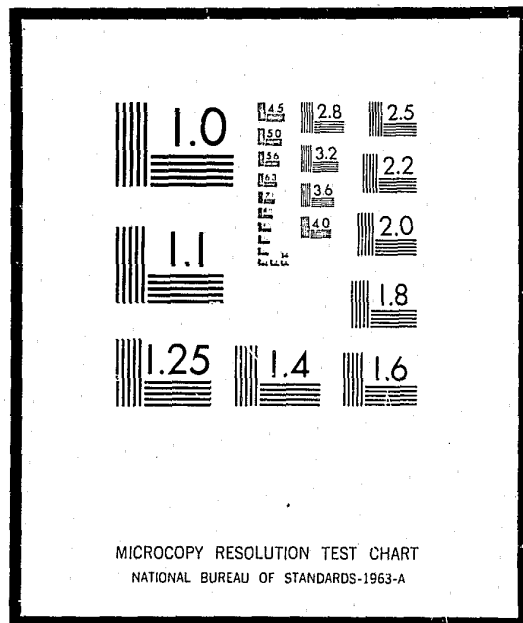


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Summary

Report on New York Parole

by

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## I. Introduction

Parole is an idealistic concept. It seeks simultaneously to protect the public and to give the criminal offender a new chance. But these noble purposes have not been realized. Parole is a tragic failure. Conspiring with other elements of the criminal justice system - unnecessary pre-trial detention, over-long sentences, oppressive prison conditions - it renders American treatment of those who break society's rules irrational and arbitrary.

This paper summarizes a 300-page study of the New York State parole system conducted by the Citizens' Inquiry on Parole and Criminal Justice. Research for this study included observing two hundred parole release hearings, interviewing thirty parole officials and over one hundred parolees, reviewing all the statutes relating to parole since 1877, reading all the annual reports of the Division of Parole since 1930, checking all New York Times references to parole in the last forty years, and studying the relevant legal and sociological scholarship. But that does not mean that the viewpoint is value-free. While the report strives for objectivity in reporting its findings, it is also informed by a set of strongly-held beliefs about the use of the criminal sanction in a free society.

The Citizens' Inquiry study was premised, in part, on the following values:

1) Individual freedom is an axiom of a democratic society, and should be preserved unless there is incontrovertible evidence that the actions of one person include the use or threat of violence against another.

2) Prisons create crime, rather than correcting criminals.

3) When some sort of confinement appears necessary to accomplish the aims of the criminal sanction, the offender should not be removed farther than is absolutely necessary from his peers and his community.

4) Coercion which extends beyond basic confinement should be avoided as much as possible, since it further antagonizes offenders and reduces their ability to solve their own problems.

5) Parolees should have all of the civil and individual rights of other citizens. Inmates should be deprived of their rights only to the extent made necessary by the fact of their incarceration. Neither group should have to submit to authorities trying to shape them into a single, middle-class model of good citizenship.

A call for change generally challenges the practices of the institution under fire, but accepts its theory. The Citizens' Inquiry study repudiates both the theory and the practice of parole. It finds that the parole board and

the parole service do not live up to their own standards, and that even if they did, the invalidity of basic parole theory would prevent the realization of its goals. It would surely be desirable to have a well-prepared parole board conducting careful release interviews based on full information about inmates; but such an achievement would not result in rational decision-making. Parole boards would still act arbitrarily if they applied legally prescribed release criteria, because, for the time being at least, future human conduct cannot be predicted and even basic changes in personality and character cannot usually be assessed. Without standards against which to measure the fact-finding of the parole board, due process protections are meaningless. Since the theory of rehabilitation includes vague and subjective notions of moral character and future conduct, there is no way that the parole board can measure the degree of an inmate's rehabilitation.

It is important to note that parole is part of a process that begins with arrest, proceeds through the pre-trial stage (where a defendant may be held in detention or released) through the trial to sentencing and the period of imprisonment. Both long-range and interim recommendations for parole depend on the future direction of pre-trial detention, of sentencing and of prisons. To abolish parole because of its demonstrated irrationality and harm and leave the rest of the process as it presently exists would cause even more harm. With all its faults,

parole is not as destructive as imprisonment, and the possibility of release is preferable to the certainty of confinement.

Although the Citizens' Inquiry has not focused on the related institutions that would have to change if parole were to be abolished, the study involved some examination of them, and a number of the Task Force members have direct professional experience with them. Those changes which are most intimately related to parole and which must be coordinated with the abolition of parole are outlined in the recommendations section at the end of this summary. Other criminal justice reforms are also necessary, like the decriminalization of victimless crimes; the elimination of most pre-trial detention; abolition of large, remote prisons; and the development of small neighborhood facilities. Continuing careful study should precede and accompany the institution and use of these reforms.

This summary describes the theory of parole in New York, shows how current practice diverges from this theory, demonstrates the invalidity of the theory itself, and sets forth long-term and transitional recommendations. The study reaches the following general findings and conclusions:

- 1) Both elements of the New York State parole system - the decision-making function and the community supervision program - have failed dramatically and are beyond reform. But parole is part of the

present indeterminate and reformatory sentencing structure and could be abolished only with simultaneous, extensive changes in that structure.

- 2) Parole in New York rests on faulty theory and has unrealistic goals. The humanitarian goal of treatment and rehabilitation of the offender has been used to justify unnecessarily lengthy incarceration and parole supervision. Since there is no agreement on the meaning of rehabilitation, and no one now knows what rehabilitates or who is rehabilitated, decisions as to length of sentence and timing of release based on an assessment of an inmate's rehabilitation are irrational and cruel.
- 3) The parole system is often unnecessarily abusive and unfair; offenders have many serious and legitimate grievances. Much of the daily oppressiveness of parole flows from the enormous amount of unstructured and invisible discretion exercised by the parole board and the parole service.
- 4) Parole allows many actors in the criminal justice system to hide the real nature of their actions and thereby escape responsibility for them. District attorneys may call for and judges may impose excessively long sentences in the name of

law-and-order, knowing that the deferred sentencing process of parole will mitigate their harshness. The parole board's extensive and invisible discretion makes it possible for these officials to mislead the public.

- 5) A wide gap separates what the New York parole system professes to do and what it actually does. One indication that parole has not lived up to its aims is its failure to consider or adopt widely-accepted reforms proposed by responsible professional groups.

\* \* \* \* \*

A general note about racism and parole is appropriate here. The racial consequences of our society's use of the criminal sanction are evident in the disproportionately high percentage of black prisoners and the imbalance of racial backgrounds between the jailers and the jailed. National commission reports and scholarly studies alike have pointed out the pervasiveness of racism in virtually all operations of the criminal justice system. In order to wipe out discrimination, both independent groups and the institutions of the system must understand its nature and causes. Only sensitivity to the problem, combined with careful data collection and interpretation at every step of the process, can ensure that understanding.

The Citizens' Inquiry, in conducting its study, requested information about racial matters from State officials. The Division of Parole, however, as a matter of policy, does not collate statistical data that would reveal the extent to which parole operates in a racially discriminatory manner. As a result, an informed judgment as to the practices and effect of racism in the parole system is not possible. We know that inmates and parolees are largely poor minority group men and women, while parole board members are generally comparatively affluent and well educated white males. Informal inquiries reveal that the proportion of black and Puerto Rican parole officers is considerably lower than that of inmates and parolees. Racial differences between the parole officials and the parolee population manifest the presence of considerable racial bias in fact and appearance. Parole officials are derelict in not documenting racial facts and maintaining a vigilance over any discrimination they may reveal. Not until blacks and other minorities participate equally with whites in shaping the criminal justice system - as corrections officers, parole officers, administrators, judges - will our society provide equal justice to its citizens.

## II. The Image of Parole

Parole was conceived as a liberal, humane way to mitigate the agonies of incarceration. Those who administer it see it in this light today; New York parole officials are proud of what they believe to be a fair and effective institution. This section sets forth a brief history of parole, a description of its place in New York's criminal justice system, and a picture of the way in which the parole system sees itself - its goals, policies and practices.

### Background

Until the nineteenth century, prisons were used mainly to house detainees, who awaited trials at which they were sentenced to such punishments as whipping, maiming, or execution. Long-term incarceration became the practice when institutionalization was seen as a means whereby deviants could be reformed into productive citizens. Even within the first half-century of the existence of prisons as we know them, their defects became apparent. They did not rehabilitate their inmates. An 1867 report to the New York State legislature said of state prisons around the country, "There is not one, we feel convinced...which seeks the reformation of its subjects as a primary object..." The late 1800s

saw the birth of parole, an attempt to extend the theoretically rehabilitative benefits of prison life into the community while simultaneously reducing the likelihood that prison would have detrimental effects.

New York adopted parole at the Elmira Reformatory nearly 100 years ago, the first state to do so. In 1899 it spread to some adult institutions, and during the early years of the twentieth century, sentencing laws were changed to make a larger number of inmates eligible for parole. Since the framework of the present parole system was established in 1930, parole has grown from an obscure agency with a three-member board and a budget of less than \$350,000 into a substantial bureaucracy (617 professionals in 1969, the last year for which figures were available) with a twelve-member parole board, a budget of over \$12 million and several offices around the state. In 1972 4,412 inmates were released from state institutions on parole, and at the end of the year there were approximately 10,000 people under parole supervision in the state.

#### Parole Today

The basic structure of parole is the same now as it was a century ago. Parole is granted to inmates after they have served a portion of their sentence, but before completion of the maximum term. Parolees in theory are supervised while in the community by parole officers and

are expected to abide by special rules, on penalty of parole revocation.

All states and the federal government now have parole systems. Parole is crucial to many parts of the criminal justice system: sentencing schemes are built around it, prosecutors take it into account in charging defendants and participating in plea bargaining, judges' roles in sentencing have been diminished as parole boards' jurisdiction over release has grown. Parole is also important in the operation of prisons. In New York nearly two-thirds of all inmates leaving state prisons annually are released by the parole board; another one-fifth, released through a mechanism other than parole, are subject, like parolees, to community supervision. Prison programs may be well or poorly attended depending on whether inmates believe that their participation will improve their chances for parole. While parole is often viewed by prison officials as a way of maintaining prison order and discipline, it may also be a cause of a catastrophic prison uprising. After a thorough investigation of the uprising at Attica prison in September 1971, in which forty-three inmates and guards died, The Official Report of the New York State Special Commission on Attica concluded:

Inmates' criticisms were echoed by many parole officers and corrections personnel, who agreed that the operation of the parole system was a primary source of tension and bitterness within the walls.

Parole in New York has become a more and more important part of the post-conviction criminal justice system. Yet, like all parole systems, it continues to function under a veil of secrecy. The New York board is the largest, best salaried state parole board in the country, yet few people could name or identify a single member. The public has only the slightest notion of parole's functions, goals, modes of operation, and degree of success or failure. As a quasi-judicial, autonomous body, the board is uniquely removed from the scrutiny of the courts, legislature, media or public.

#### How Parole Is Supposed To Work

Parole is seen by corrections officials, legislators, judges and the general public as the best way to ease the inmate's difficult transition from incarceration to freedom. It is intended to shorten sentences and to provide individual consideration of offenders' problems. To this end, the parole board theoretically tries to release an inmate when he has reached that optimal moment when he can lead a crime-free life "on the street." Then the community supervision program claims to aid his reintegration into society by offering him services and guidance beyond the prison walls.

For the past hundred years, corrections professionals have embraced an undefined goal of rehabilitation of offenders as the aim of incarceration. The theory of rehabili-

tation, as commonly espoused by parole officials, is set forth in the "Preliminary Report of the Governor's Special Committee on Criminal Offenders" of June 1968 (p. 55):

1. There are certain personal characteristics that impede an individual's ability to function at a generally acceptable level in one or more basic social areas.
2. The difficulty of performing at a generally acceptable level in such areas significantly contributes to criminal conduct.
3. Treatment should be directed at overcoming the aforesaid personal characteristics.

Thus, the aim of rehabilitation is to treat those characteristics of the offender which are inconsistent with the basic characteristics needed to function acceptably. It is felt that, if the treatment has a positive impact, the offender will be more likely to satisfy his needs through socially acceptable conduct and the likelihood of his return to crime will be reduced.

Neither the parole board nor the parole service attempts to enumerate the "certain personal characteristics that impede an individual's ability to function at a generally acceptable level."

Parole officials see the parole decision-making process as expert, fair, and guided only by determinations of an inmate's degree of rehabilitation. The parole board is supposed to be an independent body of exemplary citizens with a range of experience to insure their impartiality. They are theoretically enabled to make highly individualized decisions because they are supposed to receive careful, official reports on each inmate and conduct an interview with him designed to reveal the likelihood that he will be a successful parolee. Preparation for parole is to be started in the prison with the skilled assistance of



institutional parole officers.

All aspects of parole supervision are intended to further its two principal aims: the protection of the public and the assistance of the parolee in becoming reintegrated into non-prison life. The community supervision parole officer is to be a well-educated, sensitive man or woman able to maintain a helping relationship with the parolee, while at the same time enforcing the terms of the parole agreement. Parole officers are to be equally concerned about finding jobs for parolees and checking up to make sure that parolees live and work where they say they do. The parole service considers it important to leave these officers broad discretion in enforcing the less important parole conditions, but it also aims to provide effective guidance and regulation through a detailed manual. A good parole officer is able to anticipate when a parolee is beginning to stray and return him to prison, through initiating revocation proceedings, before a new offense is committed. The parole service considers that it treats the parolee equitably throughout.

### III. The Reality of Parole

New York corrections officials believe that the goals of parole are sound and that its operation reflects professional competence and even-handed performance. The Citizens' Inquiry study found a great gap between what the parole system professes to do and what it actually does. This section will elaborate on the ways in which parole in New York does not live up to its declared aims, policies, and practices.

#### Decision-Making - Parole Release

The New York Board of Parole is an autonomous body within the State Department of Correctional Services, whose twelve members serve full-time and are appointed to six-year renewable terms by the governor. The autonomy of the board does not guarantee its independence, for board memberships are often given out as political reward or favors. The range of experience among board members is not wide; most are white males over fifty from outside New York City. Many have come to the board from corrections and law enforcement. People who have made careers of confining and arresting are now asked to wield the power of release. By contrast, the current state prison population is

mostly under thirty, non-white and from New York City.

The parole board's jurisdiction is very broad. It decides

- when most inmates will become eligible for parole
- who shall or shall not be paroled
- what conditions parolees must obey while in the community
- who shall or shall not have his parole revoked
- who shall or shall not be discharged from community supervision prior to completing the normal term
- who shall or shall not be granted a certificate partially restoring his civil and employment rights

Its jurisdiction extends to all inmates serving sentences of more than ninety days - a total well in excess of 20,000 - and to all former inmates under parole officer supervision. As a result the board's workload is enormous; for example, in 1971, the board reported that it was responsible for 17,628 hearings or decisions.

Parole panels are, as a theoretical matter, supposed to let the parole eligibility date largely reflect their judgment as to when an inmate might be sufficiently rehabilitated so that he could seriously be considered for parole. As a result the board is endowed with broad discretion in establishing the date. In practice, however, parole eligibility dates are reflections of rules of thumb rather than judgments about the individual characters of

of each inmate. For most inmates serving an indeterminate sentence parole eligibility will be set as a matter of course at one third of the maximum term or three years, whichever is less. This practice not only ignores the board's stated objectives, but abrogates its responsibilities under New York law.

Institutional parole officers prepare for parole board members a case file on each inmate. But this file does not ensure a truly individualized decision-making process. Although crammed with reports from prison officials (warden, chaplain, disciplinarian and psychiatrist), the inmate's pre-sentence report, juvenile and criminal justice attorney, the file is not very useful. The board members receive it only at the moment they are ready to hold an inmate's release interview, and there is no opportunity to examine the reports closely. Except for the "parole summary," which is prepared by an institutional parole officer usually a few months before an inmate's hearing, only one board member actually sees the case file; duplicates are not provided to other members. In addition, even though the case files were not available for examination, their quality and method of use is not good enough to be

very helpful to parole board members. With only one officer for every 241 inmates, contacts with inmates are necessarily infrequent and superficial. Also inmates and institutional parole officers do not meet in circumstances likely to elicit candid information for reports. In 1967 a National Council on Crime and Delinquency study found that New York case files contained inadequate depth as to the causes and manifestations of inmates' problems.

The parole board makes its release decisions in panels of three during monthly visits to each state prison. The conduct of release interviews makes a mockery of the board's claim that it considers each individual inmate's case carefully. Because of the board's workload, the interviews are generally very short. Those observed by the Citizens' Inquiry generally lasted less than twelve minutes, with some as short as five minutes; the longest release interview observed lasted twenty-five minutes. Although New York law requires that the release interview be conducted by three members of the parole board, in practice only the member who reads the file usually questions an inmate, while the other two panel members are examining the files of the inmates who will come next. Most of the questions asked

are, of necessity, predictable and general. Inmates are tense and usually try to say what they think will most favorably impress the parole board members.

The release process is unfair. The inmate is not permitted to have an attorney or other representative appear with him at his interview. He is permitted neither to present his own witnesses, nor to confront those against him. He may not see any of his case file. New York officials claim that to provide the inmate with these basic due process rights at the setting of the parole eligibility date or at the release interview is unnecessary and undesirable.

Inmates do not find out the decisions - how long they must serve before they are eligible for parole, or whether they have been granted or denied parole - until after the parole panel leaves the prison for the month. And then the inmate is given only a form stating decision without explanation. In nearly all cases, there is no review of the parole panel's decision by either the entire parole board or the courts.

Although the parole board professes to make release decisions on the basis of whether or not an inmate has been rehabilitated, the statute does not even seriously attempt

to set forth criteria for making that determination. (The Citizens' Inquiry report asserts that no criteria exist, but if the parole board considers a determination of rehabilitation to be possible, it ought at least to have developed means that it thinks could aid it in making that determination.) The only legislative guidance stipulates that an inmate shall be released only if there is a "reasonable probability that...he will live and remain at liberty without violating the law and that his release is not incompatible with the welfare of society." Another provision requires that the inmate be "suitably employed in self-sustaining employment if so released." This statute is not the product of carefully designed experiments over the years, but rather a collection of phrases that appeared in different statutes from 1877 to 1928 and were simply pasted together. The parole board has not supplemented the statutory provisions by developing any formalized precedent to guide a panel in reaching a decision, nor does it look to any of the available prediction tables. The absence of prescribed release criteria is reflected in the usual lack of discussion among panel members after an inmate leaves his interview; when discussion takes place it is

usually about when the unsuccessful inmate should appear before the parole board again or what kind of community supervision unit the successful inmate should be assigned to.

The board, in trying to apply the general legislative standards for release decisions, seems to rely informally on five criteria. They include: 1) the inmate's psychological condition - whether his state of mind appears to have changed since he entered the institution, particularly whether he seems remorseful about his criminal ways and sincere in wishing to change them; 2) the inmate's past criminal record - how serious his offenses have been and how often repeated; 3) the inmate's adjustment to prison life, particularly his discipline record and his participation in programs, which the board thinks shows a desire to improve himself; 4) any record of previous community supervision under probation or parole; and 5) the inmate's parole plans - for work, family life, therapy and housing. There is no empirical evidence that any of these criteria are reliable indicators either of whether an inmate will commit another crime or of how serious a crime he might commit. Instead, the criteria appear to reflect the subjective value patterns

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and paternalistic attitudes of the parole board.

Despite its legislative mandate, the board is sometimes as influenced by bureaucratic and political considerations as by the reasonable probability "that an inmate will live and remain at liberty without violating the law." For example, an individual may be granted parole because he has cooperated with law enforcement personnel investigating a case, or denied parole because he has a poor prison discipline record. Occasionally the board denies parole to an inmate because his original crime generated a lot of publicity and the board would be subject to public criticism if it released him.

The New York parole decision-making process is basically lawless. The absence of specified criteria and procedures is an unqualified invitation to inconsistent and unfair decisions based on unreasonable and illegal grounds. (This is not to suggest that the presence of criteria would address the underlying defects of the process, which rest on the invalidity of the notion that any human group can now assess changes in an inmate's character and predict his future behavior.) The lack of review and low visibility which accompanies the extensive discretion

of the parole board ensures that the lawlessness will continue without being corrected or reduced.

The final test of a program is its results. Parole decision-making is simply ineffective. The following chart demonstrates that the percentage of parolees who return to prison during the same calendar year they are released is not significantly lower than the return rate of inmates denied parole and released only at the expiration of their maximum sentence (minus "good time").

RELEASED AND RETURNED AS VIOLATOR - SAME YEAR, BY METHOD OF RELEASE\*

	1968		1969		1970		1971	
	Parole Release	Condtnl Release	Parole Release	Condtnl Release	Parole Release	Condtnl Release	Parole Release	Condtnl Release
Released to Community Supervision	4623	1703	4086	1633	3860	1795	4051	1793
Returned as Violators	475	191	414	189	393	250	325	194
%	10.3	11.2	10.1	11.6	10.2	13.9	8.0	10.8

\*notes: 1. Source: Annual Report of the Division of Parole 1968-1971 Tables 25, 25A, 28, 28A

2. This chart does not purport to reflect general recidivism rates, even for a one-year period because it shows only the return rates of inmates released and returned within the same year. Inmates released in November or December of one year are included as well as those released in January or February although their return rate will clearly be much lower.

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3. Prisoners released by the parole board and on conditional release are subject to the same community supervision program.
4. There is one unmeasured factor which might affect the validity of this comparison. A parole violator has his sentence credited by the time he spent in the community whereas a conditional release violator does not.

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The fact that parolees do no better in the community than other releasees suggests that the parole board does not assess the changes in an inmate nor predict accurately the likelihood of his recidivism.

It is possible to argue that the chart shows the effectiveness of parole decisions rather than the opposite. Perhaps the return rate of those not released on parole would have been higher than that of parolees if the former had not been kept in prison for the extra period. But that interpretation is very weakened in light of what is known about the effect of incarceration on recidivism rates. First, there is no evidence that any programs sponsored in prison affect the inmate's behavior after release from prison. Second, even if prison programs were proven to be effective, most inmates are not offered participation in them. Third, many authorities believe that the prison experience is injurious to inmates, and instead of decreasing the likelihood of criminal

behavior upon release, it increases it.

#### Community Supervision

The gap between image and reality in parole is evident in the inadequate provisions made for material assistance of a parolee.\* The parolee's personal and material problems are staggering when he first comes out of prison. Nevertheless, he is given only a suit, \$40, the name and address of a community supervision parole officer to whom he must report within 24 hours, and a list of rules that he must follow, on pain of losing his freedom. He is generally qualified only for unskilled or semi-skilled work, and he faces other major problems in getting and keeping a job. Although the parole service recognizes employment as a major goal of each parolee, the parole officers provide little assistance in finding jobs. In 1970 New York parole officers helped obtain only 506 jobs, although over 16,000 people were on parole at some time during the year, 5,680 of them employed full-time. Similarly, the Department of Correctional Services does next

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\*The term "parolee" as used in this paper generally refers both to inmates released by the parole board and to those who are released because they have served their maximum sentence, less "good time." This latter group is also placed under community supervision until the expiration of their full term and is subject to the same restrictions. Where an assertion of this report refers only to this group, they are called "conditional releases."

to nothing to help the penniless parolee with financial problems. "Gate money" of \$40 is inadequate, the parole service has no loan fund, and New York parolees are not eligible for unemployment benefits. Furthermore, that recourse is at odds with the system's goals of leading a person into self-sufficiency and dignity in the non-prison world. The parole service also does not provide adequate housing assistance; the parole service, in fact, often impedes a parolee's attempts to get settled because every proposed residence must be approved by the parole officer. The parolee's housing problems are further complicated by his ineligibility for public housing, at least in New York City.

The law enforcement aim of the community supervision program is at least honored by a genuine effort at realization. Community supervision officers are urged to expend the greater part of their time and energy on trying to enforce the parole rules as embodied in the list which every parolee signs. This list is an agreement between the parolee and the parole board that the former will abide by restrictions on his life imposed by the latter. The Correction Law specifies a number of conditions which may be imposed. The parole agreement currently goes well beyond the minimal

statutory provision, regulating virtually every aspect of a parolee's life.

Some of the more controversial conditions are: the prohibition from leaving the area of the state to which the parolee is released without the parole officer's permission; the requirement that a parolee must allow his parole officer to search him, or to visit him at home or at work, without prior notice; the limitation that a parolee may not associate with people who have a criminal record; the requirement that a parolee must consult with his parole officer before applying for a marriage license or changing his job or residence; and the requirement that a parolee must get permission from his parole officer to drive or own a car.

Parolees interviewed by the Citizens' Inquiry felt that these restrictions often unnecessarily inhibited their re-integration into society. The prohibition against driving and traveling interstate reduces a parolee's employment opportunities. The agreement in general denies the parolee usual constitutional guarantees to the right of privacy at home, on the job, and with respect to personal relations. Furthermore, the conditions are so comprehensive that it is

practically impossible for a parolee not to violate one of them occasionally. The parole conditions are too numerous, coercive and intrusive. Their imposition seems more likely to hinder a parolee's integration into society than to help it.

After release, a parolee's principal contact with the parole system is through the community supervision parole officer. A college graduate with experience in social work, law enforcement or law, the parole officer has a difficult role. He has two responsibilities: to assist parolees in adjusting to the outside world, and to prevent or punish parole violations and criminal activities. This means that the parole officer is both social worker and policeman. He cannot fill either role very well.

As policeman, the parole officer is armed, authorized to search the parolee and his property, given power to restrict many aspects of his life, and charged with enforcing parole rules and initiating revocation proceedings if the rules are violated. He is statutorily classified, along with police and prison guards, as a "peace officer." As social worker, he is supposed to counsel the parolee on basic social and financial problems. He may assist in finding

a job or housing or drug therapy. He may mediate between the parolee and the agencies or organizations that he deals with. The two roles of the parole officer regularly conflict. He often must decide between an action which protects the community and one which aids the parolee. When such a situation arises, he is expected to choose the solution which he believes will protect the public. The conflict is apparent to parolees and precludes the development of a relationship of mutual trust.

New York's parole system emphasizes more than in many jurisdictions the role of law enforcement in community supervision. This emphasis is misplaced for several reasons. For one thing, it is ineffective. Most parolees are apprehended for a new offense before their parole officer has initiated parole revocation proceedings. Studies have shown that community supervision does not significantly decrease the recidivism rates of releasees, and that criminal violations leading to parole revocation are usually uncovered by law enforcement officials, rarely by parole officers. The law enforcement aspects of community supervision also deny the parolee fundamental freedoms enjoyed by other citizens. Finally, the surveillance and the ever-present possibility



that even minor conditions may be enforced to send a parolee back to prison can frustrate him in such a way to increase his general alienation.

Community supervision, in summary, does not assist the parolee and does not protect the public. Scarce resources are spent on inept social services and ineffective enforcement of the parole agreement. The parole regulations became an albatross on the back of most parolees, actually impeding their re-entry into society.

#### Revocation

The basic coercive power of the community supervision program is the revocation of parole followed by the parolee's return to prison for all or part of his sentence. Although the parole service maintains that this power is exercised fairly, parolees are often treated as having none of the rights of ordinary citizens.

Revocation cuts across both the decision-making and community supervision aspects of parole. Parole board members are ultimately responsible for deciding whether parole should be revoked in particular cases, and community supervision officers usually initiate and recommend a parolee's revocation. Because revocation leads back to prison, parolees live in terror of it.

The parole officer has enormous discretion in enforcing

the parole agreement. The relevant statute provides that if the parole officer has "reasonable cause to believe that such (parolee) has lapsed, or is probably about to lapse, into criminal ways or company, or has violated the conditions of his parole in an important respect," he is to report that to the parole board or its representative, who may then apprehend the parolee, or he may retake the parolee himself. Under the provisions of this statute a parole officer may choose to overlook violations, and where a parolee has shown a generally good adjustment to the community, he often does so. When a violation of parole rules (often called a "technical violation") leads an officer to initiate revocation proceedings, it is often because he suspects that a parolee is "slipping", moving from a life that he thinks is fairly stable to one that seems to the officer more likely to bring about the commission of a crime. Other situations which parole officers deem appropriate for revocation proceedings are the case where a parolee is arrested, has absconded, or is convicted of a new felony. When a parolee is taken into custody, he is held without any possibility of release, often for two or three months, pending his revocation hearing.

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In general, a parole officer prizes his wide discretion, and a certain amount of it is necessary to maintain the present system. Since the parole agreement contains so many technical rules, nearly every parolee violates one of them at some time. If a parole officer were obligated to recommend revocation every time he was aware of a rule violation, most parolees would be returned to prison for only minor infractions.

The New York statute does not provide any due process safeguards for a parolee faced with revocation proceedings. But during the last few years, constitutional rulings of the United States Supreme Court and the New York Court of Appeals have begun to carve out some protection. Taken together, these rulings have established, among other things, a two-step hearing process whereby the parole board determines whether or not the parole agreement has been violated. Recent decisions have also given the parolee the right to representation, the right to present witnesses, the right to be confronted by witnesses against him, and the right to partial disclosure of information in the case file. While New York has complied in most respects with these rulings, it has refused to allow parolees to confront witnesses against them. In addition to providing parolees with procedural due process rights once revocation proceedings have

begun, the judicial developments have also restrained parole officers somewhat in their decisions to recommend revocation.

The new due process rights are primarily important to the revocation process at its fact-finding state. Once a parole violation is verified, parole board members must decide whether to retain a parolee in prison or return him to the community. They must make a prediction very similar to that made at the release stage, with no more secure justification.

#### IV. The Defects of Parole Theory

Parole grows out of a set of assumptions popularly known as the treatment or rehabilitation theory. This theory, which gained wide currency in the nineteenth century and became the basic goal of both sentencing and imprisonment, assumed that the cause of criminality was primarily the result of a personality defect or disorder within the offender. This defect, it was reasoned, could be diagnosed and treated within a penal setting. The offender's response to treatment could be evaluated so that he could be released at the optimum moment of his rehabilitation (i.e. when he was least likely to commit another crime).

Under this theory, sentences had to provide for a flexible period of imprisonment, since the amount of time necessary for the offender's rehabilitation could not be predicted at the time of trial, and prisons had to provide treatment programs. In addition, a mechanism was needed to provide for evaluating an offender's rehabilitation, releasing him from prison, and supervising him in the community. This mechanism is parole.

The goals of community supervision are : 1) to continue the treatment of the offender that was begun in prison by assisting him in his adjustment to the community and 2) to protect the public from criminal activity by

returning the offender to prison for violation of parole rules prior to the committing of a crime. To fulfill the latter goal parole officers must identify parolees who are about to commit a crime; and the parole board, which possesses the final revocation authority, must agree with the parole officer's prediction.

Previous sections of this paper have discussed the gap between the reality of parole and its image. Instead of making carefully reasoned decisions based on an inmate's rehabilitation, the parole board uses a rule of thumb in setting the parole eligibility date and speeds through release interviews making decisions often not based on its assessment of the likelihood of an inmate's recidivism. The similarity between defendants granted parole and those denied is striking enough to suggest that, despite its attempts at professionalism and competence, the parole board is unable to distinguish the rehabilitated from the non-rehabilitated. The community supervision program, instead of helping parolees adjust to non-prison society, is usually irrelevant and sometimes harmful. The parole service has not been able to fulfill its crime prevention function because of its inability to identify which releasees are about to endanger the public safety.

The usual response to the gap between the image and reality of parole is to assume the validity of the theory

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and to recommend reforms in the practice. Typically these reforms urge: 1) improving parole board decisions through acquiring high qualifications for membership; 2) reducing the workload of the parole board to permit its members more time to consider each case; 3) improving the comprehensiveness and accuracy of the information in each case file; 4) imposing some form of due process and review procedures to protect inmates against arbitrary and abusive action by board members; 5) developing specific written criteria to guide board members in making prediction decisions; 6) expanding the parole service and reducing the officers' case-loads; 7) de-emphasizing law enforcement activity by parole officers and 8) increasing social services for parolees.

The practice of parole in New York diverges so widely from what is considered ideal that conceivably there is room for reform of the sort outlined above. Merely to implement these measures, however, would be to reform parole without changing it. If a system rests on invalid assumptions and has unrealistic goals, changes in its practice will not remedy those defects. Concededly - and importantly - those changes could make it generally fairer, but the system would not be any more effective in carrying out its intentions. That is the problem with parole.

The parole system rests on the assumption that recidivism can be measurably reduced by exposing the offender,

while in prison, to social programs such as education or vocational training or group therapy, or by giving him assistance in the community once he gets out. But the overwhelming evidence is that these programs and services are ineffective in reducing recidivism. A survey by Robert Martinson, NYU sociologist and former consultant to the New York State Office of Crime Control Planning, of all studies of rehabilitation programs undertaken around the country between 1945 and 1967 found that "the present array of correctional treatments has no appreciable effect - positive or negative - on the rates of recidivism of convicted offenders." A survey of studies of the California correctional system - which has instituted more sophisticated rehabilitation programs than in New York State - goes even further: "It is difficult to escape the conclusions that the act of incarcerating a person at all will impair whatever potential he has for a crime-free future adjustment and that, regardless of which "treatments" are administered while he is in prison, the longer he is kept there the more he will deteriorate and the more likely it is that he will recidivate." Finally, even the "Preliminary Report to the Governor [of New York] on Criminal Offenders" - a report which completely endorsed the treatment model - admitted that: "We are unable to state at the present time [June 1968] with demonstrable certainty whether any particular treatment method is effective in preventing recidivism."

Parole theory is further weakened by the fact that

neither the parole board nor the parole officer seems able to predict the nature and likelihood of recidivism for inmates in general. High parole revocation rates - which indicate about 80% of the time that a new criminal offense has been committed - cast doubt on the efficacy of the parole board's predictions. The very small number of parolees for whom revocation proceedings are initiated before apprehension for a new offense suggests that the parole officers are equally unsure in their predictions. The state of the art of prediction is still too primitive to be used as justification for substantially restricting human freedom.

Even though the parole system is ineffective in meeting its stated goals, its continuation might be justified if parole fulfilled important alternative objectives. It does not. The granting of parole is not necessary to maintain prison discipline. Prison officials have many devices which they can use as rewards and punishment for that purpose. It is also commonly believed that the parole board reduces sentence disparities by paroling similar offenders after they have served comparable amounts of time. While this function may be important in some jurisdictions, the New York parole board has no procedures to ensure its effective performance here. Even if it did we would not regard the mitigation of sentence disparities as a sufficient justification for an entire parole system, especially

since that function could be performed in other ways.

In addition to failing to fulfill its own goals or to fulfill an important alternative function, parole is oppressive and wasteful in its operation. Because parole is presently the inmate's best exit from prison, its procedures have a great impact on inmate morale and behavior. Inmates are aware that the irrationality of parole decision-making keeps some of them in prison for reasons that do not promote any justifiable public policy. Parolees feel hindered in their adjustment to the community by parole restrictions, and some know they have been returned to prison even though they were not a danger to the public and would not have become so. Lastly, the parole system costs money to operate. And while it is usually thought that the system actually saves the state money, that is only true if the alternative is imprisonment. If inmates were absolutely discharged from prison at a time when they otherwise would have been paroled, the state could save the funds now expended to support the parole system.

## V. Long-term Recommendations

The Citizens' Inquiry report concludes that parole in New York is oppressive and arbitrary, cannot fulfill its stated goals, and is a corrupting influence within the penal system. It should therefore be abolished. But abolition of the present system cannot occur within a vacuum. The following recommendations reflect the conclusion that parole is only one segment of an integrated process. Changing parole must also mean changing the other elements of the post-conviction criminal justice system, if the outcome is to make our use of the criminal sanction more humane and more effective.

1) The goals of rehabilitation as it has been described in this summary are unrealistic and should not shape sentencing and release decisions. At present this society is not able to measurably reduce recidivism by exposing the offender to treatment or rehabilitation programs either in prison or in the community. Discretionary release and compulsory community supervision which rely on the rehabilitation theory should therefore be discontinued.

2) Sentences should be shorter and have a narrower range of indeterminacy. The criteria used to determine the length of terms and the justifications for indeterminacy must await further research. But certainly this study has concluded that a sentence structure based on the rehabilitation theory is baseless.

3) The discretion in parole decision-making has been abused. In the light of past experience, the likelihood of basing the exercise of this discretion on rational criteria seems so low that it is tempting to suggest the elimination of all discretion from release procedures. At least until sentences are short and definite, some limited discretion over release will be necessary. There is need for the study of the appropriate overall sentencing and release process, but some of its qualities can be specified. Its operations must be open to scrutiny to avoid the corrupting tendencies of discretionary power. It should favor the earliest possible release for the largest possible number of inmates, perhaps by requiring corrections officials to show cause why, at a certain point, an inmate should not be released. The present parole board should be dissolved, and release decisions should be made by citizens who are not part of the penal system, but are related to it by virtue of their contacts with inmates in out-of-prison situations, such as work-release or adult education programs. Those who decide should have varying race, class, and occupational backgrounds, and should include an inmate's peers. The decision-making process should provide customary due process protections. The release criteria should be matters of fact demonstrably related to a legitimate public purpose. Judicial review should be available for release decisions.

4) New and extended alternatives to incarceration should be developed and used. Confinement, when necessary, should be in small neighborhood facilities as little isolated from normal community activities as possible.

5) Prison administration, release decisions, and post-release services must be open to public scrutiny. General public ignorance of prison life, release decision-making, and parole supervision has made it difficult to develop understanding of the penal system and press for change. Only with greater public accountability will new and better programs and practices gain support.

6) A wide range of programs should be offered to offenders before, during and after incarceration. Participation in the programs should be voluntary at all times; presumably, one test of their effectiveness will then be evidence that many offenders use them. They should be paid for by the penal system but administered by people who provide similar kinds of service to ordinary citizens.

The programs should not be justified by a vague, condescending and unmeasurable standard of rehabilitative value. They should be supported instead because our society believes that the opportunities they present to live as comfortably and productively as possible are worthwhile in and of themselves and should be shared equally by all citizens, whether they are criminal offenders or not.

a) The ex-offender's most immediate need is for

cash. He should receive financial aid, set at the minimum standard of living for his family size, for a period of several months after release from prison when employment is not readily available and need exists. He should have access to low-interest loans for a lengthy period after direct aid is discontinued.

b) Decent emergency housing should be available at no cost for the ex-offender's first days or weeks outside of prison. A sophisticated referral service should help him locate permanent housing, deal with housing agencies and management companies, and finance home purchases.

c) Job training, with living wages, should be available, as well as employment counseling and referral. Where decent jobs are not available in the private sector, government should provide them. Current policies in both public and private job sectors restricting ex-offenders from jobs should generally be abandoned.

d) Educational opportunities should be available to inmates and ex-offenders on the same basis as students. Tutoring, aptitude testing, and financial aid will be necessary to help inmates and ex-offenders prepare for school, college and vocational programs.

e) Low-cost medical services should be offered to inmates and ex-offenders - both inside and outside the penal institutions. The services should include dental and psychiatric care, as well as programs for alcoholics and drug users.

f) Both public and private legal services should be available to the offender free or at low cost from the moment of arrest until some time after release. Legal help should include representation of the client before agencies from which he may be eligible for benefits, such as welfare or workmen's disability.

One way to enlist an individual in whichever of the service programs are appropriate is to offer him, immediately after arrest or the issuance of a summons, the help of a community services advisor. This person should come from a socio-economic background similar to that of the offender and should be fully prepared to act as his advocate in seeking help from the range of programs available. The advisor should have no enforcement role. If requested to do so by the offender, the advisor would keep in touch during incarceration and would assist with arrangements for family visits, out-of-prison activities, and preparations for the return home. When inmates are confined in neighborhood facilities, the advisor would work there and canvass the surrounding community for programs that the inmate can use. He would help the ex-offender with post-release problems for as long a period as requested. He would be supervised by an organization with the power to inspect prisons and report to the public on the problems of the penal system (perhaps an ombudsman organization based on the structure of the present New York State Commission of Correction).

Present members of the parole service would have first priority for consideration as community service advisors.

#### Transitional Recommendations

The long-term recommendations of this study will necessitate a lengthy period of change. It seems worthwhile to try to articulate some of the desirable transitional steps, reforms which are easily grafted on to the present parole system. They are not offered as substitutes for the changes discussed above, for they do not alter basic inadequacies of theory or practice. They are offered in the hope that they will insure fairness for inmates and tend to expose and educate. It is crucial that the interim recommendations lead to further change and do not themselves come to symbolize an entrenched and inflexible system.

Our short-term recommendations for the decision-making aspect of the parole system are:

- 1) At the setting of the minimum period of imprisonment by the parole board and at parole release interviews, an inmate should have the right:
  - a. to be represented by retained or assigned counsel;
  - b. to present witnesses on his own behalf;
  - c. to examine personally or through counsel the entire case file prior to the release interview;



- d. to receive a statement of findings of fact and reasons for the decision within a short time of the interview;
- e. to receive a decision based on information disclosed to the inmate during the interview;
- f. to receive a written statement of the detailed and specific criteria which the parole board uses in deciding cases;
- g. to have judicial review of the substantive and procedural aspects of the decision.

- 2) The burden of proof should be shifted so that it rests with the parole board to show why an inmate should not be released.
- 3) Parole board hearings, records and regular reports should be open and available to the press and public, subject only to the right of privacy of the individual involved to request secrecy as to details personal to him.

Short-term recommendations for the community supervision aspect of the parole system include:

- 1) The length of time under community supervision should not exceed one year.
- 2) The parole rules should be substantially reduced in number and simplified so that they are not coercive and do not permit a parole officer any more right to invade the privacy of one's person,

home or property than that of ordinary citizens. One set of simple parole rules might include requirements that the parolee

- a) seek and hold a job, or demonstrate another legal means of livelihood;
- b) abide by the law; and
- c) report to the parole service regularly.

- 3) All law enforcement activities and authority of parole officers should be abolished.
- 4) Parole should be revoked only when the parolee has committed and been convicted of a new criminal offense of a magnitude that would ordinarily lead to incarceration.
- 5) The law should provide each parolee with direct financial assistance comparable to unemployment or welfare benefits. These benefits should extend from release until another means of livelihood is established.
- 6) Extensive social services, of the sort outlined as a long-term recommendation, should be provided on a voluntary basis to all parolees. Other government agencies, such as public housing authorities, civil service examiners and welfare departments, should be prohibited from maintaining discriminatory bars against parolees.
- 7) Inmates who are conditionally released should have their sentences credited with the time they spend in the community in the event that they have

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their conditional release revoked and are returned  
to prison.

March, 1974

**END**