drug trafficking in Houston, Austin, Miami, and Los Angeles.

- The Philadelphia Division Metroliner investigation culminated in Federal drug indictments of 77 members and associates of a Philadelphia-based drug cartel cell led by a Colombian national. This organization was active in Philadelphia, Los Angeles, Miami, New York, Newark, and San Juan.

- Another Philadelphia Division investigation, the Tyria H. Ekwensi investigation, uncovered several drug-trafficking groups utilizing Federal Express to ship packages of drugs and currency to California. As a result, 12 defendants have been indicted, and 55 kilograms of cocaine, 1.4 kilograms of heroin, and approximately $1 million in cash and property have been seized.

Immigration and Naturalization Service (INS)

The role of INS in drug enforcement was expanded in 1992 when the President's Office of National Drug Control Policy (ONDCP) designated the Border Patrol as the primary agency for drug interdiction between the ports of entry along the border between the United States and Mexico, a High Intensity Drug Trafficking Area. The Border Patrol made 5,070 seizures of illegal drugs valued at an estimated $1.4 billion in 1992, preventing almost 347 tons of marijuana and 38,000 pounds of cocaine, among other substances, from reaching drug markets. The INS also used an appropriation of $5.9 million authorized by the Antidrug Abuse Act to enhance surveillance and other operations along the border.

United States Marshals Service (USMS)

In 1992, more than 13,000 warrants were issued for individuals either charged with, or convicted of, narcotics crimes, but who had escaped from confinement, jumped bond, violated their parole or probation or were the subject of a Drug Enforcement Administration investigation. Almost 9,700 of these warrants were closed due to arrest or location of the fugitive by the Marshals Service.

The year also marked an important advancement in the relationship between the United States and Colombia with the apprehension of escapee Lazaro Diaz. In June 1991, the intense investigation by the Marshals Service to apprehend Diaz led to Bogota, Colombia. This dangerous felon was secured by

Colombian police after negotiations with Marshals Service officials, the Drug Enforcement Administration, the State Department and the Colombian government. Following the Diaz arrest, six more fugitives were arrested in Colombia and returned, or are awaiting return, to the United States to face criminal charges.

United States Attorneys

The Department's investigative work enabled the U.S. Attorneys' Offices to file almost 10,000 controlled substance cases, involving more than 22,360 defendants. Of the 9,155 cases terminated during 1992, guilty verdicts or guilty pleas were received for 16,163 defendants. Significant cases included:

- In the Southern District of Illinois, the leader of a major East St. Louis crack cocaine ring was sentenced to four life terms, after being convicted of drug conspiracy, money laundering, running a criminal enterprise, and employing a minor for drug trafficking.
- A doctor in Buffalo, N.Y., was convicted of distributing drugs to a narcotics ring and was sentenced to prison for 12.5 years. More than 20 witnesses testified at his trial that he routinely wrote prescriptions for patients he had never met and then sold the prescriptions to a city narcotics ring.
- Former Panamanian strongman Manuel Noriega was convicted in the Southern District of Florida on charges of exploiting his official position as head of the intelligence section of the Panamanian National Guard, and as then Commander-in-Chief of the Defense Forces of the Republic of Panama receiving payoffs in return for assisting and protecting international drug traffickers. A Federal judge sentenced him to 40 years' imprisonment.

Tax Division

Tax Division prosecutors played a major role in the conviction of drug kingpin Jesus Lazario Barrios. Barrios headed a major distribution network that imported approximately 50,000 kilos of marijuana and 5,000 kilos of cocaine into the country from 1981 through 1987, reputedly the sixth largest narcotics trafficking organization in the country. The 80 year sentence Barrios received effectively ensures the end of this ring.

Tax Division prosecutors also dismantled a multistate drug distribution ring centered in Las Vegas, Nevada. Following convictions of the kingpins of the so-called "Whittenberg Group," the prosecutors successfully pressed forfeiture claims as to millions of dollars in cash, real estate, airplanes, classic cars and an interest in a Las Vegas casino, amassed by ring members.

Money Laundering

1992 saw the culmination of several Department initiatives aimed at destroying drug-related money laundering operations. Operation Green Ice was a two-year DEA initiative that specifically targeted the money laundering activities of kingpin organizations. Green Ice culminated during the weekend of September 25, 1992, when seven top-ranking Cali Cartel money managers were captured worldwide, seriously disrupting the money flow of the Colombian cartels.

The operation also resulted in the international seizure of more than $50.3 million in cash and property and confirmed connections between the cartels and organized crime families in Italy. As a result of Operation Green Ice, 111 persons were arrested in a series of raids of several undercover money laundering operations in New York, Miami, Chicago, Los Angeles and San Diego, as well as in Italy, Canada and the United Kingdom. Prior to the raids, more than $30 million in cash was seized, and during the raids, more than $15 million in cash as well as more than 200 kilos of cocaine were seized.

The cooperative endeavor involved eight nations—Canada, the Cayman Islands, Colombia, Costa Rica, Italy, Spain, the United Kingdom, and the United States—and can be considered the first operational International Task Force to combat drug money laundering.

In addition to enforcement actions directed against specific kingpins, many operations have been initiated against major service organizations supporting kingpins. These operations are a critical part of the strategy. An investigation that focused on Jorge Reyes-Torres in Ecuador targeted such a service organization. Reyes-Torres' father was historically linked to the Ochoa brothers of Medellin. Jorge Reyes-Torres expanded the family business beyond smuggling into money laundering and cocaine HCl production and established a relationship with the Cali Cartel. Following his arrest in June 1992, $28 million was seized in August from his bank accounts in Liechtenstein and Switzerland. The loss of $28 million significantly impacted the operations of Reyes-Torres and the kingpins involved with him.

The Criminal Division contributed to the efforts against money laundering through the coordination of "Polar Cap V", a major investigation which led to the seizure of more than $25 million in assets across the United States and in five foreign countries. The investigation focused on the movement of Colombian drug cartel funds by a major money laundering organization headquartered in the United States but with assets transferred into numerous third party bank accounts across the country and abroad. The assets are now the subject of civil forfeiture actions pending in nine judicial districts.

The U.S. Attorneys' Offices also successfully prosecuted key money laundering cases in 1992. A jury in the District of Arizona returned guilty verdicts against two defendants in the first major prosecution of suppliers of aircraft to the Medellin Cartel. Daniel Morales, a Phoenix area aircraft broker, was convicted of five counts of money laundering and one count of conspiracy to import cocaine. Burton Golb, an aircraft broker from Houston and an associate of Morales, was convicted of four counts of money laundering. The defendants had used proceeds of cocaine trafficking laundered through the Cartel's operation to purchase aircraft used to transport large loads of cocaine from Colombia to Mexico, where it was smuggled into the United States. The jury also forfeited the defendants' interest in approximately $17 million worth of property, including two Lear Jets, four DC-3 turbo-prop conversions, real estate, luxury vehicles, and bank accounts.

Domestic Drug Production

Domestic production of marijuana continues to pose challenges to law enforcement, as nearly one-fifth of the marijuana available for consumption in the United States is domestically grown. DEA's Domestic Cannabis Eradication/Suppression Program and other enforcement operations have been successful in destroying an increasing percentage of domestically grown marijuana from both indoor and outdoor sites. However, indoor cultivation of cannabis showed a marked increase in 1992, and DEA responded with expanded training and identification initiatives. Thermal imaging devices have been successful in verifying indoor growing operations. In addition, DEA trained 1,147 Federal agents, state and local law enforcement officers and national Guard personnel in indoor growing investigative techniques as part of 10

schools conducted in 1992. DEA continues to develop leads on potential indoor growing operations through such means as "store front" surveillance, equipment purchases and telephone record acquisition.

Steroids also received increased attention. An estimated one million Americans, half of them adolescents, have used steroids. DEA successfully implemented the Anabolic Steroid Control Act through enactment of necessary regulations, establishment of industry-wide cooperation, and initiation of a series of Nationwide and international investigations. As a result, steroid diversion within the United States has been sharply reduced, and the majority of cases currently under investigation involve steroids smuggled into the United States from abroad.

Drug Demand Reduction

With the inception of Operation Weed and Seed, numerous U.S. Attorneys' Offices expanded their drug demand reduction activities. Examples include:

• In the Eastern District of Pennsylvania, two programs focus on anti-drug efforts. The first is a joint effort between the Police Athletic League and CORA Youth Services called the "PAL Plus Program." It supplements PAL's program of crime prevention through athletic and recreational activities by providing substance abuse prevention, intervention counseling, and family advocacy/parent education.

The second program is Corporate Alliance of Drug Education (CADE), a program funded with largely private resources that have matched the funding provided by Weed and Seed. CADE uses drug prevention specialists who work in the public and parochial elementary schools in the Weed and Seed areas, to teach drug education and drug demand reduction during regular class time. They help identify at-risk youth who can be referred for individual or family counseling through the school.

• The Omaha Community Partnership, a model program, provides coordination, credibility, and focus to the drug war in Omaha, Nebraska. The United States Attorney's office has joined school, community, religious, private sector and government leaders to create the Partnership, which is leading a unified and aggressive campaign to combat drugs in the city. The Partnership's major project is called "Drug-Free Omaha—The Decade of Difference." Its mission is to have "a safe community in which all citizens share the responsibility for zero tolerance of the illegal use of tobacco, alcohol, and other drugs through a spirit of cooperation and coordination of services."

DEA joined the U.S. Attorneys in increasing its assistance to local groups in forming community antidrug coalitions during the year. DEA Special Agents designated as Drug Demand Reduction Coordinators (DDRCs) were key players in the formation of these diverse alliances:

• With funding from Kaiser Permanente, the United Way, Pacific Telesis and Security Pacific Bank, and drawing heavily on a start-up plan from DEA, the Los Angeles Alliance for a Drug-Free Community began a broad-gauge attack on illicit drug abuse. The alliance promotes cooperation and information sharing among existing and emerging neighborhood-based organizations, while encouraging participation from civic and business leaders, law enforcement, and the school system.

• In Newport News, Virginia, 100 military personnel of the aircraft carrier *Enterprise* worked with high-risk youngsters in an intensive mentoring program. The effort was sponsored by BACK (Business and Community for Kids), a coalition launched with continuing DEA guidance and support. BACK was also the catalyst for a drug-free prom party at a major local mall for all the city's high schools. The mall's owners joined the effort after a presentation by the area DEA Demand Reduction Coordinator.

Other priorities of DEA's Demand Reduction Program were user accountability, "drugs in the workplace," sports drug awareness, programs for minority or high-risk youth, and training for local law enforcement officers. Sixty Special Agents of the FBI also served as DDRCs, and made more than 3,000 antidrug presentations to the Nation's schools, businesses and communities.

The Office of Justice Programs (OJP) also supports the Nationwide Drug Abuse Resistance Education (DARE) program, which teaches K-12 grade students, with special emphasis on fifth and sixth grade students, ways to resist peer pressure to experiment and use drugs. It educates young people about the effects of drug use and provides them both decisionmaking skills as well as the motivation required to employ skills learned.

More than 12 million elementary and junior high students in the United States received DARE training during the 1991-92 school year. In addition, DARE Parent Program Training Seminars provided an additional 36 hours of training for DARE instructors that were selected to assist parents in helping their children remain drug free.

The National Citizens' Crime Prevention Campaign continued during 1992 under a cooperative agreement between OJP and the National Crime Prevention Council. The campaign consists of public service drug and crime prevention advertising, demonstration programs focusing on community involvement in drug prevention, dissemination of crime and drug prevention materials, technical assistance and training programs, and coordination of the 134 member Crime Prevention Coalition. During 1992, the major focus of the campaign was on community and police partnerships to reduce crime and drug abuse.

A record 25.2 million people in more than 8,500 cities and towns took part in National Night Out, co-sponsored by OJP and the National Crime Prevention Council, on August 4, 1992. The event was highlighted by police-community celebrations which included parades, rallies, ice cream socials, vigils and neighborhood block parties.

Chapter III: White Collar Crime

White collar crime damages our nation's economy and creates financial losses which impact every consumer and taxpayer. The Justice Department remains committed to vigorous investigation and prosecution of fraud, anti-competitive business activity, public corruption and environmental crime, which are key battlegrounds in the fight against white collar crime.

Fraud

Economic crime undermines confidence in both public and private institutions. In 1992, the Department bolstered its efforts to stem the tide of fraudulent activity in our Nation's financial, defense procurement, health care and insurance entities.

Financial Institution Fraud

The Department of Justice and the United States Attorneys' Offices are aggressively prosecuting those responsible for undermining many of our financial institutions, and recovering as much as possible of the lost assets. Since October 1, 1988, the Justice Department has prosecuted 1,068 officials of financial institutions, with 928 convicted to date. During this same period, a total of 3,725 defendants have been charged, with 2,955 of those resulting in convictions by the end of September 1992. Prison sentences have been ordered for 1,930 defendants, totaling 4,532 years, and more than $36.6 million in court-ordered restitution has been recovered to date. Successful prosecutions by the U.S. Attorneys include:

- In the Central District of California, Thomas Spiegel was charged with 55 counts of fraud, which effectively destroyed the nation's most profitable thrift, Columbia Savings and Loan Association. Spiegel faces penalties of up to 275 years in prison and $13 million in fines.

- The former owner, CEO, and Chairman of the Board of Directors of the Western Savings Association was sentenced to 25 years in prison and ordered to pay almost $38 million in restitution to the Federal Deposit Insurance Corporation. He was convicted of conspiracy to defraud the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation and of misusing Western funds to pay his gambling debts and to cure the delinquencies of a major borrower.

- Salomon Brothers, Inc., was charged with conspiracy in violation of the Sherman Antitrust Act to limit the supply of two-year Treasury notes available in the secondary and financing markets. As part of a settlement with the Antitrust Division, United States Attorney's Office for the Southern District of New York and the Securities and Exchange Commission, Salomon agreed to pay a total of $290 million in sanctions, restitution to victims and forfeitures. The forfeiture of $55.3 million represented the largest antitrust forfeiture ever.

Civil Division attorneys took an unprecedented step in holding financial institution professionals accountable for their roles in the massive Savings & Loan debacle. Working with the Office of Thrift Supervision, a team of Civil Division attorneys filed charges against the law firm of Kaye, Scholer, Fierman, Hays & Handler for violations of Federal banking laws resulting from the firm's involvement with Lincoln Savings and Loan Association. The firm subsequently forfeited $41 million to the government.

In the wake of the collapse of the thrift industry, the Tax Division, in cooperation with the United States Attorney for the Northern District of Texas and the Fraud Section of the Criminal Division, has dramatically increased its work on tax investigations and prosecutions arising out of the Dallas Bank Fraud Task Force, and has become an important participant in both the Boston and San Diego Bank Fraud Task Forces. In 1992, Tax Division criminal enforcement attorneys obtained 35 indictments and 10 convictions in savings and loan cases, and more than 45 tax-related convictions.

Tax Division attorneys also played a critical role in bringing to justice many of the figures involved in the criminal dealings of the Bank of Credit and Commerce International (BCCI). Attorneys assisted the Fraud Section of the Criminal Division in obtaining the indictment, on tax and bank fraud charges, of William W. Batastini, the former senior vice president and comptroller of the National Bank of Georgia (NBG). They also played a key role in obtaining indictments of Ghaith R. Pharaon, NBG's former owner, and of Swaleh Naqvi, the reputedly "number two man" at BCCI, for their involvement in the same tax and bank fraud scheme.

Defense Procurement Fraud

Aggressive investigation and prosecution of corruption in the defense contracting industry accounted for the largest share of monetary recoveries for the Department in 1992. Operation Ill Wind, a joint venture of the FBI and the Criminal Division, resulted in the conviction of seven corporations and 51 individuals, with monetary recoveries exceeding $230 million. The Department has convicted more than 30 of the top 100 defense contractors, including Hughes Aircraft Company, Inc. and Teledyne, Inc., with procurement fraud.

In a related case, the General Electric Company (GE) pleaded guilty to a conspiracy that included the diversion of $26.5 million from the U.S.-financed F-16 jet program with the Israeli Air Force. The money was channeled to a former Israeli Brigadier General to influence him to assist GE in securing favorable treatment in connection with the F-16 program contracts. Funds were also used to generate funding for projects that the general either could not or did not want to have approved by the Israeli Ministry of Defense or the U.S. government. GE agreed to pay a total of $69 million in fines, penalties, and damages.

Health Care Fraud

In 1992 the Department enhanced its effort to combat health care fraud by reassigning 50 FBI agents and forming special investigative units in 12 cities to prosecute health care fraud through the use of criminal and civil remedies. As a result of a nationwide undercover investigation of prescription drug frauds committed by pharmacists, drug diverters, and physicians titled Operation Gold Pill, more than 200 criminal charges were filed, leading to 107 arrests, 111 searches and the seizure of 11 pharmacies and more than $1 million in cash.

United States Attorney's Office for the Northern District of Texas convicted the owner of a Texas pharmacy of stealing $600,000 from a drug program intended for indigent or uninsured persons affected with AIDS. The money was stolen from a program funded by the Federal government through which AIDS patients who had no insurance or were poor could purchase four bottles of the treatment drug AZT for less than $20. The pharmacy, however, raised the price to as much as $998 and sold the drug to people who did not qualify for the program.

Insurance Fraud

Insurance fraud continues to plague American consumers, particularly health care consumers. This type of fraud is directed not only at health care consumers, but providers as well. The Department formed an insurance fraud working group to develop private sector and state cooperation, identify a formal process for receiving referrals of suspected fraud for criminal investigation, and establish a coordinated approach to prosecuting major criminal cases and creating training programs.

In one of the largest insurance schemes in the country, Leonard Bramson pled guilty to a money laundering charge involving proceeds of nearly $10 million. Bramson and his brother operated dozens of unlicensed insurance companies, targeting physicians from around the country by offering below-market malpractice insurance premium rates.

In a case investigated by the FBI, three defendants were convicted or pled guilty to fraud and money laundering in connection with a fraudulent medical malpractice insurance scheme which involved more than 100,000 medical professionals who had purchased insurance from the subjects and their affiliated companies. Thus far, 53 insurance companies have been placed in liquidation as a result of this investigation. One defendant has agreed to repatriate, from foreign accounts, more than $1 million in fraudulently obtained proceeds.

Bankruptcy Fraud

During 1992, the Department continued its efforts to strengthen the integrity of the Nation's bankruptcy system and to deter the abuse of the bankruptcy laws. The Nationwide United States Trustee Program was created to bring greater supervision to the administration of bankruptcy estates and was placed within the Department's jurisdiction. Through the close relationship between the U.S. Trustees, the United States Attorneys' Offices and the FBI, the ability to detect the concealment of assets and bankruptcy fraud has been vastly enhanced.

More than 300 criminal bankruptcy matters were referred to the FBI for investigation during 1992 or to the U.S. Attorneys' Offices for indictment and prosecution, resulting in 45 convictions with more than $700,000 in fines and restitution. The FBI has implemented several new initiatives in the bankruptcy fraud area including joint training with U.S. Trustees and the establishment of Bankruptcy Task Forces in Seattle, Houston, and Chicago.

The Department has devoted significant efforts to ensure that private trustees adhere to traditional fiduciary standards in their administration of chapter 7 estates. These efforts include the imposing of periodic reporting requirements on the part of the private trustees and greater scrutiny over their conduct. One of the most effective tools used to monitor the private trustees' administration of bankruptcy cases has been the periodic audits performed by the Department's Inspector General and by private accounting firms. These audits resulted in more than 1,700 findings of private trustee malfeasance in their administration of cases.

The concealment of estate assets by debtors and private trustee embezzlement remain the most common forms of bankruptcy crime. In one case, a debtor was convicted of concealing $300,000 in estate assets, 10 counts of mail fraud and making false statements to Federally insured financial institutions. In another case, a private trustee was sentenced to three years and eight months in prison for illegally commingling $2.5 million from numerous escrow accounts.

Tax Fraud

The Tax Division is working closely with the Internal Revenue Service to step up enforcement efforts against tax violators with legal-source income. 1992 saw the beginnings of a non-filer initiative targeting the nearly 10 million taxpayers who are obliged to file returns but fail to do so each year. The IRS estimates that these non-filers cost the Federal Treasury more than $7 billion annually. Working closely with the IRS, the U.S. Attorneys and Tax Division prosecutors obtained indictments against 127 individuals on failure to file charges between January 1, 1992, and April 15, 1992, and have already obtained convictions in more than half those cases.

In another joint effort with the IRS, the Tax Division moved swiftly to uncover and prosecute those who abuse the Electronic Filing Program (ELF). In 1992, Tax Division criminal enforcement attorneys assisted in obtaining more than 400 indictments for ELF fraud, most of which have already resulted in either plea agreements or convictions. In the largest case to date, 24 individuals were indicted on December 4, 1991, in Houston, Texas for perpetrating a fraudulent electronic refund scheme involving approximately 750 individuals, many of whom were actually unemployed residents of low-income housing projects.

Other Fraud

The Department's efforts to protect the public from abuse were well chronicled in 1992. In a highly-publicized case, Dr. Cecil Jacobson was convicted on 53 counts of mail fraud, wire fraud, travel fraud and perjury. Jacobson, known as the "fertility doctor," defrauded at least 11 couples who participated in an artificial insemination program by impregnating the women with his own sperm. Jacobson, who fathered 15 children in this manner, was sentenced to 60 months in prison and ordered to pay restitution of almost $40,000.

Other significant cases included:

- The Criminal Division, in conjunction with the FBI and the Secret Service, conducted the first successful court-authorized electronic surveillance of data transmissions. The defendants allegedly broke into computers operated by the Martin Marietta Electronics Information and Missile Group as well as various telephone companies. Five computer hackers were indicted as a result of this wiretap.

- INS agents participated in a year-long investigation of a scheme to procure immigration documents for Asians seeking resident status in the United States. This investigation resulted in the arrest of 39 aliens in a six state area and the seizure of seven vehicles, one residence, cash, numerous weapons, and more than $650,000 paid to bribe an undercover agent.

Public Corruption

The Department moved aggressively in 1992 to root out corruption at all levels of government. FBI undercover operations resulted in a number of significant indictments and convictions including the conviction of 29 current or former police officers in Cleveland, Ohio; the conviction of a former chief of police in Detroit, Michigan; the indictment of 17 and conviction of eight New York City Department of Building inspectors and their supervisors; the indictment of three current and one former judge and five defense attorneys in Miami, Florida; and the conviction of the mayor of Miami Beach, Florida, for various corrupt acts involving "selling" their offices. The FBI

achieved 644 informations and indictments, 514 convictions and pretrial diversions and $21.6 million in fines, recoveries and restitutions in public corruption cases in 1992.

United States Attorneys joined the FBI in actively prosecuting corrupt officials, filing 469 cases charging 703 individuals. Notable cases included:

- In the Eastern District of Michigan, the former Chief of the Detroit Police Department was sentenced to 10 years in prison for embezzling $2.6 million in city funds and filing false income tax returns. He was also ordered to pay more than $2.3 million in restitution.

- A 14-year veteran of the Herkimer, New York Police Department pled guilty to cocaine and marijuana distribution. In his responsibility for drug investigations for the department, he directed informants to take cocaine and marijuana which had been secured as evidence, sell the drugs, and return the money to him.

- In the Northern District of Illinois, a former state senator was convicted of accepting bribes from an undercover mole to push an insurance bill through the legislature. He was sentenced to three years in prison, three years' supervised release, ordered to perform 360 hours of community service, and ordered to pay $7,500 in restitution and a $10,000 fine.

Environmental Enforcement Activities

Protection of the environment has become an urgent social issue, and the Department has responded with renewed enforcement initiatives. In 1992, the Environment and Natural Resources Division set a new record for the number of indictments for environmental crimes — 174 indictments compared with the previous record of 134 in 1990.

The largest environmental penalty in U.S. history was levied when Exxon and Exxon Shipping entered guilty pleas for their conduct in connection with the Exxon Valdez oil spill in Prince William Sound. That spill resulted in a 700-mile migration of crude oil and the deaths of 36,000 migratory birds. The combined criminal and civil settlement total which Exxon agreed to pay is $1.125 billion, of which $250 million is for criminal fines and restitution. Exxon pled guilty to one count of violating the Migratory Bird Treaty Act (MBTA), and Exxon Shipping pled guilty to violations of the Clean Water Act, the Refuse Act, and the MBTA. Under this agreement, Exxon will remedy the harm to the Sound and will make the investment in safety that is necessary to prevent future disasters.

The largest fine ever imposed in a hazardous waste case was levied on Rockwell Corporation for five felony and five misdemeanor violations of the Resource Conservation and Recovery Act and the Clean Water Act in connection with its operation of the Rocky Flats Nuclear Weapons Plant near Golden, Colorado. The FBI's Desert Glow Investigation uncovered illegal storage of wastes that contained both radioactive and other hazardous constituents, as well as corrosive hazardous wastes. Rockwell pled guilty to illegal storage of wastes and to illegal discharge of industrial and hazardous wastes to its sewage treatment plant. An $18.5 million criminal fine was imposed upon the corporation.

Protection of the nation's wildlife resources also continued to be a major priority of the Division, working in concert with U.S. Attorneys. Operation Whiteout, a two-year undercover investigation by the Fish and Wildlife Service, revealed a significant black-market trade in walrus ivory, including the trading of ivory for drugs. Twenty-nine defendants were indicted in Anchorage, Alaska, on criminal charges involving wildlife and drug offenses. Twenty-five of the defendants have been convicted or have pled guilty, typically of multiple felony charges.

Chapter IV: Controlling the Border

During 1992, the Immigration and Naturalization Service (INS) responded to the ever-increasing demands by enhancing border security and bolstering efforts against criminal aliens, improving immigration inspection services, and enhancing activities devoted to processing applications for immigration benefits for legal immigrants. In February 1992, the Attorney General directed INS to undertake a series of initiatives designed to strengthen its primary operational responsibilities. INS has been successful in expanding its workforce, improving law enforcement efforts, and providing increased services to the country's legal aliens.

Border Enforcement Activities and Initiatives

As described in Chapter II, INS' Border Patrol was designated in 1992 as the primary agency for drug interdiction between the ports of entry along the United States-Mexico border. Notwithstanding this major new responsibility, the Patrol's ongoing, principal mission is to deter illegal entry and conduct related apprehension activity at or near the borders. Assisting effectively in this mission during 1992 was INS' Immigration Inspector workforce, which itself was responsible for intercepting more than 21,000 smuggled aliens, seizing

Military Reservists reinforce border fence near San Diego with surplus metal used for temporary landing strips. The fence repair was a cooperative project of the Border Patrol and the Department of Defense in support of overall border enhancement.
Source: Immigration and Naturalization Service

9,725 vehicles and detecting more than 40,000 false claims to U.S. citizenship. The Attorney General strongly affirmed the critical importance of this enforcement mission by announcing an Enhanced Border Security Initiative in 1992. To implement the Attorney General's directive, the INS undertook determined measures to hire and train 300 additional Patrol agents over a six-month period. By the end of the year these efforts resulted in on-board agent levels which exceeded 4,000, thereby reducing position vacancy rates to their lowest levels in years.

There also was continued progress in military-supported efforts to make enforcement activity more effective through better surveillance and stronger barriers. This included the installation of stadium-style lights and sensors in areas most heavily trafficked by illegal aliens, drug smugglers and border bandits.

Improvement of these barrier systems seems to have had the desired effect of channeling alien and smuggling operations toward areas where INS personnel can work most effectively. In addition, border roads in the San Diego and Tucson Sectors were upgraded during 1992 as a result of military support. This enabled the Patrol agents to pursue their control activities more efficiently in those areas where most illegal crossing attempts occur. The total number of Border Patrol apprehensions in 1992 was 1,201,000. This represents an increase of six percent compared to 1991 and marks the third consecutive year that apprehensions have exceeded the one million level.

Ensuring the integrity of the Nation's borders also required the use of other Department enforcement mechanisms, such as aggressive prosecution and litigation assistance. Along these lines, the U.S. Attorneys continued their strong support for two major ongoing initiatives, Project Northstar, along the U.S.-Canada border and Project Alliance, along the U.S.-Mexico border. In a somewhat less direct, but no less important manner, the Civil Division and the Office of Solicitor General collaborated in defending U.S. policy in a Supreme Court case involving Haitian migrants. Successful resolution of the case preserved the President's authority to use available resources to regulate alien traffic seeking entry to U.S. territorial waters.

Employer Sanctions

Another of INS' main responsibilities is to deter the employment of illegal aliens who are not authorized to work in this country. During 1992 the INS undertook a pilot project which sought to initiate cases based on investigative leads. Although resulting investigations took longer to resolve due to their complexity, they were recording a higher overall success rate for at least one key performance indicator, the number of Notices of Intent to Fine for repeat violators. In total, INS completed more than 7,600 employer sanctions cases and issued approximately 1,300 warnings and 2,500 formal Notices in 1992. Also, more than $17 million in fines were actually assessed, and almost 12,000 unauthorized alien workers were apprehended.

A number of steps were taken in 1992 to address more effectively other statutory provisions of the employer sanctions program. For example, INS emphasized the importance of voluntary compliance among U.S. employers, and implemented a telephone-based system designed to expedite the verification of an alien's employment eligibility status. A control group of nine employers from five states were chosen to participate in this pilot and had generated nearly 1,300 queries to the system.

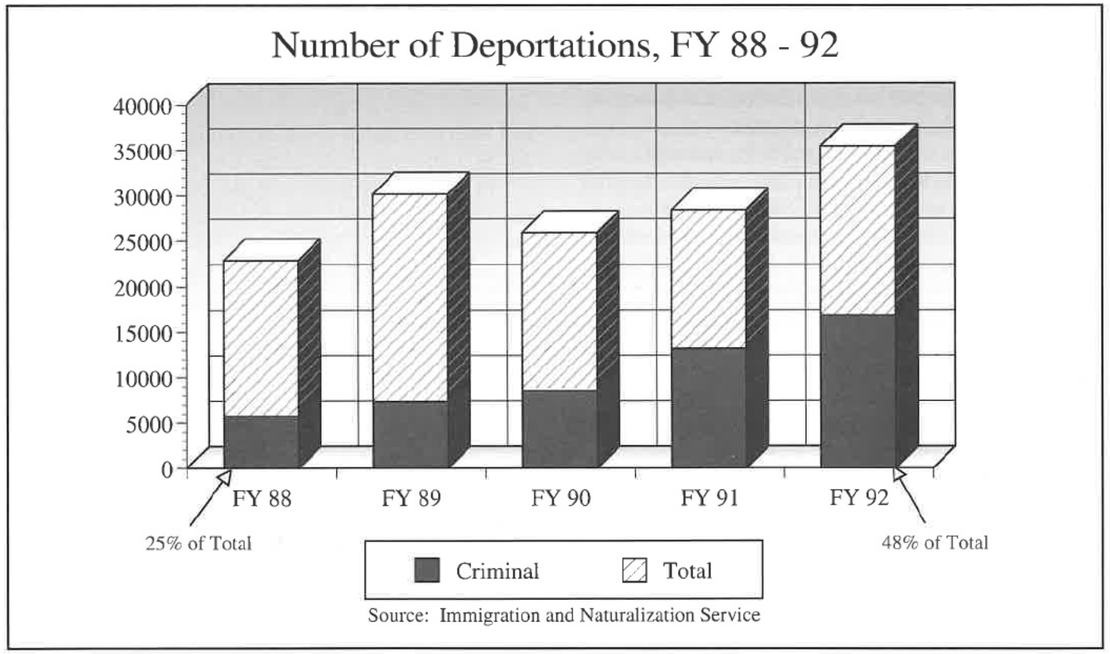
The Office of Special Counsel for Immigration Related Unfair Practices continued concerted public education efforts to inform victims of employment discrimination of their rights and employers of their responsibilities. These efforts are primarily handled both through non-profit service providers and through private sector contracts to accomplish their mission. A wide variety of innovative public education approaches are used, including theater presentations, multi-lingual hot lines, neighborhood fairs, etc. During 1992 the Special Counsel's Office awarded more than $3 million to help accomplish the educational aspect of this program.

Apprehension and Deportation of Illegal Immigrants

As noted above, the vast majority of apprehensions reported for 1992 occurred at locations monitored either by the Border Patrol or by INS' Inspector workforce. However, because INS also has the primary responsibility to enforce immigration laws within the country's interior region, it maintains a large investigative workforce which regularly apprehends illegal entrants, disrupts smuggling operations and counters other criminal activities. These investigative efforts support not only criminal prosecutions but also administrative actions leading to deportation. In discharging these latter responsibilities, the Executive Office for Immigration Review (EOIR) plays a major role.

Criminal Aliens

Involvement in criminal activity by illegal immigrants continued to be a very significant problem during 1992. In fact, INS now expends nearly one-third of its investigative effort on criminal matters, and, at least in certain facilities, a majority of available space is used for detaining criminal aliens. INS reports that it



deported approximately 15,400 individuals on criminal grounds in 1992, about half of whom on narcotics violations.

The INS also worked closely with the FBI to add names of known criminal aliens to the National Crime Information Center to aid all law enforcement agencies in identifying and locating them. In addition, the INS began devising an implementation plan for a National Criminal Alien Tracking Center which will eventually provide 24-hour response to state and local authorities as they arrest aliens who may be deportable.

Hearing and Adjudication Processes

The INS' activity in this area during 1992 was directly influenced by the high priority placed on addressing the criminal alien problem. In fact, INS' Investigations program concentrates much of its efforts on the processing of aliens who are serving prison sentences. It is expected that the initiation of deportation proceedings early in an alien's incarceration will reduce detention costs and expedite the removal process from prison.

Along this same line, the EOIR and the INS worked closely with the Bureau of Prisons and state and local correctional agencies to add six more facilities to the Institutional Hearing Program. As of October 1992 this program enabled deportation proceedings to be conducted for criminal alien inmates in five Federal facilities, 67 state prisons, and one county jail. The special INS Cuban Program expeditiously reviewed all cases for detained Mariel criminals, accelerated the repatriation process, and returned 236 of these individuals to Cuba during the year.

More attention was also devoted in 1992 toward eliminating the "revolving door" nature of much deportation activity. For example, in a pilot project done in cooperation with Mexico, the INS repatriated more than 300 Mexican criminals directly from San Diego to Mexico City. Returning these individuals to the interior of Mexico rather than at a border crossing was expected to make return attempts more difficult. As a result of all these various efforts, the number of deportations in 1992 was the highest ever recorded, or a total of 35,400 — including those deported on criminal grounds.

Asylum

The INS Asylum Program completed its first full year of operation during 1992, experiencing both crisis and growth. Just as this program's adjudication corps was being staffed up to authorized levels, the military coup in Haiti occurred, driving tens of thousands of its citizens to flee by boat towards the United States. The resulting crisis required INS to undertake extraordinary measures to deal with an overwhelming workload. For example, between November 1991 and June 1992, INS personnel interviewed more than 36,000 Haitians who had been interdicted at sea, screening in approximately 10,700 to pursue claims in the United States.

In close cooperation with the Departments of State and Defense, special housing facilities were set up for the migrants at the Guantanamo Naval Base in Cuba as the processing continued. About 50, or fully one-third of INS' 150 Asylum Officers, agreed to a lengthy detail in Cuba to assist in this unprecedented situation. Toward the end of the year, in an attempt to curb further flight by Haitians from their country, INS began processing refugee requests in Port-au-Prince. About 2,100 such applicants had already been interviewed by the end of September.

Aside from the emergency situation with Haitian migrants, this program had already been experiencing a huge growth in workload. For example, INS' Asylum Offices received nearly 116,400 cases in 1992, conducted more than 20,000 interviews and adjudicated 10,923 cases. Despite their best efforts, the backlog in pending cases increased by more than 50 percent, to 216,000 cases. Such a flood of workload prompted INS management to direct that its Service Centers begin playing a role in the asylum application process. This involvement, coupled with streamlined data entry and automation improvements, enabled the adjudication corps to increase its rate of interviews and case completions.

Immigration Services and Inspections

Adjudications

The INS performs a wide variety of important services which have a lasting and profound effect on the daily lives of the Nation's citizens and its immigrants. These services encompass not only the increasingly complex adjudications and naturalization responsibilities, but also the labor intensive ports-of-entry inspections function. Efforts in the adjudications area, in particular, were influenced this past year by continuing legislative and regulatory changes related to the landmark Immigration Act of 1990. For example, INS issued implementation directives addressing 37 separate provisions of this and related statutes. A high degree of public interest and dialogue accompanied these actions since they dealt with such important topics as family-sponsored and employment-based immigration, and a new immigrant visa for foreign investors.

Continuing improvements in automation and staffing, primarily at its four Service Centers, permitted INS to adjudicate more than 4.1 million applications for immigration benefits. This represented a productivity increase of almost 30 percent, marking the second straight year of strong gains in this standard of efficiency. Despite this progress, work demands continued to expand in this area, with the number of pending applications increasing by almost 80,000 during 1992.

Alien documentation remained another major part of INS' burgeoning workload in 1992, although that area also recorded significant improvements in productivity; specifically, more than 660,000 employment authorization documents were issued. In addition, INS initiated "Operation Green Card" — a project intended to replace all pre-1978 issued registration cards with counterfeit-proof ones that include the holder's fingerprint and signature. This project has the dual purpose of simplifying the verification of aliens' work eligibility and nullifying fraudulent use of such cards by document vendors.

Naturalization Activity

The statutory changes referenced at the start of this section had a particular effect in 1992 on the naturalization process. That is, the 1990 Immigration Act was technically amended in December 1991 to reinstate judicial authority over naturalization processes. However, the amendment still allowed citizenship candidates to choose administrative ceremonies where the courts had not claimed exclusive jurisdiction. At the same time, the INS instituted standardized testing for applicants at preapproved private facilities, thereby reducing the time required for interviews. In total for 1992, more than 297,000 resident aliens became naturalized citizens, including more than 7,000 Filipino war veterans who had qualified under a special statutory provision.

Inspections

Over the past several years, INS' Inspections program has experienced steadily increasing workload levels and last year was no exception, with a total of

more than 430 million persons inspected at land ports-of-entry alone. The upward trend is projected to continue, with concomitant increases in the number of inadmissible entrants intercepted (up to 810,000 in 1992 just at land ports). In order to address these phenomenal workload pressures, INS has begun formulating a strategic plan, Land Border 2000, which will guide this enforcement effort over the next decade.

INS also recorded two important operational successes in this area during 1992. Specifically, the Peace Arch Crossing Entry (PACE) at the Blaine, WA., port-of-entry completed the initial year of its operation of the first-of-its-kind Dedicated Commuter Lane (DCL). Both users and inspectors rated PACE an unqualified success because it speeds traffic through the port and makes more efficient use of inspections resources. A secondary positive feature of this operation was that it generated $380,025 in revenues from 20,983 users of the service. INS plans to expand the DCL concept to additional sites in the future.

The INS took other strong steps during 1992 to strengthen its Inspections program. For example, in consultation with the commercial air carrier industry, it provided training to personnel of 48 airlines in profiling techniques and identification of fraudulent documents so that airline employees working overseas could screen improperly documented passengers before they departed on U.S.-bound flights. During a 60-day test of this training, 265 aliens with fraudulent documents were intercepted at 27 locations in Central and South America, Europe, and Asia.

Haitian Resettlement Efforts

The Department's Community Relations Service (CRS) also plays an important role in the provision of certain immigration-related services, often under dire circumstances. For example, CRS played a major role in reducing tensions and concerns among Haitians during their processing through Guantanamo Bay, Cuba. CRS has statutory responsibility to provide placement and resettlement assistance to those Haitians who are eventually approved for entry into the United States. In performing this mission during the 1992 crisis, CRS personnel dealt with the community tensions and concerns in Miami regarding Federal policy toward these Haitians. In a practical sense, this included the actual resettlement of screened-in cases, as well as giving technical assistance to government officials and the voluntary sector.

The magnitude of CRS' resettlement activities required for the Haitian crisis bears special mention. During 1992, CRS resettled more than 10,700 Haitians from Guantanamo Bay, 440 of whom were unaccompanied minors. With approximately 75 percent of the resettlements occurring in Florida, CRS established a network of grants and cooperative agreements with voluntary agencies to help handle shelter care, child welfare and other services. For those Haitians who did not have family members in the United States, CRS' grantees administered resettlement programs in New Jersey, New York, Massachusetts, Connecticut, California, Nevada, Oregon and New Mexico.

Immigration Management Improvements

During 1992 the INS undertook a concerted effort to upgrade procedures and systems at all levels in order to tighten its control and accountability over fees, fines, debts and other receipts, as well as its own expenditures. These actions were consistent with the goals and objectives of INS' long-term Strategic Financial Management Improvement Plan and initially targeted two high-priority areas, debt collection and asset seizure and forfeiture.

Haitian refugees still on board at dockside. Photo: Ellen Powers, CRS

With regard to debt collection and management, the INS consolidated all such functions into two administrative centers. This was done to improve management of business debts and immigration bonds and to address problems identified by the General Accounting Office and the Office of the Inspector General. As one dramatic example of improved results, the National Fines Office (NFO) of the INS detained more than 100 commercial vessels in 1992 to ensure payment of delinquent fines. These actions, combined with warning notices to other delinquent carriers, enabled the NFO to collect more than $1 million in delinquent fines. Prior to the start of the vessel detention program, these fines had often gone uncollected.

There was also significant progress toward correcting weaknesses in overseeing asset seizure matters. INS' field efforts continue to generate a high volume of conveyance seizures, 20,000 last year alone. A number of improvements were implemented, including increased staff positions for a Headquarters Office of Asset Forfeiture. This new Office was structured to provide sufficient staffing for both financial management and program control over field operations.

During 1992 INS also made consistent progress in improving its many automated systems and their

technical applications. As one specific example, it developed and began implementing an overarching Information Systems Architecture. The practical intent is to modernize support systems by integrating databases, consolidating casework processing systems, and providing a national network for office automation. The ultimate goal of the architecture is to establish an electronic records format for the future and reduce the need for costly and time-consuming paper files and records.

Management and technological improvements were also occurring during 1992 in areas which more directly supported the needs of INS' operational personnel. For example, the Computer-Linked Adjudication Information Management System (CLAIMS), was expanded to all four INS Service Centers in 1992. The CLAIMS system supports the receipt, inventory management, case adjudication, and selected notification processes for applications and petitions. In addition, the INS connected its lookout system with the Interagency Border Inspection System (IBIS) at 38 more sites during the year, including the training facility at Glynco, GA, making IBIS operational at 98 ports (124 sites) as of September 30, 1992. The IBIS database contains lookout information from more than 20 Federal agencies and provides on-line access to the National Crime Information Center and the National Law Enforcement Telecommunications System.

As a final example, the INS was the lead agency in development of the Advance Passenger Information System. This system is intended to facilitate the interception of known terrorists, criminals, and immigration violators, while also saving time for other air passengers through use of dedicated inspection lanes. During 1992, the average number of daily flights covered under this system increased from 29 to 185, and the average time of immigration inspection per foreign visitor decreased by an average of 22 percent. Management and technological improvements such as these should better equip INS to deal more effectively with its dual enforcement and service mandate.

Chapter V: Civil Rights

President George Bush signing the Civil Rights Act of 1991 on November 21, 1991.

Susan Biddle
White House Photo Staff

One of the Department's major accomplishments during the past year was helping to secure the passage of the Civil Rights Act of 1991. This Act promotes the goals of ridding the workplace of discrimination on the basis of race, color, sex, religion, national origin, and disability; ensuring that employers can hire on the basis of merit without the fear of unwarranted litigation; and ensuring that aggrieved parties have effective remedies. In addition, the Department worked vigorously to enforce existing anti-discrimination laws in such areas as employment, voting, and housing, and played a leading role in promoting improved police-community relations.

Implementing the Americans with Disabilities Act

In 1992, the Department's Civil Rights Division made significant strides in implementing the landmark Americans with Disabilities Act (ADA) of 1990, which provides comprehensive civil rights protection to persons with disabilities. Departmental regulations for state and local governments (Title II) and for public accommodations and commercial facilities (Title III) were prepared for the issuance of final rules, an extensive technical assistance program was established and, as required by the statute, technical assistance manuals for titles II and III were issued and an enforcement and litigation program was commenced. During the latter part of the year, the Department initiated several investigations under its pattern or practice authority granted by Title I of the ADA, which prohibits employment discrimination by state and local governments.

During 1992, the Department received 504 complaints alleging violations of Title III and 563 complaints against state and local governments under Title II. Of the latter, 273 were referred to other designated Federal agencies for investigation and investigations were initiated by the Department with regard to the large majority of the rest. By emphasizing education and negotiation in complaint processing, significant relief has been obtained without the need for litigation.

ADA Assistance

In order to promote voluntary ADA compliance, more than $3.4 million in technical assistance grant monies was provided to 19 business and disability advocacy groups to support projects designed to educate individuals and covered entities about their rights and responsibilities under the ADA. In addition, an ADA telephone information system answered more than 75,000 calls during the year and, in response to such calls and written requests, more than 1.75 million technical assistance documents (fact sheets, manuals, and handbooks) were distributed to businesses, architects, persons with disabilities, and other interested parties. Expert speakers were provided at more than 150 conferences nationwide attended by more than 19,000 individuals.

ADA Education

A national conference for law enforcement on complying with the Americans with Disabilities Act was sponsored by the United States Attorney's office in the Western District of Michigan and the Police Executive Research Forum. Held in Grand Rapids, Michigan, the conference pulled together top policymakers and experts to provide law enforcement officials with information on their responsibilities under the ADA. At the conference, participants attended workshops and plenary sessions examining the Act's provisions affecting most law enforcement agencies as well as examining strategies for compliance. Topics discussed include evaluating, hiring, and promotion policies; law enforcement's response to people with disabilities; and services and accessibility for people with disabilities.

The FBI also performed a critical role in the education of law enforcement officers about ADA. Throughout 1992, the FBI provided instruction on the Act to more than a thousand law enforcement managers and executives through the FBI National Academy as well as at meetings such as the International Association of Chiefs of Police Convention. Instruction on this subject was also provided, at each session of the FBI National Law Institute and other professional meetings, to lawyers who advise law enforcement agencies.

Voting Rights Enforcement

The Department continued its efforts to assure minorities a fair opportunity to elect candidates of their choice to public office through its administrative review of voting changes under Section 5 of the Voting Rights Act, as well as through litigation. During 1992, 21,454 voting changes were submitted for review, the largest number of changes ever submitted in a fiscal year. Among these voting changes were 1,254 redistricting plans, also the most ever in a fiscal year.

The Attorney General interposed Section 5 objections to 16 statewide redistricting plans: Alabama (Congressional), Arizona (house and senate), Florida (senate), Georgia (house, senate, and Congressional), Louisiana (Board of Elementary and Secondary Education), Mississippi (senate), New Mexico (senate), New York (assembly), North Carolina (house, senate, and Congressional), and Texas (house and senate). Objections also were interposed to 49 local redistricting plans, including plans for Houston, Texas, 11 Texas counties, and three Texas school districts; 16 Louisiana parishes; nine Mississippi counties; two South Carolina towns and two South Carolina counties; two Arizona counties; and one county each in Alabama, California, and Virginia.

The Department's Civil Rights Division filed 22 new voting rights lawsuits in 1992. Significant activities included:

- Filed suit against the State of Florida to assure that both the state senate and house redistricting plans would provide blacks and hispanics fair opportunities to elect candidates of their choice to the state legislature.

- Filed suit against the North Carolina Republican Party, the Helms for Senate Committee and other defendants who had sent postcards to about 125,000 voters, 97 percent of whom were black, falsely informing them about the rules governing eligibility to cast ballots. This information was combined with a warning concerning criminal penalties for voter fraud.

Fair Housing Enforcement

During 1992, 81 new lawsuits were filed under the Fair Housing Act, including 18 pattern or practice cases. This was a near record number of new case filings which reflects the expanded enforcement authority provided by the 1988 amendments to the Act. Consent decrees were entered in 74 pending cases and litigated judgments were obtained in 12 cases.

Two major fair housing initiatives were commenced this year. The Department began its own program of "testing" to detect unlawful discrimination and also increased its efforts to detect and challenge discrimination in mortgage lending. For the first time the Department began conducting its own tests in the sale and rental of housing, using as testers Departmental personnel and outside fair housing organizations. This program is taking place in many areas of the country and already has generated lawsuits challenging unlawful practices.

In the area of mortgage lending, a ground-breaking pattern or practice race discrimination lawsuit was filed against Decatur Federal Savings and Loan Association, one of the largest originators of home mortgages in the Atlanta, Georgia, area. In the first such lawsuit under the Fair Housing Act and Equal Credit Opportunity Act, the Department negotiated a precedent-setting consent decree with the lender that includes $1 million in damages for 48 black victims of discrimination. The lender also agreed to major changes in its marketing, branching, and advertising activities. Using the Decatur Federal case as a model, the Department has engaged in a series of meetings with the Federal

financial regulatory agencies to develop a coordinated approach to investigating possible mortgage lending discrimination in major cities throughout the country.

In another far-reaching enforcement initiative in the area of public housing, a pattern or practice lawsuit was filed against the New York City Public Housing Authority (NYCPHA), the largest public housing authority in the country. The suit alleged that the NYCPHA, which owns and operates more than 300 projects housing approximately 500,000 people (nearly eight percent of New York City's population), had for many years steered minority applicants away from predominantly white projects in the City's five boroughs. A consent decree was filed with the complaint and includes a broad general injunction and a detailed new tenant selection and assignment plan to ensure against any future discrimination in tenant selections and assignments.

To compensate the victims of discrimination, the NYCPHA is required to set aside a total of 1,990 future apartment vacancies at the 31 projects where the unlawful steering allegedly occurred and to pay the victims' moving expenses. An additional 200 Section 8 housing assistance vouchers also will be provided to victims who now wish to move into apartments outside the conventional public housing system.

Police-Community Relations

The problem of police misconduct was catapulted into national prominence following the dramatic video of the beating of motorist Rodney King in Los Angeles last year. The officers charged in the King case were acquitted in April 1992, sparking large-scale rioting in the Los Angeles area. The Department played a major role in helping Los Angeles to recover from this civil unrest.

The day after the state court acquittals of the officers charged in the Rodney King beating the Associate Attorney General announced the designation of a team of Federal prosecutors from the Civil Rights Division and the United States Attorney's Office for the Central District of California, assisted by agents from the FBI, to collect and review the evidence to assess the potential for a Federal prosecution. As a result of an intensive Federal grand jury investigation, the same four Los Angeles Police officers were indicted on Federal criminal civil rights charges.

The Department's Community Relations Service (CRS) provided mediation and conciliation services to the many communities affected by the riots. Operation Repair and Rebuild was a critical component of the Presidential Task Force organized to assist in the rebuilding efforts, and assisted local law enforcement agencies, government officials, and community leaders in the process of addressing the increased tensions that resulted from the disturbances.

In addition, CRS staff, working closely with the Federal Emergency Management Agency's Disaster Application Centers when they opened to assist riot victims, provided liaison services between the centers and Black, Hispanic and Korean riot victims. Further, CRS staff served as a key link between gangs and law enforcement, enlisted the support of community leaders, identified and built common denominators between the parties, and provided recommendations to officials for supporting these efforts. CRS maintained a presence throughout the Los Angeles area as many groups held demonstrations and counter demonstrations to voice their concerns and dissatisfactions, or protest disaster services, discrimination in the rebuilding process, and racial issues. CRS also assisted the Los Angeles Unified School District in developing and training crisis response teams in its schools.

The aftermath of the King case resulted in a substantial increase in the Department's investigations of police misconduct. Forty-five grand jury investigations into incidents of official misconduct were initiated in 1992, almost doubling the number of such investigations in the year before the King incident. As a result, 27 official misconduct cases were filed charging 59 law enforcement defendants with violations of the Federal criminal civil rights laws that proscribe the intentional deprivation of individually guaranteed rights by those acting under color of law. These cases included:

- A Los Angeles police officer was convicted of the beating of a juvenile Mexican national, who was severely injured after he tried to hide from the defendant who was trying to arrest him.
- Seven North Carolina police officers, three of whom have already pled guilty, were charged with physically abusing homeless individuals arrested for public intoxication by beating them and pouring cooking oil and hot coffee on them.
- In three other separate cases, Federal law enforcement officers (an INS detention officer, a Border Patrol agent and a Federal Protective Service Officer) were indicted for assaulting arrestees while they were being detained. Two of them have pled guilty.

Improving Police-Community Relations

The Rodney King incident highlighted the need to improve the relationship between law enforcement officers and the communities they serve. In 1992, CRS entered into an agreement with the Hispanic American Police Command Officers Association (HAPCOA) to address racial and ethnic conflict and improve relationships between Hispanic communities and local police departments. Under this agreement CRS and HAPCOA provided training to Hispanics who were recent arrivals in the United States and served in a liaison capacity with police agencies in areas such as the District of Columbia, Chicago, Houston, and Miami.

CRS also was very active in Operation Weed and Seed, often serving as liaison between governmental agencies and the communities in which the program would be implemented. These activities augmented CRS' on-going assistance to police departments across the United States.

The Office of Justice Programs (OJP) is also involved in efforts to improve police-community relations. Through the Interagency Agreement for Community Policing in Public Housing between OJP's Bureau of Justice Assistance (BJA) and the Department of Housing and Urban Development (HUD), the two agencies will develop and conduct training and technical assistance to institute community policing in public housing developments in Weed and Seed sites.

The OJP's National Institute of Justice (NIJ) is providing police departments with practical information to encourage establishment of community policing. During 1992, NIJ projects in Seattle, Washington, and Madison, Wisconsin, reviewed strategies for managing effective community policing and maintaining citizen involvement and support. In South Seattle, NIJ research found that community policing reduced crime and fear. Its success led citizens to vote to expand the approach citywide. In Madison's Experimental Police District, police established storefront substations staffed by beat officers near community centers in lower income housing complexes on the city's south side. Burglaries were reduced in the experimental district, and citizens expressed greater satisfaction with police and greater feelings of safety.

In addition, NIJ is producing a national directory of community policing, as well as case studies providing in-depth reviews of selected community policing programs. The Institute has provided training in the approach, including regional seminars for police and municipal officials and a biannual newsletter. Working

with the International Association of Chiefs of Police, the Institute is developing new curricula for departmental training.

Finally, the FBI's "Safe Streets" strategy includes a community outreach program designed to create a stronger partnership between law enforcement and community leaders in fighting violent crime. As part of this approach, the FBI is currently participating in numerous programs with law enforcement agencies and community organizations. Among these successful programs are Adopt-a-School, Junior G-Men, the Mentor Program, and community outreach afternoon programs.

Chapter VI: Civil Justice

The Department moved aggressively during 1992 in civil justice litigation to protect citizens' interests in areas such as Federal compensation programs, environmental protection, and preservation of competition in the Nation's business sector. In addition, the Department took an active role in civil justice reform. Throughout 1992, the Department endeavored to implement coordinated reform of the civil justice system. A Memorandum of Preliminary Guidance was issued concerning conduct of government attorneys. Changes to the Federal Rules of Civil Procedure, including changes to limit abusive discovery and to expand inquiries into the qualifications of expert witnesses were proposed. Furthermore, the Department prepared Federal legislation, namely the Access to Justice Act, in order to enact various reforms such as the "Fairness Rule" covering the award of attorneys' fees in diversity cases, the giving of notice prior to the filing of suit, and the greater use of alternative dispute resolution mechanisms.

Defense Against Unwarranted Claims

The Department championed the interest of the United States Treasury, defending the tills against unwarranted claims by individuals and companies. The Civil Division defeated a total of $9.7 billion in claims. Noteworthy among the defeated claims were:

- A $2 billion claim by the Boeing Corporation involving a Saudi Arabian foreign military sales contract dispute
- More than $1 billion in third party tort claims by asbestos manufacturers — nearly concluding this decade-long, multi-billion dollar litigation
- A $500 million claim by owners of the now-failed Lincoln Savings and Loan that the action of Federal regulators taking over the then-failing S&L made the Government liable for their losses
- Approximately $200 million in third-party tort claims by Pan American Airlines alleging that the CIA or the DEA was responsible for the December 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland
- An attempt by bondholders of defunct nuclear power plants to shift an estimated $1 billion of costs in defaulted construction bonds to the Bonneville Power Administration

Administration of Compensation Programs

The Department's role as administer of justice includes the implementation of the multi-billion dollar Childhood Vaccine Injury and Radiation Exposure Compensation programs. Review of claims, administration of payments from established trust funds, and any associated litigation are handled by the Civil Division. During 1992, the Civil Division achieved impressive accomplishments in these areas.

The Civil Division obtained resolutions in approximately 430 claims petitioning the Secretary of Health and Human Services for damages under the National Childhood Vaccine Injury Program. Damages were awarded one-third of the time, for a total of approximately $97 million. The Civil Division's defense of these cases helped ensure that the trust fund was administered in a fair and evenhanded way, protecting the U.S. Treasury against several hundred million dollars in unwarranted claims.

The Division initiated administration of the Radiation Exposure Compensation Program which provides lump sum humanitarian payments to persons who developed certain diseases following exposure to radiation from atmospheric nuclear weapons testing or underground uranium mining. Final regulations implementing the Program were developed by the Civil Division and became effective in May 1992. In the remaining five months of the fiscal year, more than 1,800 claims were received. Of these, 343 claims valued at more than $26 million were approved.

In addition, the Civil Division defended a series of interpretive rulings and instructions issued by the Social Security Administration to expedite the processing of benefits claims associated with HIV-related illnesses, allowing the involved agencies to respond with the flexibility and promptness warranted by the rapid expansion of scientific knowledge and criticality associated with such illnesses.

Protecting the Environment

1992 marked the fourth straight billion dollar year for the recovery of civil penalties, court-ordered defendant cleanups, cleanup cost recoveries and natural resource damages by the Department's Environment and Natural Resources Division.

A number of notable settlements under Superfund were achieved during the year, including the completion of a $109 million settlement to restore New Bedford Harbor, Massachusetts and clean up PCB contamination, and a $120 million settlement with the Ciba-Geigy Corporation in which the company agreed to clean up the soil contamination near its chemical manufacturing plant in Alabama.

Superfund was not the only environmental statute that produced notable results in 1992. A major initiative was launched, in conjunction with the

Senator Orrin Hatch presents a $100,000 check to George Snow, the son of a uranium miner who died of lung cancer. The payment check was the first under the Radiation Exposure Compensation Program. Source: Senator Orrin Hatch

Environmental Protection Agency, against the pulp and paper industry, the metal manufacturing and smelting industry, and the organic chemical manufacturers. Thirteen civil judicial and nine administrative actions and settlements against 23 facilities in 16 states were announced to redress patterns of industrywide noncompliance. The Department also launched an enforcement initiative against benzene, in which a series of civil judicial and administrative enforcement actions were filed in order to protect human health from this known carcinogen.

In addition, the Department successfully defended the space program from efforts to halt the Galileo mission stemming from specious environmental claims and EPA from challenges to its regulations governing discharges from the organic chemicals, plastics, and synthetic fibers industries.

Preservation of Competition

To protect American consumers, the Department's Antitrust Division has moved aggressively against price fixing and bid-rigging, and has taken steps to block merger transactions that threaten to lessen competition. The Department has also taken an active role in opening competitive markets overseas and eliminating conditions that may impede U. S. companies from competing in the global economy.

In April 1992 the Department and the Federal Trade Commission (FTC) issued the 1992 Horizontal Merger Guidelines. The 1992 Guidelines are the first-ever joint enforcement guidelines issued by the two Federal agencies with concurrent responsibility for Federal merger enforcement. Under the new joint guidelines, the Department and the FTC will be applying identical standards in the review of mergers, thereby increasing enforcement consistency and reducing uncertainty in business planning. The new Merger Guidelines continue the movement away from wooden application of structural criteria and toward analytical standards that account more accurately for real-life conditions in affected markets.

Major Merger Investigations

Economic forces have been causing a significant consolidation of productive resources in the U.S. banking industry the past several years. The Department plays a major role in the Federal approval of bank mergers and, where necessary, it challenges transactions that are likely to result in anticompetitive markets. In 1992, the Department reviewed more than 1,600 bank mergers or acquisitions.

After a six-month investigation of BankAmerica's acquisition of Security Pacific, in February 1992, the Department agreed to a divestiture of 211 branches in five states, more than $8.8 billion in deposits, and more than $2.7 billion in loans. In March 1992, the Department filed a civil antitrust suit challenging the proposed merger of the Society Corporation and Ameritrust Corporation, two Cleveland, Ohio, bank holding companies. A proposed consent decree was filed at the same time that required the parties to divest themselves of more than 20 branch offices, more than $1 billion in deposits, and more than $40 million in loans to small businesses in the region.

The aviation industry also is undergoing consolidation, and the Department has taken decisive steps, where necessary, to ensure that mergers and acquisitions by the Nation's airlines do not create anticompetitive conditions.

Civil Enforcement Actions

In February 1992, the Department filed a civil antitrust suit charging the Massachusetts Allergy Society, Inc. and four doctors with conspiring to fix

and raise fees paid for allergy services by certain health maintenance organizations in Massachusetts. A consent decree was filed to settle the suit that prohibits the defendants from conspiring to use the Society as a joint negotiating agent to obtain higher fees from certain HMOs for allergy services, from resisting competitive pressures to discount fees, and from developing and adopting a fee schedule for the Society to use in negotiating higher fees from the HMOs on behalf of its members.

Also, the Department filed a civil antitrust suit charging the Hospital Association of Greater Des Moines and five of its member hospitals with entering into agreements to restrict advertising of hospital services. At the same time, the parties filed a proposed consent decree to settle the suit and ensure that each hospital will independently determine its policy with respect to advertising (including the amount, terms and content of such advertising), thereby aiding consumers in obtaining quality services at reasonable prices.

International Activities

On April 3, 1992, the Department of Justice announced that it would no longer refrain from challenging foreign cartels whose activity harms U.S. export trade. The new policy is consistent with the statutory language of the Foreign Trade Antitrust Improvement Act of 1982. The new policy marks a return to the successful policy held by the Department until 1988, when a footnote in the Department's 1988 Guidelines for International Operations suggested that the Department would not enforce the U.S. antitrust laws against foreign cartels unless they harm U.S. consumers.

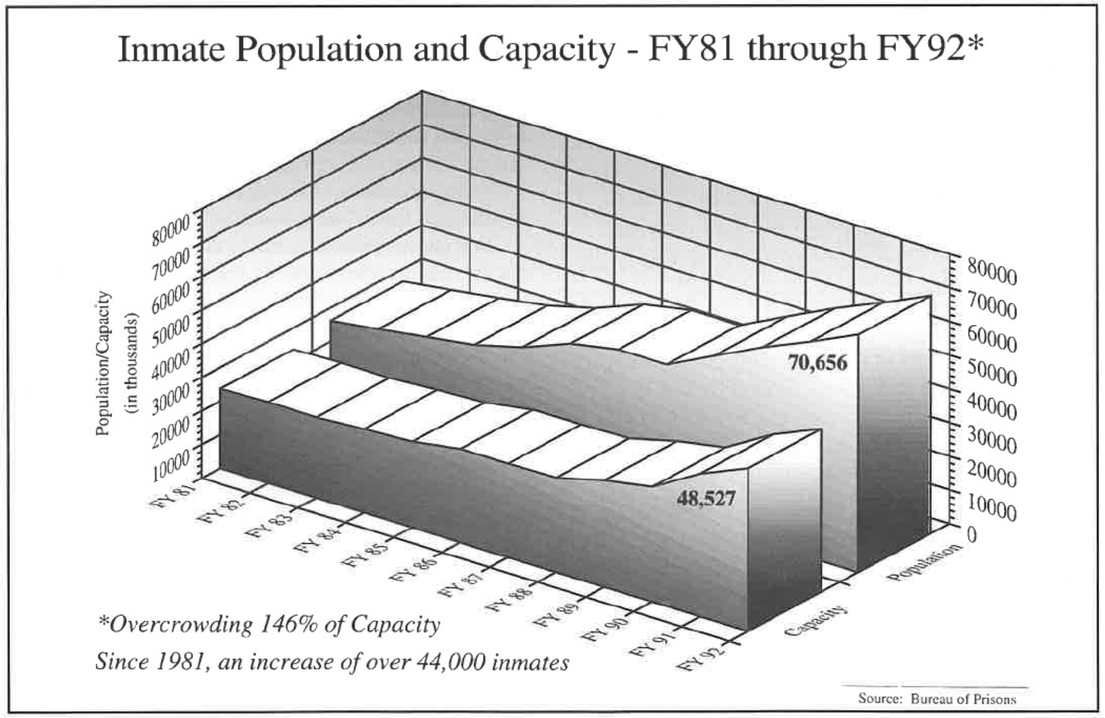
On another front, the Department and the Federal Trade Commission continue their joint program to provide legal and economic assistance to the new competition agencies of governments in Eastern and Central Europe. The program provides for short- and long-term missions by lawyer/economist teams. These teams provide, upon request, technical assistance to regulatory, competition and privatization authorities in each country.

Chapter VII: Prisoner Detention, Handling

The Department is charged with providing secure, safe and humane care for individuals placed in the custody of the Attorney General. The United States Marshals Service (USMS) is responsible for the custody of prisoners awaiting trial or sentencing. The Immigration and Naturalization Service (INS) detains and repatriates illegal and criminal immigrants. The Bureau of Prisons (BOP), which manages the Federal prison system, serviced a record 70,000 inmates in 1992, an increase of more than 6,000 from 1991. The burgeoning inmate population continues to present management challenges to the Department.

Pre-Sentencing Detention of Federal Prisoners

The acute shortage of bed space in local jails remained an important issue in many areas of the country in 1992. The USMS had a daily average of 20,000 prisoners in custody, an increase of almost 4,000 from 1991. Prisoners in Marshals Service custody usually are being held for trial, hearings, sentencing, or transfer to Federal prison. The high numbers of prisoners held under state and local charges, however, forced local jails to restrict and sometimes terminate jail space for Federal prisoners. As in 1991, the shortage of bed space was especially severe in the Northeast region.



Weekly USMS National Prisoner Transportation System airlifts continued to transport prisoners from this area to available detention space in the Southwest.

The Cooperative Agreement Program (CAP) is an essential component of the Marshals Service effort to alleviate the jail space shortage. Under the CAP program, the Marshals Service provides funds to state and local governments for jail construction or renovation in return for guaranteed detention space for Federal prisoners. Since the start of the CAP program in 1982, 75 districts have been provided with a total of 6,953 guaranteed prisoner bed spaces. During 1992, 11 CAP agreements were awarded, for a total cost of more than $5.3 million. These awards increased bed space by 302 units.

Both the BOP and INS were successful in their efforts for constructing or opening detention facilities. During 1992, 8,260 funded beds were under some phase of development or construction, including new facilities in Miami, Florida and Brooklyn, New York, which will be used primarily for pretrial activities. The BOP activated new facilities in Fort Worth, Texas and Tallahassee, Florida, and obtained funding for two additional detention units which will accommodate 1,250 prisoners. The INS increased the capacity of its Service Processing Center (SPC) in San Pedro, California, from 400 to 575 beds in 1992, and began construction on a 200-bed expansion and 20-bed maximum security unit in El Centro, California. The expansion of the Federal Detention Center (FDC) in Oakdale, Louisiana, was completed, and INS quickly filled the facility to the level approved by the BOP with criminal aliens whose immigration hearings in state and local prisons had not been completed before their sentences expired.

Prisoner Handling and Transportation

In 1992, the Marshals Service scheduled and supervised more than 180,000 prisoner movements nationally, an increase of 20 percent over 1991. This was the largest percentage increase in the history of the National Prisoner Transportation System. Of the total prisoner movements, more than one-third were by the Service's jet aircraft. The other prisoner movements were by bus, van, automobile, and commercial aircraft.

The Marshals Service's expertise in conducting large scale prisoner movements resulted in significant cost savings and efficiencies for the Service and for other Federal agencies such as INS and the United States military whose prisoners are often transported by the Marshals Service. Although the Marshals Service was required to move some prisoners on commercial airliners to meet extreme deadlines, a Service-developed centralized ticketing program saved more than $2 million. This program also saved more than $1 million by providing ticketing for all Deputy Marshals traveling on special assignments.

In a unique pilot program, a video conferencing system was installed between the U.S. Court House, Northern District of Florida, Tallahassee, and the Federal Detention Center in Tallahassee to be used for pre-trial court proceedings. The system will reduce the number of prisoner movements to and from court by U.S. Marshals, which is expected to enhance both pre-trial cost efficiencies and safety to the community and to U.S. Marshals Service personnel.

In 1992, the INS repatriated more than 280 Mariel Cubans aboard INS aircraft, and initiated repatriation flights of criminal aliens to Jamaica. INS aircraft and buses, as well as the National Prisoner Transportation System, were used to move large numbers of criminal aliens to the Oakdale FDC as its capacity was increased. Scheduled INS bus routes from northern locations were successfully used to move large numbers of aliens to the border area for removal.

Post-Sentencing Activities

The BOP continues to develop new strategies to manage the ever-expanding prison population. In 1992, the strategy included expansion of the prison system, along with provision of a variety of correctional options and programs.

System Expansion

The BOP continued the largest expansion program in its history in 1992. During the year a total of more than 33,500 funded beds for sentenced offenders were under some phase of development or construction. The BOP opened facilities in Manchester, Kentucky and Florence, Colorado, and expanded facilities in Georgia, Louisiana, North Carolina, Texas and California. These projects added 2,719 beds to the BOP capacity in 1992.

Congressional funding was approved for new construction projects which will add almost 3,600 beds to this increasing capacity. Included are secure facilities in Edgefield, South Carolina and Pollock, Louisiana, and a minimum-security facility for females in Scranton, Pennsylvania.

A major objective of the BOP is to continue to expand the capacity of the Federal Prison System to keep pace with projected increases in the inmate population and to simultaneously reduce the pressure of inmate overcrowding. Inmate population in the Federal Prison System was at a 46 percent overcrowding rate in September 1992. This represents a reduced rate from 1991, when the overcrowding rate hovered around 60 percent. The reduced overcrowding rate is the result of capacity increases and a change in the way the BOP calculates rated capacity in medium security prisons.

Correctional Options

The BOP continues to offer a variety of correctional options in an effort to reduce the number of repeat offenders. The most recent recidivism information on Federal inmates released in 1987 reveals a rearrest rate of 39.3 percent after 3 years in the community. This rate is an improvement over the average rate of 42.2 percent from the three prior Federal offender studies in 1978, 1980, and 1982.

Community Corrections Programs

Community corrections programs provide viable alternatives to prison incarceration for certain Federal offenders. Community Corrections Centers (CCC) continued to provide temporary residence, job placement assistance, counseling and drug/alcohol testing and monitoring in 1992. Participating CCC offenders are asked to reimburse the Federal government for subsistence costs, and made payments totaling $8.3 million in 1992, an increase from $7.6 million in 1991.

The Urban Work Cadre (UWC) program is a vital component of community corrections efforts. UWC participants are low-risk offenders who are selected to spend the last 18 months of their sentences at a community corrections center. During the first 12 months of this period, 168 inmates provided labor for the Army, Navy and Air Force, as well as the National Forest Service, the Veterans Administration and the National Park Service.

Cooperative efforts between the BOP, the U.S. Probation Service, and the U.S. Parole Commission have led to the establishment of the Parole Violator Sanction Program. This joint program is currently operating at Community Corrections Centers (CCC) in the District of Columbia, and Baltimore, Maryland. The program is designed to target individuals under supervision of the U.S. Probation Service who become

involved in technical violations and who pose minimal risk to the community. These offenders are placed in this program in lieu of being returned to prison. The unique nature of this program is the assignment of a full-time U.S. Probation Officer on-site at the respective CCC.

Intensive Confinement Centers

On July 13, 1992, the Bureau established the first Intensive Confinement Center (ICC) for female offenders on the grounds of the Federal Prison Camp at Bryan, Texas. The ICC is a minimum-security facility designed to house 120 inmates. The program consists of a due-process system of discipline, a strict daily regimen of physical conditioning, labor-intensive work assignments, adult basic education, secondary education, vocational training, drug and alcohol counseling, life-skills training, nutrition, and other counseling courses designed to prepare inmates for successful return to community life after completion of their sentences.

The Bureau's ICC at Lewisburg, Pennsylvania, continued to offer a specialized program that provides a workable balance between a military boot camp and traditional values of the Bureau. Exit interviews show that inmates have had very positive experiences, and staff report the same. As of August 31, 1992, 273 inmates (representing six classes) had graduated from the ICC to the community phase of the program.

Drug Treatment Programs

The Bureau continued to expand drug abuse programs for confined offenders, spending about $21.5 million for drug abuse treatment during 1992. More than 10,000 inmates participated in the Bureau's Drug Education Program, nearly 12,000 participated in non-residential drug counseling programs, and more than 1,000 completed residential drug-abuse treatment programs. In addition, 16 new institutions implemented residential drug-abuse treatment programs. Currently, 31 institutions have such programs.

Federal Prison Industries

Federal Prison Industries (trade name UNICOR) employs and trains inmates to prepare them for release, and keeps them productively occupied, contributing to the safe and orderly management of Federal correctional institutions. At the end of 1992, UNICOR employed approximately 15,000 inmates, about 23 percent of the Bureau's rapidly expanding population. Inmates at 88 factories in 47 correctional institutions manufactured a wide range of products from furniture to electronics and performed such services as data entry and printing. 1992 sales topped $417 million, up from $395 million in 1991. To meet this rapid expansion, UNICOR and the Brookings Institution sponsored a series of task force meetings in 1992, attended by leaders in the fields of government, labor and private industry. The task force examined the role of UNICOR within the correctional system; the benefits prison industries programs have on society; the impact prison industries have on post-release success rates; and the expansion of these programs to meet the increase in prison populations without undue impact on the private sector. The findings of the task force will be issued in 1993.

Inmate Financial Responsibility Program

The Inmate Financial Responsibility Program (IFRP) operated by the BOP, in cooperation with the Administrative Office of the U.S. Courts and the U.S. Attorneys' Offices, provides a systematic method of collecting court-imposed fines, fees and costs that remain unpaid. During 1992, the IFRP collected almost $11.5 million. Of the 21,381 inmates identified as having a court-ordered financial obligation, 18,815 (88 percent) are making payments toward these obligations and more than 32,957 inmates in the BOP's custody have satisfied their financial obligations.

Assistance to State and Local Governments

Several state and local governments received correctional options program demonstration grants from the Office of Justice Program's Bureau of Justice Assistance (BJA) in 1992. The Florida, Maryland and New Hampshire Departments of Corrections and the Alameda County, California, Probation Department are developing and implementing programs incorporating a wide range of correctional options for youthful offenders. These include community based incarceration, weekend incarceration, electronic monitoring, and intensive probation combined with educational, drug treatment, job training, and health services.

Through an interagency agreement with the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Corrections Academy is providing training and training-related technical assistance to practitioners working in juvenile corrections. Eight states and the District of Columbia received this assistance, and more than 240 practitioners participated in Academy seminars and national workshops.

In addition, the Cook County, Illinois, Sheriff's Office, the St. Louis, Missouri, Medium Security Institution, and the Kentucky Department of Corrections are implementing boot camp prison programs with BJA funding. Two previously funded boot camps—one in Springfield, Illinois, and another for female offenders in Taft, Oklahoma—continued during the year with BJA funding. BJA also is providing training and technical assistance to state and local agencies in this area.

Chapter VIII: Management Improvements

Over the past decade, the role of the Department of Justice in enforcing the Nation's laws has expanded greatly. With these added responsibilities have come increased staff and resources. Managing the Department's complex and extensive operations presents a major challenge. In 1992, the Department continued to make strides in a number of key management areas including worklife, debt collection, asset seizure and forfeiture, technology and oversight.

Workforce 2000

Increasing the diversity of the Department of Justice was identified as one of the Department's major objectives. All components were required to maximize efforts to increase the number of women, minorities, and disabled persons in all job categories, particularly in high level and policy making positions. The achievement of a diverse workforce is one of the best ways to send a clear signal to minorities and women in America that our government is one which aims to enforce fairly its laws and the basic human laws of fairness and decency. Moreover, the Department's ability to discharge its mission is often largely dependent upon cooperation from the public. Public cooperation is usually determined by the level of confidence it has in the integrity of the organization.

Diversity of Workforce

The Department's total staffing is more than 90,000 employees. Of that number 40% are women, 18% are Blacks, 9.7% are Hispanics, 2.0% are Asian American, 0.5% are American Indians. In addition, of 6,859 attorneys, one-third are women, 4.6% are Black, 2.6% are Hispanic, 1% Asian-American, and 0.2% are American Indian. These figures meet or exceed the average availability of these groups in the law school graduating classes over the last 5 years.

During 1992, component managers attained this level of diversity by following priority objectives established by the Attorney General to:

- host meetings of minority Bar Associations and representatives of attorneys with disabilities to discuss employment opportunities.
- convene a Department-wide conference on Equal Employment Opportunity with the active involvement of senior Justice officials.
- arrange for the law enforcement components to jointly conduct a series of Job Fairs on the campuses of women's colleges.
- schedule a number of Job Fairs on college campuses that attracted significant numbers of minority applicants.
- increase opportunities for all employees to advance to the level of their highest potential.

Worklife Issues

The Department of Justice recognizes the importance of providing managers with appropriate tools to assist employees in balancing professional and personal priorities. The Department considers the Worklife Program one of those critical tools.

During 1992, the Department realized three important goals of the Worklife Program. First, the Department's first Washington, D.C., child care center opened its doors to children. The center, Just Us Kids, was the culmination of years of effort by both employees and managers within the Department. The center can accommodate 70 children on a full time basis, with another 20 spaces reserved for the summer camp and occasional care programs.

Second, the Department continued to increase the information available to employees at the worksite on worklife issues. In April 1992, the Department launched a lunchtime speaker series with presenters who are knowledgeable on a wide variety of topics related to both personal and professional interests of employees.

Third, the creation of a Manager's Guide to Human Resource Management, a comprehensive desk-top reference to help supervisors navigate the difficult waters of changing expectations, was completed. The guide, which is being distributed to managers and supervisors within the Department, offers practical assistance to managers in helping employees balance the competing demands of work and family while enhancing the efficiency of agency operations. The guide will expand understanding of the Worklife Program and cement the gains that have already been achieved.

Debt Collection

The Department continues to face the growing cost of attacking violent crime, reducing the influence of organized criminals, and dismantling drug organizations. An integral part of its enforcement strategy is to collect debts owed to the Federal government. In 1992, the Department collected $862 million, the largest amount of cash ever collected in a single fiscal year since the Department began keeping such statistics in 1982.

Debt Collection

The Office of Debt Collection Management (DCM) coordinates collection activities of Department components. The DCM, in cooperation with the Executive Office for U.S. Attorneys (EOUSA), installed an automated system to run a current credit report on every individual debtor whose debt was referred to the Nationwide Central Intake Facility. These credit reports were forwarded to the U.S. Attorney, or the private counsel, to whom the debt was referred for litigation, to help locate the debtor and evaluate the debtor's ability to pay the debt.

In addition, the Debt Alert Interactive Voice Response System (DAIVRS) was instituted by the DCM to meet the debarment provision of the Federal Debt Collection Procedures Act of 1990. This provision restricts extension of credit by a Federal agency to any debtor against whom a judgment has been entered for a debt to the United States. DAIVRS is a database of judgments entered in lawsuits against Federal debtors by U.S. Attorneys' Offices and private counsel and is accessed by agency loan officers using a touch-tone telephone.

The U.S. Marshals Service began a one-year financial litigation pilot project in seven U.S. Attorney districts to identify, clear, and recover debts owed the U.S. by using Judgment Enforcement Teams. In the first four months, the pilot districts closed 158 cases involving $5,549,524 and collected $1,428,630. For every dollar expended on this pilot effort, the Marshals Service investigators collected $5.76.

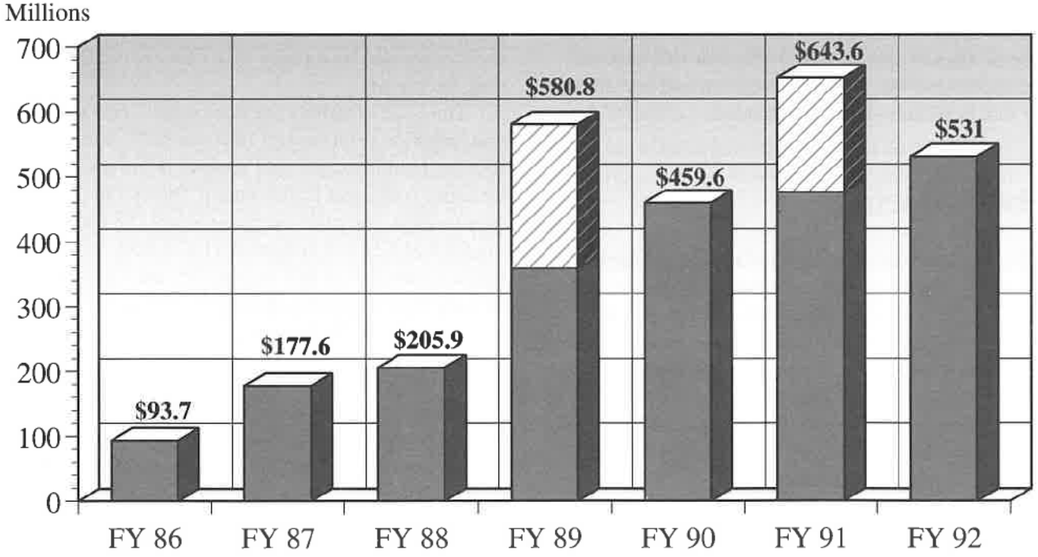
Recovering debts often achieves important societal value. When debts from the Department of Education (DOE) are collected, the dollars go back to DOE to support more student loans. For physicians who default on their Public Health Service loans, the primary concern is to get them to fulfill their obligation to provide medical services in disadvantaged areas of the country. Collections from cases involving financial institution frauds reduce the burden on the taxpayer. Collections of criminal fines, restitutions, and special assessments go directly to the Victims Assistance Fund, providing monetary assistance and social services to victims of crime.

During 1992, deposits into the Crime Victims Fund as a result of the collection of criminal fines and penalty assessments substantially exceeded the ceiling of $150 million. More than $205 million was deposited into the fund in 1992 which is the largest amount ever accumulated in the fund. This assures that a maximum number of victims will benefit from services made available through the Crime Victims Fund.

Asset Seizure and Forfeiture

Asset forfeiture has become an extremely effective and powerful tool in the Department's fight against organized crime, drug trafficking, and money laundering. While forfeiture is as old as our nation, its current scope was widened with the passage of the Comprehensive Crime Control Act of 1984. The ability of the government to remove the proceeds of crime from individuals and destroy the economic infrastructure of criminal organizations is an essential law enforcement tool. The Executive Office for Asset Forfeiture coordinates the asset forfeiture program among the various interdepartmental participating agencies. As the program has matured, so has the government's obligation for responsibility and accountability. The Department recognizes the responsibility to operate the program in a manner that maximizes the law enforcement effects along with collateral economic return to the government. The Department simultaneously recognizes the need to protect the legitimate interests of innocent third parties.

Department of Justice
Assets Forfeiture Fund Income



FY 89 includes $222M from the Drexel Burnham Lambert case. FY 91 includes $176.3M from the Michael Milkin case.

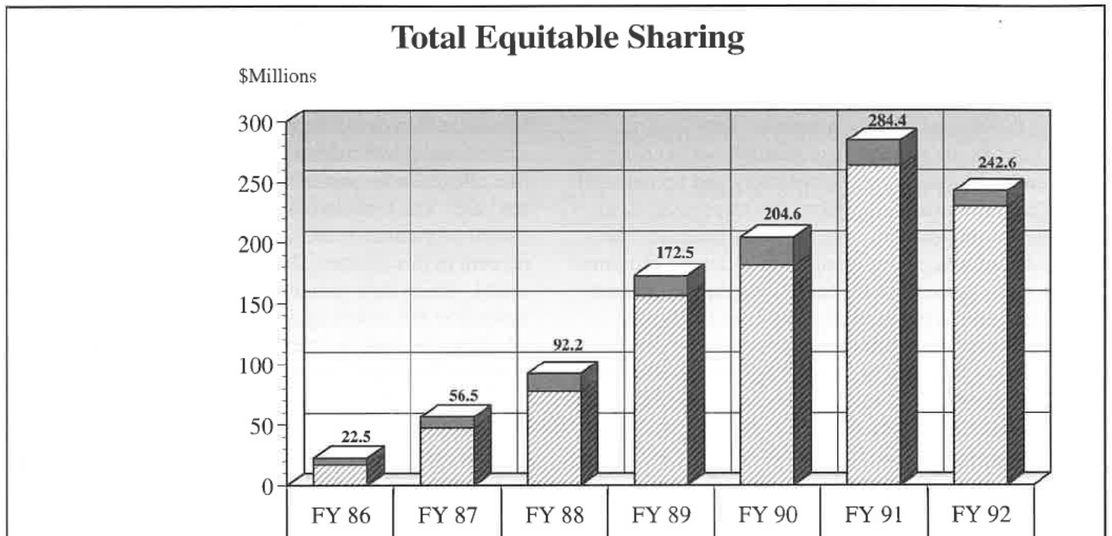
Source: Executive Office for Asset Forfeiture

During 1992, a record number of properties were seized totaling 32,463 at an estimated value of $1.8 billion. In addition, a total of $531 million in cash and proceeds was deposited into the Department of Justice's Assets Forfeiture Fund. (This figure does not include assets from the Bank of Credit and Commerce International (BCCI) and McNamara cases mentioned in the following paragraphs.) Of the $531 million forfeited, $230 million was shared with state and local law enforcement agencies that participated in the joint investigations with Federal agencies that led to asset seizures and forfeitures. Several state or local agencies received transfers exceeding $1 million in individual cases. An additional $12.5 million worth of real and personal property was transferred to state and local agencies for use in future law enforcement efforts. After payment of statutorily authorized expenses, the fund produced a surplus of more than $130 million. This surplus is available to pay initial program costs for FY 1993, for use by the Office of National Drug Control Policy, and for use by other Federal agencies for expenditures related to their law enforcement, prosecutive, and correctional programs. In 1992, the program invested cash balances from both the Assets Forfeiture Fund and the Seized Asset Deposit Fund in government securities. These investments resulted in earnings of $21.3 million during the year.

The largest criminal forfeiture to date was achieved in January 1992, when a preliminary order of forfeiture was issued for all of the domestic assets of BCCI and three related corporations. About $350 million has been seized to date. An order to preliminarily forfeit an additional $93 million belonging to another corporation alleged to be part of BCCI was obtained later in the year. The forfeited assets are to be used to pay the claims of victims of BCCI's fraudulent activities, fifty percent in this country, fifty percent elsewhere in the world. Since their issuance, the Department has been defending the orders against claims by third parties alleging a priority as to the assets. Such litigation may continue for several more years before there is a final forfeiture order issued.

In one of the largest civil forfeiture cases ever brought, the government entered into a settlement agreement with John McNamara, a Long Island auto dealer, who defrauded General Motors Acceptance Corporation of approximately $435 million by falsely representing the number of vehicles in his possession and then obtaining loans from General Motors. Under the terms of the settlement agreement, McNamara agreed to forfeit approximately $400 million to the United States, an amount equaling virtually his entire remaining assets. The proceeds of the forfeiture will be transferred to the victims of the fraud.

During 1992, the Department continued to promote international forfeiture cooperation and asset sharing with its international law enforcement partners. The success of this initiative was manifested through the negotiation of bilateral agreements providing for forfeiture cooperation and asset sharing. Under British law it is permissible to directly enforce foreign forfeiture judgments in drug cases. The United Kingdom did so this past year for the first time when it seized more than $1 million deposited into two London banks by Jose Rodriguez Gacha, a former Medellin Drug Cartel leader, who was killed in a shootout with Colombian police several years ago.



	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Transferred Property	5.4	9.2	15	16.4	23.5	21	12.5
Cash Payments	17.1	47.3	77.2	156.1	181.1	263.4	230.1

Source:Executive Office for Asset Forfeiture

Reflecting the increased level of international assistance obtained in connection with our domestic forfeiture cases, the United States shared substantial amounts of forfeited proceeds with cooperating foreign jurisdictions during 1992. During the year, the United States transferred more than $12 million in forfeited assets to foreign governments. An additional $13 million was authorized for transfer by the Attorney General and the Secretary of State, subject to further action such as completion of a sharing agreement between the United States and the recipient country as required by statute.

Technological Improvements

New technological improvements have been implemented to increase the efficiency and effectiveness of the Department's law enforcement efforts. An important example is the development of DNA analysis, the most significant improvement in forensic science in recent history. Since the DNA technology was implemented in 1989, the FBI Laboratory has conducted more than 91,000 examinations in approximately 7,000 cases. Approximately 75 percent of the evidence received for DNA examination is suitable for analysis. Of these cases, all of which are crimes of violence, approximately 65 percent of the time the DNA matches a suspect, and the remaining 35 percent of the time a suspect is excluded. Working with 13 pilot forensic laboratories, the FBI Laboratory is testing the feasibility and operational requirements of the national DNA identification index system.

In 1992, the DNA Legal Assistance Unit was established to provide training and case assistance to local, state, and Federal prosecutors in criminal prosecutions involving DNA evidence. The Department's first major DNA appellate decision, United States v. Jakobetz, ruled that judicial notice could be taken of the reliability of the FBI's DNA testing procedures.

Another development is the FBI Laboratory's use of computer face-aging capabilities on 30 state and local cases this year. New equipment installed in the Atlanta and Chicago Field Offices interfaces with the Laboratory's artists to produce a computer composite drawing for distribution on the street in three to four hours.

Technological advances have also been implemented to improve the efficiencies of management. In an effort to standardize a case tracking system used by the Department's litigating divisions, the Case Management Standards Subcommittee successfully completed a set of uniform Departmental case management standards and definitions, which all litigating organizations have agreed to use in the future. In addition, a centrally-issued case numbering system was agreed upon and approved by the Attorney General. This landmark development on case management is a major step towards achieving a consistent and accurate case management system for the Department. The next step in this process will be to use these case management standards and definitions to develop an automated system to provide reliable caseload information to senior Department officials and external oversight agencies.

Office automation continues to be an important tool for the Department's employees. In an effort to provide state-of-the-art technological capabilities, the Department initiated the Justice Consolidated Office Network (JCON) project. This project will result in the acquisition of a replacement for the AMICUS II and EAGLE office automation systems currently operating in the Department. Through Project JCON, DOJ plans to install a consolidated office automation system for 30,000 users.

Departmental Oversight

The Office of the Inspector General (OIG) is responsible for conducting investigations, audits, and inspections relating to the economy and efficiency of the Department's programs and operations, and for detecting and preventing fraud and abuse in programs and operations administered or financed by the Department. In the past year, OIG activities have helped to identify opportunities for substantial cost savings. For example, an audit of the Controlled Substances Act (CSA) Registration Fees in DEA found that DEA could have recovered more than $100 million if fee structures had been reviewed and adjusted between 1984 and 1992.

The OIG also conducted investigations to detect fraud and abuse in Department programs. An OIG investigation of a major illegal manipulation of the INS Central Index System uncovered a computer fraud scheme involving thousands of illegal aliens. The investigation, code-named Operation Byte, identified members of a multi-ethnic organization who, through a corrupt INS employee, devised a scheme in which thousands of illegal aliens, some of whom paid as much as $40,000 to illegally receive lawful permanent resident status, are in the United States with legitimate INS documents. This case was a first for the OIG in the computer fraud arena. The OIG's expertise in computer fraud used during Operation Byte prompted INS to ask the OIG Investigations Division to join two committees looking into correcting the security faults in the INS Central Index System. One of the committees is designing an audit trail for the System that will spot potential fraud and misuse. Changes to the System will make future OIG investigations of illegal activity in CIS more efficient and productive.

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U.S. Department of Justice
Office of the Attorney General

1991 Annual Report of The Attorney General of the United States

Qui Pro Domina Justitia Sequitur

Foreword

To the Senate and the House of Representatives
of the United States of America in Congress Assembled:

This Annual Report highlights the many varied activities of the Department of Justice during fiscal year 1991 to enforce Federal laws and ensure fair and impartial administration of justice for all Americans.

During the year, the Department worked long and hard to meet the many challenges before it — to dismantle drug organizations and bring to justice the kingpins of the international illegal narcotics trade; to combat violent crime so that all of us may be free from the fear of crime in our homes and communities; and to restore public trust in the integrity of our financial and business institutions. In addition, the Department reaffirmed its commitment to the vigorous enforcement of civil rights, environmental and antitrust laws.

In other areas, significant progress was made in our efforts to control the nation's borders and to fully and fairly enforce the immigration laws. We also continued to meet the challenge of the burgeoning Federal prison population.

During 1991, as in past years, the Department provided leadership and support to the nation's law enforcement agencies as well as to the international police community. We recognize that in our interconnected world, effective law enforcement requires the cooperation of all.

I am proud of the Department's dedicated employees who continue to face the challenges of law enforcement with professionalism, commitment, and integrity. It is on their behalf that I present this report of our accomplishments to you and the citizens we serve.

Respectfully submitted,

William P. Barr
Attorney General

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Introduction

As the largest law firm in the nation, the Department of Justice serves as counsel for the citizens of the United States. It enforces Federal laws and ensures the fair and efficient administration of Justice.

The myriad of wide-ranging duties of the Department include investigating, apprehending and prosecuting wrong-doers; representing the United States in Federal courts and before the Supreme Court; enforcing immigration laws; and operating and maintaining the Federal prison system. These duties are carried out by 32 component organizations of the Department whose employees are located across the United States and in 47 countries overseas. The Department's major law enforcement bureaus are the Federal Bureau of Investigation; the Drug Enforcement Administration, the United States Marshals Service; the Immigration and Naturalization Service; and the Bureau of Prisons. The bulk of the Department's litigation work is performed by the United States Attorneys and their staffs located across the country. Six litigating divisions provide legal advice and enforce the law in their respective areas of responsibilities: Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax.

The Department's important and varied duties require a skilled and widely dispersed workforce. Today the Department has 86,500 employees. These employees include attorneys, investigators, border patrol agents, deputy marshals, corrections officers, and a variety of other highly trained and committed workers.

This annual report describes the major accomplishments of the Department in carrying out its mission during fiscal year 1991.[1] It illustrates the growth of the Department and the expanse of activities that are handled daily by dedicated and professional employees of the Department of Justice.

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1 This report covers Fiscal Year (FY) 1991, which began on October 1, 1990 and ended on September 30, 1991. All references to years indicate fiscal years unless otherwise noted.

Chapter I: Countering Illegal Drug Activity

Combatting illegal drug activity remains the highest priority of the Department of Justice. During 1991, the Department continued to be vigilant in its efforts to curtail the production, trafficking and abuse of illegal narcotics. As a major player in the President's National Drug Control Strategy, the Department aggressively investigated and prosecuted drug law violators, including organization kingpins and money launderers. It made use of asset seizure and forfeiture laws to dismantle these organizations by taking away their ill-gotten profits. The Department also continued to support activities to reduce the demand for illegal drugs, especially among the nation's youth.

Drug Enforcement Operations

The National Drug Control Strategy emphasizes the importance of cooperative efforts that combine the resources and expertise of Federal agencies with those at the State and local level in winning the war on drugs. Several Department of Justice initiatives reflect this emphasis on cooperative action.

The Organized Crime Drug Enforcement Task Force (OCDETF) Program is an important element in the investigation and prosecution of drug trafficking and drug related financial crimes. The OCDETF Program brings together 12 member Federal agencies as well as their State and local

Organized Crime Drug Enforcement Task Forces

The map indicates the 13 task force regions with the headquarter city for each task force listed in parenthesis.

counterparts in a concerted effort against major drug organizations. This team approach led to a ninth straight year of success in 1991 for the 13 Task Forces located around the country. In addition in 1991, the Task Forces assumed responsibility for coordinating the activities of the four Metropolitan High Intensity Drug Trafficking Areas: Houston, Los Angeles, Miami and New York.

The Drug Enforcement Administration's (DEA) State and Local Task Force Program, now in its 21st year of operation, continued to meet with success. The Program provides increased cooperation among Federal, State and local law enforcement organizations; increased intelligence generated at the State and local levels; and increased return on investment in terms of asset seizures. There are currently 87 Task Forces around the country, of which 53 are funded and 34 are provisional. The continued expansion of the Task Forces is a direct result of the Program's proven effectiveness. It has become a model for cooperative intergovernmental law enforcement activities.

Operation Weed and Seed is a new Department initiative. It is a comprehensive, multiagency approach to law enforcement and community revitalization utilizing the combined efforts of Federal, State and local agencies. To "weed out" crime in targeted high crime neighborhoods and housing projects, the program offers intensified, coordinated law enforcement action. Following the weeding out of crime, it offers to "seed" the neighborhood with a variety of improvements in order to create an environment where crime will not re-emerge. In 1991, Operation Weed and Seed was implemented on a pilot basis in Trenton, New Jersey, and Kansas City, Missouri.

In addition to these cooperative, intergovernmental and interagency efforts, several of the Department's components have specific missions relating to combatting illegal drug use. Highlights of their activities during the past year are summarized below.

Drug Enforcement Administration

The highest priority in terms of drug enforcement operations was reducing the two narcotics that remain the greatest threat to the nation: cocaine and heroin. The DEA conducted a number of successful Special Enforcement Operations (SEO) and programs targeting both drugs.

SEO Bolivar targeted the activities of the Medellin Cartel and its leaders, Pablo Escobar-Gaviria and the Ochoa brothers. During 1991, this SEO resulted in 145 arrests, the seizure of 35 tons of cocaine, and the seizure of over $15 million in assets and over $1 million in cash. The most significant result of this SEO was the surrender of the Colombian cartel leaders Pablo Escobar-Gaviria and the Ochoa brothers, both of whom are subjects of numerous indictments. Additionally, the trial of General Manuel Noreiga, ex-Panamanian dictator and Medellin Cartel facilitator, commenced in Miami, Florida.

SEO Calico targeted the activities of the Cali Cartel and its leaders, Jose Santacruz-Londono, the Rodriguez-Orejuela brothers and other emerging trafficking figures. The Cali Cartel is currently the major supplier of cocaine to the United States. During 1991, seizures included 38 metric tons of cocaine and $21 million in assets and arrests totaled 186.

SEO Emerald Clipper, which targeted aircraft used to transport cocaine by the cartels, was initiated in September 1991. Coordination between the DEA offices in Phoenix and Bogota, in conjunction with host country officials, resulted in the seizure of five Aero Commander aircraft that were illegally brought into Colombia as replacements for other aircraft that were seized in Mexico. The value of these five aircraft totaled $14 million. In addition, two aircraft were seized in the United States with a total value of $2.2 million.

SEOs Pipeline and Convoy targeted the movement of cocaine and drug proceeds along the nation's highway systems. Operation Pipeline resulted in the seizure of 1,700 kilograms of cocaine and $2.7 million in cash. Operation Convoy, initiated in 1991, specifically targeted the movement of tractor-trailers and other large conveyances that are routinely utilized in the international and domestic movement of cocaine. This operation realized seizures of nearly $5.7 million in cash, five tons of cocaine and six tons of marijuana, and 45 arrests.

To address the growing heroin threat in the United States, the DEA established three long-term investigative Special Enforcement Programs: King Cobra, Balkan, and Aztec. The objectives of these programs are to identify, target, and immobilize major criminal organizations trafficking heroin to the United States. In 1991, these initiatives resulted in 2,757 arrests, and the seizure of 10,703 kilograms of heroin, 19,056 kilograms of opium, 972 kilograms of morphine base, and 14 laboratories. On June 20, 1991, the United States Customs Service and the DEA announced the largest seizure of heroin in the history of the United States. Over 1,000 pounds of Southeast Asian white heroin from a cargo container shipped into the Port of Oakland, California, were found and seized. The wholesale value of this heroin shipment was estimated at over $1 billion.

Federal Bureau of Investigation (FBI)

FBI drug investigations resulted in 3,289 indictments, 359 informations, 2,620 arrests, and 3,131 felony convictions during 1991. In addition, the FBI strengthened its drug intelligence capabilities by creating eight regional drug intelligence squads to coordinate the intelligence activity for eight geographic regions that are the principal drug trafficking centers and ports of entry. The FBI Laboratory employed new instrumentation to unobtrusively detect disguised drugs or explosives. During 1991, Laboratory examiners detected and identified cocaine being shipped into the United States disguised as plastic parts. The FBI Laboratory examined seized records in 320 cases identifying $728 million in illegal drugs.

Immigration and Naturalization Service (INS)

The INS had significant successes in seizing illegal drugs and arresting fugitives at the nation's borders. As an active member of the OCDETF, the INS continued to give enforcement priority to apprehending and removing criminal aliens, completing 19,141 narcotics-related cases in 1991. In the same time period, INS special agents completed 25 investigations of large-scale criminal organizations. The Border Patrol made 4,000 seizures of illegal drugs valued at an estimated $725 million in 1991, preventing almost 150 tons of marijuana and 25,000 pounds of cocaine, among other substances, from reaching drug markets.

United States Marshals Service (USMS)

USMS Deputy Marshals arrested approximately 10,000 fugitive felons during 1991. More than 2,000 of these arrests and almost 3,000 of the warrants cleared were executed on behalf of the DEA and involved "drug" fugitives. Fugitives involved with drug trafficking pose a special set of challenges for law enforcement authorities. Many times they return to drug trafficking as a way to obtain cash and stay on the run. The case of Ronald Lawrence Hansen illustrates the challenge of tracking drug fugitives. Hansen, 55, was wanted for Federal drug charges in three States, and had been added to the Marshals' list of "15 Most Wanted" fugitives. A former Chicago police detective and a military officer, Hansen's knowledge of law enforcement and his use of six aliases allowed him to elude capture for six years. Hansen reportedly made millions of dollars dealing drugs due to his cunning and use of violence. After an intense investigation, Deputy Marshals nabbed Hansen as he was driving away from his $600,000 home in Chesterton, Indiana, on November 16, 1990.

United States Attorneys

As a result of the Department's investigative work, the U.S. Attorneys' Offices filed over 12,000 controlled substance cases, involving over 24,850 defendants. Of the 10,182 cases terminated during the year, guilty verdicts or guilty pleas were received for 17,304 defendants. Significant cases included:

- The kingpin of a major marijuana smuggling/money laundering organization, responsible for the importation of over 200,000 pounds of marijuana into this country, was sentenced in the Southern District of Indiana to 28 years in prison.

- In the Northern District of Illinois, one of the biggest drug dealers ever convicted in Federal court in Chicago, Ricardo Nava-Salazar, was sentenced to 13 years in prison in connection with the seizure of $74 million in cocaine.

- In the Middle District of Tennessee, a longtime Postal Service employee and six coconspirators were convicted of multiple sales of drugs in school zones and conspiracy. The defendant was also convicted of Continuing Criminal Enterprise, which carries a 20-year minimum sentence.

- In the Northern District of Alabama, the ringleader of a marijuana operation, who ordered the murder of a police informant, became the first person sentenced to death under the statute allowing the death penalty in drug-related killings.

Criminal Division

The Criminal Division obtained the conviction of the notorious drug trafficker, Juan Ramon Matta Ballesteros, for operating a continuing criminal enterprise and trafficking in cocaine. Matta had been convicted previously for his participation in the Enrique "Kiki" Camarena murder case. He was sentenced, on the new conviction, to life imprisonment without parole plus 150 years.

Supreme Court Cases

The Office of the Solicitor General (OSG) won several important victories on behalf of the United States that will aid drug enforcement operations. In four cases, the Supreme Court held that:

- A mandatory sentence of life imprisonment without possibility of parole for possession of 650 grams of cocaine does not violate the Eighth Amendment's prohibition against cruel and unusual punishment.

- Congress may delegate to the Attorney General the power temporarily to include drugs on the list of controlled substances, without prior judicial review.

- For the purposes of sentencing, the weight of the medium in which LSD is dissolved is to be included in determining the amount of drugs sold.

- Police officers' conduct in boarding a bus, asking passengers questions, and requesting consent to search their luggage does not constitute a "seizure" for purposes of the Fourth Amendment, unless a reasonable person would not feel free to decline the requests and terminate the encounter.

Domestic Drug Production

During the past year, the U.S. experienced a continued increase in the domestic cultivation of cannabis, both indoor and outdoor. To respond to this problem, the DEA's two major cannabis initiatives for 1991 were the Domestic Cannabis Eradication/Suppression Program (DCE/SP) and Special Enforcement Operation (SEO) Green Merchant.

The DCE/SP continued to be an unqualified success. In 1991, the DCE/SP recorded over 23,000 outdoor plots and over 1,500 indoor operations immobilized nationwide, resulting in the eradication of over 88.5 million cannabis plants. Of significant note, approximately $26 million in assets related to cannabis investigations were seized during 1991, a 63 percent increase over 1990. SEO Green Merchant targeted major suppliers of marijuana seeds, companies selling equipment to grow marijuana, and marijuana growers. In 1991, 947 violators were arrested under SEO Green Merchant, and over 150,000 cannabis plants and more than $17.2 million in assets were seized. Under SEO Green Merchant, the DEA initiated and developed the first Indoor Cannabis Investigation (ICI) training curriculum. In 1991, 12 ICI schools were conducted throughout the United States, resulting in the training of over 900 Federal, State and local police and military officers involved in SEO Green Merchant investigations. SEO Green Merchant was responsible for expanding the indoor cultivation target list to over 65,000 entries and these leads, supported by the ICI schools, are being actively pursued nationwide.

The Chemical Diversion and Trafficking Act of 1988 (CDTA) enables the Federal Government to bring charges against chemical distributors involved in the illicit production of controlled substances. Clandestine laboratory seizures in the United States declined approximately 38 percent during 1991 from the previous year. It is believed that the implementation of the CDTA was a major factor contributing to this decline. Eighty-five

percent of all clandestine laboratory seizures were methamphetamine laboratories; methamphetamine remains the most prevalent clandestinely manufactured controlled substance in the United States.

During 1991, the Civil Division conducted an investigation into illegal practices in the generic drug industry. As a result of this investigation, former employees of four generic drug manufacturers have been convicted of crimes involving fraud in securing approval of Abbreviated New Drug Applications. Over $11 million in criminal fines have been paid and over two hundred Abbreviated New Drug Applications have been withdrawn. Additionally, 35 anabolic steroids traffickers were sentenced in 18 Federal districts to over 307 months in jail for their crimes. To date, over 175 persons and firms have been convicted.

The U.S. Attorneys' Offices, through the Law Enforcement Coordinating Committees (LECCs), participated in joint training with State and local law enforcement agencies on programs to combat production of domestic drugs. The LECC in the Eastern District of Tennessee sponsored a Regional Marijuana Eradication Conference on April 18-20, 1991, in Gatlinburg, Tennessee. Over 200 Federal, State, and local law enforcement officers from Tennessee, Kentucky, West Virginia, Virginia, North Carolina, Alabama, Georgia, and Ohio attended. The conference included outdoor training sessions on surveillance techniques, booby traps, and explosives, conducted by the Tennessee Governor's Task Force on Marijuana Eradication and the Kentucky State Police's Hazardous Devices Unit.

Drug Demand Reduction Activities

The Department continued its role in supporting education efforts to reduce and prevent drug abuse. The FBI participated in a joint drug awareness initiative with Orion Home Video and the Boys & Girls Clubs of America. Robocop, the movie character, took part in drug awareness tours to Boys & Girls Clubs around the nation. The FBI helped develop two Drug Demand Reduction comic books published with Archie Comics Publications, Inc., and Marvel Entertainment Group, Inc. Over 3.5 million have been printed and distributed.

The United States Attorneys are involved in many ways with the LECCs and other law enforcement agencies to help reduce the demand for drugs. Examples of these activities included:

- The Northern District of West Virginia is involved in several community anti-drug activities, including the annual "Get Hooked on Fishing, Not on Drugs" program, an annual "Just Say No" walk, and a "parent pledges" program, in which area parents are asked to sign a pledge promising to take responsibility in addressing substance abuse.

- The Eastern District of Texas and the Western District of New York are active in implementing the D-FY-IT (Drug-Free Youth in Town) in their districts. D-FY-IT relies on positive peer pressure and incentives for middle- and high-school students to stay drug-free.

- The Southern District of Texas works with a similar program, KYSSED (Knowledgeable Youth Stand Superior Eliminating Drugs) and participates in an annual train ride for local youth as a reward for staying drug-free.

The INS' Border Patrol continued its 4-year-old program to reduce demand for drugs through education, using agents with drug-sniffing dogs to give demonstrations in local schools. The presentations also include robots, video tapes, posters, and pamphlets. Since its inception, the demand reduction teams have given over 28,000 presentations to more than three million persons.

The Office of Liaison Services coordinated the participation of Department of Justice officials in the Legal Advocates in Education Program. Through mentoring, teaching, and serving as positive role models, more than 300 Department of Justice personnel volunteered their time in 12 District of Columbia public schools. The Legal Advocates in Education Program has served as a vehicle for Federal law enforcement personnel to support our nation's education system, encourage students to stay in school and reduce the temptations of young people to become involved in illegal drug activity.

The Drug Abuse Resistance Education (DARE) program sponsored by the Office of Justice Programs (OJP), teaches elementary and high school students ways to resist peer pressure to experiment with drugs. As of September 1991, approximately 11,217 instructors had been trained by the five DARE Regional Training Centers. Over 12 million students in the United States have received DARE training. Another effort supported by the OJP in conjunction with the National Crime Prevention Council (NCPC) is the National Citizens' Crime Prevention Campaign. The campaign sponsors public service advertising featuring "McGruff, the Crime Dog" who asks citizens to help "Take A Bite Out of Crime." The NCPC also disseminates crime and drug prevention information and materials; provides technical assistance and training; and coordinates the activities of the 136-member Crime Prevention Coalition.

David Opont and Clara Hale receive the Director's Community Leadership Award from FBI Director Sessions for their contribution and commitment to a drug-free America.

The OJP also implemented the Denial of Federal Benefits Program, a program that allows the courts to deny Federal benefits to any individual who is convicted of a Federal or State offense

for the distribution or possession of a controlled substance. Federal benefits include grants, contracts, loans, professional licenses, or commercial licenses. During 1991, the OJP's clearinghouse continued to process notifications from both Federal and State courts of such sentences and transmit them to the General Services Administration for inclusion in the Debarment List and to Federal agencies. This program underscores the importance of holding drug users accountable.

The Bureau of Prisons continued to expand the drug abuse programs available to confined prisoners. Approximately $10.5 million was spent for drug abuse treatment during 1991. A portion of this funding was used for the addition of seven Comprehensive Treatment Units, bringing the total number of specialized treatment units to 15. The addition of over 100 staff positions significantly enhanced drug abuse treatment and drug education programs at all Bureau facilities.

Chapter II: White Collar Crime

White collar crime is characterized by trickery, concealment, or violation of trust. It undermines faith in our business, financial, and government institutions. Moreover, it typically results in tremendous losses to the nation's economy which are often borne by consumers and taxpayers. For these reasons, the Department renewed its vigorous effort to detect and uproot fraud and other white collar crimes. The creation of several new units in the Criminal Division dedicated to prosecuting money laundering, insurance fraud, and computer crime illustrates this commitment to aggressive enforcement.

Fraud

The Department has a unique role to play in the investigation and prosecution of white collar crime. It is often the only enforcement agency with the resources, capacity, and legal scope to handle these cases, since they frequently involve sophisticated conspiracies that cross both State lines and international borders. Evidence of the Department's success in carrying out this role are the significant number of indictments and convictions obtained in 1991.

Savings and Loan Investigations

Savings and loan investigations were aggressively pursued during 1991. Since October 1, 1988, the Department has charged 871 defendants in major savings and loan fraud cases. Of those charged, 661 have been convicted including over 200 presidents, chief executive officers, board chairmen, directors and officers, along with 427 other defendants who defrauded thrift institutions. Courts ordered over $12 million in fines and over $372 million in restitution. Prison sentences were ordered for 401 defendants, totaling 1,344 years.

Examples of such cases include the former vice president of the Security Pacific Bank in Alaska who pleaded guilty to embezzling more than $1.5 million over a four-year period. In the Northern District of Texas, Max Ray Faulkner, former director and president of the First State Bank of Miami, Texas, was convicted of making $2 million in straw loans to a fellow director of the bank, who had previously been convicted and sentenced to four years in jail.

The Dallas Bank Fraud Task Force which combines the efforts of the FBI, the Internal Revenue Service, the Federal Bank Examiners, the Criminal Division, and the U.S. Attorney's Office for the Northern District of Texas, successfully obtained 32 convictions, $285,000 in fines, and $10.6 million in restitution during 1991. The Dallas Bank Fraud Task Force activities during 1991 included the following:

- Convicted Don R. Dixon, former majority owner of Vernon Savings and Loan Association, who was sentenced to five years in prison plus $611,200 in restitution.
- Obtained sentences for Paul S. Cheng and Simon E. Heath, co-owners and co-chairmen of Guaranty Federal Savings and Loan Association, of 30 years and 20 years imprisonment, respectively, plus $7.9 million in restitution.
- Indicted four officers and two attorneys associated with Caprock Savings and Loan

Association in a 30-count indictment charging them with conspiracy, bank fraud, and money laundering in connection with transactions totaling $10 million.

• The Civil Division investigated more than 60 matters involving allegations of fraud against financial institutions for possible prosecution of civil penalty actions. Additionally, the Division successfully defended the government in a variety of cases stemming from savings and loan failures, closures, and investigations by the bank regulating agencies. Notably, the Supreme Court affirmed that Federal regulators who assist in a failing thrift's activities are protected by the "discretionary function" exception to the Federal Tort Claims Act.

Bank of Credit and Commerce International (BCCI)

The BCCI investigation was a top priority for the Department during 1991. A cooperative effort between the Criminal Division and the FBI led to the conviction of BCCI and five BCCI officials for conspiracy and money laundering offenses. The bank paid a $15 million penalty, and the individual defendants received sentences of up to 12 years incarceration without parole. Also, six BCCI officials in Tampa, five other individuals, and one corporation were indicted with RICO violations involving the laundering of narcotics proceeds through BCCI foreign and domestic branches. A DOJ/FBI Task Force was established to conduct further investigations and prosecutions of criminal allegations involving BCCI.

Securities and Commodities Fraud

Both the FBI and the Criminal Division played major roles in targeting securities and commodities fraud. The FBI's SOUR MASH investigation, targeting illegal trading activity by Chicago Board of Trade brokers and traders, began in 1985 and continued through 1991 resulting in 22 convictions via guilty pleas or trials. These convictions positively impacted the commodity trading activity throughout the country. The FBI's undercover operation PENNYCON, which investigated market manipulations of low-priced stocks, resulted in 30 indictments and seven convictions. The Criminal Division obtained an eight-year prison sentence and more than $1 million in fines and restitution against Sam Merit after his conviction in a penny-stock fraud scheme.

Defense Procurement Fraud

During 1991, the FBI continued an aggressive investigation of fraud and corruption in Department of Defense procurements under Operation ILL WIND. In cooperation with the Criminal Division, Operation ILL WIND obtained an additional 14 convictions and $167,696,759 in restitutions. These convictions included Melvyn R. Paisley, former Assistant Secretary of the Navy for Research, Engineering and Systems, and Unisys Corporation. Unisys agreed to pay $185 million to the United States, the largest defense-related criminal settlement to date.

In another investigation, the Criminal Division obtained a guilty plea by Platt Manufacturing Corporation, an Ohio manufacturer of connectors for Navy aircraft carrier catapults, on mail fraud charges for having certified falsely that its connectors met military test specifications.

The Department of Defense/Department of Justice Voluntary Disclosure Program is an incentive program for defense contractors who discover government fraud within their own organizations. The contractor reports the fraud to the Criminal Division and must pay back the exact amount it defrauded the government. The incentive is for organizations to reveal known fraud without suffering additional penalties, fines, or legal proceedings. During 1991, the Department recovered a total of more than $13 million from defense contractors through this program.

Housing Fraud

In the many cases of fraud against the Department of Housing and Urban Development (HUD) prosecuted by the U.S. Attorneys' Offices, several leading business and political figures have been indicted. In the Southern District of West Virginia, former State HUD Chief Carl Smith was convicted on charges of bribery, perjury, making a false statement, and tax fraud. He was sentenced to over four years in prison and is required to pay back $60,000 plus interest, Federal and State taxes and penalties. In another case, the Oklahoma City HUD Task Force obtained seven convictions of prominent businessmen and over $3.4 million in recoveries. Since its inception in October 1988, the Task Force secured 40 convictions and approximately $5.9 million in fines and court-ordered restitution.

Immigration Fraud

Immigration and Naturalization Service (INS) agents, working with the OCDETF, uncovered a scheme in which traffickers bribed a public official to procure Alien Registration Receipt Cards to facilitate the entry of drug couriers and others into the United States. More than 125 individuals had used the cards before the fraud was detected and the principals were prosecuted. In another OCDETF investigation, an immigration inspector was arrested in April 1991 for allegedly accepting bribes of $5,000 per trip to pass multi-kilogram loads of cocaine through the Port of Entry at Nogales, AZ.

Bankruptcy Fraud

The Department continued to strengthen the integrity of the nation's bankruptcy system and discourage the abuse of bankruptcy laws. With close to one million bankruptcy cases being filed each year, the ability to detect the concealment of assets or fraud is enhanced through the close relationship among the U.S. Trustees, the United States Attorneys' Offices and the Federal Bureau of Investigation. A criminal referral from the United States Trustees to the U.S. Attorneys' Office resulted in a conviction in one of the largest investment fraud cases in United States history. Mr. James D. Donahue of Denver, Colorado, pleaded guilty to defrauding options investors of over $195.5 million.

Over 300 criminal bankruptcy matters were referred to the FBI for investigation during 1991 or to the U.S. Attorneys' Offices for indictment and prosecution. Thirty-nine convictions were obtained resulting in the collection of over $20 million in fines and restitution. The most common crimes involved debtor attempts to conceal assets and case trustee embezzlements. In one case, a debtor pleaded guilty to fabricating $7.2 million in

pharmaceutical bills. The debtor is paying $5 million in restitution and serving four years in prison.

Tax Fraud

Joining forces with the Internal Revenue Service (IRS), the Tax Division continued to uncover and prosecute abuses in the electronic filing of tax returns, which the IRS hopes to make available to all taxpayers by the year 2000. Because refunds claimed on electronically filed returns may be received in a matter of days, electronic filing fraud must be detected and punished as quickly as possible. During 1991, the IRS and the Tax Division effectuated a process for streamlining and expediting referrals of electronic filing fraud cases for grand jury investigations, arrests and prosecution. Thirty-eight individuals were indicted in 12 judicial districts on electronic filing fraud charges involving approximately $2.5 million in false or fictitious tax refunds. Eighteen of these individuals pleaded guilty.

In other joint efforts with the IRS, the Tax Division sought to ensure compliance with the cash reporting requirements of the Internal Revenue Code, which specify that any person engaged in a trade or business who receives more than $10,000 in cash in a single transaction or related transactions must file an information return with the IRS.

The Tax Division's activity in this area with respect to compliance by attorneys is of particular note. The IRS has been issuing summonses to attorneys who fail to fully complete any required information returns, and has then referred cases to the Tax Division for enforcement. To date, the Tax Division has been uniformly successful in enforcing these summonses. The Tax Division continued to target tax evasion schemes involving legally obtained unreported income. In one case, the Tax Division obtained the convictions of six participants in a "warehouse bank" that secretly processed millions of dollars of checks in order to conceal its members' income and expenses from the IRS. The Tax Division also obtained the indictments of 11 individuals on charges of conspiring to defraud the United States of millions of dollars by promoting and marketing fraudulent trusts designed to conceal assets and income from the Internal Revenue Service.

Other Fraud

The Department continued its effort to investigate all types of fraud. Several U.S. Attorneys' Offices established task forces to target fraud cases. Significant cases resulted in impressive convictions and dollar recovery for the government.

- The Central District of California's Boiler Room Task Force investigated and prosecuted a man who pleaded guilty to two counts of wire fraud in connection with his operation of a bankrupt Orange County "boiler room" that purported to sell precious metals and gold coins over the telephone. The company received approximately $3.5 million from almost 700 victims nationwide.

- A multiagency task force on the investigation and prosecution of motor fuel excise tax evasion by organized crime figures resulted in 30 convictions. The most well-known defendant, Getty Terminals, a subsidiary of Getty Petroleum, was convicted of conspiring to evade more than $1 million in gasoline excise taxes. Two indictments are pending in the Eastern District of New York, and numerous investigations are ongoing in most areas of the country.

Antitrust Investigations

Criminal enforcement of the Federal antitrust laws is a major component of the Department's offensive against white collar crime. During 1991, the Antitrust Division moved aggressively against illegal conduct that artificially raised the prices charged to consumers of a diverse range of products and services, including: power grid tubes, frozen seafood, school buses, waste disposal, school milk, and wholesale grocery products.

Most notably the Antitrust Division shut down conspiracies of national dairies and milk suppliers that artificially raised the price of Federally subsidized school milk purchased by local school districts. Several major national dairies and milk suppliers pleaded guilty to bid rigging charges, and investigations are ongoing in 17 States. At the end of 1991, the Department successfully prosecuted 42 school-milk cases against 24 individuals and 18 corporations, with fines and penalties totaling over $20 million. Eighteen individuals were sentenced to a total of 3,172 days in jail.

Antitrust enforcement was a major prong of the Department's campaign to clean up government procurement. In 1991, the Antitrust Division brought numerous bid-rigging and related charges against individual and corporate contractors who illegally overcharged the Federal Government. Affected contracts called for the procurement of a wide array of services and products, ranging from dam construction to food provisions.

An important settlement negotiated by the Antitrust and Civil Divisions resulted in the payment of $34 million in civil fines and penalties by a subsidiary of NEC that admitted to bid-rigging telecommunications contracts awarded by the United States at its air base in Yakata, Japan.

Public Corruption

Rooting out corruption by public officials continued to be a priority of the Department. During 1991, U.S. Attorneys' Offices filed 510 cases charging 733 individuals with official corruption. The FBI achieved 758 informations and indictments, 405 convictions and pretrial diversions, and $156.1 million in fines, recoveries, and restitutions in other public corruption investigations. Undercover operations resulted in a number of significant convictions including four Kentucky county sheriffs; one chief of police in Kentucky; five Massachusetts police officers; 15 North Carolina and California State legislators; and one Federal judge in Louisiana, for various corrupt acts involving "selling" their offices for personal gain.

Other notable public corruption cases included:

- In New Jersey, the former top executive of the Passaic Housing Authority was sentenced to 57 months in prison on charges that he took more than $1 million in government funds earmarked for the poor and underprivileged.

- The former Assistant Administrator for Africa at the Agency for International Development (AID) pleaded guilty to stealing government funds, making him the highest ranking AID official ever to be convicted of a crime.

• John W. Milton, a former attorney with the Equal Employment Opportunity Commission (EEOC), was convicted of conspiring to steal money from an EEOC fund earmarked for victims of discrimination and other crimes.

Chapter III: Organized Crime

In an effort to eliminate the influence and threat of organized crime groups, the Department developed the Organized Crime National Strategy of 1991. The strategy established two major objectives: to eliminate the La Cosa Nostra (LCN) crime families through effective investigations and prosecutions, and to ensure that no other criminal organization ever achieves a comparable level of power. Implementing the Strategy became one of the Department's most important goals during 1991.

In support of the Strategy, the FBI's Organized Crime Program (OCP) targeted both LCN and other organized crime groups. During 1991, this program led to 530 indictments and 540 convictions and pretrial diversions of organized crime figures.

La Cosa Nostra

The Department continued to focus on the largest organized crime group in the country, La Cosa Nostra (LCN), literally "Our Thing." The LCN was founded in the 1930's and currently has 24 families throughout the country consisting of some 1,700 active members. It is heavily involved in gambling, conspiracy, murder and labor racketeering. During the past year, the Department obtained a number of indictments and convictions of LCN members and associates.

In December 1990, alleged boss of the Gambino LCN Family, John Gotti, and others, were indicted in a Racketeer Influence and Corrupt Organizations (RICO) murder prosecution. Gotti is charged with the gangland slaying of former Gambino Boss Paul Castellano. The indictment alleges that the defendants committed various other criminal acts, including other murders, the operation of an illegal gambling business, extortionate collections of credit, and the corrupt control of union officials. The trial is scheduled to begin in early 1992.

The alleged Chicago LCN Southside Crew Boss Dominick Palermo and seven others, including two key Chicago LCN associates, were indicted for RICO violations. The government charged that Palermo and the other defendants extorted payments from numerous illegal gambling enterprises and controlled much of the illegal gambling operations in Northwest Indiana in the mid-1980s through extortionate street taxes.

Several public officials were charged with RICO violations, including bribery and extortion, based on a thirteen-year history of alleged payoffs to judges and other public officials in Chicago. Among those indicted from the LCN families were Fred Roti, a Chicago Alderman, and Pasquale (Pat) Marcy, Secretary of the First Ward Democratic Organization. Other indictments charged a former Judge of the Circuit Court of Cook County, an attorney, and a State senator, with related violations. Among the acts charged were fixing official decisions, including criminal trials and civil cases in State courts, and extortion by a State legislator who demanded payment in return for the introduction of legislation.

In one of the most important cases ever brought against a criminal organization, Nicholas Bianco and seven others were convicted in Connecticut of numerous crimes for their roles in the Patriarca Crime Family. Among the offenses were murder, RICO, and extortion. The jury found that several of the defendants murdered

family underboss William "The Wild Guy" Grasso, as part of a bloody feud between rival mob factions in Boston and Providence. The case provided the nation with the first-ever tape recording of a Mafia initiation ceremony in which new inductees promised to murder their families if necessary to protect the mob's interests.

The leader and the principal enforcer of the Genovese Crime Family in New Jersey, Louis Gatto, Sr. and Alan Grecco respectively, were convicted on racketeering charges of operating a multimillion dollar sports and numbers gambling business by using murder and extortion. The defendants operated their sports gambling business in New York and New Jersey for over a decade, using violence and intimidation to eliminate competition from other gambling operations. Among other racketeering acts, the jury found that the defendants conspired in the icepick murder of Vincent Mistretta, after Mistretta went to the local police following a dispute with Grecco.

In April 1991, a consent decree barred certain union officers who were associated with organized crime from ever holding a position other than member with Local 54 of the Hotel and Restaurant Employees International Union. The decree was the result of a civil RICO suit brought to remove LCN influence from this Atlantic City casino workers union comprised of 22,000 members.

Based on his fraudulent acquisition and diversion of approximately $2.2 million from the American Savings and Loan Association of Stockton, California, Leonard Pelullo was convicted in Philadelphia of one count of a RICO violation and forty-nine wire fraud counts. Pelullo's fraudulent activities helped drive American Savings into bankruptcy. Pelullo also fraudulently diverted money from a public corporation he owned and controlled in order to repay a personal debt to his loanshark at the request of former Philadelphia LCN boss Nicodemo Scarfo. Pelullo agreed to forfeit $2.2 million in proceeds as well as his interest in two motels.

Robert and Steven Homick, two brothers with LCN connections, were sentenced to life imprisonment for their roles in a series of violent crimes including arson. A co-defendant pleaded guilty to Federal murder-for-hire charges, admitting that he hired the Homicks to kill his parents for $50,000.

In the largest street-level loansharking operation ever uncovered by the FBI, Frank Oreto, Sr., was sentenced to 20 years of imprisonment and nearly $40,000 in fines, restitution, and forfeitures. Extensive loansharking records showed that the operation had over 400 victims and lent out approximately $1 million over a six-year period. Oreto was the operation's kingpin and was rewarded with this position by La Cosa Nostra for his silence while serving a prison sentence for a gangland slaying.

Other Organized Crime Groups

Other organized groups from various geographic and ethnic backgrounds are involved in illegal activities, including narcotics trafficking, drug-related financial crimes, tax evasion, and homicides. Such groups include Colombian organizations, Jamaican posses, Asian groups, and American street gangs such as the Bloods and the Crips. The Department and its components have responded to meet this growing challenge of non-traditional organized criminal elements.

The Violent Traffickers Project (VTP) established by the U.S. Attorney's Office in the Eastern District of Pennsylvania targets violent drug trafficking organizations. The VTP is unique because it brings together all the agencies investigating narcotics violations in the Philadelphia area. Since its inception in 1989, 92 members of three Jamaican drug trafficking organizations have been convicted.

A 1991 FBI investigation of the Green Dragons street gang, one of the most violent Asian organized crime groups active in the United States, led to the arrests of 16 members and the recovery of 36 firearms. A subsequent indictment charged the leader and entire hierarchy of the Green Dragons with numerous crimes, including seven murders.

In Chicago, 22 defendants were convicted for their roles in a massive illegal gambling business operated through chapters of the On Leong Chinese Merchants Association. The On Leong is a Chinese "Tong" that has been involved for many years with the operation of gambling casinos, bribery of law enforcement and other officials, income tax violations, and the use of Asian street gangs to protect and enforce their gambling casino businesses in such cities as Chicago, Houston, and Minneapolis.

The Office of Justice Program's Bureau of Justice Assistance (BJA) supported several projects to target organized crime. The BJA established the Organized Crime/Narcotics Trafficking Enforcement Program (OCNTEP) to enhance the ability of State, local, and Federal criminal justice agencies to investigate, arrest, prosecute, and convict targeted narcotics trafficking conspirators. The OCNTEP led to the arrests of 1,805 mid- and high-level criminals, adding to a cumulative figure of over 11,855 arrests since the program began in 1987. Drugs, cash, and property seized during 1991 under the OCNTEP had an estimated value of over $61.3 million.

Judicial and Witness Security

The increasingly violent nature of organized crime and drug trafficking groups has rapidly expanded the need for judicial and witness security as the cases move through prosecution in all judicial districts. The U.S. Marshals Service (USMS) provides protection to Federal judges, court officials, witnesses, and jurors and ensures security and maintains decorum within the courtroom.

In 1991, Deputy Marshals provided security at 398 sensitive or high threat trials, a 32 percent increase over 1990. The USMS responded to 362 threats made against members of the judicial family, and Deputy Marshals provided 24-hour personal security details to 41 judicial officers in response to specific threats. A total of 68 personal security details for U.S. Supreme Court Justices were established by the USMS during the year. Deputy Marshals also provided security for 137 Federal judicial conferences, up 13 from 1990.

The USMS also provides for the security, health, and safety of government witnesses and their immediate dependents whose lives are in danger as a result of their testimony against drug traffickers, organized crime members, terrorists, and other major criminal elements. During the year, 175 new principal witnesses entered the Witness Security Program, bringing to 12,982 the number of witnesses and family members for whom the USMS provided protection and funding.

Witnesses were produced for court testimony more than 300 times in 1991. In spite of a verified death threat hanging over most of the witnesses, no witness following the guidelines of the Program was injured or killed. The number of protected witnesses produced for child visitations totaled 260, an increase of 22 percent over the previous year. Child visitations present difficult coordination problems in bringing together family members from different States, without compromising the security requirements of the protectees.

In mid-September 1991, a Short-Term Witness Protection Pilot Project began in the District of Columbia, providing temporary relocation, money, food, and health care to witnesses and/or family members for periods of six months or less. The pilot project is housed in the Victim-Witness Unit of the U.S. Attorney's Office (USAO), under the direction of the Victim-Witness Coordinator. For this pilot project, the USAO works in conjunction with the Metropolitan Police Department, the USMS, and the Criminal Division's Office of Enforcement Operations.

Chapter IV: Other Litigation Priorities

In addition to prosecuting drug traffickers, white collar criminals, and organized crime offenders, the Department's litigation priorities in 1991 included other violent crime, civil rights, the environment, and merger enforcement. A variety of other criminal and civil cases added to the Department's workload and also produced significant accomplishments.

Violent Crime

The Attorney General's Summit on Law Enforcement Responses to Violent Crime: Public Safety in the Nineties, held in March 1991, was successful in developing law enforcement strategies to combat violent crime in the 1990s. One such strategy is Project Triggerlock.

Project Triggerlock is a comprehensive effort to use Federal laws pertaining to firearm violations to target, arrest, and prosecute the most dangerous violent criminals in each community. Violent criminals typically prosecuted in State court will be prosecuted Federally to take advantage of stiff mandatory sentences without the possibility of parole. Under the auspices of Project Triggerlock, 2,649 defendants were charged with Federal firearms violations from Triggerlock's kickoff on April 10, 1991, through September 30, 1991.

Violent crime committed on Federal property or where the Federal Government has jurisdiction remains the responsibility of the U.S. Attorney's Office or the Criminal Division. Significant cases included:

- The District of Arizona prosecuted a school teacher of an Indian Tribe who had sexually abused many children, leaving an entire community devastated. The defendant pleaded guilty to three counts of aggravated sexual abuse and was sentenced to 19.5 years imprisonment, to be followed by five years of supervised release. He was also ordered to pay $15,000 restitution to assist with the long-term therapy needed by the children and their families.

- The Eastern District of Virginia prosecuted and convicted Robert Peter Russell, a former captain in the U.S. Marine Corps (USMC), for first degree murder of his USMC captain wife. This murder case is unique because the decedent's body has never been found. The defendant was sentenced to life imprisonment.

- The Criminal Division convicted two defendants extradited from Germany in the prosecution of seven former members of the cult headed by the late Bhagwan Shree Rajneesh for conspiracy to murder the United States Attorney in Oregon. Extradition proceedings are pending against other co-defendants.

Civil Rights

During 1991, criminal civil rights prosecution efforts grew significantly in number and were highly successful in obtaining convictions for crimes of racial violence for the third year in a row. The Civil Rights Division filed 68 cases charging 129 defendants of racial violence, representing the greatest number of cases and charges in a single year since 1971. In numerous cities throughout the country, both the Civil Rights Division and the U.S. Attorneys' Offices

examined the conduct of violent and racist Skinhead groups. Notable convictions were obtained in the following cases:

- In Shreveport, Louisiana, 14 Ku Klux Klan members were indicted on conspiracy charges in a series of cross burnings that occurred following the sentencing of a Klan leader on a Federal firearms offense.

- In Seattle, Washington, three white supremacists connected to the supremacist group Aryan Nation, were convicted of plotting to firebomb a minority discotheque in Seattle.

- In an ongoing investigation of hate crimes in Nashville, Tennessee, eight people were convicted on charges of criminal conspiracy, civil rights obstruction of justice, vandalism, and intimidation. Among those convicted was the leader of the Nashville area Confederate Hammerskins, a neo-Nazi Skinhead organization.

- In Tulsa, Oklahoma, 17 defendants, including several juveniles, all of whom were associated with the Oklahoma Skinhead Alliance, pleaded guilty to conspiring to interfere with the rights of minorities to enjoy the use of public accommodations such as public parks and live music clubs. The defendants were sentenced to as much as nine years imprisonment.

The Department's efforts in the area of fair housing continued to expand significantly pursuant to its increased authority under the Fair Housing Amendments Act. A large part of the Department's enforcement efforts were directed at discrimination against families with children and persons with disabilities, newly protected classes under the 1988 amendments to the Act.

During 1991, the Department filed 90 fair housing cases — more than double the number filed in 1990 and more than the number of such cases filed in any single year since the Fair Housing Act was originally enacted in 1968. The fair housing cases filed by the Department included suits against local governments challenging land use practices restricting the location of group homes for the handicapped.

After 13 years of intensive litigation against the District of Columbia, the District finally placed all of the residents of Forest Haven, the District's facility for developmentally disabled persons located in Laurel, Maryland, into community residences. This was a milestone, making the District only the second major jurisdiction (after New Hampshire) to have closed all of its large institutions for the developmentally disabled in favor of community residences.

In the area of employment discrimination, the Civil Rights Division filed 23 new cases alleging violations of the Equal Employment Opportunity Act. In a case against the City of Las Vegas Police Department, the court sustained the lawfulness of an entry-level law enforcement examination which the Division assisted the City to develop. This decision is significant because it is the first such examination that this Department has held as meeting the requirements of Title VII of the Civil Rights Act of 1964 for job-relatedness. In another case, an order was obtained requiring the Commonwealth of Massachusetts to pay in excess of $2 million, including post-judgment interest, to victims of discrimination in the Department of Corrections.

In the area of voting rights enforcement, the Civil Rights Division continued its efforts to assure minorities a fair opportunity to elect candidates of their choice to public office by challenging the method of electing judges in Alabama, Georgia, Louisiana, and Texas; the Georgia majority vote requirement; and the electoral system in Memphis, Tennessee. Objections under Section 5 of the Voting Rights Act were interposed to Statewide redistricting plans in Louisiana (House and Senate), Mississippi (House and Senate), and Virginia (House) and to the redistricting plans for New York City, Dallas, two Louisiana parishes, 15 Mississippi counties, one South Carolina school district, and one Texas school district. A total of 589 redistricting plans, drawn to equalize district population based on data from the 1990 census, were submitted for review during the year.

In 1991, the Office of Special Counsel for Immigration Related Unfair Employment Practices received and began investigation of 606 charges of employment discrimination, a 16 percent increase over the previous year, and initiated 60 independent investigations. As a result of these and other ongoing investigations, the Special Counsel during 1991 filed eight complaints, negotiated 22 formal settlements of charges and two adjudications, obtained $65,000 in backpay and negotiated six settlements of independent investigations. Many other investigations were resolved through voluntary changes in personnel policies and practices.

The Environment

The Environment and Natural Resources Division (ENRD) continued its aggressive posture in 1991 in both civil and criminal enforcement of environmental laws. In terms of civil enforcement, the Division, working with the United States Attorneys, experienced continued record-breaking success, posting its third consecutive year in which it recovered over $1 billion in civil penalties, court-ordered defendant cleanups, Environmental Protection Agency cleanup cost recoveries, and natural resource damages. This success is reflected in a $25 return to the United States for every dollar invested in the Division's civil enforcement efforts. Significant activities included:

- Filed 154 "Superfund" lawsuits, the largest number of cases ever filed.

- Assessed the largest civil penalty ever under the Clean Water Act, over $6 million against Wheeling-Pittsburgh Steel.

- Levied a $220,000 fine against Ebco Manufacturing for violations of the drinking water standards of the Safe Drinking Water Act.

In terms of criminal enforcement, the Division continued to work together with the United States Attorneys in its prosecution of polluters, obtaining 125 indictments and 96 convictions. Criminal prosecution efforts during 1991 yielded the assessment of $18.5 million in fines and 24 years of prison terms. Notable cases included:

- Levied the largest environmental fine for a violation of the Resource Conservation and Recovery Act. A $3 million fine was assessed against United Technologies Corporation for illegal disposal of hazardous waste.

- Imposed the first pre-trial detention for environmental defendants where two individuals were incarcerated after being indicted for illegal disposal of hazardous wastes, witness

tampering and conspiracy to defraud the Environmental Protection Agency.

Protection of the nation's wildlife and marine resources was also a major priority of the Division. In prosecuting, both civilly and criminally, those responsible for the injury or death of endangered wildlife and marine animals, the record for 1991 reflects 1,200 criminal indictments, 900 guilty pleas or convictions, 60 years of prison sentences assessed and $1 million in criminal fines. The Division was successful in obtaining the forfeiture of $3 million from foreign and domestic fishing vessels which had violated fishing laws. In one case, the Division imposed $590,000 in criminal fines and restitution on two corporations for uncovered toxic waste ponds.

The U.S. Attorneys' Offices also filed 52 cases charging criminal violations of statutes and regulations relating to toxic, hazardous, or carcinogenic substances. In the Central District of California, Laminating Company of America pleaded guilty to one felony count of conspiracy, 23 felony counts of illegal disposal of hazardous waste, and one felony count of illegal transportation of hazardous waste, agreeing to pay a fine of $525,000 over a period of several years. This District also obtained the first Federal conviction under the Resource Conservation and Recovery Act for the unlawful exportation of hazardous waste to a foreign country.

In the Northern District of Texas, Herman Goldfadden, owner of Controlled Disposal, pleaded guilty to one count of dumping industrial waste; his company pleaded to two counts of violations of the Clean Water Act. In July 1991, Goldfadden was sentenced to three years imprisonment and ordered to pay a $75,000 fine; Controlled Disposal was fined $1 million.

Merger Enforcement

Mergers and acquisitions within the banking industry were pervasive during 1991. The Department's Antitrust Division played a major role in Federal approval of bank mergers and, where necessary, it challenged transactions that were likely to result in anticompetitive markets. The Division filed suit to prevent the merger of the second and fourth largest banks in Hawaii. The case was settled in March 1991 when the parties to the merger agreed to divestitures that eliminated the Department's competitive concerns. The Division also challenged the acquisition by Fleet/Norstar Financial Group of the assets of the Bank of New England. The acquisition was allowed to proceed after the parties agreed to settle the case by divesting branches in key affected markets.

The Antitrust Division took decisive steps to ensure that mergers and acquisitions by the nation's airlines did not create anticompetitive conditions. A challenge to United Airlines' bid for Eastern Airlines' gates at Washington National Airport successfully blocked that transaction without interfering with the court supervised liquidation of Eastern's bankrupt assets. After the Division announced its intent to challenge, United Airlines withdrew from the transaction, opening the door to the second highest bidder, Northwest, which ultimately matched United Airlines' bid. The Division also played an important role in American Airlines' purchase of TWA's London routes. Originally, American intended to purchase all six of TWA's London routes, a plan that was plainly anticompetitive. The Division indicated its intention to block American's plan, and the Department of Transportation approved the purchase of only three of the six routes.

Following a two-year investigation into price-fixing by various groups of colleges and universities around the nation, the Division reached a major civil settlement agreement with seven Ivy League colleges suspected of colluding on prices. The consent decree prohibits future discussions among college administrators regarding the level of financial aid that is offered to individual students, tuition or faculty salaries.

General Litigation

The U.S. Attorneys' Offices continued to prosecute obscenity and pornography cases during 1991. In the Southern District of Mississippi, a medical doctor in Jackson, Mississippi, was sentenced to 13 months in prison for child pornography through the mail. His sentence included 36 months of supervised release, a $6,000 fine, 180 days in a halfway house, participation in a mental health program, and prohibition from entering any occupation which involves contacts with minors. The Eastern District of Virginia convicted a well-respected founder and editor of an academic journal following his attempt to smuggle into the country two videotape recordings depicting sexually explicit conduct between two underage boys, a violation of the Child Protection Act of 1984.

The Criminal Division also continued its efforts in prosecuting producers and distributors of hard-core pornography. In Project PostPorn, which targets mail-order distributors of obscenity, 50 convictions were obtained in 20 Federal districts. Additionally, three defendants pleaded guilty in the largest child pornography/obscenity case in the New England region during the last decade. Searches in four States lead to the seizure of more than 1,000 pornographic tapes depicting child and adult pornography.

During 1991, the Tax Division's civil trial attorneys handled over 25,000 bankruptcy cases. These cases included the bankruptcies of Drexel, Burnham, Lambert; LTV, Inc.; Campeau; Crazy Eddie's; Continental Airlines; Braniff Airlines; Southland; Greyhound; and Revco, which involved billions of dollars in tax claims. Additionally, the United States Trustees processed 880,399 bankruptcy petitions during 1991, representing a dramatic rise of 21 percent since 1990 and almost 60 percent since 1986. Billions of dollars of assets are pending in bankruptcy estates because major companies filed for bankruptcy protection during 1991.

Supreme Court Cases

The Office of the Solicitor General (OSG) promoted the mission of the Department through its representation of the United States before the Supreme Court. The OSG's significant successes before the Supreme Court included the following decisions holding that:

- Regulations issued by the Secretary of Health and Human Services under Title X of the Public Health Service Act that prohibit grant recipients from furnishing abortion-counseling or abortion-referral services within their

Title X programs are consistent with the Act and do not violate the First Amendment rights of grantees or the Fifth Amendment rights of pregnant women (Rust v. Sullivan; State of New York v. Sullivan).

- The use of victim-impact evidence during the sentencing phase of a capital case does not per se violate the Eighth Amendment's prohibition against cruel and unusual punishment (Payne v. Tennessee).

Chapter V: National Security

The Department's fundamental national security responsibilities remained a high priority during 1991 especially in light of the Persian Gulf War and the major changes occurring throughout the world. These responsibilities included counterterrorism, counterintelligence, and national security litigation. Counterterrorism involves prevention of terrorist acts and, if such an act occurs, initiation of a proper investigative response. Counterintelligence involves identifying, penetrating, and neutralizing threats to national security posed by hostile intelligence services. National security litigation includes maintaining the legal framework for counterterrorism and counterintelligence activities and defending national security policies and activities in the courts.

Counterterrorism

Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government or the civilian population to further political or social objectives. International terrorism involves activities by groups or individuals who are foreign-based and/or directed by countries or groups outside the United States or whose activities transcend national boundaries. Following the eruption of hostilities in the Persian Gulf, the Department committed additional resources and personnel to closely monitor the threat of terrorist violence in the United States.

The FBI made significant arrests in the area of terrorism including:

- A naturalized citizen from Jordan for threatening to assault U.S. officials and conspiracy to destroy or damage military bases.
- 15 members/associates of the Macheteros, a Puerto Rican-based terrorist group, for their alleged involvement in narcotics activities.
- 18 members of the Yahweh terrorist organization on charges of murder, kidnaping, extortion, and arson.

The Criminal Division, working with the Transnational and Major Crimes Section of the U.S. Attorneys' Office for the District of Columbia, contributed significantly to international counterterrorism efforts during 1991 in a number of cases around the world:

- Indicted two Libyan Intelligence officials for the bombing of Pan American Flight 103 which was destroyed by a mid-air explosion over Lockerbie, Scotland, in December 1988.
- Indicted a member of the FMLN leftist guerrilla organization for the January 1991 murders of two U.S. Army Air Crewmen in El Salvador.
- Convicted two participants in the 1976 assassination of Orlando Letelier, a former Chilean Ambassador to the United States, of conspiracy to murder an internationally protected person.
- Successfully litigated the appeal of convicted terrorist Fawaz Yunis for the hijacking of a Jordanian Air Liner with two Americans on board in June 1985.

In another important international case, the FBI provided crucial forensic and testimonial evidence to the Greek government that was instrumental in the conviction of Mohammed Rashid for the murder of a Japanese teenager who was a passenger in a Pan American flight from Japan to

Hawaii. Rashid was arrested on a U.S. indictment filed in the District of Columbia and tried in Greece.

The Office of Justice Program's National Institute of Justice (NIJ) continued an important research project on tactical methods for handling terrorist situations. The NIJ began a national assessment of State and local law enforcement preparedness in dealing with terrorism. The study is investigating the nature and extent of the threat of terrorism within the United States and identifying promising counterterrorist programs.

Foreign Counterintelligence

The continued changes taking place in Eastern Europe and the former Soviet Union had a significant effect on foreign counterintelligence. The FBI made accurate assessments of foreign intelligence threats to U.S. national security that led to the identification of clandestine agents and assisted U.S. officials in establishing foreign policy. The FBI continued to monitor the changes taking place within the intelligence services of various East European countries and verified that most of these countries are no longer targeting the United States. Although the Soviet republics have started to restructure the domestic responsibilities of the KGB, FBI investigations confirm that the KGB and its military counterpart, the GRU, continue to operate in the United States.

In response to the changing intelligence threat, the FBI initiated a reorganization of its Foreign Counterintelligence program called the National Security Threat List (NSTL). Specifically, the NSTL enables the FBI to conduct offensive counterintelligence operations to neutralize hostile intelligence activity by any foreign power, regardless of our affiliation with that foreign power. The Office of Intelligence Policy and Review (OIPR) also worked with the FBI to review the manner in which it assigns its priorities in national security investigations and assisted the Bureau in obtaining Attorney General approval to develop a new system of priorities for the changing world of the future.

Investigations concerning espionage and international terrorism often require the use of electronic surveillance equipment. The OIPR, representing the FBI and the National Security Agency, obtained approximately 500 orders authorizing electronic surveillance for foreign counterintelligence purposes from the United States Foreign Intelligence Surveillance Court. In addition, OIPR attorneys visited the headquarters and field facilities of agencies engaged in the collection of foreign intelligence and counterintelligence to ensure that these activities are conducted in accordance with relevant guidelines. Working with attorneys and field personnel from these agencies, OIPR attorneys provided legal advice and guidance in intelligence operations.

National Security Litigation

The Civil Division handled numerous cases involving aspects of Operation Desert Storm, including an action filed by news organizations challenging the Department of Defense's rules and practices governing press coverage during the conflict. Further, the Division defended the government in litigation arising from the Soviet shootdown of Korean Air Lines flight 007.

The Criminal Division engaged in a number of significant national security litigation activities:

- Convicted former U.S. Army Sergeant Roderick Ramsay of espionage in connection with his activities on behalf of Hungary and Czechoslovakia.
- Convicted Douglas Tsou, a former FBI translator, of communicating classified information to the Coordination Council for North American Affairs, a group representing the interests of Taiwan in the United States.
- Convicted 52 defendants on charges of illegally exporting munitions and strategic commodities to such foreign countries as Iraq, Libya, Iran, South Africa, North Korea, Cuba, and the Soviet Union.

During national security litigation, the Department through the Security and Emergency Planning Staff (SEPS) is responsible for protecting classified national security information. During the year, the SEPS provided security support to approximately 30 cases nationwide. The most notable case, United States v. Manuel Noriega, involves the most sensitive classified information and requires coordination with many agencies in the intelligence community. In accordance with the Classified Information Procedures Act of 1980, background investigations (BIs) for all parties in the litigation are required in order to obtain security access clearances. Approximately 350 BIs were conducted in support of these cases.

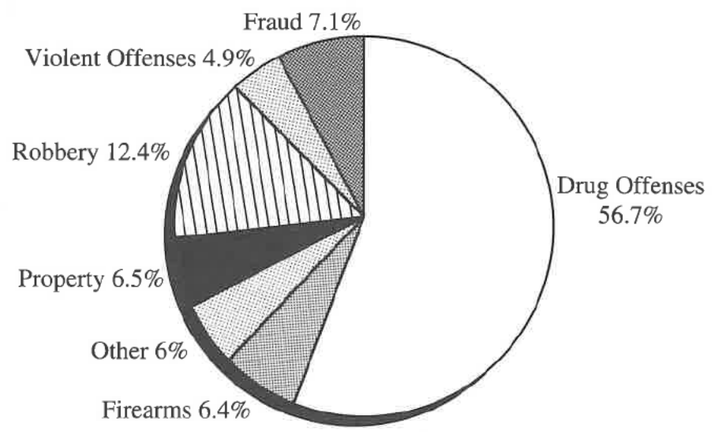
Chapter VI: Prisoner Detention, Handling, and Incarceration

The Department's accomplishments in arresting and convicting drug dealers and other offenders in record numbers continued during 1991. The Bureau of Prisons (BOP) inmate population increased from 58,021 to over 64,100, representing unprecedented growth. The U.S. Marshals Service (USMS) had a daily average of 17,000 prisoners in custody, an increase of 27 percent from last year. As a result of this unparalleled surge, the Department's ability to effectively detain, handle, and incarcerate offenders continued to be a major challenge in 1991.

Pre-Sentencing Activities

A traditional practice by the Federal Government is to house prisoners held for trials, hearings, or sentencing in State or local jails. However, a serious shortage of space in local jails continued to exist throughout the country affecting the available jail space for Federal detainees. The shortage of bed space was especially severe in the Northeast region. Airlifts of prisoners from this area to available detention space in Texas, Louisiana, and Tennessee became a regular occurrence, culminating in a scheduled weekly airlift.

BOP Sentenced Inmates
Types of Offenses - 1991



Detention Facilities

An interagency task force under the leadership of the Deputy Attorney General was created to address the needs for additional detention space as well as resolve operational problems. The interagency task force includes members from offices that have an impact on the detention population including the BOP, the Immigration and Naturalization Service (INS), the USMS, the U.S. Attorneys' Offices, the Executive Office for Immigration Review (EOIR), and the Community Relations Service. The task force developed a Five-Year Detention Plan which proposes constructing new detention facilities and expanding the Cooperative Agreement Program (CAP). Under the CAP program, the USMS provides funds to State and local governments for jail construction or renovation in return for guaranteed detention space for Federal prisoners. The CAP is an essential component of the USMS effort to alleviate the jailspace shortage. Since the start of the program in 1982, 74 judicial districts have been provided with a total of 6,700 guaranteed bed spaces at an average cost of $18,517 each. During 1991, 39 CAP agreements were awarded, for a total cost of more than $30 million. These awards increased bed space by 1,274 units.

Both the BOP and INS were successful in their plans for constructing or opening detention facilities. The BOP received final approval for two detention facilities in Miami, Florida, and Brooklyn, New York, that will be used primarily for pretrial activities. Additionally, Congress funded five pre-trial detention units at the Federal Correctional Institutions in Sheridan, Oregon; El Reno, Oklahoma; Seagoville, Texas; Memphis, Tennessee; and Butner, North Carolina. The INS opened two new Service Processing Centers increasing detention capacity by 400 beds in San Pedro, California, and 60 beds in Aguadilla, Puerto Rico. At the same time, construction was nearly completed on the expanded facility in Oakdale, Louisiana (Oakdale II), which will add space for up to 600 criminal aliens, beginning in November 1991. Along with the Oakdale project, the INS worked closely with the BOP to develop a proposal for a joint contract facility to house 1,000 criminal aliens.

Prisoner Handling

The National Prisoner Transportation System of the USMS produced economies in 1991 despite a record growth in its workload. There were 131,088 prisoner movements in 1991. Of the total prisoner movements, more than one-third were by USMS jet aircraft. The other prisoner movements were by different modes of transportation; i.e., bus, van, automobile, and commercial aircraft. During 1991, the cost per prisoner movement using USMS planes was $176—compared to $688 by commercial airliner and $1,689 by air charter. In certain circumstances, the USMS was required to move prisoners by commercial airliners but was again able to save substantial Federal funds on those trips. If the NPTS had been forced to rely on normal non-discounted rates, commercial air trips would have cost $1.8 million. However, by using its centralized ticketing program, the system saved more than 59 percent—or $1.07 million—on the trips. The program also included ticketing for all Deputy Marshals traveling on special assignments, amounting to a 58 percent savings.

The Marshals Service's Prisoner Transportation System, also known as "Con-Air," continues to move thousands of prisoners coast-to-coast and all points in between. Last year, the Service carried out more than 131,000 prisoner movements; more than one-third were on the Service's jet aircraft. The Oregonian, Dana Olsen

Following last year's successful historic agreement between the INS and the Maryland National Guard to provide prisoner transportation, the INS entered into agreements with National Guards of six other states: Georgia, Rhode Island, Texas, Florida, New York, and Delaware. The agreement permits the National Guards to transport criminal aliens by Guard aircraft to expedite the aliens' deportation at no expense to the Service. This approach is very cost effective in that it saves scarce funds for alien travel, detention, and welfare while taking advantage of the National Guard's ongoing flight certification program.

Post-Sentencing Activities

A major objective of the BOP is to continue to expand the capacity of the Federal Prison System to keep pace with projected increases in the inmate population and to simultaneously reduce prison population to 30 percent above rated capacity. During 1991, the Bureau's inmate population hovered around 60 percent above capacity. The Bureau continues to make use of half-way houses and other community options and to increase the capacity at existing institutions.

System Expansion

The BOP added 4,718 beds in 1991 by opening new Federal Correctional Institutions at Three Rivers, Texas, and Schuylkill, Pennsylvania; and opening a portion of the Public Health Service Gillis W. Long Hansen's Disease Center, Carville, Louisiana, which was acquired for use as a Federal Medical Center. Among other expansion projects, the Bureau activated Federal Prison Camps in Nellis, Nevada; Seymour Johnson Air Force Base, South Carolina; and El Paso, Texas; and increased capacities at the Federal Correctional Institutions in Otisville, New York; Ashland, Kentucky; Morgantown, West Virginia; and Butner, North Carolina. The BOP also initiated construction of 5,965 new beds during the year and continued construction efforts on an additional 6,659 new beds initiated in prior years.

Inmate Financial Responsibility Program

The Inmate Financial Responsibility Program operated by the BOP, in cooperation with the Administrative Office of the U.S. Courts and the U.S. Attorneys' Offices, continued its work through 1991. The Program provides a systematic method of collecting court-imposed fines, fees, and costs that remain unpaid. During 1991, the Inmate Financial Responsibility Program collected over $11 million. Of the 21,834 inmates identified as having a court-ordered financial obligation, 18,839 (86 percent) are making payments toward these obligations and over 26,000 inmates in the BOP's custody have satisfied their financial obligations.

Federal Prison Industries

The Federal Prison Industries (trade name UNICOR) is a wholly-owned government corporation whose mission is to provide employment and training opportunities for inmates confined in Federal correctional facilities. UNICOR manufactures a wide range of items from furniture to electronics. Services performed by UNICOR's inmates include data entry, printing, and furniture refinishing. During 1991, an average of 14,549 inmates were employed at 46 institutions in 87 factories. Sales for 1991 increased by 13 percent to over $395 million. New factories were opened at Federal Correctional Institutions in Fairton, New Jersey, for automatic data processing services; and at Three Rivers, Texas, for vehicular component rehabilitation.

UNICOR is a correctional program of vital importance to effective management and operation of the Federal Prison System. A major BOP study, The Post-Release Employment Project, found that inmates who participated in industrial work and vocational training during their imprisonment showed better adjustment during incarceration and were significantly less likely to recidivate by the end of their first year back in the community. Additionally, they were more likely to be employed both during their stay in a halfway house and upon discharge to the community, and earned slightly more money in the community than inmates with similar backgrounds who did not participate in work and vocational training programs.

Community Corrections Programs

Community corrections activities provide an effective alternative to prison incarceration for certain Federal offenders. Three major community corrections activities during 1991 included community corrections centers, the electronic monitoring program, and sanctions centers. Community corrections centers (CCC) are residential programs for Federal offenders that provide temporary residence, job placement assistance, counseling, and drug/alcohol testing and monitoring. A total of 4,130 offenders were housed in CCCs during 1991. While participating in CCCs, offenders are asked to reimburse the government for their subsistence costs. Over $7 million was collected as subsistence payments from inmates residing in CCCs as compared to $6 million during fiscal year 1990.

CCCs also provide structured programs for offenders such as Urban Work Camps. While residing in a community corrections center, inmates participating in the Philadelphia Urban Work Camp provided labor intensive support services to the Department of Defense Personnel Support Center. A national agreement was finalized that will allow other regions to develop Urban Work Camps with other Federal agencies.

The United States Parole Commission (USPC) in cooperation with the BOP and the Probation Division of the U.S. Courts, developed the Electronic Monitoring Program (EMP), an alternative to incarceration. This program imposes home detention that can be monitored by electronic signaling devices worn by offenders. In pilot programs during 1991, about 300 persons were involved in electronic monitoring programs in 14 judicial districts at a cost of about $15 per day.

The use of sanctions centers was another effort initiated by the USPC in conjunction with the BOP and the U.S. Courts. The Technical Parole Violator Sanctions Centers will be used to impose sanctions on former prisoners who violate their terms of release rather than return them to prison. The Centers should be operational before the end of the 1991 calendar year. Two pilot Technical Parole Violator Sanctions Centers, one in the Baltimore, Maryland, area and the other one in the District of Columbia, are in the process of development.

Prison Uprising

In August 1991, a prison uprising occurred at the Talladega, Alabama, Federal Correctional Institution. This prison riot lasted for 10 days, endangered innocent persons and involved hostages. The FBI's Hostage Rescue Team, hostage negotiators, and Special Weapons and Tactics (SWAT) teams supported by the Bureau of Prisons, effected the safe rescue of all hostages and brought this dangerous life-threatening situation to a successful conclusion with only minor injuries to one inmate.

Assistance to State and Local Governments

The Department continued to assist State and local governments to meet their corrections responsibilities. Both BOP's National Institute of Corrections and the Office of Justice Programs (OJP) provided significant assistance.

One of the most innovative programs developed by the OJP is the Boot Camp Program. The Boot Camp Program serves as an intermediate sanction between community supervision and

prison, and provides a highly-structured, military-type environment for young, nonviolent first offenders. Offenders are required to participate in programs including physical conditioning, manual labor, vocational and life-skills training, self-esteem enhancement, and drug rehabilitation. Aftercare programs such as intensive supervision or residential probation and temporary work for offenders when they return to the community; individual, group, and family counseling; job and educational referrals; and relapse prevention sessions are also available. The aim of the Boot Camp Program is to provide an opportunity for offenders to become law-abiding and drug-free while holding them accountable for their crimes through incapacitation, thereby enhancing public safety. In 1991, the OJP's Bureau of Justice Assistance funded demonstration Boot Camp Programs in Oklahoma and Illinois.

In addition, the OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) funded three demonstration Boot Camp Programs for adjudicated nonviolent juvenile offenders. The three-year awards were made to the Boys and Girls Club of Mobile, Alabama; the Division of Youth Services in Denver, Colorado; and the Juvenile Court in Cleveland, Ohio. As many as 100 juvenile offenders will reside at each of the three sites and participate in physical fitness drills, literacy and job training, and alcohol and drug treatment programs. The OJP's National Institute of Justice (NIJ) is assessing boot camps and other types of intermediate sanctions that strengthen controls over convicted offenders released in the community.

In another effort, the OJP provided technical assistance and training to help public officials recruit private sector firms to create inmate work programs in prisons and jails. In 1991, plans were developed to support 20 pilot programs and to develop a national database on jail industries programs. The OJP also provided information on prison construction through its Construction Information Exchange. The program shares the latest concepts and techniques for constructing and financing prisons and jails. State and local officials can access the information by computer.

Chapter VII: Immigration and Border Control

Effective January 1, 1991, the Department began implementing the provisions of the Immigration Act of 1990, the most comprehensive reform of the immigration laws in 66 years. The Act focuses on six key issues:

- Promotes immigration of skilled individuals to meet the country's economic needs while retaining the commitment to family reunification.
- Better equips the Department to combat illegal drugs and accompanying violence.
- Improves the capability to secure borders by clarifying the authority of INS enforcement officers to make arrests and carry firearms.
- Refines anti-discrimination provisions of the Immigration Reform and Control Act of 1986 (IRCA).

"This bill is good for families, good for business, good for crime fighting, and good for America. We welcome both it and the generations of future Americans who it will bring in to strengthen our great country." President George Bush signing the Immigration Act of 1990
White House Photo November 29, 1991

- Revises outdated and restrictive immigration exclusions.

- Provides temporary protected status to certain categories of foreign nationals facing turbulent circumstances at home.

In 1991, the Department continued to meet the challenge of immigration reform by focusing on employer sanctions, apprehension and removal of illegal aliens, and improved immigration services.

Employer Sanctions

The Attorney General's Task Force on IRCA-Related Discrimination report, published at the end of 1990, showed that increased efforts were needed to educate the public about the specific provisions of the law. As a result, the Office of Special Counsel for Immigration Related Unfair Practices (OSC) took immediate steps to promote public awareness by awarding over $1 million to non-profit organizations to develop innovative public education programs focused on outlining the responsibilities of employers and the rights of victims of employment discrimination. The non-profit organizations used a variety of educational approaches including theater presentations, English as a second language curricula, multi-lingual hot lines, manuals, flyers, posters, radio and television public service announcements, neighborhood fairs, and business meetings. The OSC worked with the Immigration and Naturalization Service (INS) to ensure that the new Handbook for Employers described how to avoid discrimination problems while employers carried out their employer sanctions responsibilities.

While continuing to encourage voluntary compliance among U.S. employers, the INS intensified efforts to identify violators of the employer sanctions provisions of immigration law. During the second half of 1991, at least 30 percent of investigative activity was devoted to employer sanctions enforcement including investigations of suspected violators and administrative audits of employers. More than 8,500 employer sanctions cases were completed during the year, resulting in an estimated 2,100 warnings and 2,073 Notices of Intent to Fine. The total amount of fines assessed exceeded $12 million. Sanctions enforcement also led to the apprehension of 10,748 unauthorized alien workers.

The Executive Office for Immigration Review (EOIR) is responsible for adjudicating employer sanctions and anti-discrimination cases. In 1991, EOIR's Administrative Law Judges rendered decisions in almost 300 cases, some following fully litigated hearings. One significant decision, argued by the OSC, provides a mechanism for U.S. workers to file discrimination complaints and obtain a hearing against employers who hire temporary foreign workers if U.S. workers are available. Now employers who seek labor certifications for temporary foreign workers must consider liability for back pay and penalties under IRCA should their representations that no U.S. workers were available to perform the work prove inaccurate.

Apprehensions and Removals

One of the major objectives of the INS' Border Patrol is to deter uncontrolled entry into the United States by rapid detection, interception, and apprehension of illegal entrants at or near the border. Surveillance activities are supported by computer-monitored electronic ground sensors that alert Border Patrol officers of illegal entries. Additional support is provided by observation aircraft, low light level television systems and infrared viewing devices. The Border Patrol apprehended 1,077,500 illegal aliens along the southern border during 1991, an increase of about three percent over the previous year's total.

In a major initiative against alien smuggling, INS carried out "Operation Ironhorse" to check trains in major railway corridors along both borders and in the interior. Border Patrol and Anti-Smuggling agents in 15 sectors and three districts joined agents from the Customs Service and the Drug Enforcement Administration, Marine Corps Military Police, and security officers from nine different railroads to conduct intensive train inspections for illegal aliens and contraband. They found 12,517 aliens, including 74 who were sealed in locked boxcars or rail containers, and about $20 million worth of cocaine and marijuana. The overall objectives of "Ironhorse" were to reduce fatalities and personal injuries associated with the smuggling of aliens and narcotics in rail cars, and prevent theft and vandalism against railroad and public property.

In other efforts, Anti-Smuggling agents completed 1,472 Level I (highest priority) criminal cases, in which 2,166 smugglers were apprehended and 1,608 were presented to U.S. Attorneys for prosecution. Over 80 percent of these prosecutions resulted in convictions. The INS continued its efforts to remove aliens who have entered the country illegally, who are convicted criminals or who have violated their immigration status.

During 1991, the INS deported 28,870 aliens including 10,406 aliens convicted of drug-related crimes and 2,862 other criminals. Immigration inspectors stopped 13,369 travelers at U.S. ports of entry who were listed in automated lookouts; intercepted 775 subjects of narcotics cases and 5,167 subjects of alien smuggling cases; prosecuted 7,722 violators of immigration law; and arranged exclusion proceedings for 4,437 aliens. As part of the Cuban Program, the INS expeditiously reviewed all cases for detained Mariel Cuban criminals, accelerated the repatriation process, and returned 295 Mariels to Cuba during the year.

In related events, the Criminal Division instituted deportation proceedings in Cleveland, Ohio, against an individual who had been a Nazi SS guard at Auschwitz. In addition, the Division excluded 13 persons from entering the United States because their names were on the "Watch List" of persons alleged to have participated in Nazi-sponsored persecution.

Immigration Services

Major immigration services provided by the INS focused on three areas during 1991: adjudications, naturalization, and employment authorization.

The INS adjudicates applications for naturalization and other types of benefits available to individuals under the immigration and nationality laws. The volume and variety of immigration adjudications in the four Regional Service Centers grew significantly in 1991, reflecting the continuing shift of casework from district offices to

centralized processing. Productivity increased by 16 percent in the centers as a result of improvements to the automated casework support system. The INS completed 3.5 million adjudications cases during the year, about 100,000 cases fewer than total receipts, which are expected to rise above four million cases in 1992 as a result of the Immigration Act of 1990.

The naturalization process significantly changed with the passage of the Immigration Act of 1990. By transferring the authority for the naturalization of aliens from the judiciary to the Attorney General, candidates for citizenship may be naturalized administratively by an INS officer in "dignified public ceremonies" instead of judicially by a judge after an oath of allegiance is recited. The law also granted a special naturalization benefit to certain Filipino war veterans and relaxed some age and residency requirements for other qualified aliens.

Employment authorization was streamlined at the end of the previous fiscal year with the development of the new Employment Authorization Document System (EADS). The EADS was implemented to meet the requirements for employment verification under the Immigration Reform and Control Act (IRCA). The EADS issues a standard, counterfeit-resistant work permit under uniform procedures to qualified aliens at approximately 200 locations nationwide. This standardized document will ultimately replace all the different forms of work authorization previously issued by the INS.

The EADS also provides automated support to implement the provisions of the temporary protected status (TPS) program of the Immigration Act of 1990. Under the TPS, eligible nationals of designated countries who are in the United States without legal status may apply for relief from deportation and for work authorization for a specified period. The law granted eligibility for TPS to Salvadorans; the Attorney General extended eligibility for TPS to nationals of Kuwait, Lebanon, Liberia, and Somalia during the year. EADS documents were provided to 181,000 individuals under the TPS provisions for temporary work authorization.

Judicial Activities

The Executive Office for Immigration Review (EOIR) conducts administrative adjudications that interpret the immigration laws. The EOIR's immigration judges preside at formal, quasi-judicial deportation and exclusion proceedings. Their decisions are administratively final unless appealed or certified to the Board of Immigration Appeals. During 1991, the EOIR received over 150,000 cases, appeals, motions and related matters and completed over 165,000 cases.

The EOIR established the Criminal Alien Program to adjudicate the immigration status of incarcerated aliens as mandated by IRCA. In 1991, the Criminal Alien Program expanded to include programs with correctional authorities in all 50 states, Puerto Rico, and the District of Columbia. During 1991, 6,244 criminal alien cases were filed with the EOIR and 5,165 cases were completed by the EOIR's immigration judges. The program also involved liaison with various bar and legal associations to coordinate pro bono programs in conjunction with hearings in penal institutions.

The EOIR's Board of Immigration Appeals published 20 precedent-setting decisions dealing with issues of first impression and involving unsettled areas of law. These decisions included significant interpretations of statutory provisions enacted in both the Refugee Act of 1980 and IRCA. During 1991, the Board continued to utilize the Alternate Board Member program, a management initiative which involves the appointment of immigration judges, on a rotational basis, to act as Alternate Board Members. This program allows the consideration of appeals using multiple panels and has resulted in a more effective usage of EOIR personnel in the adjudication of appeals.

In response to IRCA, the Board, during 1987 and continuing through 1991, instituted procedures for screening cases which appeared to be eligible for relief under the legalization provisions of the law. These procedures assisted the overall legalization process clearing thousands of cases, with concurrence from all parties involved, from the Board's appeals docket.

Soviet Emigration

The United States admitted some 38,700 Soviet refugees during 1991, short of the 50,000 admissions anticipated at the beginning of the year. This shortfall resulted largely from the difficulties encountered by many approved refugee applicants in obtaining exit permission from the former Soviet Union. Soviet refugee admissions will be increased by the amount of the shortfall in 1992. Provisions of the Foreign Appropriations Act which extended special consideration for certain categories of Soviet refugee applicants, the so-called "Lautenberg Amendment," continued to have a significant impact on Moscow adjudications throughout the year. Approval rates for Soviet applicants who qualified under these provisions — Soviet Jews, Evangelicals, Ukrainian Orthodox and Catholics — exceeded 96 percent. The overall approval rate for refugee adjudications during the year was 91 percent, with approximately 57,000 Soviets approved for resettlement in the United States.

Chapter VIII: Law Enforcement: Intergovernmental Cooperation and Coordination

Effective law enforcement requires concerted action by all levels of government —Federal, State and local. Therefore, a major objective of the Department of Justice is to promote cooperation among the members of the intergovernmental law enforcement community. In 1991, as in past years, the Department provided leadership and support in a variety of ways. It participated in joint Federal, State and local operations; offered training and technical assistance services; and provided direct funding for State and local activities.

Operations

Examples of the Department's support of operational activities included the following:

- The United States Attorneys across the country promoted coordination and cooperation among Federal, State and local law enforcement agencies through the Law Enforcement Coordinating Committees (LECCs) that exist in each district. Many LECCs deal with such topics as financial institution fraud, asset forfeiture, gangs, environmental crime and illegal narcotics.

- In 1991, the majority of Organized Crime Drug Enforcement Task Force (OCDETF) investigations were intergovernmental operations involving a number of Federal agencies as well as one or more State and local units of governments. In addition, the United States Attorneys participated in a variety of other joint task forces. For example, the Central District of California's Sheriff Corruption Task Force obtained the conviction of seven Los Angeles County Deputy Sheriffs on a variety of charges, including conspiracy to commit theft, money laundering, filing false tax returns, and interstate travel in furtherance of racketeering.

- The Federal Bureau of Investigation's (FBI) National Center for the Analysis of Violent Crime handled over 2,000 cases in 1991, including requests from Federal, State and local law enforcement agencies for operational support. The Bomb Data Center of the FBI Laboratory established an Emergency Broadcast Network in response to the Persian Gulf War. The Network provided for immediate notification of bomb squads throughout the nation regarding intelligence developed about terrorist devices or methods.

- The United States Marshals Service (USMS) conducted "Operation Sunrise" — a cooperative Federal, State and local effort to apprehend persons who have evaded arrest or jumped bond or bail. It resulted in the arrest of 1,495 criminals and the seizure of more than $1.8 million in cash and property.

- The Bureau of Prisons' National Institute of Corrections facilitated the transfer of suitable Federal land and buildings to States and localities for correctional purposes.

- The Antitrust Division worked extensively with other Federal agencies as well as State governments to alert them to conduct that is

During "Operation Sunrise", investigators arrested Manuel Armmando Menocal, who is wanted in Sweden for cocaine trafficking. He tried to escape from "Sunrise" agents by jumping into a pond behind his luxurious Miami home. Deputy Marshals also found 10 guns in the house. The 10-week operation, sponsored by the U.S. Marshals Service, resulted in the arrest of almost 15,000 fugitives.
U.S. Marshals Service

typical of antitrust crime. A major effort to inform competition officials in the midwestern states of illegal conduct in the meatpacking industry received wide acclaim from State leaders and the public.

Technical Assistance

The FBI's National Crime Information Center (NCIC) serves over 60,000 criminal justice agencies. In 1991, NCIC continued to provide invaluable assistance to these agencies while at the same time modernizing its services. Based on the two-year "NCIC 2000" study, the FBI's future NCIC system will be able to transmit a single fingerprint and mugshot from a police car radio to the NCIC network allowing the officer to know if a person is wanted or missing. In addition, the NCIC will have artificial intelligence to analyze data and identify crime patterns, and expert systems to spot possible misuse.

In another area of technical assistance provided by the FBI, the Laboratory Division received over 17,000 requests for examinations from the FBI itself, other Federal agencies, and State and local governments. It performed 898,146 scientific examinations on 167,551 specimens of evidence. At the same time, the FBI Laboratory initiated research to develop the next generation of forensic DNA analysis examination. The Laboratory also developed the ability to use computer advances to age photographs to show what individuals would look like after a period of time. For example, an FBI fugitive from Los Angeles wanted for murder was arrested after his photograph was aged 12 years and shown on the television show "America's Most Wanted."

The INTERPOL-U.S. National Central Bureau (USNCB) also assists law enforcement agencies in this country. The primary mission of USNCB is to promote cooperation between Federal, State and local police in the United States and the police agencies of INTERPOL's 154 member countries. The USNCB has access to a broad range of foreign data bases, its own unique data base of international investigations, and a worldwide communications network. To serve the United States police community, the USNCB makes this considerable resource of criminal information available for the conduct of international criminal investigations.

In other areas of assistance, the Bureau of Prisons' National Institute of Corrections provided technical assistance in response to 583 requests from State and local corrections agencies and responded to 15,000 requests for information from 8,500 correctional practitioners, policy makers, and others. The OJP's Drugs and Crime Data Center and Clearinghouse continued to provide a centralized source of information on drugs and crime. During 1991, the Clearinghouse responded to 5,710 inquiries and distributed 15,050 documents on drugs and crime.

In another example of the Department's intergovernmental assistance, the Community Relations Service (CRS) convened a two-day conference to identify and propose resolutions to disputes involving police use of force and other police-community relations problems. In addition, the CRS conducted dialogues between minority groups to develop a joint understanding of the issues and problems facing their respective communities. The CRS also worked with over 1,000 law enforcement agencies, Southeast Asian refugees and other community representatives in a series of national, multi-jurisdictional, and local workshops designed to improve the reporting and response to Asian community victimization by mobile youth gangs and hate crimes.

Training

Literally thousands of Federal, State, and local law enforcement officials were the beneficiaries of training programs sponsored by the Department in 1991. Highlights of these multi-faceted training efforts include:

- The Drug Enforcement Administration (DEA) conducted 310 basic, intermediate and advanced training courses in drug law

enforcement for 18,650 Federal, State, and local police officers and military personnel.

- The FBI trained approximately 12,000 persons at its Academy, including 991 State, local, and international law enforcement officers who graduated from the FBI National Academy. More than 3,500 other local officers received training at the Academy in executive, forensic, and other specialized courses. In addition, the FBI provided crisis management, crisis negotiation, and SWAT training to 4,200 FBI agents as well as other personnel.

USMS Academy conducted basic law enforcement training at the Federal Law Enforcement Training Center for 240 new agents in its 14-week Deputy U.S. Marshals Basic Training Program.

Federal Law Enforcement Training Center

- The Bureau of Prisons' National Institute of Corrections Academy conducted 55 seminars and trained 4,278 personnel at its facility in Longmont, Colorado.

- The Executive Office for United States Attorneys' Office of Legal Education, which includes the Attorney General's Advocacy Institute and the Legal Education Institute, sponsored 175 courses and 87 video courses for more than 15,000 legal professionals of the Federal Government.

- The USMS trained 229 law enforcement officers from State and local agencies in asset seizure and forfeiture, court security, and fugitive investigations. In addition, Marshals Service court security inspectors provided training and technical assistance to 76 State and local law enforcement agencies. The USMS experts in threat investigations provided training to over 1,000 Federal, State and local officers.

- The INS developed a new training program for local police in conjunction with the International Association of Chiefs of Police. The program provides police officers with an understanding of INS authority and enforcement and deportation activities.

- The Office of Justice Programs (OJP) sponsored a number of training programs for State and local law enforcement officials. These included programs on police management, ways to respond to the needs of crime victims, and many other topics.

Funding

As part of its leadership role, the Department of Justice provides financial assistance to States and localities to support criminal justice improvements. Most of this assistance is channeled through the OJP. The OJP administers a variety of specific grant programs dealing with criminal and juvenile justice, victims, and drug control.

In 1991, the OJP's Bureau of Justice Assistance (BJA) awarded $423 million to the States to implement coordinated State drug control strategies under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. Under this program over 1,000 multi-jurisdictional anti-drug task forces have been established or expanded to strengthen drug control efforts. The OJP's National Institute of Justice (NIJ), as part of its research mission, identified the elements of successful multi-jurisdictional task forces. These include: computerized intelligence data bases, effective asset seizure and forfeiture programs, and the involvement of prosecutors in planning and day-to-day operations.

Also in 1991, the OJP's Office for Victims of Crime awarded $51.8 million to 44 States to support their crime victim compensation programs, and another $65.6 million to 57 States and territories to support programs that provide direct assistance to crime victims and their families. The OJP's Office of Juvenile Justice and Delinquency Prevention awarded over $45 million to the States under its formula grant program in 1991.

As part of its mission of developing and testing new approaches for fighting crime and improving the administration of justice, the BJA funded innovative neighborhood policing programs in 18 sites around the country. The programs emphasize police-community cooperation and interaction to reduce illegal drug use and other crimes in targeted neighborhoods.

The NIJ has also been in the forefront of efforts to improve and expand community policing. Its activities included: a national census of community policing projects; case studies of exemplary community policing programs; and an analysis of the legal authorization and limits for citizen activities conducted in conjunction with community policing operations.

The BJA also provided funding for pilot programs under the Department's "Weed and Seed" initiative. This initiative (described in more detail in Chapter I) tests new strategies to control and prevent illegal drug use and trafficking among high risk youth in drug and crime-ridden neighborhoods.

Two OJP bureaus — the BJA and the Bureau of Justice Statistics — awarded grants to States and territories to assist them in improving their criminal history records. Many of the participating States have conducted needs assessments and are implementing innovative solutions to improve their computerized criminal history records.

The National Institute of Corrections of the Bureau of Prisons also provides direct financial assistance. In 1991, it awarded 31 grants to correctional agencies and individuals in 21 States and the District of Columbia.

Chapter IX: International Cooperation

Both criminal and civil justice matters are increasingly international in scope. In 1991, the Department continued to foster international cooperation in the fight against drug trafficking, money laundering, and other crimes. In addition, it worked with the international community to help protect the environment, ensure competitiveness in international markets, enforce tax laws, and on a variety of other issues. Today the Department has a major and growing international role; over 950 Justice employees are located in 47 countries.

Treaties and Agreements

The Criminal Division coordinates the negotiation of three types of treaties and agreements: mutual legal assistance treaties (MLATs), extradition treaties, and executive agreements. MLATs facilitate the exchange of evidence between countries in important cases and are especially useful in gaining access to foreign bank accounts. During 1991, MLATs were signed with Argentina, Uruguay, Panama, and Spain, and MLAT negotiations were initiated with Hungary.

Extradition treaties assist the legal surrender of an alleged criminal to the jurisdiction of another country. The Criminal Division negotiated an amendment to the extradition treaty with Canada to cover more offenses with fewer exceptions.

Executive agreements are treaty-like agreements between countries that do not require consent of the Senate. In 1991, the Department negotiated an Executive Agreement with Hong Kong relating to forfeiture of narcotics proceeds and with Colombia relating to the evidence developed in the U.S. for prosecuting Colombian nationals whose extradition was barred.

Through the efforts of the Antitrust Division, the U.S. and the European Community (EC) entered into an agreement to expedite and harmonize antitrust enforcement. Signers of the agreement will notify each other whenever they become aware of activities that may affect important interests of other signers.

The Tax Division monitored and negotiated various types of international agreements that avoid double taxation, provide for the enforcement of domestic tax laws, and facilitate access to information and assets located in other countries for purposes of tax enforcement. During 1991, the Tax Division made substantial progress towards tax information exchange agreements with El Salvador and Nicaragua which will be helpful in preventing tax evasion and waging the war against drugs.

The Environment and Natural Resources Division (ENRD) continued its aggressive enforcement of national obligations established under the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on International Trade in Endangered Species, and other international instruments, through prosecution of illegal imports of ozone-depleting chlorofluorocarbons (CFCs) and endangered species of wildlife and plants. This year, the Division obtained a conviction in the first-ever criminal prosecution for illegal export of hazardous waste to another country (Mexico) without the consent of that country.

The Executive Office of Asset Forfeiture extended its equitable sharing program with Canada, Colombia, Great Britain, Venezuela, the Channel Islands, and Germany.

Drug Enforcement Operations

International cooperation is essential to this country's effort to stem the flow of illegal drugs. Collaboration with several Latin American and Caribbean countries made several enforcement operations such as Operation SNOWCAP a continued success in 1991.

The Drug Enforcement Administration's (DEA) Operation SNOWCAP is a sophisticated operation designed to attack the flow of cocaine at its source and throughout its distribution chain. The operation is designed so that DEA agents work closely with drug enforcement counterparts in Bolivia and Peru to do as much as possible to disrupt the supply of cocaine and the raw material that is ultimately processed into cocaine. In 1991, SNOWCAP led to the destruction of 181 hydrochloride and base labs; the seizure of illicit cocoa products, aircraft, and currency; and the arrests of 634 persons.

In Bolivia, SNOWCAP operations became more sophisticated, targeting major production organizations. Several of these organizations were dismantled during 1991, severely disrupting cocaine base production and transportation, thereby contributing to the instability of cocaine prices and availability.

In Peru, DEA agents seized the largest cocaine hydrochloride laboratory yet discovered in that country. The Peruvian Air Force, operating fighter aircraft, was successful in responding to several SNOWCAP provided targets.

During 1991, the DEA launched a new regional program, Operation CADENCE, in Central America to meet the dramatically increased use of Central America as a transshipment point for cocaine destined for the United States. The Central American Drug Enforcement Centers (CADENCE) provide, with Department of State support, a rapid response airmobile capability for host nation law enforcement officers to utilize and act on various intelligence regarding the movement of cocaine through the region. In its initial 90 days, Operation CADENCE was credited with the apprehension of two aircraft and one boat, and the seizure of 3.8 tons of cocaine. The DEA also assisted in six controlled deliveries of cocaine through Guatemala to the continental United States.

Operation Bahamas, Turks and Caicos (OPBAT), a joint drug law enforcement air and maritime apprehension operation, inaugurated its fourth and final base of operations at Great Inagua Island. OPBAT, managed by the DEA and supported by the Departments of State and Defense, continues to be prolific in arrests and seizures, and serves as an important deterrent against drug smuggling through the favored Caribbean route. During the year, OPBAT was responsible for 14 arrests and the seizure of 3.6 tons of cocaine, including 3,282 kilograms of hydrochloride and one vessel.

The Northern Border Response Force (NBRF), initiated in April 1990, continued to be successful in targeting cocaine-laden aircraft that use northern Mexico as a transshipment route for cocaine destined for the United States. Mexico's heightened level of cooperation in drug law enforcement has become the hallmark of this operation. Under the DEA's leadership and with the support of the Departments of Defense and State, the NBRF provided all-source intelligence to Mexico on cocaine smuggling through Mexico. In 1991, the NBRF was responsible for the seizure of 30 tons of cocaine and 18 aircraft, and the arrest of 27 people.

Other International Enforcement

Other international enforcement activity centered on implementing strategies for controlling chemicals. The DEA's enforcement of the Chemical Diversion and Trafficking Act (CDTA), caused drug traffickers to exploit non-U.S. sources of supply. It became increasingly clear that U.S. chemical control efforts would bear little fruit if traffickers could simply obtain their chemicals from non-regulated sources. As a result, during 1991 the DEA initiated and supported several international efforts which resulted in the general acceptance of the notion of chemical control as a viable means by which to combat drug trafficking.

One of these efforts was the Chemical Action Task Force (CATF), which was mandated by the 1990 Group of Seven Industrialized Nations (G-7) Houston Economic Summit to develop effective procedures to prevent the diversion of chemicals for use in the manufacture of cocaine, heroin, and other illegal drugs. The Task Force Final Report contained 46 recommendations for improving enforcement efforts to combat diversion. The CATF served to legitimize the concept that the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances merely establishes the foundation for international control of chemicals used to produce illicit drugs.

Additionally, the DEA sponsors the International Drug Enforcement Conference (IDEC) which annually brings together high-level drug law enforcement officials from countries of the Western Hemisphere. The purpose of the IDEC is to foster cooperation and develop the commitment necessary to successfully attack drug trafficking organizations at every link in the cocaine supply chain. The ninth annual IDEC attended by representatives of 25 member countries took place in Cartagena, Colombia, in April 1991. The agenda for this conference focused on chemical control and money laundering.

Money Laundering

One of the DEA's objectives is to disrupt the flow of money of the powerful cocaine cartels. To accomplish this objective, the DEA established a multiagency task force including investigators from the DEA, the FBI, the U.S. Customs Service, the Internal Revenue Service, and the U.S. Postal Service to focus on key financial operations associated with the drug cartels. The Department of Treasury's Financial Crimes Enforcement Network (FinCEN) also played a vital role. The real time sharing of financial intelligence by these agencies is precedent-setting in Federal law enforcement. This combination of Federal resources represents a first time opportunity to permanently disrupt the cocaine cartels' ability to manipulate their vast assets with impunity.

Under the new Immigration Act of 1990, money laundering was added to the list of offenses defined as "aggravated felonies" in immigration law. Money laundering offenses are also grounds for Organized Crime Drug Enforcement Task Force (OCDETF) investigations.

Fugitive Apprehension and Extradition

During 1991, the Department surrendered 99 fugitives to foreign governments and extradited 166 fugitives to face criminal charges in the United States. The following are illustrative cases:

- The former Soviet Union delivered accused medicare swindler Felix Kolbovsky to Federal agents at the airport in Moscow. Kolbovsky was returned to Missouri to face fraud charges involving more than $10 million.
- Convicted murderer Jiri Vaclav Benes was extradited from Florida to the Czech and Slovak Federal Republic in the first post-cold-war extradition request from that country. The treaty dates from 1926 but had not been used in many years.
- Charles Chitat Ng and Joseph John Kindler were extradited from Canada. Ng allegedly participated in the brutal torture-murder of at least a dozen men, women, and children in the San Francisco bay area during 1985 and 1986. Kindler was convicted of the 1982 slaying of a witness against him in an unrelated burglary case.

International Training Activities

The Department spent considerable time providing assistance and training to foreign countries in the area of law enforcement. These activities foster increased international cooperation and collaboration to combat crime that extends beyond our borders.

The International Criminal Investigative Training Assistance Program (ICITAP) provides law enforcement training to Latin and Central America and the Caribbean. During 1991, the ICITAP conducted 76 courses for over 2,200 students from more than 20 foreign countries, resulting in 4,400 student-weeks of training. In addition, the ICITAP assisted the Panama National Police in establishing a National Academy and designed a three-week course to effect the transition from military to civilian-style policing. ICITAP personnel trained Panama National Police instructors who in turn trained approximately 4,000 members of the National Police in basic police skills. The ICITAP also arranged forensic internships for Panama's Technical Judicial Police with crime laboratories in the United States, Puerto Rico, and Costa Rica.

Other important training assistance and conferences were sponsored throughout 1991.

- The Antitrust Division and the Federal Trade Commission managed a two-year program to provide legal and economic assistance to the newly-created competition agencies of governments in Eastern and Central Europe.
- The Criminal Division hosted the first multinational conference on the status of Asian organized crime groups and their activities directed toward the United States.
- The FBI continued its cooperation with the Italian Government through its participation in the Italian-American Working Group (IAWG). In May 1991, the FBI hosted the annual meeting of the IAWG Terrorism Subgroup.

- The FBI undertook a training initiative for Republic of the Philippines police officers providing specialized law enforcement-related training to Filipino police officers.

International Information Exchange

In 1991, Phase II of the United States/ Canadian Interface was implemented: a semi-automated link between law enforcement information networks of the U.S. and Canada. Working through the INTERPOL National Central Bureaus in Washington and Ottawa, the police of both countries can query each other's law enforcement information networks.

Additional efforts by the Department to exchange information with foreign governments included the following:

- The FBI and the United Kingdom Home Office established a collaborative technical effort toward the development of an Integrated Automated Fingerprint Identification System (IAFIS) which should allow the FBI to develop an IAFIS more quickly and efficiently.
- The Office of Liaison Services coordinated visits and exchanges with legal, law enforcement, and judicial officials from foreign countries to further international cooperation.
- The Criminal Division deposed three Soviet witnesses who were brought to the United States in connection with a denaturalization case pending in New Jersey. This was a history-making event because it was the first time such testimony was ever taken in the United States.

Foreign Claims Activities

Foreign claims can be made by U.S. nationals for uncompensated takings of property by foreign governments, and claims by military personnel and civilians held as prisoners of war or interned by hostile forces during periods of war or armed conflict. The Foreign Claims Settlement Commission is responsible for adjudicating these claims.

During 1991, significant progress was made in the adjudication of more than 3,100 claims of U.S. nationals against the Iranian government for property and financial losses arising out of the 1979 Iranian revolution. By the end of 1991, the Commission decided 212 claims and awarded over $2.5 million.

Chapter X: Legislative and Regulatory Activities

The Department's legislative and regulatory activities included three major aspects: working with Congress to enact legislation; developing procedures to implement laws, regulations, and guidelines; and conducting ongoing legislative initiatives.

New Legislation

The Department worked closely with Congress on two major pieces of legislation: the Immigration Act of 1990 (IMMACT) and the Crime Control Act of 1990. Both Acts were signed into law in November 1990.

The IMMACT is the most comprehensive immigration reform statute since 1924. The Act permits a substantial increase in the number of immigrants allowed to enter the United States annually, particularly those with skills relevant to the needs of the U.S. economy. The Act also improves the deportation process for aliens convicted of violent crimes; enhances the authority of Immigration and Naturalization Service (INS) enforcement officers on U.S. borders, the front lines in the war on drugs; strengthens antidiscrimination in employment provisions; and establishes safe haven relief ("temporary protected status") for aliens unable to return to their native countries due to war, natural disaster or other extraordinary conditions.

The Crime Control Act of 1990 was a major accomplishment for the Department. It supports the first civil right of each American: the right to be free from fear in our homes, on our streets and in our communities. The Crime Control package included several Acts such as the Hate Crime Statistics Act, the Federal Debt Collection Procedures Act, the Victims' Rights and Restitution Act, and the Victims of Child Abuse Act. These Acts contain provisions for reporting instances of hate crime, establishing procedures for collecting debts, and protecting victims' rights with special attention to victims of child abuse.

With respect to funding, the Department's appropriation was increased to facilitate its expanding law enforcement responsibilities in several critical areas. These include the Department's efforts in attacking the nation's drug problem, which in many instances is directly linked to combatting organized crime. The Department's stepped-up efforts against financial institutions fraud and other forms of white collar crime also were recognized in the appropriation process. Debt collection and other affirmative litigation were accorded a new priority in 1991.

Implementation of Laws, Regulations and Guidelines

The Department responded vigorously to implement both new and existing legislation by implementing appropriate actions for effective execution in almost all areas.

Americans With Disabilities Act (ADA)

The Civil Rights Division devoted substantial efforts in preparing for its successful implementation, especially for those portions of the Act that prohibit discrimination against persons with disabilities in employment, government services, and public accommodations. These efforts included:

• Preparing final regulations, within the statutory deadline, setting out standards for complying with the government services and public accommodations provisions of the Act.

• Activating special telephone lines and preparing brochures and other public information guides to explain the Act.

• Awarding grants to major business and disability rights organizations to assist their members in understanding the law.

• Distributing 1.2 million copies of the explanatory materials to interested organizations and individuals, and notifying six million businesses about the law.

Crime Control Act of 1990

Several Department components were involved in a variety of efforts to implement the Crime Control Act of 1990.

• The FBI trained over 400 law enforcement agencies serving 77 percent of the country in accordance with the Uniform Crime Reports Section of the Hate Crime Statistics Act.

• The Bureau of Prisons (BOP) implemented the Mandatory Literacy Program that provides incentives for all sentenced inmates who are mentally competent to complete a high school equivalency diploma.

• The BOP established the Intensive Confinement Center, a program involving an intensive, highly structured schedule of physical training, job training, and life skills to prepare inmates for a successful return to community life.

• The Executive Office for U.S. Attorneys (EOUSA) sponsored a series of training programs for the U.S. Attorneys (USA), Assistant U.S. Attorneys (AUSA), legal division personnel, and other Department personnel to implement both the debt collection procedures and the victims' rights sections of the Crime Control Act.

The Department took a strong position on protecting the rights of victims so they are not victimized twice: once by the criminal and again by the criminal justice system. The Attorney General signed the *Guidelines for Victim and Witness Assistance* and distributed them with a directive that crime victims be treated with compassion, respect, and dignity and that DOJ officials make their best effort to assure the victims receive the rights, services, and information due them. The Guidelines were developed in accordance with the Crime Control Act of 1990. In addition, the Executive Office for U.S. Attorneys developed a handbook, *Expertise in Cases Involving Children: A Directory for Assistant United States Attorneys*, listing the AUSAs who have expertise in child-related cases, sample indictments, an overview of new legislation, and other helpful information.

Bankruptcy Administration

The United States Trustee Program supervises the administration of bankruptcy cases. Established as a pilot program in 1978, it completed its nationwide expansion in 1989. In fulfilling its responsibilities, the Program appoints and supervises private trustees who administer cases. It also oversees those who seek the protection of the bankruptcy laws, the debtors.

The system of oversight the Program inherited was a patchwork of practices, steeped in local customs and procedures. Standards of accountability for trustees and debtors varied, and in many areas were non-existent. During the past year the Program has continued its efforts to establish accountability. These efforts include:

• Audits - The Program has instituted audit procedures whereby private trustee adherence to fiduciary standards are reviewed. The review is followed by efforts to ensure that corrections are implemented, and if necessary, enforcement efforts, through litigation in the bankruptcy court, are undertaken.

• Reporting Requirements - Private trustees are now required to report on each case under their administration semi-annually. The efficiency and effectiveness of how a bankruptcy estate is being administered can now be monitored throughout the case.

• Background Investigations - All private trustees are now subject to name and fingerprint check to ensure that nothing in their history indicates a departure from fiduciary standards.

That these efforts have improved dramatically the accountability of the system was demonstrated in 1991, when nine private trustees or employees of private trustees were indicted or convicted for embezzling bankruptcy estate assets. Since the Program's nationwide expansion, 27 trustees or their employees have been subject to prosecution.

Anabolic Steroids Control Act of 1990

The Drug Enforcement Administration (DEA) was entrusted with the primary responsibility for investigating anabolic steroid trafficking under the Anabolic Steroids Control Act of 1990. The DEA initiated meetings with agency heads of the Food and Drug Administration (FDA), the Federal Bureau of Investigation (FBI), the U.S. Customs Service, and the United States Postal Service to ensure overall coordination of steroid enforcement activity. The results of steroid cases developed to date have demonstrated the continuing need for the dedication of resources to identify, target, and immobilize domestic and international trafficking organizations and to curtail foreign sources of supply for the illicit market in the United States.

The DEA placed a high priority on informing the public about the new Federal law that makes possession of anabolic steroids a Federal offense punishable by up to one year in jail. The DEA's multi-media campaign about the new law included the distribution of 8,000 color posters, mostly to high school athletic coaches, and the placement of hundreds of anti-drug messages in the print and electronic media.

Other Statutes and Regulations

The Department implemented several other statutes and regulations. The Civil Rights Division worked to identify and locate Japanese individuals eligible for restitution from the United States government who suffered because of evacuation, internment, or other action taken during World War II. During 1991, the Civil Rights Division disbursed $500 million in payment of 25,000 redress cases, the maximum authorized by Congress in a single fiscal year.

The Office of Intelligence Policy and Review (OIPR) revised guidelines and procedures regarding the collection of intelligence and counterintelligence information. The OIPR also provided legal advice to the Department of Energy and drafted guidelines for the operation of the Department of Energy's Threat Assessment program to identify terrorist threats to national energy assets.

The Department's Antitrust Division continued its role as the Administration's competition advocate, appearing before other Federal agencies in regulatory proceedings that were likely to have a substantial impact on competition. Specifically, the Division participated in a Federal Communications Commission (FCC) proceeding designed to increase the amount of rate regulation and other restrictions on cable system operators. The Division also responded to the Department of Transportation's (DOT) proposed rules designed to prevent computer reservation systems owned by certain airlines from being used to disadvantage non-owner airlines. The Antitrust Division urged DOT to take appropriate additional steps to reduce or eliminate possible bias in the systems. The Civil Division proposed regulations to implement the Radiation Exposure Compensation Act, which will be finalized in 1992. Department representatives have joined certain congressional offices in hosting public meetings in several states to advise interested individuals about the implementation of this program.

During 1991, the INS fully implemented the new asylum program by recruiting, hiring, and training a specialized corps of 82 Asylum Officers. The INS also opened seven Asylum Offices and a Resource Information Center, and developed an automated system of case tracking. Due to the Immigration Act of 1990, the numerical limit on asylum approvals was raised from 5,000 to 10,000 per year.

Ongoing Legislative Initiatives

The Office of Legislative Affairs (OLA) continued to press for passage of the Civil Rights Act of 1991 which expanded the protections against employment discrimination. This Act (which was ultimately signed into law early in fiscal year 1992) reflects the President's longstanding commitment to strengthen the legal tools designed to eliminate the intolerable blight of discrimination from our society.

Additionally, the Department continued to seek to amend the Indian Civil Rights Act to provide Federal court review in certain cases. Department officials met with Members of Congress and other groups interested in this measure, which was introduced in the last two Congresses.

As in 1990, the Department again devoted considerable effort in 1991 to obtaining new Crime Control legislation. The Department worked with the House and Senate Judiciary Committees to draft legislation included in the 1991 Crime Bill.

The Department worked on a variety of other legislative fronts. The Criminal Division prepared several important provisions in the Administration's Comprehensive Violent Crime Control Bill including titles on firearms, obstruction of justice, gangs and juvenile offenders, and terrorism. In addition, it submitted a package of technical money laundering amendments entitled, Money Laundering Improvements Act of 1991. The DEA continued to work toward closing existing loopholes in the Chemical Diversion and Trafficking Act of 1988 and toward passage of the Controlled Substance Monitoring Act that creates a system to reduce the diversion of legitimate drugs. The U.S. Marshals Service proposed a provision that would authorize the Attorney General to grant permanent residence status to an alien and his or her immediate family, if it is necessary to protect the life of an individual who has provided cooperation to Federal law enforcement.

The EOUSA participated in developing the Bankruptcy Reform Act of 1991 which includes the Department's proposed amendments to Title 11 of the United States Code (Bankruptcy Code) and proposed amendments to Title 18, directed specifically towards bankruptcy crimes.

The Civil Division prepared materials in support of two Presidential legislative initiatives — the "Model State Volunteer Service Act" and the proposed, "Health Care Liability Form and Quality of Care Improvement Act of 1991."

Chapter XI: Management Improvements

During the past several years, the Department has greatly expanded its law enforcement effort in several areas as detailed in the previous chapters. In order to keep pace, the Department has increased its employee population by 40 percent since 1986. To manage the growth and added responsibilities while still maintaining a professional and effective organization, the Department implemented several strategic improvements in its infrastructure. These include addressing worklife issues, increasing effectiveness of fiscal management, and implementing office automation systems.

Addressing Worklife Issues

Recognizing that employees are its greatest resources, the Department worked hard to achieve several goals in the area of worklife issues including compensation, flexible work schedules and work places, family leave, and improved office space.

In the area of compensation, the Federal Employee Pay Comparability Act of 1990 (FEPCA) had a significant impact on the Department of Justice law enforcement components. Title IV of the FEPCA is the Law Enforcement Pay Reform Act of 1990 which raises entry level salaries, raises the maximum retirement age to 57, provides for geographic pay increases for specified cities, grants awards to law enforcement officers for foreign language capabilities, and provides for relocation bonuses. It also directs the Office of Personnel Management (OPM) to develop a special pay and classification system for law enforcement officers by January 1, 1993.

During 1991, the Department initiated a pilot program which permits employees to work at home or other approved worksites. This pilot program called "flexiplace" provides a means of responding to the demographic, societal, and technological changes affecting today's workforce. In addition, 1991 marked the beginning of a new family leave policy which allows employees to take up to six months leave for child or elder care.

Improved office space also increases the productivity of the Department's employees by providing adequate space for libraries and conference areas and by enhancing the working environment. Under the Facilities 2000 plan, the Department continued to work with the General Services Administration to negotiate space to consolidate components to minimize administrative costs, to enhance efficiency, and to maximize existing resources.

Fiscal Management

The Department of Justice is not only a revenue user, but an important revenue generator. A dollar invested in the Department is one that brings a great many dividends to Departmental operations, the U.S. Treasury and eventually, the American taxpayer. In 1991, the Department collected receipts in excess of $2.3 billion, over 25 percent of its discretionary budget authority. The Department currently collects receipts in the areas of debt collection, affirmative litigation, asset seizure and forfeitures, and user fees that support base operations in many programs, especially the

Immigration and Naturalization Service, the Federal Bureau of Investigations, and the U.S. Trustee System.

Debt Collection

An important accomplishment was the enactment and implementation of the Federal Debt Collection Procedures Act of 1990, which became effective on May 29, 1991. The Act establishes uniform, nationwide methods and procedures for collecting debts owed to the United States.

Demonstrating the importance of financial litigation, the Department established a Financial Litigation Policy providing appropriate oversight, coordination of statistical reporting, and collection activity monitoring under the Associate Deputy Attorney General for Financial Litigation. Coordinated collection activities of Department components resulted in $766.2 million in cash being collected on civil debts and criminal fines in 1991. This is the largest amount of cash collected in a single fiscal year since the Department began keeping such statistics in 1982. When added to the cash collected for fiscal years 1982 through 1990, these figures added up to $4.5 billion in total cash collected by the Department for the past ten fiscal years.

In an effort to create a central intake point for the receipt of debt referrals to the U.S. Attorneys, the Office of Debt Collection Management established the Nationwide Central Intake Facility (NCIF) which began operations on October 1, 1990. The computerized data base at the NCIF has enabled the Department to get an accurate count of the number and dollar value of debts being referred to the Department for litigation by its various client agencies. The NCIF has proved invaluable in solving the problem of reconciling information reported to the Department of Treasury and the Office of Management and Budget. For 1991, the NCIF received a total of 26,608 debts valued at over $457 million.

Under the Federal Debt Recovery Act, a pilot program to contract with private law firms to increase the Department's resources in debt collection was operated in eight Federal judicial districts in 1991. The purpose of the program is to determine if private counsel will increase collections. The Office of the Inspector General audited the program during the year and will issue its findings during fiscal year 1992.

The Executive Office for U.S. Attorneys (EOUSA) sponsored and implemented numerous training opportunities to enhance debt collection efforts. During 1991, 65 districts held training sessions to improve the enforcement of criminal fines and restitution, training nearly 3,000 criminal prosecutors, civil collection attorneys, U.S. probation officers and others. The EOUSA also trained 73 of the 93 U.S. Attorneys in executive sessions to teach the Federal Debt Collection Procedures Act of 1990. During 1991, the EOUSA trained 482 Assistant U.S. Attorneys, Financial Litigation Agents, and other Financial Litigation Unit personnel on the Federal Debt Collection Procedures Act of 1990.

In addition, the EOUSA prepared a pamphlet entitled, "What You Should Know About Your Criminal Debts," for distribution to convicted criminals by the Bureau of Prisons. The pamphlet informs prisoners of the Federal criminal fine and restitution laws and the enforcement tools that will be used to collect these debts. It is also being translated into Spanish.

Asset Seizure and Forfeiture

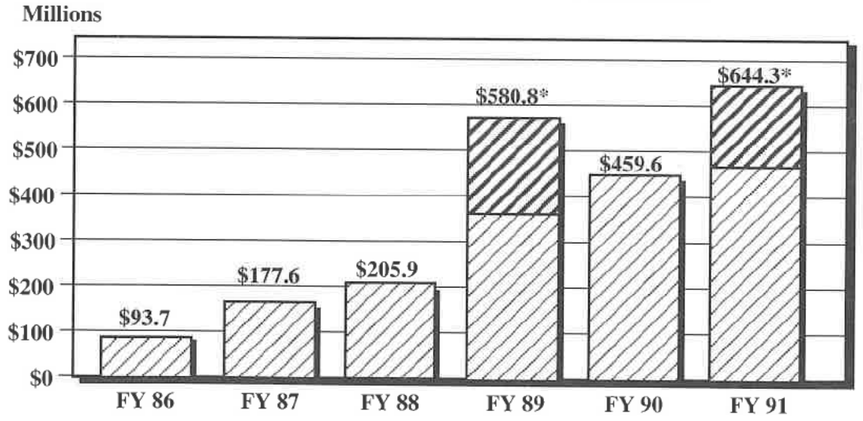
Asset seizure and forfeiture has proven to be one of the most effective law enforcement tools to combat drug trafficking and money laundering, crimes committed for profit. Assets seized and forfeited during 1991 included cars, boats, aircraft, residential and commercial real properties, jewelry, precious metals, and cash.

Money realized from the disposition of forfeited assets is deposited in the Justice Asset Forfeiture Fund along with any forfeited cash. A total of $644.3 million was deposited during 1991. Over $2.2 billion has been deposited since its creation in 1985, representing a twenty-fold increase in forfeiture deposits in six years. In addition to paying the expenses of the asset forfeiture program, transfers from the Fund support Federal, State, local, and foreign law enforcement agencies that participated in the cases resulting in the forfeiture. A total of $266.8 million in cash was shared with State and local law enforcement agencies and foreign governments in 1991. The value of properties transferred to State and local agencies totaled $21.2 million. In addition, $150 million was transferred to the Office of National Drug Control Policy for other uses in the war on drugs.

Office Automation

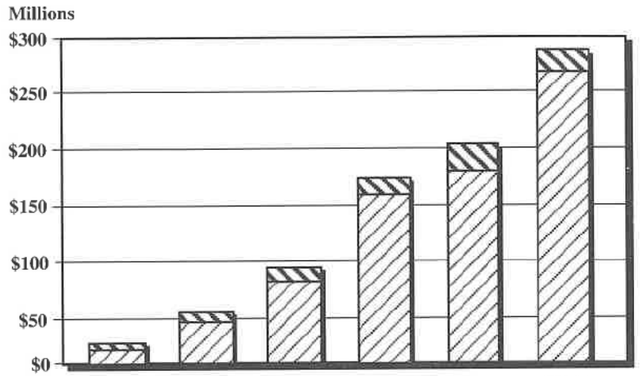
One of the areas of most dramatic improvement during 1991 was the increase in computer support and technology. The benefits derived

Department of Justice
Assets Forfeiture Fund Income



*** 1989 income includes $222 million from the Drexel Burnham Lambert settlement. 1991 income includes $176.3 million from the Michael Milkin settlement**

Total Equitable Sharing



	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
Total	22.5	56.5	92.2	172.5	203.2	288
Transferred Property	5.4	9.2	15	16.4	23.5	21.1
Cash Payments	17.1	47.3	77.2	156.1	179.7	266.8

Cash Payments Transferred Property

from the efficiency and accuracy offered by these technological advancements have significantly improved operations throughout the Department.

Project EAGLE

One of the Department's goals during 1991 was to provide every U.S. Attorney with an EAGLE computer by the end of the calendar year. The U. S. Attorneys' Offices completed EAGLE installations in 60 districts totaling more than 7,500 workstations. The Criminal Division completed its EAGLE installation, with more than 700 workstations across the country. The Tax Division completed its EAGLE implementation with more than 600 workstations nationwide. The Justice Management Division, the Office of Policy Development, the Office of Professional Responsibility, and the Office of the Solicitor General also converted to EAGLE. Nearly 8,000 additional EAGLE workstations were put into operation throughout the United States, bringing the total to more than 12,000 EAGLE users. In addition, a communications gateway was installed that allows EAGLE users to communicate electronically with users of the older AMICUS system and to transmit documents instantaneously — an important step in connecting the two major legal office automation systems.

The importance of the EAGLE project cannot be overstated. Attorneys, managers, professionals, and support staff already have benefitted from the EAGLE system. Exchange of information is quicker than with overnight delivery or facsimile, and attorneys can edit and review recommended changes to documents with minimal delay. The on-line capabilities reduce the time needed to complete legal research — avoiding lost time traveling to the library, waiting for available machines, and copying information from printed sources. These time savings can be reinvested toward improving the quality and effectiveness of legal work products and responding to an ever-growing caseload.

Computer Security

The Department completed major physical security upgrades to its Washington, D.C., computer service facility. The objective of the physical security enhancements was to ensure that all reasonable steps were taken to prevent situations which could interrupt the Department's mission. To protect against theft, vandalism, sabotage, civil disorder, and other types of forced intrusion, the Department installed improved lighting and closed circuit television cameras with recording capabilities. In addition, new intrusion detection systems with physical barriers at doors and windows were supplemented by additional guards. Access to critical areas within the Washington, D.C., computer service facility are now controlled with electronic keycard access devices and electronic door locks, and supervised by guards who control the movement of personnel and materials.

The Security and Emergency Planning Staff conducted security awareness training sessions for Departmental security personnel, U.S. Attorneys' Offices, the Civil Division, all component computer security trainers, DOJ senior management and the Office of Legislative Affairs. Security awareness training was also incorporated into the new employee orientation program.

During 1991, the Department took significant steps to issue revisions to the ADP security order, and offer guidance on implementing the Office of Management and Budget circulars that refer to security. Security compliance reviews and reviews of computer security plans were completed for 12 sites including the Tax Division, Bureau of Prisons, and U.S. Attorneys' Offices.

Technological Enhancements

The Department's information resources environment experienced rapid growth and change during 1991. In order to keep pace with the personnel growth, additional priorities, and increased complexities of law enforcement, over $600 million was spent on computer technology and telecommunications. New technology is increasingly needed to fight sophisticated criminal enterprises and to search, collect, and track vast amounts of information for investigations and litigation. This is especially key to the Federal Bureau of Investigation (FBI) as they pursue drug investigations where the criminals can afford the latest technology to promote their actions and detect the government's. During 1991, the FBI acquired the Engineering Research Facility at Quantico, Virginia, which will establish a national center for engineering research and

development for investigative support. The center will significantly reduce time and costs to produce custom devices and advance the professional growth of the staff.

Additional technological enhancements were developed in nearly all bureaus within the Department. Examples of these systems include:

- The Drug Enforcement Administration (DEA), in a joint effort with the Department of Defense, initiated Project Mountain Pass, a project to improve the intelligence information processing capabilities at the El Paso Intelligence Center (EPIC). This important initiative will upgrade and enhance automation support for EPIC watch officers, analysts and administrators by acquiring and integrating commercial, off-the-shelf hardware, communications, and software to satisfy EPIC mission requirements.

- The FBI automated investigative, administrative, and record keeping functions in all its offices with 10,199 workstations on-line in locations worldwide. The FBI more than doubled its processing power on six mainframe computers to handle an increased and ever-growing workload and to enhance backup and recovery ability.

- The Seized Assets Management System (SAMS) of the U.S. Marshals Service was upgraded in all district offices to allow decentralization of the equitable sharing process at the district office level. Specialized SAMS training was provided through more than 70 courses in addition to regional training conferences for Marshals Service personnel.

- The Department completed the replacement of all outdated terminal equipment on the Justice Telecommunications System (JUST). The new terminals were programmed to provide preformatted screens to improve the quality of information being entered or extracted from the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS). These terminals also will provide the capability to access the new NCIC 2000 system when it becomes operational in 1995.

- The United States National Central Bureau (USNCB) implemented a Local Area Network (LAN) that allows each workstation to simultaneously query several data bases: Treasury Enforcement Communications System (TECS), Immigration and Naturalization Service, the Bureau of Prison's Sentry System, and the INTERPOL Case Tracking System. By using the LAN to transmit messages to INTERPOL, Department of Justice, or commercial message networks worldwide, the user cuts the response time from several days to a few hours.

- The Justice Retrieval and Inquiry System (JURIS), a legal and administrative computerized research system, contains the complete text of Federal cases, statutes, regulations, manuals, and other government materials, in addition to over 11,000 appellate briefs. During 1991, JURIS was enhanced to include U.S. Supreme Court opinions and U.S. Circuit Courts opinions. Both Court opinions are made available on JURIS by the following day.

- The INS continued to expand its data bases to increase the quality of information regarding immigration. The Investigations Division of INS developed an Enforcement Case Tracking System (ENCATS) which will be the primary INS enforcement system designed to automate the documentation and exchange of information regarding suspects and incidents related to criminal activity. The system will allow information to flow from one office to another and provide the ability for agents in one office to quickly identify criminal aliens who have been previously documented in another office.

- The INS continued converting its lookout system to the Interagency Border Inspection System (IBIS) developed for use by all agencies with inspection responsibility at U.S. Ports of Entry. The IBIS data base contains lookout information from more than 15 Federal agencies and provides on-line access to the NCIC and the NLETS. The system was operational at 36 ports as of September 30, 1991, with installation pending at another 17 sites.

Departmental Oversight

The Department's Office of the Inspector General (OIG) works with Departmental managers to ensure the effectiveness and efficiency of Departmental programs. The office carries out an active program of audits and inspections throughout the year. The OIG audits are taken seriously in the Department and often result in improvements in management effectiveness and productivity.

In the past year, many OIG activities focused on providing opportunities for substantial cost savings. For example, the OIG assisted the Bureau of Prisons (BOP) in identifying Florida State prisoners who were detained in Federal institutions at no charge. In response to OIG recommendations, the BOP returned the prisoners to Florida at a significant savings to the government. Based on recommendations in another OIG audit, the FBI took steps to reduce by $9.5 million, the amount of cash held in imprest fund field support accounts and employee travel advances. This reduction will result in interest savings of about $750,000 annually.

The Office of Inspector General strives to promote integrity throughout the Department. To this end, it has begun Integrity Awareness Briefings for Department employees that focus on ethics, consequences of misconduct and the importance of preserving the public trust.