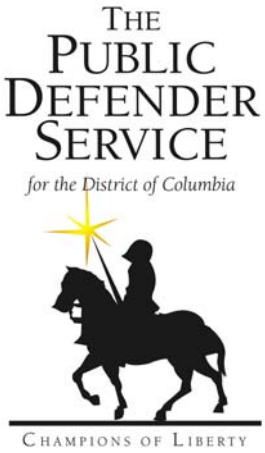

Testimony of

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before the

United States House of Representatives

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

for the

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

March 11, 2008

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

The Public Defender Service

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

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

[1] Pub. L. No. 91-358, Title III, § 301 (1970); *see also* D.C. Code § 2-1601, *et seq*., 2001 ed.

[2] *Gideon v. Wainwright*, 372 U.S. 335 (1963).

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

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

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

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

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

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

The Commission Treats Minor Technical Violations Too Harshly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission's Salient Factor Score System Has Significant Flaws

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission Overuses Pre-hearing Detention.

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

The Revocation Decision Process Lacks Transparency and Fairness

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

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

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

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

[17] The Commission has been operating with only four members since the resignation of Commissioner Spagnoli in 2007.
[18] See 28 C.F.R. § 2.26 (b)(2).
[19] Annual Report of the U.S. Parole Commission, October 1, 2005 – September 30, 2006, Table 11, page 11, which shows the number of administrative appeals and the action of the National Appeals Board on those appeals. While the National Appeals Board did not reverse any lower decision in Fiscal Year 2005, it "modified" 7% of those decisions. In Fiscal Year 2006, it modified only 4% of the decisions and reversed 2% of them.

Improvements in the Commission's Functioning

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

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

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