PAROLE REORGANIZATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

FIRST SESSION

ON

H.R. 1598 and Identical Bills

TO ESTABLISH AN INDEPENDENT AND REGIONALIZED FEDERAL BOARD OF PAROLE, TO PROVIDE FOR FAIR AND EQUITABLE PAROLE PROCEDURES, AND FOR OTHER PURPOSES

JUNE 21 AND 28, 1973

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PAROLE REORGANIZATION ACT

THURSDAY, JUNE 21, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to call, in room 2226, Rayburn House Office Building, Hon. Robert M. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Owens, Mezvinsky, Railsback, Smith, and Cohen.

Also present: Herbert Fuchs counsel; Thomas E. Mooney, associate counsel and Howard Eglit, former corrections counsel.

Mr. KASTENMEIER. The hearing will come to order.

Today, the subcommittee has met to begin 2 days of public hearings on H.R. 1598, a bill to establish an independent and regionalized Federal Board of Parole, to provide for fair and equitable parole procedures, and for other purposes.

The subject parole legislation was first introduced in the 92d Congress, where, after 19 days of public hearings and extensive markup sessions on H.R. 13118 and related bills to improve and revise parole procedures, H.R. 16276 was introduced by the Chair and cosponsored by the eight other members of the subcommittee. The measure was ordered reported to the full Committee and such report began on August 15, 1972. Unfortunately, the 92d Congress adjourned before full Committee consideration of that measure could be completed.

In the present Congress, the Chair reintroduced this measure as H.R. 1598, and the surviving members of Subcommittee No. 3 as this subcommittee was then known cosponsored it. In addition, the distinguished chairman of the Committee on the Judiciary, Congressman Rodino, introduced an identical measure as H.R. 978, and the Chair introduced H.R. 2028, also identical, and cosponsored by Mr. Mazzoli, Mr. Mitchell of Maryland, and Ms. Abzug.

[The bills, H.R. 1598, H.R. 978, and H.R. 2028, follow:]

93D CONGRESS
1ST SESSION

H. R. 1598

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1973

Mr. KASTENMEIER (for himself, Mr. CONYERS, Mr. DRINAN, Mr. RAILSBACK, Mr. BIESTER, Mr. FISH, and Mr. COUGHLIN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an independent and regionalized Federal Board of Parole, to provide for fair and equitable parole procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Reorganization Act of 1973".

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TITLE I—FEDERAL PAROLE SYSTEM

BOARD OF PAROLE; PAROLE PROCEDURES, CONDITIONS, ETC.

SEC. 101. Chapter 311 of title 18 of the United States Code (relating to parole) is amended to read as follows:

"Chapter 311.—PAROLE

"§ 4201. Board of Parole; structure; membership; etc.

"(a) There is created, as an independent establishment in the executive branch, a Board of Parole to consist of a National Board and five Regional Boards.

"(b) The Board of Parole shall be appointed by the President by and with the advice and consent of the Senate. To the extent feasible, the racial and ethnic composition

of the Federal prison population should be proportionately reflected in the composition of the Board of Parole.

"(c) (1) The National Board shall be composed of seven members. Except as provided in paragraphs (2) and (5), members of the National Board shall be appointed for terms of six years. No individual may serve as a member of the National Board for any period of time in excess of twelve years.

"(2) Of the members first appointed to the National Board under this section—

"(A) one shall be appointed for a term of one year,

"(B) one shall be appointed for a term of two years,

"(C) one shall be appointed for a term of three years,

"(D) one shall be appointed for a term of four years,

"(E) one shall be appointed for a term of five years, and

"(F) two shall be appointed for terms of six years.

"(3) Each of the five Regional Boards shall be composed of three members. Except as provided in paragraphs (4) and (5), members of each Regional Board shall be appointed for terms of six years. No individual may serve as

a member of one or more Regional Boards for any period of time in excess of twelve years.

"(4) Of the members first appointed to two of the five Regional Boards under this section—

"(A) one member of each of such two Boards shall be appointed for a term of one year,

"(B) one member of each of such two Boards shall be appointed for a term of three years, and

"(C) one member of each of such two Boards shall be appointed for a term of five years.

Of the members first appointed to three of the five Regional Boards under this section—

"(D) one member of each of such three Boards shall be appointed for a term of two years,

"(E) one member of each of such three Boards shall be appointed for a term of four years, and

"(F) one member of each of such three Boards shall be appointed for a term of six years.

"(5) Any member of the Board of Parole appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

"(d) The President shall from time to time designate

one of the members of the National Board to serve as Chairman of the Board of Parole and shall delegate to him the necessary administrative duties and responsibilities. The Chairman of the Board of Parole shall designate one of the members of each Regional Board to serve as Chairman of such Regional Board. The term of office of the Chairman of the Board of Parole and of the Chairman of each Regional Board shall be not less than two years but not more than six years as specified at the time of designation as Chairman. The Chairman of each Regional Board shall have such administrative duties and responsibilities with respect to the Regional Board as may be necessary to carry out the purposes of this chapter.

"(e) Each Regional Board shall have such geographical jurisdiction as the National Board may provide in order to assure efficient administration.

"(f) The respective rates of pay for members of the Board of Parole (other than the Chairman of the Board of Parole) shall be equal to the maximum rate, as in effect from time to time, for GS–17 of the General Schedule of section 5332 of title 5. The rate of pay of the Chairman of the Board of Parole shall be at the rate prescribed for level III of the Executive Schedule.

"§ 4202. Powers and duties of National Board

"(a) The National Board shall have the power to—

"(1) establish general policies and rules for the Board of Parole, including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole;

"(2) conduct appellate review of determinations of the Regional Boards as provided in section 4216;

"(3) appoint and fix the basic pay of personnel of the Board of Parole (including not more than six hearing examiners to be assigned to each Regional Board);

"(4) procure for the Board of Parole temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5;

"(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

"(6) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions of the Board of Parole, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(7) accept voluntary and uncompensated serv-

ices, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b));

"(8) request such information, data, and reports from any Federal agency as the Board of Parole may from time to time require and as may be produced consistent with other law;

"(9) arrange with the head of any other Federal agency for the performance by such agency of any function of the Board of Parole, with or without reimbursement;

"(10) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the National Board deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive case loads; and

"(11) (A) issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter with respect to which the National Board or any Regional Board is empowered to make a determination under this chapter. Such attendance of witnesses and the production

of evidence may be required from any place within the United States at any designated place of hearing within the United States.

"(B) If a person issued a subpena under paragraph (A) refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the National Board) order such person to appear before the National Board or any Regional Board to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) The subpena of the Board of Parole shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

"(D) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

"(E) For purposes of sections 6002 and 6004 of this title (relating to immunity of witnesses) the Board

of Parole shall be considered an agency of the United States.

The National Board shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law (including any provision of law which invests any powers or functions in the Board of Parole).

"(b) The National Board may delegate any power or function to any member or agent of the National Board and may delegate to the Regional Boards such powers as may be appropriate other than—

"(1) the power to appoint and fix the basic pay of hearing examiners, and

"(2) the power to establish general policies, rules, and factors under subsection (a) (1).

"(c) Upon the request of the National Board, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Board of Parole in the performing of its functions.

"(d) Except as otherwise provided by law, any action taken by the National Board shall be taken by a majority vote of all individuals currently holding office as members of the National Board, and it shall maintain and make avail-

able for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it.

"§ 4203. Powers and authority of Regional Boards

"(a) The Regional Boards shall conduct such hearings and perform such other functions and duties as may be provided under this chapter.

"(b) Except as otherwise provided by law, any action taken by any Regional Board shall be taken by a majority vote of all individuals currently holding office as members of such Regional Board.

"(c) Except as otherwise provided by law, when so authorized by a Regional Board, any member or agent of the Regional Board may take any action which the Regional Board is authorized to take.

"§ 4204. Time of eligibility for release on parole

"(a) Whenever confined and serving a definite term or terms of over one hundred and eighty days, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years.

"(b) (1) Any prisoner whose eligibility for release on parole is fixed under clause (1) of section 4217 (a) at the time of sentencing shall be eligible for release on parole on a date as provided in that clause.

"(2) The Regional Board shall determine the date of eligibility of any prisoner sentenced under clause (2) of section 4217(a). Such date shall be not later than sixty days following the date prescribed by section 4207 (b) for the prisoner's initial parole determination hearing.

"(c) The Regional Board shall determine the date of eligibility of any prisoner released on parole and subsequently reimprisoned. Such date shall be not later than sixty days following the date prescribed by section 4207(b) for the prisoner's initial parole determination hearing.

"§ 4205. Release on parole

"(a) The Regional Board shall release a prisoner whose record shows that he has substantially observed the rules of the institution in which he is confined on the date of his eligibility for parole, unless the Regional Board determines that he should not be released on such date for one or both of the following reasons:

"(1) there is a reasonable probability that such prisoner will not live and remain at liberty without violating any criminal law; or

"(2) there is a reasonable probability that such release would be incompatible with the welfare of society.

"(b) In the case of any prisoner not earlier released under subsection (a), except in the case of special dangerous

offenders as defined in section 3575(e) of this title, the Regional Board shall release such prisoner on parole after he has served two-thirds of his sentence, or after twenty years in the case of a sentence of thirty years or longer (including a life sentence), whichever is earlier, unless the Regional Board determines that he should not be so released because there is a high likelihood that he will engage in conduct violating any criminal law.

"(c) When by reason of his training and response to the programs of the Bureau of Prisons, it appears to the Regional Board that there is a reasonable probability that the prisoner will live and remain at liberty without violating any criminal law, and that his immediate release is not incompatible with the welfare of society, but he is not yet eligible for release on parole under section 4204, the Regional Board in its discretion may apply to the court imposing sentence for a modification of his sentence in order to make him so eligible. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

"§ 4206. Factors taken into account; information considered

"In making a determination under section 4205 (a) or (b) (relating to release on parole) the Regional Board shall take into account the factors established by the National

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Board under section 4202 (a) (1), and shall consider the following information:

"(1) any reports and recommendations which the staff of the facility in which such prisoner is confined may make;

"(2) any official report of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

"(3) any presentence investigation report;

"(4) any recommendation regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

"(5) any reports of physical, mental, or psychiatric examination of the offender.

The Regional Board shall also consider such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

"§ 4207. Parole determination hearing; time

"(a) In making a determination under section 4205 (a) or (b) (relating to release on parole) the Regional Board shall hold a hearing (referred to in this chapter as a 'parole determination hearing') unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. The hearing shall be conducted by a panel of

three individuals, all of whom shall be either members of the Regional Board or hearing examiners, and a member of the Regional Board shall preside. Such panel shall have the authority to make the parole determination decision, notwithstanding section 4203 (b).

"(b) In the case of any prisoner eligible for parole on a date provided by section 4204, an initial parole determination hearing shall be held at a time prescribed by the Regional Board. Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204 (a) or (b) (1), the time of such hearing shall be not later than sixty days before such date of his eligibility for parole (as provided by such section). Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204 (b) (2) or (c), the time of such hearing shall be not later than ninety days following such prisoner's imprisonment, or reimprisonment, as the case may be.

"(c) In any case in which release on parole is denied or delayed at the prisoner's parole determination hearing, subsequent parole determination hearings shall be held not less frequently than annually thereafter.

"§ 4208. Procedure of parole determination hearing

"(a) Within a reasonable time prior to any prisoner's parole determination hearing, the Regional Board shall (1) provide the prisoner with written notice of the time and place

of the hearing, and (2) make available to the prisoner any file or report or other document to be used in making its determination.

"(b) Clause (2) of subsection (a) shall not apply to any portion of any file, report, or other document which—

"(1) is not relevant to the determination of the Regional Board;

"(2) is a diagnostic opinion which might seriously disrupt a program of rehabilitation; or

"(3) reveals sources of information which may have been obtained on a promise of confidentiality.

Whenever the Regional Board finds that this subsection applies to any portion of a file, report, or other document to be used by it in making its determination, it shall state such finding (including the reasons therefor) on the record and shall provide the prisoner, or any representative of the prisoner referred to in subsection (c) (2), with written notice of such finding (and reasons). The Regional Board shall make available to the prisoner, or any representative of the prisoner referred to in subsection (c) (2), the substance of any portion of any file, report, or other document not made available by reason of paragraph (2) or (3) of this subsection, except when the disclosure of such substance would endanger, in the opinion of the Regional Board, the safety of any person other than the prisoner.

"(c) (1) At any time prior to the parole determination hearing, a prisoner may consult with his attorney, and by mail (or otherwise as provided by the Regional Board) with any person concerning such hearing.

"(2) The prisoner shall, if he chooses, be represented at the parole determination hearing by an attorney, by an employee of the Federal Bureau of Prisons, or by any other qualified person, unless he intelligently waives such representation. Such attorney may be retained by the prisoner or appointed pursuant to section 3006A of chapter 201.

"(d) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination hearing.

"(e) A full and complete record of the parole determination hearing shall be kept, and not later than fourteen days after the date of the hearing, the Regional Board shall (1) notify the prisoner in writing of its determination, (2) furnish the prisoner with a written notice stating with particularity the grounds on which such determination was based, including a summary of the evidence and information supporting the finding that the criteria provided in section 4205 were established as to the prisoner. When feasible, the Regional Board shall advise the prisoner as to what steps in its opinion, he may take to correct the problems responsible for his denial of release on parole, so as to enhance his chance of being released on parole.

"§ 4209. Conditions of parole

"(a) The Regional Board shall impose such conditions of parole as it deems reasonably necessary to ensure that the parolee will lead a law-abiding life or to assist him in doing so. In every case the Regional Board shall impose as a condition of parole that the parolee not commit any criminal offense during his parole.

"(b) The Regional Board may require as a condition of parole that the parolee reside in or participate in the program of a residential community treatment center, or similar public or private facility, for all or part of the period of parole if the Attorney General (or director in the case of such similar facility) certifies that adequate treatment facilities, personnel, and programs are available. In the case of a parolee who is an addict within the meaning of section 4251 (a) of this title, or a drug dependent person within the meaning of section 2 (q) of the Public Health Service Act, the Regional Board may require as a condition of parole that the parolee participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole. If the Attorney General (or director, as the case may be) determines that a parolee's residence in a center, or participation in a program, should be terminated because the parolee can derive no further significant benefits from such residence or participation, or because

his residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General (or director, as the case may be) shall so notify the Regional Board, which shall thereupon make such other provision with respect to the parolee as it deems appropriate. A parolee residing in a residential community treatment center may be required to pay such costs incident to residence as the Regional Board deems appropriate.

"(c) In imposing conditions of parole, the Regional Board shall consider the following:

"(1) there should be a reasonable relationship between the condition imposed and both the prisoner's previous conduct and his present capabilities; and

"(2) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

"(d) Upon release on parole, a prisoner shall be given a certificate setting forth the conditions of his parole.

"§ 4210. Jurisdiction of Board of Parole

"(a) Except as otherwise provided in this section, the jurisdiction of the Board of Parole over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that such jurisdiction shall terminate at an earlier date—

"(1) to the extent parole good time is accrued pursuant to section 4211, and

"(2) to the extent provided under section 4164 (relating to mandatory release).

"(b) The parole of any parolee shall run concurrently with any period of parole or probation under any other Federal, State, or local sentence.

"(c) In the case of any parolee found by the Regional Board to have intentionally refused or failed to respond to any reasonable request, order, or warrant of the Regional Board, the jurisdiction of the Board of Parole may be extended for a period equal to such period as the parolee so refused or failed to respond.

"(d) In the case of any parolee imprisoned under any other sentence, the jurisdiction of the Board of Parole may be extended for a period equal to the period during which such parolee was so imprisoned.

"(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by sections 4161 through 4165 of this title.

"(f) Upon the termination of the jurisdiction of the Board of Parole over any parolee, the Regional Board shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

"§ 4211. Parole good time

"(a) Except as provided in subsection (b), the

Regional Board shall allow each parolee whose record of conduct shows that he has substantially observed the conditions of his parole a deduction from his parole, computed as follows:

"(1) five days for each month of parole, if the maximum period for which he may be subject to the jurisdiction of the Board of Parole, determined as of the date of release on parole, is more than six months but not more than one year;

"(2) six days for each month of parole, if such maximum period is more than one year but less than three years;

"(3) seven days for each month of parole, if such maximum period is more than three years but less than five years;

"(4) eight days for each month of parole, if such maximum period is more than five years but less than ten years;

"(5) ten days for each month, if such maximum period is ten years or more.

"(b) Deductions from parole for good conduct may be forfeited or withheld by the Regional Board pursuant to the requirements of sections 4214 and 4215.

"(c) Any deduction forfeited or withheld under the

preceding subsection may be restored by the Regional Board at any time.

"§ 4212. Early termination or release from conditions of parole

"Upon its own motion or upon petition of the parolee, the Regional Board may terminate the jurisdiction of the Board of Parole over a parolee prior to the termination of such jurisdiction under section 4210, or the Regional Board may release a parolee at any time from any condition of parole imposed under section 4209.

"§ 4213. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Regional Board may authorize his release on condition that he be deported and remain outside the United States. Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4214. Parole modification and revocation

"(a) Pursuant to the requirements of this section and section 4215, the Regional Board may modify or revoke the parole of any parolee at any time prior to the termination of the jurisdiction of the Board of Parole over the parolee.

"(b) No penalty or condition imposed pursuant to an order of parole modification and no revocation of parole shall

extend beyond the date of termination of the Board of Parole's jurisdiction over the parolee.

"(c) If a parolee has violated a condition of his parole or if his assignment to a center, or similar facility, has been terminated pursuant to section 4209 (b), the Regional Board may modify his parole by ordering that—

"(1) parole supervision and reporting be intensified;

"(2) the parolee be required to conform to one or more additional conditions of parole imposed in accordance with the provisions of section 4209; and

"(3) parole good time allowed under section 4211 be forfeited or withheld.

"(d) In the case of any parolee convicted of a criminal offense, or where otherwise warranted by the frequency or seriousness of the parolee's violation of the conditions of his parole, the Regional Board may modify his parole as provided in subsection (c) or may revoke his parole and return him to the custody of the Attorney General.

"§ 4215. Parole modification and revocation procedures

"(a) If, in the opinion of the Regional Board, there is probable cause to believe that any parolee has violated a condition of his parole, or there is probable cause to support the termination of any parolee's assignment to a center or

similar facility, or program, pursuant to section 4209(b), the Regional Board may—

"(1) order such parolee to appear before it; or

"(2) issue a warrant and retake the parolee as provided in this section.

In the case of any parolee charged with a criminal offense, such charge shall constitute probable cause under this subsection, but issuance of an order to appear and retaking of the parolee may be suspended pending disposition of the charge.

"(b) Any order or warrant issued under this section shall provide the parolee with written notice of—

"(1) the conditions of parole he is alleged to have violated;

"(2) the time, date, place, and circumstances of the alleged violation;

"(3) the time, date, and place of the scheduled hearing;

"(4) his rights under this chapter; and

"(5) the possible action which may be taken by the Regional Board.

"(c) Any order or warrant issued under this section shall be issued as soon as practicable and by one or more

members of the Regional Board. Imprisonment in an institution shall not be deemed grounds for delay of such issuance.

"(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Regional Board, or to the custody of the Attorney General if the Regional Board shall so direct.

"(e) A parolee retaken under this section may be returned to the custody of the Attorney General and imprisoned if the Regional Board determines, after a preliminary hearing, that there is substantial reason to believe that the parolee will not appear for his hearing under subsection (g) when so ordered, or that he constitutes a danger to himself or to others. The preliminary hearing shall be held as soon as possible following the retaking of the parolee, and the parolee shall be advised of the charges against him and shall be allowed to testify at such hearing.

"(f) Prior to the hearing conducted pursuant to subsection (g), the Regional Board may impose such interim modifications of the conditions of parole as may be necessary, without regard to the provisions of section 4209.

"(g) If any parolee ordered to appear before the Regional Board or retaken by warrant under this section

contests the allegation that he has violated a condition of his parole or that his assignment to a center or similar facility, or program, has been properly terminated under section 4209 (b), a hearing shall be held not later than 30 days after—

"(1) issuance of the order, or

"(2) the date of retaking,

whichever is later. Such hearing shall be held at a place reasonably near the location where the alleged violation of parole, or termination of asignment to a center or similar facility, or program, occurred, and shall be conducted by at least one member of the Regional Board. In the case of any parolee imprisoned in an institution to whom an order is issued, such hearing shall be conducted at such institution or other site specified by the Regional Board at which the parolee is allowed to appear. If the Regional Board finds by a preponderance of the evidence that the parolee has violated a condition of his parole, or that a preponderance of the evidence supports the termination of his assignment to a center, or similar facility, it may modify or revoke his parole as provided in section 4214.

"(h) The hearing conducted pursuant to subsection (g) shall include the following procedures—

"(1) proper and timely opportunity for the parolee to examine evidence against him;

"(2) representation by an attorney (retained by

the parolee or appointed pursuant to section 3006A of chapter 201) or such other qualified person as the parolee shall retain, unless the parolee intelligently waives such representation;

"(3) opportunity for the parolee to appear and testify on his own behalf;

"(4) opportunity for the parolee to compel the appearance of witnesses and to confront and cross-examine witnesses; and

"(5) maintenance of a full and complete record of the hearing.

"(i) In the case of any parolee ordered to appear before the Regional Board or retaken by warrant under this section who—

"(1) does not contest the allegation that he has violated a condition of his parole or that his assignment to a center or similar facility, or program, has been properly terminated under section 4209 (b), or

"(2) has been adjudged guilty of a criminal offense,

no hearing shall be held under subsection (g), but if the parolee so requests, a hearing shall be held under this subsection to determine the modification or revocation order to be entered under section 4214, if any. Such a hearing shall be conducted by not less than one member of the Regional

Board, and the parolee shall be allowed to appear and testify on his own behalf.

"(j) Not more than fourteen days following the hearing under subsection (g) or (i), the Regional Board shall inform the parolee in writing of its finding and disposition, stating with particularity the reasons therefor.

"§ 4216. Appeals

"(a) A prisoner who is denied release on parole under section 4204 or whose parole has been revoked, or a parolee whose parole good time (allowed under section 4211) has been forfeited or withheld, may appeal such action by submitting a notice of appeal not later than fifteen days after receiving written notice of such action and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than three members of the National Board. The prisoner or parolee shall be entitled to representation by an attorney (retained by him or appointed pursuant to section 3006A of chapter 21) or such other qualified person as the prisoner or parolee shall retain, unless he intelligently waives such representation. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"(b) Whenever conditions of parole are imposed under section 4209, or parole is modified pursuant to section 4214 (c) (1) or (2), the parolee may appeal such conditions or modification by submitting a notice of appeal not later than fifteen days after receiving written notice of such conditions or modification, and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than two members of the National Board. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"§ 4217. Fixing eligibility for parole at time of sentencing

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than, one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the pris-

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oner may become eligible for parole at such time as the Regional Board may determine.

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary

report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary. It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Board of Parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

"§ 4218. Young adult offenders

"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal

Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

"§ 4219. Warrants to retake Canal Zone parole violators

"An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

"§ 4220. Certain prisoners not eligible for parole

"Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

"§ 4221. Training and research

"In addition to its other powers and duties under this chapter, the National Board shall—

"(1) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(2) disseminate pertinent data and studies to

individuals, agencies, and organizations concerned with the parole process and parolees;

"(3) publish data concerning the parole process and parolees;

"(4) carry out programs of research to develop effective classification systems through which to describe the various types of offenders who require different styles of supervision and the types of parole officers who can provide them, and to develop theories and practices which can be applied successfully to the different types of parolees;

"(5) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in working directly with parolees;

"(6) devise and conduct a training program of short-term instruction in the latest proven effective methods of parole for parole personnel and other persons connected with the parole process; and

"(7) develop technical training programs to aid in the development of training programs within the several States and within the State and local agencies and private and public organizations which work with parolees.

"§ 4222. Annual report

"The National Board shall report annually to each

House of Congress on the activities of the Board of Parole.

"§ 4223. Applicability of Administrative Procedure Act

"(a) For purposes of the provisions of chapters 5 and 7 of title 5, other than sections 552(a)(4), 554, 555, 556, 557, 705, and 706(2)(E) and (F), the Board of Parole is an 'agency' as defined in such chapters.

"(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, relating to rule making, shall be deemed not to include the phrase 'general statements of policy'.

"(c) For purposes of section 701(a)(1) of chapter 7 of title 5, judicial review of decisions of the National Board made pursuant to section 4216(b) of this chapter is precluded.

"§ 4224. Definitions

"As used in this chapter—

"(a) The term 'prisoner' means a Federal prisoner other than a juvenile delinquent or a committed youth offender.

"(b) The term 'parolee' means any prisoner released on parole or deemed as if released on parole under section 4164 (relating to mandatory release)."

CONFORMING AMENDMENTS

SEC. 102. (a)(1) Section 3105 of title 5, relating to appointment of hearing examiners, is amended by striking

out the period after "title" and inserting in lieu thereof ", or chapter 311 of title 18.".

(2) Section 5314 of such title, United States Code, relating to level III of the Executive Schedule, is amended by adding at the end thereof the following new item:

"(58) Chairman, Board of Parole.".

(3) Section 5108(c)(7) of such title, relating to classification of positions at GS–16, 17, and 18, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;".

(b)(1) Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "Board of Parole".

(2) Section 3006A(a) of such title, relating to choice of plan for adequate representation by counsel, is amended by striking out "who is subject to revocation of parole" and inserting in lieu thereof "who is a prisoner or parolee entitled to representation under chapter 311 of this title (relating to parole)".

(3) Section 3006A(g) of such title, relating to discretionary appointments of counsel, is amended by striking out "subject to revocation of parole, in custody as a material

witness," and inserting in lieu thereof "in custody as a material witness".

(4) Section 5005 of such title, relating to the Youth Correction Division, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(5) The second sentence of section 5008 of such title, relating to duties of probation officers, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(c) Section 509 of title 28, United States Code, relating to functions of the Attorney General, is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out "and" at the end of paragraph (3); and

(3) striking out paragraph (4).

(d) Clause (B) of section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)(B)), relating to prohibition against certain persons holding offices, is amended by striking out "of the United States Department of Justice".

(e) Section 406(a) of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3746(a)), relating to training, education, research, demonstration, and special grants, is amended by inserting immediately after "Commissioner of Education" the following: "(and, with the Chairman of the Board of Parole with respect to training and education regarding parole)".

EFFECTIVE DATE OF TITLE

SEC. 103. The amendments made by this title shall apply—

(a) to any person sentenced to a term of imprisonment at any time after one hundred and eighty days after the date of the enactment of this Act, and

(b) except as otherwise may be provided by rule or regulation prescribed under section 104, to any person sentenced to a term of imprisonment at any time prior to the date one hundred and eighty-one days after the date of the enactment of this Act.

For any purpose other than a purpose specified in the preceding provisions of this section, the effective date of this title shall be the date one hundred and eighty days after the date of the enactment of this Act.

TRANSITIONAL RULES

SEC. 104. If, by reason of any computation of (1) eligibility for parole, (2) time of entitlement to release on parole, (3) termination of the jurisdiction of the Board of Parole, or (4) parole good time, or by reason of any other circumstances, the application of any amendment made by this title to any individual referred to in section 103(b)

is impracticable or does not carry out the purposes of this title, the National Board of the Board of Parole established under section 4201 of title 18, United States Code, as amended by this title, may prescribe such transitional rules and regulations to apply to such individual as may be fair, equitable, and consistent with the purposes of this title.

TITLE II—GRANTS TO STATES

STATE PLANS

SEC. 201. Section 453 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750b), relating to grants for correctional institutions and facilities, is amended as follows:

(a) paragraph (4) of such section is amended by striking out "offenders, and community-oriented programs for the supervision of parolees" and inserting in lieu thereof "offenders";

(b) paragraph (8) of such section is amended by striking out "and" at the end thereof;

(c) paragraph (9) of such section is amended by striking out the period at the end thereof and substituting "; and"; and

(d) the following new paragraph is inserted immediately after paragraph (9):

"(10) provides satisfactory emphasis on the development and operation of community-oriented programs

for the supervision of and assistance to parolees and provides satisfactory assurances that the State parole system shall include, to the extent feasible, the following elements:

"(A) employment programs designed to encourage the proper reintegration of offenders into the community; and

"(B) procedures designed to ensure equitable and expeditious disposition of parole hearings. The types of procedures which shall be implemented under this subparagraph include:

"(i) periodic hearings at intervals of not more than two years;

"(ii) personal appearance and testimony of the prisoner at such hearings;

"(iii) availability to the prisoner of any file, report, or other document to be used at such hearings, except to the extent that any portion of such file, report, or other document—

"(I) is not relevant,

"(II) is a diagnostic opinion which might seriously disrupt a program of rehabilitation, or

"(III) reveals sources of information which may have been obtained on a promise of confidentiality,

subject to the requirement that a finding (including the reasons therefor) shall be made on the record whenever such file, report, or other document is not available for a reason provided in clause (I), (II), or (III), and subject to the requirement that the substance of any file, report, or other document which is not available for a reason provided in clause (II) or (III) shall be available to the prisoner or his representative except when the disclosure of such substance would endanger the safety of any person other than the prisoner;

"(iv) representation of the prisoner by counsel or by another qualified individual at such hearing unless he intelligently waives such representation; and

"(v) expeditious disposition of the case and notification to the prisoner of such disposition, and in the case of denial of parole, a statement, with particularity, of the grounds on which such denial was based.

"(C) the following minimum procedures with respect to the revocation of a parolee for violation of his parole:

"(i) a hearing, at which the parolee shall have the opportunity to be heard in person and to present witnesses and documentary evidence;

"(ii) availability to the parolee of any file, report, or other document to be used at such hearings to the same extent as provided under subparagraph (B) (iii);

"(iii) representation of the parolee by counsel or by another qualified individual at such hearing, unless he intelligently waives such representation;

"(iv) opportunity for the parolee to confront and cross-examine adverse witnesses;

"(v) expeditious disposition of the case and notification to the parolee of such disposition, including a statement, with particularity, of the grounds on which such disposition is based; and

"(vi) opportunity for appellate review."

REGULATIONS

SEC. 202. Section 454 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C.

3750c) is amended by inserting immediately after "Prisons" the following: "(or in the case of the requirements specified in paragraph (10) of section 453, after consultation with the Board of Parole)".

93D CONGRESS
1ST SESSION

H. R. 978

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1973

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an independent and regionalized Federal Board of Parole, to provide for fair and equitable parole procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Reorganization Act of 1973".

TABLE OF CONTENTS

TITLE I—FEDERAL PAROLE SYSTEM

BOARD OF PAROLE; PAROLE PROCEDURES, CONDITIONS, ETC.

SEC. 101. Chapter 311 of title 18 of the United States Code (relating to parole) is amended to read as follows:

"Chapter 311.—PAROLE

"§ 4201. Board of Parole; structure; membership; etc.

"(a) There is created, as an independent establishment in the executive branch, a Board of Parole to consist of a National Board and five Regional Boards.

"(b) The Board of Parole shall be appointed by the President by and with the advice and consent of the Senate. To the extent feasible, the racial and ethnic composition

of the Federal prison population should be proportionately reflected in the composition of the Board of Parole.

"(c) (1) The National Board shall be composed of seven members. Except as provided in paragraphs (2) and (5), members of the National Board shall be appointed for terms of six years. No individual may serve as a member of the National Board for any period of time in excess of twelve years.

"(2) Of the members first appointed to the National Board under this section—

"(A) one shall be appointed for a term of one year,

"(B) one shall be appointed for a term of two years,

"(C) one shall be appointed for a term of three years,

"(D) one shall be appointed for a term of four years,

"(E) one shall be appointed for a term of five years, and

"(F) two shall be appointed for terms of six years.

"(3) Each of the five Regional Boards shall be composed of three members. Except as provided in paragraphs (4) and (5), members of each Regional Board shall be appointed for terms of six years. No individual may serve as

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a member of one or more Regional Boards for any period of time in excess of twelve years.

"(4) Of the members first appointed to two of the five Regional Boards under this section—

"(A) one member of each of such two Boards shall be appointed for a term of one year,

"(B) one member of each of such two Boards shall be appointed for a term of three years, and

"(C) one member of each of such two Boards shall be appointed for a term of five years.

Of the members first appointed to three of the five Regional Boards under this section—

"(D) one member of each of such three Boards shall be appointed for a term of two years,

"(E) one member of each of such three Boards shall be appointed for a term of four years, and

"(F) one member of each of such three Boards shall be appointed for a term of six years.

"(5) Any member of the Board of Parole appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

"(d) The President shall from time to time designate

one of the members of the National Board to serve as Chairman of the Board of Parole and shall delegate to him the necessary administrative duties and responsibilities. The Chairman of the Board of Parole shall designate one of the members of each Regional Board to serve as Chairman of such Regional Board. The term of office of the Chairman of the Board of Parole and of the Chairman of each Regional Board shall be not less than two years but not more than six years as specified at the time of designation as Chairman. The Chairman of each Regional Board shall have such administrative duties and responsibilities with respect to the Regional Board as may be necessary to carry out the purposes of this chapter.

"(e) Each Regional Board shall have such geographical jurisdiction as the National Board may provide in order to assure efficient administration.

"(f) The respective rates of pay for members of the Board of Parole (other than the Chairman of the Board of Parole) shall be equal to the maximum rate, as in effect from time to time, for GS–17 of the General Schedule of section 5332 of title 5. The rate of pay of the Chairman of the Board of Parole shall be at the rate prescribed for level III of the Executive Schedule.

"§ 4202. Powers and duties of National Board

"(a) The National Board shall have the power to—

"(1) establish general policies and rules for the Board of Parole, including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole;

"(2) conduct appellate review of determinations of the Regional Boards as provided in section 4216;

"(3) appoint and fix the basic pay of personnel of the Board of Parole (including not more than six hearing examiners to be assigned to each Regional Board);

"(4) procure for the Board of Parole temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5;

"(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

"(6) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions of the Board of Parole, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665(b));

"(8) request such information, data, and reports from any Federal agency as the Board of Parole may from time to time require and as may be produced consistent with other law;

"(9) arrange with the head of any other Federal agency for the performance by such agency of any function of the Board of Parole, with or without reimbursement;

"(10) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the National Board deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive case loads; and

"(11)(A) issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter with respect to which the National Board or any Regional Board is empowered to make a determination under this chapter. Such attendance of witnesses and the production

of evidence may be required from any place within the United States at any designated place of hearing within the United States.

"(B) If a person issued a subpena under paragraph (A) refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the National Board) order such person to appear before the National Board or any Regional Board to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) The subpena of the Board of Parole shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

"(D) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

"(E) For purposes of sections 6002 and 6004 of this title (relating to immunity of witnesses) the Board

of Parole shall be considered an agency of the United States.

The National Board shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law (including any provision of law which invests any powers or functions in the Board of Parole).

"(b) The National Board may delegate any power or function to any member or agent of the National Board and may delegate to the Regional Boards such powers as may be appropriate other than—

"(1) the power to appoint and fix the basic pay of hearing examiners, and

"(2) the power to establish general policies, rules, and factors under subsection (a) (1).

"(c) Upon the request of the National Board, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Board of Parole in the performing of its functions.

"(d) Except as otherwise provided by law, any action taken by the National Board shall be taken by a majority vote of all individuals currently holding office as members of the National Board, and it shall maintain and make avail-

able for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it.

"§ 4203. Powers and authority of Regional Boards

"(a) The Regional Boards shall conduct such hearings and perform such other functions and duties as may be provided under this chapter.

"(b) Except as otherwise provided by law, any action taken by any Regional Board shall be taken by a majority vote of all individuals currently holding office as members of such Regional Board.

"(c) Except as otherwise provided by law, when so authorized by a Regional Board, any member or agent of the Regional Board may take any action which the Regional Board is authorized to take.

"§ 4204. Time of eligibility for release on parole

"(a) Whenever confined and serving a definite term or terms of over one hundred and eighty days, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years.

"(b) (1) Any prisoner whose eligibility for release on parole is fixed under clause (1) of section 4217 (a) at the time of sentencing shall be eligible for release on parole on a date as provided in that clause.

"(2) The Regional Board shall determine the date of eligibility of any prisoner sentenced under clause (2) of section 4217 (a). Such date shall be not later than sixty days following the date prescribed by section 4207 (b) for the prisoner's initial parole determination hearing.

"(c) The Regional Board shall determine the date of eligibility of any prisoner released on parole and subsequently reimprisoned. Such date shall be not later than sixty days following the date prescribed by section 4207 (b) for the prisoner's initial parole determination hearing.

"§ 4205. Release on parole

"(a) The Regional Board shall release a prisoner whose record shows that he has substantially observed the rules of the institution in which he is confined on the date of his eligibility for parole, unless the Regional Board determines that he should not be released on such date for one or both of the following reasons:

"(1) there is a reasonable probability that such prisoner will not live and remain at liberty without violating any criminal law; or

"(2) there is a reasonable probability that such release would be incompatible with the welfare of society.

"(b) In the case of any prisoner not earlier released under subsection (a), except in the case of special dangerous

offenders as defined in section 3575(e) of this title, the Regional Board shall release such prisoner on parole after he has served two-thirds of his sentence, or after twenty years in the case of a sentence of thirty years or longer (including a life sentence), whichever is earlier, unless the Regional Board determines that he should not be so released because there is a high likelihood that he will engage in conduct violating any criminal law.

"(c) When by reason of his training and response to the programs of the Bureau of Prisons, it appears to the Regional Board that there is a reasonable probability that the prisoner will live and remain at liberty without violating any criminal law, and that his immediate release is not incompatible with the welfare of society, but he is not yet eligible for release on parole under section 4204, the Regional Board in its discretion may apply to the court imposing sentence for a modification of his sentence in order to make him so eligible. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

"§ 4206. Factors taken into account; information considered

"In making a determination under section 4205 (a) or (b) (relating to release on parole) the Regional Board shall take into account the factors established by the National

Board under section 4202(a)(1), and shall consider the following information:

"(1) any reports and recommendations which the staff of the facility in which such prisoner is confined may make;

"(2) any official report of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

"(3) any presentence investigation report;

"(4) any recommendation regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

"(5) any reports of physical, mental, or psychiatric examination of the offender.

The Regional Board shall also consider such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

"§ 4207. Parole determination hearing; time

"(a) In making a determination under section 4205 (a) or (b) (relating to release on parole) the Regional Board shall hold a hearing (referred to in this chapter as a 'parole determination hearing') unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. The hearing shall be conducted by a panel of

three individuals, all of whom shall be either members of the Regional Board or hearing examiners, and a member of the Regional Board shall preside. Such panel shall have the authority to make the parole determination decision, notwithstanding section 4203(b).

"(b) In the case of any prisoner eligible for parole on a date provided by section 4204, an initial parole determination hearing shall be held at a time prescribed by the Regional Board. Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204(a) or (b)(1), the time of such hearing shall be not later than sixty days before such date of his eligibility for parole (as provided by such section). Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204(b)(2) or (c), the time of such hearing shall be not later than ninety days following such prisoner's imprisonment, or reimprisonment, as the case may be.

"(c) In any case in which release on parole is denied or delayed at the prisoner's parole determination hearing, subsequent parole determination hearings shall be held not less frequently than annually thereafter.

"§ 4208. Procedure of parole determination hearing

"(a) Within a reasonable time prior to any prisoner's parole determination hearing, the Regional Board shall (1) provide the prisoner with written notice of the time and place

of the hearing, and (2) make available to the prisoner any file or report or other document to be used in making its determination.

"(b) Clause (2) of subsection (a) shall not apply to any portion of any file, report, or other document which—

"(1) is not relevant to the determination of the Regional Board;

"(2) is a diagnostic opinion which might seriously disrupt a program of rehabilitation; or

"(3) reveals sources of information which may have been obtained on a promise of confidentiality.

Whenever the Regional Board finds that this subsection applies to any portion of a file, report, or other document to be used by it in making its determination, it shall state such finding (including the reasons therefor) on the record and shall provide the prisoner, or any representative of the prisoner referred to in subsection (c)(2), with written notice of such finding (and reasons). The Regional Board shall make available to the prisoner, or any representative of the prisoner referred to in subsection (c)(2), the substance of any portion of any file, report, or other document not made available by reason of paragraph (2) or (3) of this subsection, except when the disclosure of such substance would endanger, in the opinion of the Regional Board, the safety of any person other than the prisoner.

"(c) (1) At any time prior to the parole determination hearing, a prisoner may consult with his attorney, and by mail (or otherwise as provided by the Regional Board) with any person concerning such hearing.

"(2) The prisoner shall, if he chooses, be represented at the parole determination hearing by an attorney, by an employee of the Federal Bureau of Prisons, or by any other qualified person, unless he intelligently waives such representation. Such attorney may be retained by the prisoner or appointed pursuant to section 3006A of chapter 201.

"(d) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination hearing.

"(e) A full and complete record of the parole determination hearing shall be kept, and not later than fourteen days after the date of the hearing, the Regional Board shall (1) notify the prisoner in writing of its determination, (2) furnish the prisoner with a written notice stating with particularity the grounds on which such determination was based, including a summary of the evidence and information supporting the finding that the criteria provided in section 4205 were established as to the prisoner. When feasible, the Regional Board shall advise the prisoner as to what steps, in its opinion, he may take to correct the problems responsible for his denial of release on parole, so as to enhance his chance of being released on parole.

"§ 4209. Conditions of parole

"(a) The Regional Board shall impose such conditions of parole as it deems reasonably necessary to ensure that the parolee will lead a law-abiding life or to assist him in doing so. In every case the Regional Board shall impose as a condition of parole that the parolee not commit any criminal offense during his parole.

"(b) The Regional Board may require as a condition of parole that the parolee reside in or participate in the program of a residential community treatment center, or similar public or private facility, for all or part of the period of parole if the Attorney General (or director in the case of such similar facility) certifies that adequate treatment facilities, personnel, and programs are available. In the case of a parolee who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, the Regional Board may require as a condition of parole that the parolee participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole. If the Attorney General (or director, as the case may be) determines that a parolee's residence in a center, or participation in a program, should be terminated because the parolee can derive no further significant benefits from such residence or participation, or because

his residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General (or director, as the case may be) shall so notify the Regional Board, which shall thereupon make such other provision with respect to the parolee as it deems appropriate. A parolee residing in a residential community treatment center may be required to pay such costs incident to residence as the Regional Board deems appropriate.

"(c) In imposing conditions of parole, the Regional Board shall consider the following:

"(1) there should be a reasonable relationship between the condition imposed and both the prisoner's previous conduct and his present capabilities; and

"(2) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

"(d) Upon release on parole, a prisoner shall be given a certificate setting forth the conditions of his parole.

"§ 4210. Jurisdiction of Board of Parole

"(a) Except as otherwise provided in this section, the jurisdiction of the Board of Parole over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that such jurisdiction shall terminate at an earlier date—

"(1) to the extent parole good time is accrued pursuant to section 4211, and

"(2) to the extent provided under section 4164 (relating to mandatory release).

"(b) The parole of any parolee shall run concurrently with any period of parole or probation under any other Federal, State, or local sentence.

"(c) In the case of any parolee found by the Regional Board to have intentionally refused or failed to respond to any reasonable request, order, or warrant of the Regional Board, the jurisdiction of the Board of Parole may be extended for a period equal to such period as the parolee so refused or failed to respond.

"(d) In the case of any parolee imprisoned under any other sentence, the jurisdiction of the Board of Parole may be extended for a period equal to the period during which such parolee was so imprisoned.

"(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by sections 4161 through 4165 of this title.

"(f) Upon the termination of the jurisdiction of the Board of Parole over any parolee, the Regional Board shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

"§ 4211. Parole good time

"(a) Except as provided in subsection (b), the

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Regional Board shall allow each parolee whose record of conduct shows that he has substantially observed the conditions of his parole a deduction from his parole, computed as follows:

"(1) five days for each month of parole, if the maximum period for which he may be subject to the jurisdiction of the Board of Parole, determined as of the date of release on parole, is more than six months but not more than one year;

"(2) six days for each month of parole, if such maximum period is more than one year but less than three years;

"(3) seven days for each month of parole, if such maximum period is more than three years but less than five years;

"(4) eight days for each month of parole, if such maximum period is more than five years but less than ten years;

"(5) ten days for each month, if such maximum period is ten years or more.

"(b) Deductions from parole for good conduct may be forfeited or withheld by the Regional Board pursuant to the requirements of sections 4214 and 4215.

"(c) Any deduction forfeited or withheld under the

preceding subsection may be restored by the Regional Board at any time.

"§ 4212. Early termination or release from conditions of parole

"Upon its own motion or upon petition of the parolee, the Regional Board may terminate the jurisdiction of the Board of Parole over a parolee prior to the termination of such jurisdiction under section 4210, or the Regional Board may release a parolee at any time from any condition of parole imposed under section 4209.

"§ 4213. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Regional Board may authorize his release on condition that he be deported and remain outside the United States. Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4214. Parole modification and revocation

"(a) Pursuant to the requirements of this section and section 4215, the Regional Board may modify or revoke the parole of any parolee at any time prior to the termination of the jurisdiction of the Board of Parole over the parolee.

"(b) No penalty or condition imposed pursuant to an order of parole modification and no revocation of parole shall

extend beyond the date of termination of the Board of Parole's jurisdiction over the parolee.

"(c) If a parolee has violated a condition of his parole or if his assignment to a center, or similar facility, has been terminated pursuant to section 4209 (b), the Regional Board may modify his parole by ordering that—

"(1) parole supervision and reporting be intensified;

"(2) the parolee be required to conform to one or more additional conditions of parole imposed in accordance with the provisions of section 4209; and

"(3) parole good time allowed under section 4211 be forfeited or withheld.

"(d) In the case of any parolee convicted of a criminal offense, or where otherwise warranted by the frequency or seriousness of the parolee's violation of the conditions of his parole, the Regional Board may modify his parole as provided in subsection (c) or may revoke his parole and return him to the custody of the Attorney General.

"§ 4215. Parole modification and revocation procedures

"(a) If, in the opinion of the Regional Board, there is probable cause to believe that any parolee has violated a condition of his parole, or there is probable cause to support the termination of any parolee's assignment to a center or

similar facility, or program, pursuant to section 4209 (b), the Regional Board may—

"(1) order such parolee to appear before it; or

"(2) issue a warrant and retake the parolee as provided in this section.

In the case of any parolee charged with a criminal offense, such charge shall constitute probable cause under this subsection, but issuance of an order to appear and retaking of the parolee may be suspended pending disposition of the charge.

"(b) Any order or warrant issued under this section shall provide the parolee with written notice of—

"(1) the conditions of parole he is alleged to have violated;

"(2) the time, date, place, and circumstances of the alleged violation;

"(3) the time, date, and place of the scheduled hearing;

"(4) his rights under this chapter; and

"(5) the possible action which may be taken by the Regional Board.

"(c) Any order or warrant issued under this section shall be issued as soon as practicable and by one or more

members of the Regional Board. Imprisonment in an institution shall not be deemed grounds for delay of such issuance.

"(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Regional Board, or to the custody of the Attorney General if the Regional Board shall so direct.

"(e) A parolee retaken under this section may be returned to the custody of the Attorney General and imprisoned if the Regional Board determines, after a preliminary hearing, that there is substantial reason to believe that the parolee will not appear for his hearing under subsection (g) when so ordered, or that he constitutes a danger to himself or to others. The preliminary hearing shall be held as soon as possible following the retaking of the parolee, and the parolee shall be advised of the charges against him and shall be allowed to testify at such hearing.

"(f) Prior to the hearing conducted pursuant to subsection (g), the Regional Board may impose such interim modifications of the conditions of parole as may be necessary, without regard to the provisions of section 4209.

"(g) If any parolee ordered to appear before the Regional Board or retaken by warrant under this section

contests the allegation that he has violated a condition of his parole or that his assignment to a center or program, or similar facility, has been properly terminated under section 4209(b), a hearing shall be held not later than 30 days after—

"(1) issuance of the order, or

"(2) the date of retaking,

whichever is later. Such hearing shall be held at a place reasonably near the location where the alleged violation of parole, or termination of assignment to centers or similar facility, or program occurred, and shall be conducted by at least one member of the Regional Board. In the case of any parolee imprisoned in an institution to whom an order is issued, such hearing shall be conducted at such institution or other site specified by the Regional Board at which the parolee is allowed to appear. If the Regional Board finds by a preponderance of the evidence that the parolee has violated a condition of his parole, or that a preponderance of the evidence supports the termination of his assignment to a center, or similar facility, it may modify or revoke his parole as provided in section 4214.

"(h) The hearing conducted pursuant to subsection (g) shall include the following procedures—

"(1) proper and timely opportunity for the parolee to examine evidence against him;

"(2) representation by an attorney (retained by

the parolee or appointed pursuant to section 3006A of chapter 201) or such other qualified person as the parolee shall retain, unless the parolee intelligently waives such representation;

"(3) opportunity for the parolee to appear and testify on his own behalf;

"(4) opportunity for the parolee to compel the appearance of witnesses and to confront and cross-examine witnesses; and

"(5) maintenance of a full and complete record of the hearing.

"(i) In the case of any parolee ordered to appear before the Regional Board or retaken by warrant under this section who—

"(1) does not contest the allegation that he has violated a condition of his parole or that his assignment to a center or similar facility, or program, has been properly terminated under section 4209 (b), or

"(2) has been adjudged guilty of a criminal offense,

no hearing shall be held under subsection (g), but if the parolee so requests, a hearing shall be held under this subsection to determine the modification or revocation order to be entered under section 4214, if any. Such hearing shall be conducted by not less than one member of the Regional

Board, and the parolee shall be allowed to appear and testify on his own behalf.

"(j) Not more than fourteen days following the hearing under subsection (g) or (i), the Regional Board shall inform the parolee in writing of its finding and disposition, stating with particularity the reasons therefor.

"§ 4216. Appeals

"(a) A prisoner who is denied release on parole under section 4204 or whose parole has been revoked, or a parolee whose parole good time (allowed under section 4211) has been forfeited or withheld, may appeal such action by submitting a notice of appeal not later than fifteen days after receiving written notice of such action and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than three members of the National Board. The prisoner or parolee shall be entitled to representation by an attorney (retained by him or appointed pursuant to section 3006A of chapter 21) or such other qualified person as the prisoner or parolee shall retain, unless he intelligently waives such representation. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"(b) Whenever conditions of parole are imposed under section 4209, or parole is modified pursuant to section 4214 (c) (1) or (2), the parolee may appeal such conditions or modification by submitting a notice of appeal not later than fifteen days after receiving written notice of such conditions or modification, and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than two members of the National Board. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"§ 4217. Fixing eligibility for parole at time of sentencing

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than, one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the Regional Board may determine.

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary

report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary. It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Board of Parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

"§ 4218. Young adult offenders

"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal

Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

"§ 4219. Warrants to retake Canal Zone parole violators

"An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

"§ 4220. Certain prisoners not eligible for parole

"Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

"§ 4221. Training and research

"In addition to its other powers and duties under this chapter, the National Board shall—

"(1) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(2) disseminate pertinent data and studies to

individuals, agencies, and organizations concerned with the parole process and parolees;

"(3) publish data concerning the parole process and parolees;

"(4) carry out programs of research to develop effective classification systems through which to describe the various types of offenders who require different styles of supervision and the types of parole officers who can provide them, and to develop theories and practices which can be applied successfully to the different types of parolees;

"(5) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in working directly with parolees;

"(6) devise and conduct a training program of short-term instruction in the latest proven effective methods of parole for parole personnel and other persons connected with the parole process; and

"(7) develop technical training programs to aid in the development of training programs within the several States and within the State and local agencies and private and public organizations which work with parolees.

"§ 4222. Annual report

"The National Board shall report annually to each

House of Congress on the activities of the Board of Parole.

"§ 4223. Applicability of Administrative Procedure Act

"(a) For purposes of the provisions of chapters 5 and 7 of title 5, other than sections 552(a)(4), 554, 555, 556, 557, 705, and 706(2)(E) and (F), the Board of Parole is an 'agency' as defined in such chapters.

"(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, relating to rule making, shall be deemed not to include the phrase 'general statements of policy'.

"(c) For purposes of section 701(a)(1) of chapter 7 of title 5, judicial review of decisions of the National Board made pursuant to section 4216(b) of this chapter is precluded.

"§ 4224. Definitions

"As used in this chapter—

"(a) The term 'prisoner' means a Federal prisoner other than a juvenile delinquent or a committed youth offender.

"(b) The term 'parolee' means any prisoner released on parole or deemed as if released on parole under section 4164 (relating to mandatory release)."

CONFORMING AMENDMENTS

SEC. 102. (a)(1) Section 3105 of title 5, relating to appointment of hearing examiners, is amended by striking

out the period after "title" and inserting in lieu thereof ", or chapter 311 of title 18.".

(2) Section 5314 of such title, United States Code, relating to level III of the Executive Schedule, is amended by adding at the end thereof the following new item:

"(58) Chairman, Board of Parole.".

(3) Section 5108(c)(7) of such title, relating to classification of positions at GS–16, 17, and 18, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;".

(b)(1) Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "Board of Parole".

(2) Section 3006A(a) of such title, relating to choice of plan for adequate representation by counsel, is amended by striking out "who is subject to revocation of parole" and inserting in lieu thereof "who is a prisoner or parolee entitled to representation under chapter 311 of this title (relating to parole)".

(3) Section 3006A(g) of such title, relating to discretionary appointments of counsel, is amended by striking out "subject to revocation of parole, in custody as a material

witness," and inserting in lieu thereof "in custody as a material witness".

(4) Section 5005 of such title, relating to the Youth Correction Division, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(5) The second sentence of section 5008 of such title, relating to duties of probation officers, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(c) Section 509 of title 28, United States Code, relating to functions of the Attorney General, is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out "and" at the end of paragraph (3); and

(3) striking out paragraph (4).

(d) Clause (B) of section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)(B)), relating to prohibition against certain persons holding offices, is amended by striking out "of the United States Department of Justice".

(e) Section 406(a) of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3746(a)), relating to training, education, research, demonstration, and special grants, is amended by inserting imme-

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diately after "Commissioner of Education" the following: "(and, with the Chairman of the Board of Parole with respect to training and education regarding parole)".

EFFECTIVE DATE OF TITLE

SEC. 103. The amendments made by this title shall apply—

(a) to any person sentenced to a term of imprisonment at any time after one hundred and eighty days after the date of the enactment of this Act, and

(b) except as otherwise may be provided by rule or regulation prescribed under section 104, to any person sentenced to a term of imprisonment at any time prior to the date one hundred and eighty-one days after the date of the enactment of this Act.

For any purpose other than a purpose specified in the preceding provisions of this section, the effective date of this title shall be the date one hundred and eighty days after the date of the enactment of this Act.

TRANSITIONAL RULES

SEC. 104. If, by reason of any computation of (1) eligibility for parole, (2) time of entitlement to release on parole, (3) termination of the jurisdiction of the Board of Parole, or (4) parole good time, or by reason of any other circumstances, the application of any amendment made by this title to any individual referred to in section 103(b)

is impracticable or does not carry out the purposes of this title, the National Board of the Board of Parole established under section 4201 of title 18, United States Code, as amended by this title, may prescribe such transitional rules and regulations to apply to such individual as may be fair, equitable, and consistent with the purposes of this title.

TITLE II—GRANTS TO STATES

STATE PLANS

SEC. 201. Section 453 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750b), relating to grants for correctional institutions and facilities, is amended as follows:

(a) paragraph (4) of such section is amended by striking out "offenders, and community-oriented programs for the supervision of parolees" and inserting in lieu thereof "offenders";

(b) paragraph (8) of such section is amended by striking out "and" at the end thereof;

(c) paragraph (9) of such section is amended by striking out the period at the end thereof and substituting "; and"; and

(d) the following new paragraph is inserted immediately after paragraph (9):

"(10) provides satisfactory emphasis on the development and operation of community-oriented programs

for the supervision of and assistance to parolees and provides satisfactory assurances that the State parole system shall include, to the extent feasible, the following elements:

"(A) employment programs designed to encourage the proper reintegration of offenders into the community; and

"(B) procedures designed to ensure equitable and expeditious disposition of parole hearings. The types of procedures which shall be implemented under this subparagraph include:

"(i) periodic hearings at intervals of not more than two years;

"(ii) personal appearance and testimony of the prisoner at such hearings;

"(iii) availability to the prisoner of any file, report, or other document to be used at such hearings, except to the extent that any portion of such file, report, or other document—

"(I) is not relevant,

"(II) is a diagnostic opinion which might seriously disrupt a program of rehabilitation, or

"(III) reveals sources of information which may have been obtained on a promise of confidentiality,

subject to the requirement that a finding (including the reasons therefor) shall be made on the record whenever such file, report, or other document is not available for a reason provided in clause (I), (II), or (III), and subject to the requirement that the substance of any file, report, or other document which is not available for a reason provided in clause (II) or (III) shall be available to the prisoner or his representative except when the disclosure of such substance would endanger the safety of any person other than the prisoner;

"(iv) representation of the prisoner by counsel or by another qualified individual at such hearing unless he intelligently waives such representation; and

"(v) expeditious disposition of the case and notification to the prisoner of such disposition, and in the case of denial of parole, a statement, with particularity, of the grounds on which such denial was based.

"(C) the following minimum procedures with respect to the revocation of a parolee for violation of his parole:

"(i) a hearing, at which the parolee shall have the opportunity to be heard in person and to present witnesses and documentary evidence;

"(ii) availability to the parolee of any file, report, or other document to be used at such hearings to the same extent as provided under subparagraph (B) (iii);

"(iii) representation of the parolee by counsel or by another qualified individual at such hearing, unless he intelligently waives such representation;

"(iv) opportunity for the parolee to confront and cross-examine adverse witnesses;

"(v) expeditious disposition of the case and notification to the parolee of such disposition, including a statement, with particularity, of the grounds on which such disposition is based; and

"(vi) opportunity for appellate review."

REGULATIONS

SEC. 202. Section 454 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C.

3750c) is amended by inserting immediately after "Prisons" the following: "(or in the case of the requirements specified in paragraph (10) of section 453, after consultation with the Board of Parole)".

93D CONGRESS
1ST SESSION

H. R. 2028

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1973

Mr. KASTENMEIER (for himself, Mr. MAZZOLI, Mr. MITCHELL of Maryland, and Ms. ABZUG) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an independent and regionalized Federal Board of Parole, to provide for fair and equitable parole procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Reorganization Act of 1973".

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TITLE I—FEDERAL PAROLE SYSTEM

BOARD OF PAROLE; PAROLE PROCEDURES, CONDITIONS, ETC.

SEC. 101. Chapter 311 of title 18 of the United States Code (relating to parole) is amended to read as follows:

"Chapter 311.—PAROLE

"§ 4201. Board of Parole; structure; membership; etc.

"(a) There is created, as an independent establishment in the executive branch, a Board of Parole to consist of a National Board and five Regional Boards.

"(b) The Board of Parole shall be appointed by the President by and with the advice and consent of the Senate. To the extent feasible, the racial and ethnic composition

of the Federal prison population should be proportionately reflected in the composition of the Board of Parole.

"(c) (1) The National Board shall be composed of seven members. Except as provided in paragraphs (2) and (5), members of the National Board shall be appointed for terms of six years. No individual may serve as a member of the National Board for any period of time in excess of twelve years.

"(2) Of the members first appointed to the National Board under this section—

"(A) one shall be appointed for a term of one year,

"(B) one shall be appointed for a term of two years,

"(C) one shall be appointed for a term of three years,

"(D) one shall be appointed for a term of four years,

"(E) one shall be appointed for a term of five years, and

"(F) two shall be appointed for terms of six years.

"(3) Each of the five Regional Boards shall be composed of three members. Except as provided in paragraphs (4) and (5), members of each Regional Board shall be appointed for terms of six years. No individual may serve as

a member of one or more Regional Boards for any period of time in excess of twelve years.

"(4) Of the members first appointed to two of the five Regional Boards under this section—

"(A) one member of each of such two Boards shall be appointed for a term of one year,

"(B) one member of each of such two Boards shall be appointed for a term of three years, and

"(C) one member of each of such two Boards shall be appointed for a term of five years.

Of the members first appointed to three of the five Regional Boards under this section—

"(D) one member of each of such three Boards shall be appointed for a term of two years,

"(E) one member of each of such three Boards shall be appointed for a term of four years, and

"(F) one member of each of such three Boards shall be appointed for a term of six years.

"(5) Any member of the Board of Parole appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

"(d) The President shall from time to time designate

one of the members of the National Board to serve as Chairman of the Board of Parole and shall delegate to him the necessary administrative duties and responsibilities. The Chairman of the Board of Parole shall designate one of the members of each Regional Board to serve as Chairman of such Regional Board. The term of office of the Chairman of the Board of Parole and of the Chairman of each Regional Board shall be not less than two years but not more than six years as specified at the time of designation as Chairman. The Chairman of each Regional Board shall have such administrative duties and responsibilities with respect to the Regional Board as may be necessary to carry out the purposes of this chapter.

"(e) Each Regional Board shall have such geographical jurisdiction as the National Board may provide in order to assure efficient administration.

"(f) The respective rates of pay for members of the Board of Parole (other than the Chairman of the Board of Parole) shall be equal to the maximum rate, as in effect from time to time, for GS-17 of the General Schedule of section 5332 of title 5. The rate of pay of the Chairman of the Board of Parole shall be at the rate prescribed for level III of the Executive Schedule.

"§ 4202. Powers and duties of National Board

"(a) The National Board shall have the power to—

"(1) establish general policies and rules for the Board of Parole, including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole;

"(2) conduct appellate review of determinations of the Regional Boards as provided in section 4216;

"(3) appoint and fix the basic pay of personnel of the Board of Parole (including not more than six hearing examiners to be assigned to each Regional Board);

"(4) procure for the Board of Parole temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5;

"(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

"(6) without regard to section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the functions of the Board of Parole, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

"(7) accept voluntary and uncompensated serv-

ices, notwithstanding the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665 (b));

"(8) request such information, data, and reports from any Federal agency as the Board of Parole may from time to time require and as may be produced consistent with other law;

"(9) arrange with the head of any other Federal agency for the performance by such agency of any function of the Board of Parole, with or without reimbursement;

"(10) request probation officers and other individuals, organizations, and public or private agencies to perform such duties with respect to any parolee as the National Board deems necessary for maintaining proper supervision of and assistance to such parolees; and so as to assure that no probation officers, individuals, organizations or agencies shall bear excessive case loads; and

"(11) (A) issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter with respect to which the National Board or any Regional Board is empowered to make a determination under this chapter. Such attendance of witnesses and the production

of evidence may be required from any place within the United States at any designated place of hearing within the United States.

"(B) If a person issued a subpena under paragraph (A) refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the National Board) order such person to appear before the National Board or any Regional Board to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(C) The subpena of the Board of Parole shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

"(D) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

"(E) For purposes of sections 6002 and 6004 of this title (relating to immunity of witnesses) the Board

of Parole shall be considered an agency of the United States.

The National Board shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter or as may be provided under any other provision of law (including any provision of law which invests any powers or functions in the Board of Parole).

"(b) The National Board may delegate any power or function to any member or agent of the National Board and may delegate to the Regional Boards such powers as may be appropriate other than—

"(1) the power to appoint and fix the basic pay of hearing examiners, and

"(2) the power to establish general policies, rules, and factors under subsection (a) (1).

"(c) Upon the request of the National Board, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Board of Parole in the performing of its functions.

"(d) Except as otherwise provided by law, any action taken by the National Board shall be taken by a majority vote of all individuals currently holding office as members of the National Board, and it shall maintain and make avail-

able for public inspection a record of the final vote of each member on statements of policy and interpretations adopted by it.

"§ 4203. Powers and authority of Regional Boards

"(a) The Regional Boards shall conduct such hearings and perform such other functions and duties as may be provided under this chapter.

"(b) Except as otherwise provided by law, any action taken by any Regional Board shall be taken by a majority vote of all individuals currently holding office as members of such Regional Board.

"(c) Except as otherwise provided by law, when so authorized by a Regional Board, any member or agent of the Regional Board may take any action which the Regional Board is authorized to take.

"§ 4204. Time of eligibility for release on parole

"(a) Whenever confined and serving a definite term or terms of over one hundred and eighty days, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years.

"(b) (1) Any prisoner whose eligibility for release on parole is fixed under clause (1) of section 4217 (a) at the time of sentencing shall be eligible for release on parole on a date as provided in that clause.

"(2) The Regional Board shall determine the date of eligibility of any prisoner sentenced under clause (2) of section 4217 (a). Such date shall be not later than sixty days following the date prescribed by section 4207 (b) for the prisoner's initial parole determination hearing.

"(c) The Regional Board shall determine the date of eligibility of any prisoner released on parole and subsequently reimprisoned. Such date shall be not later than sixty days following the date prescribed by section 4207 (b) for the prisoner's initial parole determination hearing.

"§ 4205. Release on parole

"(a) The Regional Board shall release a prisoner whose record shows that he has substantially observed the rules of the institution in which he is confined on the date of his eligibility for parole, unless the Regional Board determines that he should not be released on such date for one or both of the following reasons:

"(1) there is a reasonable probability that such prisoner will not live and remain at liberty without violating any criminal law; or

"(2) there is a reasonable probability that such release would be incompatible with the welfare of society.

"(b) In the case of any prisoner not earlier released under subsection (a), except in the case of special dangerous

offenders as defined in section 3575 (e) of this title, the Regional Board shall release such prisoner on parole after he has served two-thirds of his sentence, or after twenty years in the case of a sentence of thirty years or longer (including a life sentence), whichever is earlier, unless the Regional Board determines that he should not be so released because there is a high likelihood that he will engage in conduct violating any criminal law.

"(c) When by reason of his training and response to the programs of the Bureau of Prisons, it appears to the Regional Board that there is a reasonable probability that the prisoner will live and remain at liberty without violating any criminal law, and that his immediate release is not incompatible with the welfare of society, but he is not yet eligible for release on parole under section 4204, the Regional Board in its discretion may apply to the court imposing sentence for a modification of his sentence in order to make him so eligible. The court shall have jurisdiction to act upon the application at any time and no hearing shall be required.

"§ 4206. Factors taken into account; information considered

"In making a determination under section 4205 (a) or (b) (relating to release on parole) the Regional Board shall take into account the factors established by the National

Board under section 4202(a)(1), and shall consider the following information:

"(1) any reports and recommendations which the staff of the facility in which such prisoner is confined may make;

"(2) any official report of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

"(3) any presentence investigation report;

"(4) any recommendation regarding the prisoner's parole made at the time of sentencing by the sentencing judge; and

"(5) any reports of physical, mental, or psychiatric examination of the offender.

The Regional Board shall also consider such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

"§ 4207. Parole determination hearing; time

"(a) In making a determination under section 4205(a) or (b) (relating to release on parole) the Regional Board shall hold a hearing (referred to in this chapter as a 'parole determination hearing') unless it determines on the basis of the prisoner's record that the prisoner will be released on parole. The hearing shall be conducted by a panel of

three individuals, all of whom shall be either members of the Regional Board or hearing examiners, and a member of the Regional Board shall preside. Such panel shall have the authority to make the parole determination decision, notwithstanding section 4203(b).

"(b) In the case of any prisoner eligible for parole on a date provided by section 4204, an initial parole determination hearing shall be held at a time prescribed by the Regional Board. Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204(a) or (b)(1), the time of such hearing shall be not later than sixty days before such date of his eligibility for parole (as provided by such section). Whenever feasible, in the case of a prisoner eligible for parole on a date provided by section 4204(b)(2) or (c), the time of such hearing shall be not later than ninety days following such prisoner's imprisonment, or reimprisonment, as the case may be.

"(c) In any case in which release on parole is denied or delayed at the prisoner's parole determination hearing, subsequent parole determination hearings shall be held not less frequently than annually thereafter.

"§ 4208. Procedure of parole determination hearing

"(a) Within a reasonable time prior to any prisoner's parole determination hearing, the Regional Board shall (1) provide the prisoner with written notice of the time and place

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of the hearing, and (2) make available to the prisoner any file or report or other document to be used in making its determination.

"(b) Clause (2) of subsection (a) shall not apply to any portion of any file, report, or other document which—

"(1) is not relevant to the determination of the Regional Board;

"(2) is a diagnostic opinion which might seriously disrupt a program of rehabilitation; or

"(3) reveals sources of information which may have been obtained on a promise of confidentiality.

Whenever the Regional Board finds that this subsection applies to any portion of a file, report, or other document to be used by it in making its determination, it shall state such finding (including the reasons therefor) on the record and shall provide the prisoner, or any representative of the prisoner referred to in subsection (c) (2), with written notice of such finding (and reasons). The Regional Board shall make available to the prisoner, or any representative of the prisoner referred to in subsection (c) (2), the substance of any portion of any file, report, or other document not made available by reason of paragraph (2) or (3) of this subsection, except when the disclosure of such substance would endanger, in the opinion of the Regional Board, the safety of any person other than the prisoner.

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"(c) (1) At any time prior to the parole determination hearing, a prisoner may consult with his attorney, and by mail (or otherwise as provided by the Regional Board) with any person concerning such hearing.

"(2) The prisoner shall, if he chooses, be represented at the parole determination hearing by an attorney, by an employee of the Federal Bureau of Prisons, or by any other qualified person, unless he intelligently waives such representation. Such attorney may be retained by the prisoner or appointed pursuant to section 3006A of chapter 201.

"(d) The prisoner shall be allowed to appear and testify on his own behalf at the parole determination hearing.

"(e) A full and complete record of the parole determination hearing shall be kept, and not later than fourteen days after the date of the hearing, the Regional Board shall (1) notify the prisoner in writing of its determination, (2) furnish the prisoner with a written notice stating with particularity the grounds on which such determination was based, including a summary of the evidence and information supporting the finding that the criteria provided in section 4205 were established as to the prisoner. When feasible, the Regional Board shall advise the prisoner as to what steps, in its opinion, he may take to correct the problems responsible for his denial of release on parole, so as to enhance his chance of being released on parole.

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"§ 4209. Conditions of parole

"(a) The Regional Board shall impose such conditions of parole as it deems reasonably necessary to ensure that the parolee will lead a law-abiding life or to assist him in doing so. In every case the Regional Board shall impose as a condition of parole that the parolee not commit any criminal offense during his parole.

"(b) The Regional Board may require as a condition of parole that the parolee reside in or participate in the program of a residential community treatment center, or similar public or private facility, for all or part of the period of parole if the Attorney General (or director in the case of such similar facility) certifies that adequate treatment facilities, personnel, and programs are available. In the case of a parolee who is an addict within the meaning of section 4251 (a) of this title, or a drug dependent person within the meaning of section 2 (q) of the Public Health Service Act, the Regional Board may require as a condition of parole that the parolee participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole. If the Attorney General (or director, as the case may be) determines that a parolee's residence in a center, or participation in a program, should be terminated because the parolee can derive no further significant benefits from such residence or participation, or because

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his residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General (or director, as the case may be) shall so notify the Regional Board, which shall thereupon make such other provision with respect to the parolee as it deems appropriate. A parolee residing in a residential community treatment center may be required to pay such costs incident to residence as the Regional Board deems appropriate.

"(c) In imposing conditions of parole, the Regional Board shall consider the following:

"(1) there should be a reasonable relationship between the condition imposed and both the prisoner's previous conduct and his present capabilities; and

"(2) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

"(d) Upon release on parole, a prisoner shall be given a certificate setting forth the conditions of his parole.

"§ 4210. Jurisdiction of Board of Parole

"(a) Except as otherwise provided in this section, the jurisdiction of the Board of Parole over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except that such jurisdiction shall terminate at an earlier date—

"(1) to the extent parole good time is accrued pursuant to section 4211, and

"(2) to the extent provided under section 4164 (relating to mandatory release).

"(b) The parole of any parolee shall run concurrently with any period of parole or probation under any other Federal, State, or local sentence.

"(c) In the case of any parolee found by the Regional Board to have intentionally refused or failed to respond to any reasonable request, order, or warrant of the Regional Board, the jurisdiction of the Board of Parole may be extended for a period equal to such period as the parolee so refused or failed to respond.

"(d) In the case of any parolee imprisoned under any other sentence, the jurisdiction of the Board of Parole may be extended for a period equal to the period during which such parolee was so imprisoned.

"(e) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by sections 4161 through 4165 of this title.

"(f) Upon the termination of the jurisdiction of the Board of Parole over any parolee, the Regional Board shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

"§ 4211. Parole good time

"(a) Except as provided in subsection (b), the

Regional Board shall allow each parolee whose record of conduct shows that he has substantially observed the conditions of his parole a deduction from his parole, computed as follows:

"(1) five days for each month of parole, if the maximum period for which he may be subject to the jurisdiction of the Board of Parole, determined as of the date of release on parole, is more than six months but not more than one year;

"(2) six days for each month of parole, if such maximum period is more than one year but less than three years;

"(3) seven days for each month of parole, if such maximum period is more than three years but less than five years;

"(4) eight days for each month of parole, if such maximum period is more than five years but less than ten years;

"(5) ten days for each month, if such maximum period is ten years or more.

"(b) Deductions from parole for good conduct may be forfeited or withheld by the Regional Board pursuant to the requirements of sections 4214 and 4215.

"(c) Any deduction forfeited or withheld under the

preceding subsection may be restored by the Regional Board at any time.

"§ 4212. Early termination or release from conditions of parole

"Upon its own motion or upon petition of the parolee, the Regional Board may terminate the jurisdiction of the Board of Parole over a parolee prior to the termination of such jurisdiction under section 4210, or the Regional Board may release a parolee at any time from any condition of parole imposed under section 4209.

"§ 4213. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Regional Board may authorize his release on condition that he be deported and remain outside the United States. Such prisoner, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4214. Parole modification and revocation

"(a) Pursuant to the requirements of this section and section 4215, the Regional Board may modify or revoke the parole of any parolee at any time prior to the termination of the jurisdiction of the Board of Parole over the parolee.

"(b) No penalty or condition imposed pursuant to an order of parole modification and no revocation of parole shall

extend beyond the date of termination of the Board of Parole's jurisdiction over the parolee.

"(c) If a parolee has violated a condition of his parole or if his assignment to a center, or similar facility, has been terminated pursuant to section 4209 (b), the Regional Board may modify his parole by ordering that—

"(1) parole supervision and reporting be intensified;

"(2) the parolee be required to conform to one or more additional conditions of parole imposed in accordance with the provisions of section 4209; and

"(3) parole good time allowed under section 4211 be forfeited or withheld.

"(d) In the case of any parolee convicted of a criminal offense, or where otherwise warranted by the frequency or seriousness of the parolee's violation of the conditions of his parole, the Regional Board may modify his parole as provided in subsection (c) or may revoke his parole and return him to the custody of the Attorney General.

"§ 4215. Parole modification and revocation procedures

"(a) If, in the opinion of the Regional Board, there is probable cause to believe that any parolee has violated a condition of his parole, or there is probable cause to support the termination of any parolee's assignment to a center, or

similar facility, or program, pursuant to section 4209(b), the Regional Board may—

"(1) order such parolee to appear before it; or

"(2) issue a warrant and retake the parolee as provided in this section.

In the case of any parolee charged with a criminal offense, such charge shall constitute probable cause under this subsection, but issuance of an order to appear and retaking of the parolee may be suspended pending disposition of the charge.

"(b) Any order or warrant issued under this section shall provide the parolee with written notice of—

"(1) the conditions of parole he is alleged to have violated;

"(2) the time, date, place, and circumstances of the alleged violation;

"(3) the time, date, and place of the scheduled hearing;

"(4) his rights under this chapter; and

"(5) the possible action which may be taken by the Regional Board.

"(c) Any order or warrant issued under this section shall be issued as soon as practicable and by one or more

members of the Regional Board. Imprisonment in an institution shall not be deemed grounds for delay of such issuance.

"(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Regional Board, or to the custody of the Attorney General if the Regional Board shall so direct.

"(e) A parolee retaken under this section may be returned to the custody of the Attorney General and imprisoned if the Regional Board determines, after a preliminary hearing, that there is substantial reason to believe that the parolee will not appear for his hearing under subsection (g) when so ordered, or that he constitutes a danger to himself or to others. The preliminary hearing shall be held as soon as possible following the retaking of the parolee, and the parolee shall be advised of the charges against him and shall be allowed to testify at such hearing.

"(f) Prior to the hearing conducted pursuant to subsection (g), the Regional Board may impose such interim modifications of the conditions of parole as may be necessary, without regard to the provisions of section 4209.

"(g) If any parolee ordered to appear before the Regional Board or retaken by warrant under this section

contests the allegation that he has violated a condition of his parole or that his assignment to a center, or similiar facility, or program, has been properly terminated under section 4209 (b), a hearing shall be held not later than 30 days after—

"(1) issuance of the order, or

"(2) the date of retaking,

whichever is later. Such hearing shall be held at a place reasonably near the location where the alleged violation of parole, or termination of assignment to a center or similar facility, or program occurred, and shall be conducted by at least one member of the Regional Board. In the case of any parolee imprisoned in an institution to whom an order is issued, such hearing shall be conducted at such institution or other site specified by the Regional Board at which the parolee is allowed to appear. If the Regional Board finds by a preponderance of the evidence that the parolee has violated a condition of his parole, or that a preponderance of the evidence supports the termination of his assignment to a center, or similar facility, it may modify or revoke his parole as provided in section 4214.

"(h) The hearing conducted pursuant to subsection (g) shall include the following procedures—

"(1) proper and timely opportunity for the parolee to examine evidence against him;

"(2) representation by an attorney (retained by

the parolee or appointed pursuant to section 3006A of chapter 201) or such other qualified person as the parolee shall retain, unless the parolee intelligently waives such representation;

"(3) opportunity for the parolee to appear and testify on his own behalf;

"(4) opportunity for the parolee to compel the appearance of witnesses and to confront and cross-examine witnesses; and

"(5) maintenance of a full and complete record of the hearing.

"(i) In the case of any parolee ordered to appear before the Regional Board or retaken by warrant under this section who—

"(1) does not contest the allegation that he has violated a condition of his parole or that his assignment to a center or similar facility, or program, has been properly terminated under section 4209 (b), or

"(2) has been adjudged guilty of a criminal offense,

no hearing shall be held under subsection (g), but if the parolee so requests, a hearing shall be held under this subsection to determine the modification or revocation order to be entered under section 4214, if any. Such hearing shall be conducted by not less than one member of the Regional

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Board, and the parolee shall be allowed to appear and testify on his own behalf.

"(j) Not more than fourteen days following the hearing under subsection (g) or (i), the Regional Board shall inform the parolee in writing of its finding and disposition, stating with particularity the reasons therefor.

"§ 4216. Appeals

"(a) A prisoner who is denied release on parole under section 4204 or whose parole has been revoked, or a parolee whose parole good time (allowed under section 4211) has been forfeited or withheld, may appeal such action by submitting a notice of appeal not later than fifteen days after receiving written notice of such action and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than three members of the National Board. The prisoner or parolee shall be entitled to representation by an attorney (retained by him or appointed pursuant to section 3006A of chapter 21) or such other qualified person as the prisoner or parolee shall retain, unless he intelligently waives such representation. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"(b) Whenever conditions of parole are imposed under section 4209, or parole is modified pursuant to section 4214 (c) (1) or (2), the parolee may appeal such conditions or modification by submitting a notice of appeal not later than fifteen days after receiving written notice of such conditions or modification, and by submitting appeal papers not later than forty-five days after being so informed. Such appeal shall be decided by no less than two members of the National Board. The National Board shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of its decision and the reasons therefor.

"§ 4217. Fixing eligibility for parole at time of sentencing

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than, one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the pris-

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oner may become eligible for parole at such time as the Regional Board may determine.

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the prisoner on probation as authorized by section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the Board of Parole a summary

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report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Board of Parole may make such other investigation as it may deem necessary. It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Board of Parole information concerning the prisoner, and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

"§ 4218. Young adult offenders

"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency or criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal

Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to the provisions of such Act.

"§ 4219. Warrants to retake Canal Zone parole violators

"An officer of a Federal penal or correctional institution, or a Federal officer authorized to serve criminal process within the United States, to whom a warrant issued by the Governor of the Canal Zone for the retaking of a parole violator is delivered, shall execute the warrant by taking the prisoner and holding him for delivery to a representative of the Governor of the Canal Zone for return to the Canal Zone.

"§ 4220. Certain prisoners not eligible for parole

"Nothing in this chapter shall be construed to provide that any prisoner shall be eligible for release on parole if such prisoner is ineligible for such release under any other provision of law.

"§ 4221. Training and research

"In addition to its other powers and duties under this chapter, the National Board shall—

"(1) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(2) disseminate pertinent data and studies to

individuals, agencies, and organizations concerned with the parole process and parolees;

"(3) publish data concerning the parole process and parolees;

"(4) carry out programs of research to develop effective classification systems through which to describe the various types of offenders who require different styles of supervision and the types of parole officers who can provide them, and to develop theories and practices which can be applied successfully to the different types of parolees;

"(5) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in working directly with parolees;

"(6) devise and conduct a training program of short-term instruction in the latest proven effective methods of parole for parole personnel and other persons connected with the parole process; and

"(7) develop technical training programs to aid in the development of training programs within the several States and within the State and local agencies and private and public organizations which work with parolees.

"§ 4222. Annual report

"The National Board shall report annually to each

House of Congress on the activities of the Board of Parole.

"§ 4223. Applicability of Administrative Procedure Act

"(a) For purposes of the provisions of chapters 5 and 7 of title 5, other than sections 552(a)(4), 554, 555, 556, 557, 705, and 706(2)(E) and (F), the Board of Parole is an 'agency' as defined in such chapters.

"(b) For purposes of subsection (a) of this section, section 553(b)(3)(A) of title 5, relating to rule making, shall be deemed not to include the phrase 'general statements of policy'.

"(c) For purposes of section 701(a)(1) of chapter 7 of title 5, judicial review of decisions of the National Board made pursuant to section 4216(b) of this chapter is precluded.

"§ 4224. Definitions

"As used in this chapter—

"(a) The term 'prisoner' means a Federal prisoner other than a juvenile delinquent or a committed youth offender.

"(b) The term 'parolee' means any prisoner released on parole or deemed as if released on parole under section 4164 (relating to mandatory release)."

CONFORMING AMENDMENTS

SEC. 102. (a)(1) Section 3105 of title 5, relating to appointment of hearing examiners, is amended by striking

out the period after "title" and inserting in lieu thereof ", or chapter 311 of title 18.".

(2) Section 5314 of such title, United States Code, relating to level III of the Executive Schedule, is amended by adding at the end thereof the following new item:

"(58) Chairman, Board of Parole.".

(3) Section 5108(c)(7) of such title, relating to classification of positions at GS–16, 17, and 18, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;".

(b)(1) Section 3655 of title 18, United States Code, relating to duties of probation officers, is amended by striking out "Attorney General" in the last sentence and inserting in lieu thereof "Board of Parole".

(2) Section 3006A(a) of such title, relating to choice of plan for adequate representation by counsel, is amended by striking out "who is subject to revocation of parole" and inserting in lieu thereof "who is a prisoner or parolee entitled to representation under chapter 311 of this title (relating to parole)".

(3) Section 3006A(g) of such title, relating to discretionary appointments of counsel, is amended by striking out "subject to revocation of parole, in custody as a material

witness," and inserting in lieu thereof "in custody as a material witness".

(4) Section 5005 of such title, relating to the Youth Correction Division, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(5) The second sentence of section 5008 of such title, relating to duties of probation officers, is amended by striking out "Attorney General" and inserting in lieu thereof "Chairman of the Board of Parole".

(c) Section 509 of title 28, United States Code, relating to functions of the Attorney General, is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out "and" at the end of paragraph (3); and

(3) striking out paragraph (4).

(d) Clause (B) of section 504 (a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504 (a) (B)), relating to prohibition against certain persons holding offices, is amended by striking out "of the United States Department of Justice".

(e) Section 406 (a) of part D of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3746 (a)), relating to training, education, research, demonstration, and special grants, is amended by inserting immediately after "Commissioner of Education" the following: "(and, with the Chairman of the Board of Parole with respect to training and education regarding parole)".

EFFECTIVE DATE OF TITLE

SEC. 103. The amendments made by this title shall apply—

(a) to any person sentenced to a term of imprisonment at any time after one hundred and eighty days after the date of the enactment of this Act, and

(b) except as otherwise may be provided by rule or regulation prescribed under section 104, to any person sentenced to a term of imprisonment at any time prior to the date one hundred and eighty-one days after the date of the enactment of this Act.

For any purpose other than a purpose specified in the preceding provisions of this section, the effective date of this title shall be the date one hundred and eighty days after the date of the enactment of this Act.

TRANSITIONAL RULES

SEC. 104. If, by reason of any computation of (1) eligibility for parole, (2) time of entitlement to release on parole, (3) termination of the jurisdiction of the Board of Parole, or (4) parole good time, or by reason of any other circumstances, the application of any amendment made by this title to any individual referred to in section 103 (b)

is impracticable or does not carry out the purposes of this title, the National Board of the Board of Parole established under section 4201 of title 18, United States Code, as amended by this title, may prescribe such transitional rules and regulations to apply to such individual as may be fair, equitable, and consistent with the purposes of this title.

TITLE II—GRANTS TO STATES

STATE PLANS

SEC. 201. Section 453 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750b), relating to grants for correctional institutions and facilities, is amended as follows:

(a) paragraph (4) of such section is amended by striking out "offenders, and community-oriented programs for the supervision of parolees" and inserting in lieu thereof "offenders";

(b) paragraph (8) of such section is amended by striking out "and" at the end thereof;

(c) paragraph (9) of such section is amended by striking out the period at the end thereof and substituting "; and"; and

(d) the following new paragraph is inserted immediately after paragraph (9):

"(10) provides satisfactory emphasis on the development and operation of community-oriented programs

for the supervision of and assistance to parolees and provides satisfactory assurances that the State parole system shall include, to the extent feasible, the following elements:

"(A) employment programs designed to encourage the proper reintegration of offenders into the community; and

"(B) procedures designed to ensure equitable and expeditious disposition of parole hearings. The types of procedures which shall be implemented under this subparagraph include:

"(i) periodic hearings at intervals of not more than two years;

"(ii) personal appearance and testimony of the prisoner at such hearings;

"(iii) availability to the prisoner of any file, report, or other document to be used at such hearings, except to the extent that any portion of such file, report, or other document—

"(I) is not relevant,

"(II) is a diagnostic opinion which might seriously disrupt a program of rehabilitation, or

"(III) reveals sources of information which may have been obtained on a promise of confidentiality,

subject to the requirement that a finding (including the reasons therefor) shall be made on the record whenever such file, report, or other document is not available for a reason provided in clause (I), (II), or (III), and subject to the requirement that the substance of any file, report, or other document which is not available for a reason provided in clause (II) or (III) shall be available to the prisoner or his representative except when the disclosure of such substance would endanger the safety of any person other than the prisoner;

"(iv) representation of the prisoner by counsel or by another qualified individual at such hearing unless he intelligently waives such representation; and

"(v) expeditious disposition of the case and notification to the prisoner of such disposition, and in the case of denial of parole, a statement, with particularity, of the grounds on which such denial was based.

"(C) the following minimum procedures with respect to the revocation of a parolee for violation of his parole:

"(i) a hearing, at which the parolee shall have the opportunity to be heard in person and to present witnesses and documentary evidence;

"(ii) availability to the parolee of any file, report, or other document to be used at such hearings to the same extent as provided under subparagraph (B) (iii);

"(iii) representation of the parolee by counsel or by another qualified individual at such hearing, unless he intelligently waives such representation;

"(iv) opportunity for the parolee to confront and cross-examine adverse witnesses;

"(v) expeditious disposition of the case and notification to the parolee of such disposition, including a statement, with particularity, of the grounds on which such disposition is based; and

"(vi) opportunity for appellate review."

REGULATIONS

SEC. 202. Section 454 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1 (42 U.S.C.

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3750c) is amended by inserting immediately after "Prisons" the following: "(or in the case of the requirements specified in paragraph (10) of section 453, after consultation with the Board of Parole)".

Mr. KASTENMEIER. The hearings have been scheduled to acquaint new members of the subcommittee with the legislation and to refresh the recollection of those of us who participated in the 1972 proceedings.

Parole has become an integral component of the American corrections process. It is a product of a changed emphasis in American penology which seeks to protect society by restoring offenders to useful membership in society. Congress extended parole to the Federal correctional system in 1910. Today all personnel of the Board are stationed in Washington. Final decisions are made by concurrence of two members. In fiscal year 1970, members of the Board made more than 17,000 decisions.

In the fall and winter of 1971–72, the subcommittee visited jails and prisons in five States and the District of Columbia, talking to hundreds of prisoners and corresponding with hundreds of others. One issue, one concern, has loomed above all others and that is parole. Increased interest in and attention to the Federal parole system has given rise to substantive criticism. The U.S. Board of Parole processes have been particularly subject to scrutiny and the conclusions of this scrutiny are most disturbing and call for remedial legislation.

A recent study by the Administrative Conference of the United States recommends significant changes in the system of procedures by which the Board operates. This study is included in the printed hearings record which the members have before them (vol. VII–B, p. 1377.)

The bill which is the subject of these hearings is, I believe, a responsible and effective reaction to the information acquired by the subcommittee through its hearings and its 92d Congress visits. The bill establishes an independent Board of Parole, comprising a National Board and five Regional Boards, and lays down due process requirements to be applicable to revocation hearings, to hearings in which the propriety of release on parole is inititally determined, and to appeal. We believe that the prime essential is the creation of a system which protects society, including the prisoner. H.R. 1598 enhances the ability of the U.S. Board of Parole to make informed decisions, while insuring that those who are affected by its decisions receive fair and equitable consideration.

Beyond this, title II of H.R. 1598 amends the Omnibus Crime Control and Safe Streets Act by making eligibility to receive corrections grants depend in part on due process components in State plans.

Our witnesses this morning are Hon. Maurice H. Sigler, distinguished chairman of the U.S. Board of Parole, and Hon. Antonin Scalia, chairman of the Administrative Conference of the United States. The subcommittee is also fortunate in having present Mr. Howard Eglit, formerly corrections counsel to the subcommittee, who will assist us and is expected to testify at next week's hearings. Mr. Eglit is largely responsible for the subcommittee's progress last year on the pending legislation. At this point, before calling on the witnesses, I would like to yield to my friend and colleague, the gentleman from Illinois.

Mr. RAILSBACK. Thank you, Mr. Chairman. I want to begin by commending our chairman for scheduling these 2 days of public hearings. Also, I would like to ask unanimous consent that my remarks be inserted in the record following your remarks so that I can just summarize.

28-049—74——9

Mr. KASTENMEIER. Without objection, they will be so included.

Mr. RAILSBACK. Mr. Chairman, I think that our experiences last Congress led all of us that were on Subcommittee No. 3 in the last term to conclude that perhaps in this country, we have been a failure as far as our entire criminal justice system is concerned. I am particularly concerned about the high rate of recidivism and I can only say that even though the bill that we reported out last year contains some very great improvements over the present parole system, there are still many aspects of our correctional system that need to be dealt with. I think something has to be done from a minimum wage standpoint. I favor something like a pretrial provision to keep our young people out of what I believe to be a very bad criminal justice system. And I would urge my colleagues on this side of the aisle to not let public apathy prevent us from enacting some substantial reforms, including H.R. 1598, which was the subject of so much discussion in so many hearings.

I want to just tell the chairman that even though I may disagree with the judicial review part of the bill, I expect to enthusiastically work for its passage.

Thank you.

[The complete statement of Mr. Railsback follows:]

STATEMENT OF HON. TOM RAILSBACK BEFORE JUDICIARY SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE OPENING HEARINGS ON H.R. 1598

Thank you Mr. Chairman. I would like to commend our Chairman for scheduling these two days of public hearings. Last year, Subcommittee No. 3 spent a good many hours of drafting this bill to reorganize our present parole board structure and function. A lot of energy and thought went into every section of this bill. I believe that H.R. 1598 is a good bill. I further believe it is a bill that will be supported by the Full Committee and eventually adopted by the House of Representatives.

It was not by happenstance that we chose parole as our first area for legislative effort. As our Chairman pointed out in his opening remarks, parole was the most talked about area for reform among the inmates we visited. Their anguish over existing parole procedures or the lack thereof was best stated by Jimmy Hoffa in testimony before this subcommittee last year:

"Parole is the predominant thought in every person's mind who goes to prison . . . you cannot diminish the desire of individuals for a parole or the anxiety brought prior to a parole hearing and the despair when he comes out of the Parole Board [and] is turned down the way people are turned down. You are on the right track to alleviate tension, to alleviate aggravation and alleviate hate, and it is hate, believe me. The people in that prison hate the words 'Parole Board'."

Last year this subcommittee compiled over 1500 printed pages of public hearings, not on this particular bill but on a similar bill, H.R. 13118. Those hearings were extensive and penetrating. These hearings will not be extensive, I hope, Mr. Chairman, that we can move expeditiously and favorably report H.R. 1598 to the Full Committee. I have some questions as to the scope of the judicial review section of this bill as does the Judicial Conference of the United States. But this will not inhibit my active support for this legislation.

Arbitrary and unchecked discretion permits and occasions irrational, selective, and discriminatory decision-making. This is what H.R. 1598 is aimed at correcting. This is its primary focus. I believe that when prisoners are treated fairly, society will be the ultimate benefactor.

Mr. KASTENMEIER. I appreciate the statement of the ranking minority member, the gentleman from Illinois.

At this time, the Chair would like to call on the distinguished chairman of the U.S. Board of Parole, Maurice Sigler.

We are very pleased to have you here, Mr. Sigler, and are appreciative of your efforts.

TESTIMONY OF HON. MAURICE H. SIGLER, CHAIRMAN, U.S. BOARD OF PAROLE; ACCOMPANIED BY JOSEPH BARRY, COUNSEL

Mr. SIGLER. Mr. Chairman, members of the committee, accompanying me today is Joe Barry, counsel for the Board of Parole, and any questions that you might have regarding law, we would appreciate it if you would just direct that to him because he is expert in that and I know, I guess you would have to say, very little law.

We want to thank you for this opportunity to appear before you to discuss H.R. 1598, your "Parole Reorganization Act of 1973." While I have not previously had the pleasure of testifying before this subcommittee, I am aware, Mr. Chairman, of your keen interest in the area of parole reform, and I wish to commend you for the fine work you have done.

Before I discuss specific features of H.R. 1598, I believe that it would be useful to bring the subcommittee up to date on the progress the Board of Parole has made in improving the paroling process. I think you will find that many of the structural and procedural changes which we intend to implement on a nationwide basis in the very near future are similar to those suggested in your legislative proposal. While we do object to several of the provisions of the bill, I think that it is fair to say that we are in agreement on many fundamental issues, and I am hopeful that we can work in close cooperation toward achieving the common goal of a better decisionmaking process.

As I mentioned, the Board intends to initiate changes in both the structure of the Board and its procedures on a nationwide scale. We believe we are in a position to do this very soon, perhaps within several months, because of the great success we have experienced in our pilot regionalization project. As you may know, the Board conceived some time ago the idea of establishing a pilot project to test both the concept of regionalization as well as new parole procedures. The project went into effect last October in the northeast region of the United States, and the results have been so encouraging that we have now made definite plans to extend many of the project's innovative features to the other regions of the country.

Let me outline now the organization of the project and the procedural changes that have been adopted. As I proceed, I would like to bring to the subcommittee's attention some of the results from our first 6 months of experience.

The northeast region of the United States consists of the following Federal institutions: The Federal Reformatory, Petersburg, Va.; and the Robert F. Kennedy Youth Center, Morgantown, W. Va. (youth institutions); also the U.S. Penitentiary, Lewisburg, Pa.; the Federal Reformatory for Women, Alderson, W. Va.; and the Federal Correctional Institution, Danbury, Conn. (adult institutions).

For purposes of the project, parole interviews are conducted by a panel of two hearing examiners. Their recommendations are then forwarded to the Board in Washington where a parole decision is made. The decision is then communicated back to the institution.

The project is innovative in many respects. First of all, parole decisions are based on explicit guidelines designed to provide fairness and reasonable uniformity in the parole process. Briefly the guidelines take into account the severity of the offense as well as the parole prognosis, that is the probability of favorable parole outcome. Once

these elements are known, the general range of time to be served before release can be determined. For example, an inmate who was convicted of a low severity offense and who has a very high probability of favorable parole outcome will generally serve a relatively short period of time before release; an inmate with a low severity offense, but only a fair probability of favorable parole outcome will generally serve a longer period of time, et cetera. The time periods are specified for each combination of elements.

After the range of time to be served is determined, other factors are then considered, such as the subject's institutional behavior and participation in institutional programing, the results of institutional testing, community resources, and the parole plan. When exceptional factors are present, such as extremely good or poor institutional performance, and a decision falling outside of the guidelines range is made, the hearing examiner must cite the reason for this exception.

These guidelines provide a generally consistent parole policy, and in individual cases, serve to alert reviewing officers to unique decisions so that either the special factors in the case may be specified or the decision may be reconsidered. It is felt that the use of these guidelines will serve not to remove discretion, but to enable it to be exercised in a fair and rational manner.

For purposes of the pilot project, an inmate is also permitted to have a representative or advocate present with him at the parole interview. The function of the representative is to assist the inmate in summarizing the positive features of his case. This aspect has been well received by inmates and has proved to be especially helpful in cases where an inmate has had difficulties expressing himself. For the first 6 months of the project, representatives appeared at over 40 percent of the interviews.

I would like to point out here that up until recently inmates have not been permitted to be represented by legal counsel. The Board is now of the opinion that there is no need to preclude an attorney from appearing as an inmate's representative in our pilot project cases simply because he is an attorney, as long as he realizes that parole release determinations do not, and should not, involve an adversary presentation of issues of law or fact. Starting this month, therefore, inmates will be and are being permitted to appear at the initial interview with a representative who may be an attorney.

Another objective of the pilot project is to render speedier parole decisions. One of the frequent criticisms leveled at the Board, and justifiably so, is that the decisionmaking process has been too cumbersome and slow. This is in large part due to the fact that some 17,000 parole-related decisions must be made during the course of a year within an administrative framework that is far from perfect.

We established a goal in the project of notifying the institution of the Board's decision within a very short period of time, and I can report that 99.5 percent of all decisions have been made known to the inmates within 5 working days. We believe that this is a very significant accomplishment, since it tends to minimize the anxiety which the inmates understandably face during the waiting period.

In addition, inmates are provided with written reasons in cases when parole is denied. The providing of reasons has been a frequent suggestion from those who have studied the parole process, and we

believe that the suggestion is sound. This belief has been reinforced by the results of the project. We have found that inmates who are advised of the reasons for parole denial are better able to understand what steps they must take to improve their chances—this, of course, at a later date. Furthermore, the cloak of secrecy is removed from the decisionmaking process when the reasons for the decision are communicated to the inmate.

The pilot project also involves a new review/appeal mechanism. Briefly, under this procedure inmates are permitted to file for review 30 days after a parole decision has been rendered if there is new and significant information which was available at the time of the interview, but not considered, or if the written reasons provided to the inmate do not support the order of the Board.

The petition by the inmate is considered by a Regional Board member, who may affirm the decision; grant a review hearing in Washington, D.C., at which the inmate may be represented; grant a reinterview at the institution; or modify the original decision. During the first 6 months, 104 requests for review were acted upon. The decision was affirmed in approximately 70 percent of the cases.

If the inmate is not satisfied with the action taken upon review, he may then appeal the decision to the Board after a 90-day waiting period. If a member of the Board determines that the appeal should be considered, he and two other members render a final decision.

This then is a general description of our pilot regionalization project. As I have already indicated, the results after 6 months have been very encouraging. We intend to continue the project and make appropriate improvements until such time as it is absorbed into a general parole reorganization.

As I suggested at the outset, the Board of Parole is also actively planning a general reorganization, based on our experience with the pilot project, to expand the procedural and substantive reforms to Federal parole applicants throughout the United States. I would like now to outline the form of the reorganizations as it is presently contemplated.

First of all, there will be a basic structural change in the Board of Parole in order to effect regionalization on a national scale. The plan calls for the creation of five parole regions, each headed by a Regional Board member, hereafter referred to as Regional Director. Each regional office would have responsibility for handling the total parole function within the particular geographical area. In addition, three Board members, hereafter referred to as National Directors, would sit in Washington, D.C., as a National Appellate Board. Moreover, authority for original case decisions would be delegated to Parole Hearing Examiners who would work in two-man panels using explicit decision guidelines promulgated by the Board, such as those I have discussed. In cases in which decisions outside of the parole guidelines were made, each Hearing Examiner panel would be required to specify the unique factors considered. Furthermore, each inmate would be permitted to have a representative who may be an attorney, to assist him at his parole hearing; parole denial would be accompanied by written reasons; and the right to a two-level appeal process would be provided.

Under our proposal, the Regional and National Directors would function as an appellate and policy-setting body. The Regional Di-

rector would consider appeals from the case decisions of the Hearing Examiner panels within his region, and his decision could then be appealed to the three National Directors sitting as a National Appellate Board. The decision of the National Appellate Board would be final. In essence, the procedural details would be similar to those of the pilot project discussed previously.

In addition, original jurisdiction in certain cases, such as those that are especially sensitive or notorious, would be retained by the National Appellate Board. Also the Regional and National Directors would meet as the U.S. Board of Parole at regular intervals to develop, modify, and promulgate Board procedures, rules, and policies.

This then basically describes the reorganization plan as presently envisioned. We think that implementing the plan would meet the criticisms leveled at the Board by achieving the following major goals:

1. Providing timely, well-reasoned decisions based upon personal interviews of inmates by a professionally trained hearing panel;
2. Developing and implementing an explicit general paroling policy to provide greater consistency and equity in decisionmaking;
3. Affording an efficient, effective, and legal method of reviewing case decisions; and
4. Establishing a more effective and responsive liaison with the institution, courts, and related personnel, as well as with the persons under the supervision of the Board.

Before turning to the specific features of H.R. 1598, I would like to say that we are in favor of accomplishing the reforms administratively, rather than by legislation. Our view is that administrative changes would have the advantage of much greater flexibility and permit us to continue experimentation until the best parole process can be achieved. We are dealing with an inexact science and should be in a position to make additional changes, necessitated by experience, mistake, or advances in the state of the art.

Mr. Chairman, at this point I would like to proceed with a discussion of your legislation. I hope that it is apparent that many of the bill's features are included in both our pilot regionalization project and the planned general reorganization. For this reason, I will address myself only to those provisions of the bill with which we have significant difficulty.

First of all, we do not share the belief that the Board should be independent from the Department as section 4201(a) would require. There is no doubt in my mind that our decisions are rendered independently, yet we benefit from the administrative support of the Department. Also, I note that section 4201(b) would require, to the extent feasible, that the Board of Parole represent the ethnic and racial composition of the Federal prison population. It is our opinion that this requirement fails to take into consideration the fact that the Board represents the American public as well as Federal prisoners. Moreover, we are not aware of any evidence to suggest that such a Board would be better qualified to render parole decisions than one whose composition is determined solely on merit considerations. By way of comparison, permit me to point out that there is no such requirement for Federal judges who play an equally important role in determining the length of time an individual will spend in prison.

We find section 4205 especially troublesome. Under present law, the granting of parole is discretionary with the Board. The Board must make a positive finding that there is a reasonable probability that the prisoner would not violate the law and that his release would not be incompatible with the welfare of society.

Section 4205, however, would appear to establish a presumption in favor of parole by requiring that the board release a prisoner unless it finds certain factors to be present. This procedure would be weighted heavily in favor of the inmate. We believe, however, that it is not unreasonable to require a positive finding by the board that he can assume the responsibility of leading a law abiding life. The welfare and protection of society demand nothing less.

Subsection (b) of section 4205 would require that with respect to any prisoner not released earlier under the provisions discussed immediately above, the regional board would have to release him after two-thirds of his sentence unless it finds a "high probability" that he will engage in criminal conduct. Again, we believe that the burdens are reversed.

In our opinion, the present standard should remain in effect; namely, that it must appear to the board that there is a reasonble probability that the inmate will not engage in further violations of law and that his release at that time is not incompatible with the welfare of society.

Section 4207, which deals with the parole determination hearing, requires that in any case in which parole is denied or delayed, subsequent parole determination hearings must be held annually thereafter. We agree that the rule should be for at least annual reviews; however, we believe that discretion should be left to the board to decide against annual review in cases where it appears clear that a release order after an additional year would be inappropriate. In such cases we would wish to retain discretion to defer a further hearing for a maximum of 3 years. This discretion would be exercised in those situations where it could be realistically seen that a longer period would be needed to meet minimum release requirements. Annual review in such cases would only mislead the inmate and overburden the board.

The provisions of section 428 pose problems which bar our endorsement. Specifically, that section would make available to any inmate or his representative the files, reports, or documents used in parole decisionmaking. Exceptions are made for documents which constitute diagnostic opinions, or which reveal sources of information obtained confidentially, but the bill would require that the prisoner be given written notice of the exceptions and that he be provided with the substance of the documents.

It is the present policy of the board not to permit access to these materials. First of all, many of the documents do not belong to the board and we are in no position to unilaterally release them. For example, certain reports are compiled by the Bureau of Prisons. In addition, the presentence report is the property of the sentencing court, and we are not permitted to release the contents without specific authorization. I must say, however, Mr. Chairman, that if these problems could be solved, I would favor limited access to file materials.

Section 4208 also permits a prisoner to be represented at a parole determination hearing, either by an attorney or any other qualified person. Attorneys may either be retained or appointed under the provisions of the Criminal Justice Act. With respect to representation, it has been the policy of the board in our pilot project to permit an inmate to appear with an advocate, so long as the advocate was not an attorney. This position was based on the fact that the parole hearings are not adversary proceedings. The nonadversary nature of the proceedings is, of course, well supported in law.

Our concern was that the presence of lawyers would have the effect of turning the parole hearing into a legal or factual confrontation between the prisoner and the hearing examiner. Our position has been modified, as I mentioned earlier, and we are now permitting representation by attorneys in our pilot project so long as the attorneys recognize the nonadversarial nature of the hearing.

We are opposed, however, to appointment of lawyers for parole applicants under the Criminal Justice Act. The Criminal Justice Act now in force does not permit appointment of attorneys for parole hearings, and even for parole revocation hearings it provides for appointment of counsel only if the court finds that the interests of justice require such appointment for an indigent prisoner. By contrast, this bill would require appointment both for parole and parole revocation hearings at the request of the prisoner.

For both types of hearings we feel the law should remain as it stands. With respect to revocation, appointments of counsel should be left to the courts' discretion as the Criminal Justice Act provides. This view is in accord with the latest Supreme Court ruling on the subject. (See *Gagnon* v. *Scarpelli*, No. 71–1225, decided May 14, 1973.) In parole hearings we believe that no court appointment of counsel, discretionary or otherwise, should be provided. Again, the nonadversary nature of the parole hearing is such that attorney representation is not required. This indeed is the obvious rationale of the existing law's exclusion of parole hearings from the requirements of attorney appointments.

We can foresee that if lawyers are available for the asking, then every inmate will surely demand one. Very soon, all inmates will have legal counsel, and the inevitable result will be the development of a formalized, legalistic parole hearing. This of course would necessitate a vast augmentation in board personnel. We are unconvinced that such an eventuality would result in better and quicker parole decisions.

Section 4210 deals with the jurisdiction of the Board of Parole. The bill, like present law, starts with the notion that the period of parole, absent special factors, is the maximum term of imprisonment reduced by the time served in prison prior to parole. This creates an anomaly, since persons released earlier have a possible parole term which is longer than those released later. The latter group, however, presents greater parole risks. I would like to mention that the administration's proposal to reform the Federal criminal laws, introduced as H.R. 6046, makes the term of parole independent of the amount of time served prior to parole. We believe this to be the better approach.

I would also like to point out that the administration's code reform legislation rejects the concept of "good time," both for persons in prison and those on parole. Our experience indicates that good time

serves only the function of more rapidly terminating paroles and not necessarily deterring misconduct. We believe that the approach taken in section 4212, which permits the early termination of parole, is wholly adequate to deal with excessive parole terms.

Under section 4214, the parole term served before a parole violation cannot extend the term of the Board's jurisdiction over the individual. Thus, the parolee receives 100 percent credit for parole time upon modification or revocation, even though he may forfeit good time. This progressively reduces the sanctions available to deter violations by parolees. Such credits have been rejected in H.R. 6046.

Section 4215 outlines the procedures for revocation of parole, and we are in general accord with its provisions, which track the requirements of *Morrissey* v. *Brewer*, 408 U.S. 417, and our own established procedures.

We cannot endorse subsection (e), however, which in effect provides for release of a parolee on his own recognizance, except if deemed dangerous or likely to flee, following the preliminary interview and pending the revocation hearing. Present law provides that persons at this point in service of sentences may be released, even on bail, only in very extraordinary circumstances. It should be pointed out of course that expedited revocation hearings under regionalization will eliminate any unnecessary delay.

Section 4215 also provides an opportunity for the parolee to compel the appearance of witnesses at a revocation hearing. This would be possible because of the bill's provisions for subpena power in the National Board. The power would run nationwide and be enforceable through the U.S. district courts. We do not believe, however, that such subpena power is required to enable the Board to conduct fair parolee revocation hearings. The Morrissey decision, in which the Supreme Court listed the necessary elements for a fair revocation hearing including a conditional right to cross-examine adverse witnesses, significantly did not mandate compulsory process for the attendance of witnesses, though this possibility could not have escaped the court's attention. Our experience has not indicated any necessity for compulsory process to obtain witnesses for the parolee's cause. He is permitted to have voluntary witnesses and he has the right under Morrissey to cross-examine any adverse witnesses who appear. Further, any adverse witnesses whom he wishes to attend are requested to appear, provided that this is not determined to be dangerous, or unwise for other good reasons, as provided in Morrissey.

If a parolee could compel witnesses' attendance as in a criminal trial, revocation hearings would be delayed and obstructed with no real benefit to the parolee. Under present law, as mentioned above, the parolee is provided counsel where the interests of justice require an attorney's assistance, such as in cases of factual dispute. The attorney of course will see to it that any favorable testimony by voluntary witnesses, either in person or by affidavit or other documentation, is presented.

We have one further objection to section 4215, that being with respect to its provisions for a revocation hearing upon termination of an assignment of a prisoner to a community treatment center. This termination of assignment, as we read the bill, constitutes a mere change in a condition of his parole, not a revocation of parole. We do

not see the necessity for a formal revocation-type hearing where revocation is not being decided; indeed, it would appear anomalous to provide such a hearing on the issue of whether the parolee should be placed in a situation perhaps less restrictive of his liberty than the community treatment center assignment. Further, if a hearing of this nature were required, it might inhibit the free use of such centers for parolees, this discouraging use of a most useful rehabilitative tool.

Sections 4214 and 4215 also might be read to require a revocation-type hearing for modification of any condition of parole. While we doubt that this is the intent of the bill, we would of course oppose such provisions.

Section 4216 provides for automatic appeals in all cases where parole has been denied or revoked, or where parole good time has been withheld or forfeited, or where parole conditions have been imposed or modified. Appeals shall be decided by at least three members of the National Board, except where parole conditions have been imposed or modified, in which case at least two members are required. We believe that these appeals should be discretionary, and that there should be a mechanism to screen out those frivolous cases that will only clog the appellate system.

Title II of the bill provides for an amendment to that section of the Crime Control and Safe Streets Act of 1968 dealing with grants for correctional institutions and facilities. The amendment would add a new paragraph to section 453 of part E of the act which now enumerates certain correctional standards which must be met by States desiring grants for such institutions and facilities. The amendment would require, among other things, that the State assure LEAA that its parole system includes certain specified elements, such as procedures for equitable and expeditious disposition of parole hearings including access to files, representation of prisoners, and quick notification of decisions. Minimum standards with respect to parole revocation would also be required.

Certain of the requirements set forth in the amendment have been discussed above, and to the extent that we oppose the requirements with respect to the Federal parole system, we oppose their imposition on State programs.

Even to the extent that we favor some of the correctional requirements, however, we would not at this time recommend amending the Safe Streets Act. As you know, the administration's law enforcement revenue sharing proposal is now being considered by the House and Senate, and for the time being we oppose specific amendments to the present statute since such amendments are contrary to the proposal's concept. We would prefer to wait until we have had an opportunity to study the final version of our legislation before making recommendations.

Mr. Chairman, this concludes my prepared statement. I wish to point out in closing that I have discussed only our major criticisms with the legislation. If the subcommittee decides to proceed with the legislation, we would request that our attorneys be permitted to work with the subcommittee staff in ironing out our technical difficulties. Of course we do hope that the subcommittee will agree that it is best to allow the Board to proceed with the reorganization administratively.

Thank you.

[Mr. Sigler's prepared statement appears at p. 187.]

Mr. KASTENMEIER. Thank you, Mr. Sigler, for your very comprehensive statement. Indeed, it would appear that there are considerable changes since Chairman Reed appeared on April 13, 1972, over 14 months ago, before this subcommittee. You say your pilot project went into effect last October. Could you tell the subcommittee when it was determined to run such a project?

[Subsequently, the Board of Parole supplied the following information:]

U.S. BOARD OF PAROLE

PILOT REGIONALIZATION PROJECT—THE FIRST SIX MONTHS

This report describes some statistical highlights of the first six months of the U.S. Board of Parole Regionalization Project. The format of this report is designed for illustrative rather than analytical purposes. For further information, the six monthly research reports (from which these figures have been abstracted) may be consulted.

TABLE 1.—NUMBER OF INTERVIEWS

	Number
All institutions:	
Initial	962
Review	613
Early review	28
Violation	65
Reinterview	11

Note: Table 1 shows the total number of the types of interviews conducted during the 6-mo period from October 1972 to March 1973.

TABLE 2.—REPRESENTATION AT INTERVIEWS[1]

	Number	Percent
None	892	56.0
Spouse	103	6.5
Parent	65	4.1
Other relative	35	2.2
Caseworker (or institutional staff)	396	24.9
Other inmate	35	2.2
Friend	59	3.7
Other	8	.5

[1] Percentages do not tabulate 100 percent due to rounding error.

Note: Table 2 shows the number and breakdown in the types of representatives present at the interviews. It is noted that over 40 percent of the interviews had representatives present.

TABLE 3.—NUMBER OF VIOLATION INTERVIEWS WITH ATTORNEY/WITNESS PRESENT

	Number
None	47
Attorney/witness(es)	4
Attorney only	12
Witness(es) only	2

Note: Table 3 shows the number of violation interviews and the number of times an alleged violator was represented by an attorney and or had witness(es) present. It may be seen that at this point attorneys and witnesses are present at only a minority of the violation interviews held.

TABLE 4.—NOTIFICATION OF DECISIONS—PERCENT OF CASES NOTIFIED OF DECISION WITHIN 5 WORKING DAYS

	Percent
All institutions	[1] 99.5

[1] 1 case was delayed due to mechanical failure; 2 cases were delayed due to split decisions; 6 cases were continued to Washington for en banc consideration.

Note: Table 4 shows the percent of cases notified of their decision within 5 working days. In all but 9 cases, the goal of speedier decisionmaking was fulfilled in that the inmates were notified of the decision of the Board within 5 days of their interview.

TABLE 5.—INITIAL INTERVIEWS—GUIDELINE USAGE

	Number	Percent
Number and percent of recommendations: All institutions:		
Within decision guidelines	559	64.2
1 to 3 mo. longer	49	5.6
4 or more months longer	69	7.9
1 to 3 mo. shorter	102	11.7
4 or more months shorter	92	10.6

Note: Table 5 shows the number and percentages of hearing panels' recommendations in relation to the explicit decision guidelines provided by the Board. At the project's 1st 6 mo review these guidelines were submitted to the Board for modification and several changes were made. Furthermore, a list of auxiliary examples (which notes recurring situations in which decisions falling outside the guidelines have been made) has been prepared.

TABLE 6.—PERCENT PAROLED AT REVIEW INTERVIEWS

	Number	Percent
Parole	494	81.3
Continue	114	18.7

Table 6 shows the percent paroled at review interviews. It is to be noted that most continuances at review interviews were the result of institutional misconduct and/or failure to complete a specific program.

TABLE 7.—HEARING PANEL/PAROLE BOARD DECISION AGREEMENT INITIAL, REVIEW AND EARLY REVIEW INTERVIEWS

[Number and percent of actual decisions [1]]

	Number	Percent
Same as panel recommendation	1,162	88.0
1 or 2 months longer	72	5.5
3 or more months longer	76	5.8
1 or 2 months shorter	6	.5
3 or more months shorter	4	.3

[1] Percentage do not tabulate 100 percent due to rounding error.

Note: Table 7 shows the agreement between the hearing panel and the Board members for all initial, review and early review interviews. This does not include 268 cases in which 2 Board members voted as the hearing panel.

TABLE 8.—REQUESTS FOR REVIEW DECISIONS [1]

	Number	Percent
Total requests acted on to date	104	
Decision affirmed	70	67.3
Review granted	8	7.7
Reinterview granted	22	21.2
Decision modified	4	3.9

[1] Percentages do not tabulate 100 percent due to rounding error.

Note: Table 8 shows the dispositions of the 104 requests for review acted on to date. This excludes 6 requests which were deemed not eligible for review. In addition, 9 requests for review are pending.

TABLE 9.—RESULTS OF REVIEW HEARING OR REINTERVIEW

	No change	Advance parole or review date	Pending
Review	0	3	5
Reinterview	11	3	8

Note: Table 9 shows the results of the regional reviews and reinterviews that were granted, as a result of requests for review.

Mr. SIGLER. This had been under discussion, Mr. Chairman, for sometime. I became chairman on the 1st day of July. Since I was one of the members who favored this project, we began to work on it immediately. The Board unanimously was in favor of the project. I would like to point that out here. The Board began to work together as a unit in developing this proposal that we presented to the Attorney General on July 16, 1972—I think that is the right date. The Attorney General and his staff considered this and we were given approval and limited funds to proceed with the project as we had requested.

Mr. KASTENMEIER. This was at a time subsequent to the hearings that this subcommittee conducted on the same subject.

Mr. SIGLER. That is correct.

Mr. KASTENMEIER. Could this subcommittee have copies of your guidelines?

Mr. SIGLER. Oh, yes. I am sorry that I do not have them here, but I will see that you get them immediately.

[The guidelines referred to follow:]

INSTRUCTIONS FOR USE OF DECISION GUIDELINES

The decision guidelines (Form R–3—R–4) indicate the average total number of months served before release (including jail time) for each combination of offense severity/salient factor characteristics. This is in the form of a range (e.g. 12–16 months) and is intended to serve as a guideline only. However, you are required to indicate the reasons for recommendations which fall outside of the guideline range.

Guideline evaluation worksheet—Form R–2 will be completed—

A. For all initial interviews

B. For all review interviews where the previous continuance has been 30 months or more

C. For all review interviews in which a recommendation for continuance is being considered when this continuance does not relate to institutional misconduct or the failure to complete a specific program.

Severity rating—the hearing panel will rate the severity of the subject's offense behavior. This is a matter of judgment. The examples given on the Decision Guideline Chart (Form R–3 (Adult) and R–4 (Youth)) show the severity ratings customarily given to selected offenses. These are meant to serve only as examples. However, the panel's severity rating must be supported by the case summary.

Note: 1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used. If the offense behavior invoives a series of separate offenses, a more serious category may be used.

2. If an offense is not listed, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.

Salient (favorable) factor score—one positive point will be given for each correct statement. The total number of correct statements reflect the salient score.

Note: 3. When recommending a continuance, allow one month for release program processing.

Form R-2
(Rev. April 1973)

Guideline Evaluation Worksheet

Case Name _____ Register Number _____

Salient Factors:
(Please check each correct statement):

_____ A. Commitment offense did not involve auto theft.

_____ B. Subject had one or more codefendants (whether brought to trial with subject or not).

_____ C. Subject has no prior (adult or juvenile) incarcerations.

_____ D. Subject has no other prior sentences (adult or juvenile) (i.e., probation, fine, suspended sentence).

_____ E. Subject has not served more than 18 consecutive months during any prior incarceration (adult or juvenile).

_____ F. Subject has completed the 12th grade or received his G.E.D.

_____ G. Subject has never had probation or parole revoked (or been committed for a new offense while on probation or parole).

_____ H. Subject was 18 years old or older at first conviction (adult or juvenile).

_____ I. Subject was 18 years old or older at first commitment (adult or juvenile).

_____ J. Subject was employed, or a full time student, for a total of at least six months during the last two years in the community.

_____ K. Subject plans to reside with his wife and/or children after release.

_____ Total number of correct statements = favorable factors = score.

Offense Severity: Rate the severity of the present offense by placing a check in the appropriate category. If there is a disagreement, each examiner will initial the category he chooses.

Low _____ High _____

Low Moderate _____ Very High _____

Moderate _____ Greatest _____
(e.g. willful homicide, kidnapping)

Jail Time (Months) _____ + Prison Time (Months) _____ = Total Time Served To Date _____ Months.

Guidelines Used: _____ Youth _____ Adult

Decision Recommendation _____

Dissenting Recommendation (if any) _____

Form R-8
(Rev. April 1973) Youth

Guidelines for Decision-Making (Youth Cases) -
Average Total Time Served Before Release
(Including Jail Time)

Offense Behavior Severity	Offense Characteristics - Salient Factor Score (Probability of Favorable Parole Outcome)			
Examples	(9-11) Very High	(6-8) High	(4-5) Fair	(0-3) Low
[illegible]	6-10 months	8-12 months	10-14 months	12-16 months
[illegible]	8-12 months	12-16 months	16-20 months	20-25 months
[illegible]	9-13 months	13-17 months	17-21 months	21-26 months
[illegible]	12-16 months	16-20 months	20-24 months	24-28 months
[illegible]	23-27 months	27-32 months	32-36 months	36-42 months
[illegible]	(Information not available due to limited number of cases)			

NOTES: 1) If an offense behavior can be classified under more than one category, the most serious applicable category is to be used. If an offense behavior involved multiple separate offenses, the severity level may be increased.

2) If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.

3) If a continuance is to be recommended, allow 30 days (1 month) for release program provision.

Form R-3
(Rev. April 1973) ADULT

Guidelines for Decision-Making (Adult Cases) -
Average Total Time Served Before Release
(Including Jail Time)

Offense Characteristics — EXAMPLES	Offender Characterization — Salient (Favorable) Factor Score (Probability of Favorable Parole Outcome) (9-11) Very High	(6-8) High	(4-5) Fair	(0-3) Low
Category A - Low Severity Offenses Immigration law violations; walkaway; Minor theft (includes larceny and simple possession of stolen property less than $1,000)	6-10 months	8-12 months	10-14 months	12-16 months
Category B - Low Moderate Severity Offenses Alcohol tax violations; Selective Service; Mann Act (no force - commercial purposes); Theft from mail; Forgery/Fraud (less than $1,000); Possession of marijuana (less than 1000); Passing/Possession of counterfeit currency (less than $1,000)	8-12 months	12-16 months	16-20 months	20-25 months
Category C - Moderate Severity Offenses Simple theft of motor vehicle (not multiple theft or for resale); Theft, Forgery/Fraud ($1,000 - $20,000); Possession of marijuana (1000 or over); Possession of Other "Soft Drugs" (less than $5,000); Sale of marijuana (less than $5,000); Sale of Other "Soft Drugs" (less than $500); Possession of "Heavy Narcotics" (by addict - less than $500); Receiving stolen property with intent to resell (less than $20,000); Embezzlement (less than $20,000); Passing/Possession of counterfeit currency ($1,000 - $20,000); Interstate transportation of stolen/forged securities (less than $20,000)	12-16 months	16-20 months	20-24 months	24-30 months
Category D - High Severity Offenses Theft, Forgery/Fraud (over $20,000); Sale of marijuana ($5,000 or more); Sale of Other "Soft Drugs" ($500 - $5,000); Possession of Other "Soft Drugs" (more than $5,000); Sale of "Heavy Narcotics" to support own habit; Receiving stolen property ($20,000 or over); Embezzlement ($20,000 - $100,000); Passing/Possession of counterfeit currency (more than $20,000); Counterfeiter, Interstate transportation of stolen/forged securities ($20,000 or more); Possession of "Heavy Narcotics" (by addict - $500 or more); Sexual act (fear - no injury); Burglary (Bank or Post Office); Robbery (no weapon or injury); Organized vehicle theft	16-20 months	20-26 months	26-32 months	32-38 months
Category E - Very High Severity Offenses Extortion; Assault (serious injury); Mann Act (force); Armed robbery; Sexual act (force - injury); Sale of "Soft Drugs" (other than marijuana - more than $5,000); Possession of "Heavy Narcotics" (non-addict); Sale of "Heavy Narcotics" for profit	26-36 months	36-45 months	45-55 months	55-65 months
Category F - Greatest Severity Offenses Aggravated armed robbery (or other felony) - weapon fired or serious injury during offense; Kidnapping; Willful homicide	(Information not available due to limited number of cases)			

NOTES: 1) If an offense behavior can be classified under more than one category, the most serious applicable category is to be used. If an offense behavior involved multiple separate offenses, the severity level may be increased.

2) If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.

3) If a continuance is to be recommended, allow 30 days (1 month) for release program provision.

Mr. KASTENMEIER. Mr. Sigler, will you tell the subcommittee again what three or four provisions of the bill are most objectionable to the board in descending order of unacceptability? This would help us set some priority to your objections. You have covered it rather from the beginning to the end of the bill, rather than in terms of those matters you regard as most important.

Mr. SIGLER. Well, off the top of my head, sir, I do not know which I would say. But section 4205, I think, would have to be at least close to the head of the list. From a personal standpoint, I would say, too, that—let me see. 4201(a)—I do not know whether I can speak for the board, for all eight members of the board, but my own personal opinion is that it would be a mistake, a grave mistake, to take us, the Board of Parole, out from under the Department at this time. That, I think, I would put near the top.

Mr. KASTENMEIER. I think this is one of the areas that I would regard as most unpersuasive. I know that Chairman Reed presented the same point of view. Why the Board of Parole must find itself wedded to the Department of Justice—as you know, the formulation we had in our bill was to make you independent.

Mr. SIGLER. Yes.

Mr. KASTENMEIER. Of course, you are going to get administrative support from the Government in one way or another. Part of it was

based on a rather objective analysis, part on criticisms levied. For example, a former member of the Board of Parole testified before this committee as follows. I will quote the section that I think is relevant to the basic argument. The witness said on April 14:

> Theoretically, the U.S. Board of Parole is independent. Theoretically it is perfectly free to develop its own procedures and to determine its own philosophy of corrections. The tie that binds it legally to the Justice Department is administrative but "administration" includes budget and that is the big stick. As long as the Justice Department has control over the Parole Board money, the Justice Department will be able to exert pressure where it hurts and the Chairman of the Board, who has to account to the Justice Department for all Board expenditures, is taking the brunt of it.

The witness referred to many examples. In the paragraph before the one I just quoted the witness said:

> These examples illustrate how the Justice Department, either directly or indirectly, through a Chairman politically indebted, may prevent members of the U.S. Board of Parole from making independent decisions based on their own education, intelligence, and professional training.

Whether this witness is right or not, I think it is at least worthy to consider whether the suspicion that is raised does not suggest that in the long run, the Board of Parole should be separated from the Justice Department—regardless of what administration, what Attorney General, or what type of aura happens to be connected with it for that period of time—in terms of public respect for the institution, especially in terms of inmate respect for the institution. In that context, I am wondering why it is that you insist that you should be tied to the Justice Department.

Mr. SIGLER. I suppose it is a philosophical thing. I am aware of the material you referred to. I do not know the witness who came.

Mr. KASTENMEIER. It is not a surprise.

Mr. SIGLER. No; it is not a surprise.

I might say this to you, though. I have been Chairman just a few days less than a year, I have been on the Board less than 2 years, about 23 months. I would not in any sense tell this lady she does not know what she is talking about, but I can give you my experience, and I have had nothing similar happen. It may be because of the difference in individuals. I do not know that. But I would not be so presumptuous as to say to you that what you have said to me does not have merit, either.

It just happens to be my opinion that based on what I know and the way I interpret the experiences that I have had, since we have not had any pressure from anybody under any conditions on decision-making, and this is what we are talking about—I would reject that at this point.

Now, I am not naive enough to think that at some time, there might not be an Attorney General who would want to exert pressure. I will agree that I can see this. But I see a little organization like the Board of Parole, whose budget is one of the smallest in Government, I suppose one of the smallest budgets we get. Right now, we have less than a million and a half dollars. In Federal Government, that is not much money. I do not know whether we would have a much better chance; I do not know. Maybe we would if we came before an appropriations committee on our own.

I might say to you that right now in this new proposition, we are requesting through the Department of Justice a doubling of our budget. So we will see what happens there.

To do what we are asking to do is going to cost exactly that much money. So I do not know. I would have to say to you that my experience leads me to say what I have said, but I can be wrong, too.

Mr. KASTENMEIER. I appreciate that. I would urge you to be more enterprising in consideration of your ability to go it alone, on your own, in terms of Congress. I think now and in the foreseeable future, there is and should be public attention devoted to your activities and the success of them. I think Congress would support your reasonable requests and would understand that the requests might have to be increased.

Chairman Sigler, I note, for example, that your prepared statement is typed on a Department of Justice caption. Must you clear your statements in advance with the Justice Department?

Mr. SIGLER. I work with members of the Justice Department in making this; yes, sir. I would not say I clear it, but we work together. One of the men who actually authored that, I think, is sitting in back of me.

I will say this, though: I have final say and did have final say on this and what went into it. The final corrections were made by me.

Mr. KASTENMEIER. I have other questions, but I want to yield to my colleague. I will return for other questions later.

I will yield first to the gentleman from Massachusetts, Mr. Drinan, who went through this in the last Congress.

Mr. DRINAN. Thank you, Mr. Chairman.

Thank you, Mr. Sigler, for coming before us and for your statement. I commend you and your associates upon the changes which have been made. But at the same time, I think there is a fundamental difference between what you are recommending and what the committee has concluded. I do not think there is any point in blinking at that.

You state on page 1, "that it is fair to say that we are in agreement on fundamental issues." Well, in all candor, I have not found many fundamental issues in agreement and at that you are resisting legislation. Yet, I like to think that our probe and our travels to prisons and our correspondence with hundreds of Federal prisoners, brought a little bit of reform into the Parole Board and that you have adopted some things that people have been recommending for a long time. For that, I am grateful and I commend you.

At the same time, I gather from your statement that you do not want our interference at all and that you say, "We are doing fine." In all candor, I do not find anything here that is encouraging the committee to continue in its work. Maybe that is being too blunt about it, but we have been on this for some 2 years. We have held hearings, we have talked to people. And we have structured something. I, for one, feel that we should go forward, regardless of what is held by the Parole Board. These are findings that we have come to after hearing witnesses of all types and I have been involved in criminology and penology, not as long or as intensely as you, sir, but for some 10 or 20 years. All I can say is that the best people across the country have been recommending many of the things that we have in our bill and that there is profound discontent—I do not have to tell you—among

Federal prisoners, and I am happy to see this experiment where they do get the reasons why their parole was denied.

At the same time, what do you think that this committee could justifiably or helpfully do to assist you in the mutual objectives that we have?

Mr. SIGLER. I would say to you the same, sir, what I said to Senator Burdick's committee.

Mr. DRINAN. Senator Birch Bayh's committee?

Mr. SIGLER. No, Senator Burdick's.

We believe that we are not making these changes that we obviously, as I stated, are opposed to in your bill. But we are going forward exactly as I stated, only I could go into it a little deeper, in doing what we think is best from the standpoint of handling the parole problems of the Federal Government. And we would ask you to watch us. We think that is fair.

Mr. DRINAN. We have been watching it for a long time and the rate of recidivism is not going down. Can you show that?

Mr. SIGLER. Well, no, but nobody else can, either.

Mr. DRINAN. OK. I agree, but in Federal prisons, where we have direct oversight function, there is no indication that anything is improving. That is why this congressional unit has to adopt measures that promise something better.

Mr. SIGLER. I would say to you that nobody could measure anything in the area of this business in 6 or 8 months' time. There would be no way that you could measure what we have done or what anybody else has done in 6 months.

From the standpoint of recividism, I have been around a long time and I would——

Mr. DRINAN. You have had a very distinguished career, sir, in this.

Mr. SIGLER. And I would not make any predictions until I saw them work, because we do not know much about this. I said something in here that I think I would correct. We are not a science, we are not even an art yet in this business. And the very first thing that has been done in parole, in the history of parole, to my mind, at least, is the guideline situation I mentioned in here based on the research we are doing that began before I ever came on the scene. Now, parole authorities the country over—no, the world over—have made all the decisions and if you have talked to anybody who has ever been on a parole board, it is a gut-level thing. Well, it may be all right in a poker game to make a gut-level decision whether you should call anybody or not, but it is not a very good way to make a decision on the life of the prisoner.

Mr. DRINAN. I think you have made more progress in a year than I have seen for a long time in the Federal Parole Board and I commend you. We are here to assist you. All you are saying is: "We prefer to do this administratively rather than by legislation." I say we are here to help you with legislation that will help you with your objectives.

Mr. SIGLER. On my own, and again, this is a philosophical thing, I have never been on that side of the counter, of the table. Legislation is hard to change if you get something wrong. It is much easier to pass than it is to change. And this is the reason, the basic reason, that we believe it is good to experiment with this thing from the standpoint of administrative procedure, because we can correct errors that we make as we go along. And they should be corrected.

Mr. DRINAN. We also are accountable for those mistakes because we have direct oversight function. All we are saying is that the track record, as indicated in these volumes and in all types of other testimony, is not good.

Mr. SIGLER. Right.

Mr. DRINAN. And that you have improved it, but I say that we have an obligation to assist you by passing legislation.

Mr. SIGLER. Well. I am not here, of course, to argue that. I am here to make suggestions to you.

Mr. DRINAN. You have discussed only your major criticisms of the legislation. You have rejected every major aspect of the proposed legislation.

Mr. SIGLER. I do not have to agree with that.

Mr. DRINAN. That is not a constructive approach in coming before us. We have studied it, we have the background, we want to be helpful and you come here and say that nothing in this proposal which has been endorsed by experts—we took the best—nothing in the bill is constructive.

Mr. SIGLER. I am sorry. But we took 2 years—well, I have been on the Board for close to 2 years and we have studied it.

Mr. DRINAN. Would you say this, sir, that our bill embodies the best recommendations made by the most knowledgeable people in this area?

Mr. SIGLER. I would say your bill is not the best bill introduced in Congress, if that is what you mean.

Mr. DRINAN. No: that is not what I meant. I meant that we have called what the experts have said are the most knowledgeable people and have put it into proposed legislation. Would you recognize that?

Mr. SIGLER. I recognize some of the people.

Mr. DRINAN. Therefore, you are proposing the enactment of what the best criminologists and best penologists in this country are recommending. Right? Yes or no?

Mr. SIGLER. No: I am not criticizing any other penologists, but when you say you have the best, there are a lot of them, you know. I do not know who all you had appear before you. Some of the people that did appear before you—and I do not—please do not ask me who they are—I would not consider them to be the best. So I would take exception to that, that all of them are the best.

Mr. DRINAN. All right. I thank you for your criticisms. We will look at them very carefully and I will just conclude by saying that the last point, one of the last points, on page 21 about the administration's law enforcement revenue-sharing proposal. I think that is dead for at least a year, perhaps 2 years, and I do not think, therefore, that that is a justifiable reason for postponing it.

I thank you for your testimony and I do hope that we can collaborate in the future and work together for the improvement of the Parole Board.

Thank you.

Mr. KASTENMEIER. Before I yield to the gentleman from Illinois, Mr. Railsback, who also worked on this legislation in the 92d Congress, I would say it is perhaps inappropriate to expect the LEAA Act to reflect these changes until we incorporate basic changes in the Federal parole system. Then I think we will be in a position to ask the States to adopt some minimum standards in that connection.

Mr. SIGLER. I would want to be on the record as not disagreeing with that, because I happen to know that some of these systems, maybe all of us, need to lift our minimum standards. I would not want to disagree with that.

Mr. KASTENMEIER. Secondly, there were those who testified before the subcommittee who were so disillusioned with the parole experiment generally as to recommend not reform of parole, but abandonment of parole as a system and return to straight sentencing, straight service of terms, stating that parole was largely a chance matter and an illusion held out to inmates and so forth and so on, that it generally had not worked.

We, however, as a subcommittee still believe that we can help the parole system work.

Mr. SIGLER. Mr. Chairman, may I add right here that I agree with that. I do not think parole has been good, the way it has been run over the years. I would agree. I would agree we need change.

Mr. KASTENMEIER. I yield now to the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Sigler, I want to begin by complimenting you for the pilot program which recognizes one major step, that is a two-tier system. Also, I want to commend you for taking another step and that is giving reasons for denial of parole, which I think is long overdue and which you had success with. This confirms some of the things we proposed in our legislation a year and a half ago.

Might I ask you to provide us with biographies of the members of your Federal Parole Board. I have gotten just some of your background, but I would like to know your entire background.

[Subsequently, the following was submitted:]

BIOGRAPHY

Name Maurice H. Sigler.
Title and Organization Unit: Chairman, U. S. Board of Parole, Justice.
Date and Place of Birth: 7/3/09—Missouri Valley, Iowa.
Education: High School—Two semesters at South Dakota State College.
Military Service: U.S. Navy, 1934–45.
Work Experience:
May 1939 to April 1946—Correctional Officer, U.S. Penitentiary, Leavenworth, Kanas.
April 1946 to October 1952—Correctional Lt. and Staff Training Supervisor, Federal Correctional Institution, Seagoville, Texas.
October 1952 to August 1958—Warden, State Penitentiary, Angola, La.
August 1958 to May 1959—Division of Corrections, Tallahassee, Fla.
June 1959 to April 1963—Warden, Nebraska State Penitentiary, Lincoln, Neb.
April 1963 to January 1967—Warden, Nebraska Penal and Correctional Complex, Lincoln, Neb.
January 1967 to July 1971—Director of Division of Corrections, Nebraska.
July 1971 to June 1972—Member, U.S. Board of Parole.
July 1972 to Present—Chairman, U.S. Board of Parole.
Honors: Recipient of annual "Award of Appreciation" (1970) given by the Nebraska Bar Assn. to non-member of the bar for services rendered to the state.
Recipient of the "Good Government Award" given by Lincoln, Nebraska Jaycees for excellence in and dedication to the public service (196—).
Organizations: Past President, American Correctional Assn., currently Member of Board of Directors, American Correctional Assn.
Member of Ad Hoc Committee for Nat'l Institute of Corrections.
Family: Married—no children.

BIOGRAPHICAL SKETCH—CURTIS C. CRAWFORD

Birth: April 18, 1921, Paris, Tennessee.

Education: A.B. Degree, Political Science and History, West Virginia State College, Charleston, West Virginia, 1947. LL.B. Degree, Lincoln University, Jefferson City, Missouri, 1951.

Military: U.S. Army 1942–1946, Honorable Discharge, Staff Sergeant (Chief Administrative NCO).

Professional experience:

1951–52—Claims Investigator, Transit Casualty Company, St. Louis, Missouri.

1952–56—General Practice of Law.

1956–62—Assistant Circuit Attorney, City of St. Louis, Missouri.

1962–64—Chief, Trial Assistant, Circuit Attorney, City of St. Louis, Missouri.

1965 and 1967—Sat as Provisional Judge, Court of Criminal Corrections, St. Louis, Missouri.

1965–67—Director, Legal Aid Society of the City and County of St. Louis, Missouri.

1967–70—General Practice of Law.

1970—District Director, Small Business Administration, St. Louis, Missouri.

Professional memberships: American Bar Association, National Bar Association, Missouri Bar Association, The Bar Association of Metropolitan St. Louis, Lawyers Association of St. Louis, Mound City Bar Association, John Marshall Club.

Social and Civic Organizations: Board of Adult Services, City of St. Louis; Board of Directors, St. Louis Amateur Athletics Association, Page Park Branch, YMCA, St. Louis, Missouri; Boy Scouts of America; National Association for the Advancement of Colored People; OMEGA PSI PHI Fraternity.

Political: 1964—Candidate for Circuit Attorney, City of St. Louis; 1968—Candidate, U.S. Congress, First District of Missouri.

Personal: Married October 10, 1954, former Joan Carroll, two children, boy and girl.

Appointment to Board: September 18, 1970 by President Richard Nixon, John M. Mitchell Attorney General; Confirmed by Senate October 8, 1970; Sworn in by Justice Harry Blackmun, November 9, 1970.

THOMAS R. HOLSCLAW, MEMBER, U.S. BOARD OF PAROLE, WASHINGTON, D.C.

Date of Birth: December 12, 1929.

Place of Birth: Jefferson County, Kentucky.

Profession: Law Enforcement.

Education: BS in Commerce, 1960, University of Louisville, Kentucky. JD in Law, 1966, University of Louisville, Kentucky.

Positions held (in chronological order): Jefferson County Kentucky Police Dept., January 1959 to October 1972; Chief of Police, 1961 to 1971, Jefferson County, Police Dept.; Member U.S. Board of Parole, Oct., 1972 to present.

Memberships of Societies, Clubs, etc (with any offices held): International Association of Chiefs of Police, Kentucky Law Enforcement Council, Southern Police Institute Alumni Association.

Military: U.S. Army, June 1954 to June 1956, Served in Germany.

GEORGE J. REED, MEMBER, U.S. BOARD OF PAROLE, WASHINGTON, D.C.

Date of birth: May 31, 1914.

Place of birth: Haigler, Nebraska.

Profession: Criminologist.

Details of education: A.B., Pasadena College; Graduate Studies, U. of Southern California—Criminology; Elected a "Fellow" American Academy of Criminology because of research in the causes of juvenile delinquency.

Personal details: Wife: Lois C. Goetze Reed (Married November 10, 1938), Son: George C. Reed.

Details of Positions Held (in chronological order):

Deputy Probation Officer, Los Angeles County Probation Department, 1938–1946.

Field Director, California State Youth Authority, 1946–1949.

Deputy Director, Minnesota State Youth Conservation Commission, 1949–1953.

Chairman, Youth Correction Division, U.S. Board of Parole, U.S. Department of Justice, 1953–1957.

Chairman and Member, U.S. Board of Parole, U.S. Department of Justice, 1957–1964.

Director, Nevada State Department of Parole and Probation, 1965–1967.

Professor of Criminology, College of the Sequoias, Visalia, California, 1967–1968.

Director, Lane County Juvenile Department, Eugene, Oregon, 1968–1969.

Chairman, U.S. Board of Parole, U.S. Department of Justice, May 1969 to July 1, 1972.

Member, U.S. Board of Parole, U.S. Department of Justice, July 1972 to present.

Memberships of Societies, Clubs, etc. (with any offices held) American Academy of Criminology; National Council on Crime and Delinquency (formerly on Board of Directors); American Correctional Association; American Bar Association, Commission on Correctional Facilities and Services; National Parole Council (former Chairman); Member, Executive Board, Professional Council on Probation and Parole; Member, Church College Board of Trustees and former Member Board of Trustees, Protestant Church Seminary.

Military: 1942–1945 United States Navy—Honorable Discharge.

Publications: Numerous articles in Federal Probation, Sociological Review, Journal of Corrections.

Speeches: In addition to some 35 published speeches, Parole Better Protects Society, given before the National Exchange Club's convention in Los Angeles, Califronia, was published in Speeches of the Year as well as in the U.S. Congressional Record.

Honors, Prizes, etc. Awarded: Outstanding President's Alumni Association Award, Pasadena College; Three Honorary Doctor of Laws Degrees; Special Award of Recognition, American Legion; Membership in the Special Awards for Services to Humanities by National Exchange Clubs of America; Who's Who in America.

GERALD E. MURCH, MEMBER, U.S. BOARD OF PAROLE, WASHINGTON, D.C.

Date of birth: July 2, 1909.

Place of birth: North Jay, Maine.

Profession: Member, U.S. Board of Parole.

Details of Education: University of Illinois 1928–1932.

Personal Details: Married Fiona M. MacLeod, June 22, 1935; one son, Gerald M.; two grandsons, Mike and Mark.

Details of Positions Held: Parole Officer—State School for Boys Maine, 1933–1941; Parole Officer—Maine State Prison, 1941–1942; Chief Parole Officer—State Parole Board of Maine 1949–1955; Member, U.S. Board of Parole—1955 to present; Chairman, Youth Correction Division—1961–1963.

Memberships of Societies, Clubs, etc.: ACA, NCCD, APA (Correctional Associations), Reserve Officers Association (Military), Masons—Chapter, 32nd degree, Shrine, Royal Order of Scotland.

Military: Maine National Guard, 1935–1939; U.S. Naval Reserve, 1942–1965.

WILLIAM T. WOODARD, JR.

Birth: October 1, 1913—Selma, North Carolina.

Education: A. B. in Education, University of North Carolina—1934. Graduate work at the University of North Carolina School of Social Work (one year).

Employment: Teacher, Public Schools of North Carolina, 1934–38; Case Worker, Johnston County, North Carolina Welfare Department, 1938–41; Superintendent, Johnston County, North Carolina Welfare Department, 1941–51; Chief U.S.P.O., United States District Court, Eastern District of North Carolina, 1951–66.

Public Positions: President, North Carolina Association of Public Welfare Superintendents; Delegate, Mid-Century White House Conference on Children and Youth; Member, Legislative Council of North Carolina Social Service Conference; Member, Johnston County, North Carolina Memorial Hospital Board

of Trustees; Vice-President, Federal Probation Officers Association; President, Federal Probation Officers Association.

Appointment to Board: September 7, 1966; appointed by President Johnson, Nicholas Katzenbach, Attorney General.

BIOGRAPHICAL SKETCH—WILLIAM E. AMOS

PERSONAL

Date of Birth: July 20, 1926.
Place of Birth: Charleston, Arkansas.
Family: Wife, Ava N. Amos; Children, 2 boys and 2 girls.

EDUCATION—DEGREE, COLLEGE OR UNIVERSITY, MAJOR SUBJECT

B.S.E., State College of Arkansas, Social Science.
M.A., University of Tulsa, Clinical Psychology.
School Psychologist Certificate, American University, Psychology and Education (30 hrs. beyond the M.A.).
M.Ed., University of Maryland, Guidance and Counseling.
Ed.D., University of Maryland, Human Development.

WORK EXPERIENCE

Psychologist, Child Guidance Clinic.
Principal, Cabot High School, Cabot, Arkansas.
Superintendent of Public Schools, Cabot, Arkansas.
Army Officer. I was assigned to various Army correctional institutions, including the United States Disciplinary Barracks. While there I was Director of Education and Training.
Special Agent, U.S. Secret Service. I was assigned to Presidential protection and investigative work.
Children's Center, Laurel, Maryland. Staff Training Officer for three institutions. Two institutions for delinquents and one for the mentally retarded.
Superintendent, Cedar Knoll School. Cedar Knoll is a coeducational institution for juvenile delinquents from the District of Columbia and provides care for approximately 600 young people.
Chief, Division of Youth Employment and Guidance Services, U.S. Employment Service. U.S. Department of Labor, Washington, D.C.
Assistant Director, President's Commission on Crime in the District of Columbia.
Chief, Division of Counseling and Test Development, U.S. Employment Service, U.S. Department of Labor, Washington, D.C.

PROFESSIONAL MEMBERSHIPS

A. American Psychological Association.
B. American Personnel and Guidance Association.
C. District of Columbia Psychological Association.
D. National Association of Training Schools and Juvenile Agencies.
E. Member, The American Academy of Political and Social Sciences.

ACADEMIC AND CIVIC HONORS

A. PSI CHI (Psychology).
B. PHI ALPHA THETA (History).
C. PHI DELTA KAPPA (Education).
D. Human Development Fellowship—University of Maryland, 1958.
E. Grant Foundation Fellowship—University of Maryland, 1959.
F. Various service awards from communities or service agencies.
G. Superior Performance Award, U.S. Department of Labor, 1964.

PART-TIME UNIVERSITY TEACHING

A. University of Georgia.
B. University of Maryland.
C. University of North Carolina.

D. The George Washington University.

Dr. Amos is currently a professorial lecturer in education at the George Washington University.

MRS. PAULA A. TENNANT, MEMBER, U.S. BOARD OF PAROLE

1. Three years, U.S. Navy.
2. Graduated from Lincoln University Law School, San Francisco, California.
3. Admitted to and Member of the State Bar of California in 1955.
4. Member of the ABA and Federal Bar Association.
5. Assistant United States Attorney, Territory of Alaska.
6. District Attorney of Lassen County, California.
7. Private Practice 1963–68.
8. Appointed by Governor Reagan on November 1, 1968, to the Board of California Youth Authority.
9. Appointed by President Nixon on October 14, 1970 to the United States Board of Parole.

Mr. RAILSBACK. Presently, how many blacks are on the Federal Parole Board?

Mr. SIGLER. One.

Mr. RAILSBACK. One black? What is his background?

Mr. SIGLER. He is an attorney. He was a prosecuting attorney at one time. He has worked on both sides of the aisle. He is from St. Louis, Mo.

Mr. RAILSBACK. Was he a defense counsel, too?

Mr. SIGLER. Yes, he has been a defense counsel.

Mr. RAILSBACK. That is why I want to get biographies of the members of the Parole Board. I think we are very interested in that.

What is the percentage of blacks in the prison population right now, if you know?

Mr. SIGLER. I do not know, but there is a man in the room who can answer that right now.

Mr. RAILSBACK. Could you get the answer from him?

Mr. TAYLOR. Sixteen percent.

Mr. RAILSBACK. Sixteen percent in the prison population?

Mr. TAYLOR. Yes.

Mr. SIGLER. Mr. Taylor is the Administrative Assistant to Mr. Norman Carlson, Director of the Bureau of Prisons.

Mr. DRINAN. Did I understand that 16 percent of the 1,000 Federal prisoners are black?

Mr. SIGLER. There are 23,000, Mr. Drinan.

Mr. TAYLOR. Excuse me. 26 percent, I am sorry.

Mr. DRINAN. Now, which is it?

Mr. TAYLOR. Twenty-six percent.

Mr. DRINAN. I would like to have documentary evidence of that.

[Subsequently, Mr. Taylor supplied the following information:]

GRAND TOTAL FOR ALL INSTITUTIONS (EXCLUDING HOLDOVERS)—POPULATION BY RACE
AS OF MAR. 31, 1973

	Number	Percent
Total	21,556	100.0
White	13,922	64.6
Black	6,432	29.8
Yellow	41	.2
Red	349	1.6
Other	39	.2
Not reported	773	3.6

GRAND TOTAL FOR ALL INSTITUTIONS (EXCLUDING HOLDOVERS)—POPULATION BY RACE AS OF DEC. 31, 1972

	Number	Percent
Total	20,608	100.0
White	13,152	63.8
Black	5,865	28.5
Yellow	40	.2
Red	335	1.6
Other	37	.2
Not reported	1,179	5.7

GRAND TOTAL FOR ALL INSTITUTIONS (EXCLUDING HOLDOVERS)—POPULATION BY RACE AS OF SEPT. 30, 1972

	Number	Percent
Total	20,694	100.0
White	12,933	62.5
Black	5,595	27.0
Yellow	35	.2
Red	316	1.5
Other	38	.2
Not reported	1,777	8.6

GRAND TOTAL FOR ALL INSTITUTIONS (EXCLUDING HOLDOVERS)—POPULATION BY RACE AS OF JUNE 30, 1971

	Number	Percent
Total	20,487	100.0
White	14,294	69.8
Black	5,639	27.5
Yellow	42	.2
Red	386	1.9
Other	33	.2
Not reported	93	.5

Mr. RAILSBACK. Now, what percentage of the hearing examiners are black?

Mr. SIGLER. We do not have a black.

Mr. RAILSBACK. You do not have any black hearing examiners?

Mr. SIGLER. No. One left us. One is coming. So there will be another one, Mr. Donahy——

Mr. RAILSBACK. Let me comment. We at one time were considering putting in our parole bill some requirements that there should be some racial and ethnic representation on the Board. But we decided to make such a proposal suggestive rather than mandatory. However, I must say that personally, from what you have just told me, I, for one, might have second thoughts. It seems to me preposterous that we have 26 percent blacks in the prison population and we have one single Parole Board member and no hearing examiners.

Mr. SIGLER. Excuse me, sir. May I make that a little stronger on the record, then? We have hired one. He is coming.

Mr. RAILSBACK. I know, but—how many hearing examiners do you have?

Mr. SIGLER. Eight.

Mr. RAILSBACK. That leads me to my next question. You are trying to develop a two-tier system but given your limited budgetary restraints I am wondering if such is possible. I want to know if we are really going to do anything about attacking your heavy caseload.

What are your needs and how can we help you meet them? What do you really need to have a successful five-region system?

Mr. SIGLER. We have submitted, as I told you a few moments ago, I have asked for a 100-percent increase in our budget, practically speaking—that is, in round figures—30 examiners. We have asked for 30.

Mr. RAILSBACK. Thirty examiners? I commend you for that.

What kind of a caseload are we seeking to achieve per individual?

Mr. SIGLER. Well, our plan is to work these men in teams of two and we visit each institution six times a year. In our experiment on this project—and I have been out twice, myself, so I am not speaking from hearsay—it is not unreasonable to believe that we should hear 14 cases a day.

Mr. DRINAN. Excuse me, sir.

Fourteen cases a day?

Mr. SIGLER. Yes.

Mr. DRINAN. How long does each person have?

Mr. SIGLER. As long as he needs, Father—some 15 minutes, some an hour. You cannot, in my judgment, just break off times on the clock and say you are going to give that. But we do not—some days, we have 11, you know.

Mr. RAILSBACK. May I just say that this was one of our major concerns. We talked to so many inmates who felt just extraordinarily frustrated that they were given no prior counseling, they did not even know who their counselor was, then they would have 10 minutes before the Parole Board, which is ridiculous.

Mr. SIGLER. Mr. Congressman, let me say this to you for the record, that no inmate, to my knowledge—and I can be wrong; somebody may have pushed one out, or two, or maybe a number—but single examiners go out—that has been our procedure with no more people than we have—and will hear an average of about 17 cases a day, and they work 8 hours. Sometimes they work 9 hours before the——

Mr. RAILSBACK. What do you think about our proposal which would actually set up five regional parole boards, meeting in panels of three, one Parole Board member with two hearing examiners? In other words, have one Parole Board member rather than delegate all the decisionmaking to a hearing examiner?

Mr. SIGLER. I would have to say to you that I have not even considered it enough to give you an intelligent answer. Our whole plan has been based on what I said to you, that we believe we need two people. Now, I have gone out on two hearings, have had two experiences hearing complete dockets, with two different Parole Board members. And there is always the chance that two Parole Board members will not agree on a decision. So it has to be referred to a third one. You don't want them to do this job so that you would probably never have a split. So it would have to be referred to somebody else, maybe three people. I doubt that it would be good to have a Parole Board member, with two examiners, for this reason: If you had a real strong Parole Board member that was a dominating person, he might dominate the votes. You know, in other words, his sales pitch might be the strongest and you might have, rather than three, conceivably, you could have one if you had two people who would listen to their superior officer in a manner that you and I would agree is wrong.

I believe that two members, two hearing examiners—incidentally, these hearing examiners are going to be as well qualified, and maybe better qualified, in some instances, than some of the Board members. We are just not picking people who have no background. Our hearing examiners are all experienced people and they are now being paid GS–14 salaries, which will give us an opportunity to get good experienced people in the positions.

Mr. RAILSBACK. This is my final question. I am asking this, really, for Mr. Cohen, who could not be here, but I share with him his concern.

I have a great deal of difficulty understanding why originally you would permit a so-called advocate but not an attorney. I know you talk about the nonadversary character of the proceedings. But, I understand you changed your policy on that point.

The other thing is why cannot an attorney, or the individual inmate, be able to challenge facts upon which the judgment is based which deny him parole?

Mr. SIGLER. If they are facts. We do not go behind the courts. The Parole Boards do not go behind the courts and I personally do not think that we should.

Mr. RAILSBACK. That is not what I am talking about.

Mr. SIGLER. Are those not the facts of the case?

Mr. RAILSBACK. We are talking about a case where you have a file that comes up to you which you have not even seen before, which comes from the prison authorities who say, this man was guilty of committing such and such at 3 o'clock on the 3d day of June, and this man wants to challenge that fact which was given to you through hearsay by an individual that is within the prison system. Why should not he be able to challenge that fact if he says, I did not do that and I have witnesses that will say I did not do that?

Mr. SIGLER. I am not opposed to his challenging that fact. That is why I say a limited access to the files, in my judgment, is desirable.

Mr. RAILSBACK. And I appreciate you taking that position. You say there are certain reasons why you cannot permit access to the files. Well, I think Congress can take care of those reasons. But I think if a person is going to be detained or held in custody based upon another person's decision, he ought to know why that decision was made. I think he ought to be able to question such a judgment.

Mr. SIGLER. He should know why it has been made and there is no question about that. And I will agree with you, having worked in prisons many, many years, that sometimes things get into the records that should not be in the records. Everything that goes into every record is not a fact.

But I do not think that this is a matter of law. This is a matter where this man should be able to challenge, and this is why I say limited disclosure of the files.

Incidentally, the Bureau of Prisons will not disagree with that. Mr. Carlson is going to be before you and I know he will tell you that he agrees this should happen, too.

Mr. RAILSBACK. They should have limited access?

Mr. SIGLER. You know, for instance, we say he has done something bad, that should be in the file, and another person may have something wrong that is in these files, probably, where information that belongs in one file gets into another, and a man should be allowed to challenge this. I agree with you.

Mr. RAILSBACK. Mr. Chairman, I have just one last observation.

It is my understanding that that part of your statement which is critical of our bill for providing legal representation under the Criminal Justice Act. We are not necessarily providing every single inmate that requests an attorney with an attorney. That attorney would be provided by the court under the terms of the Criminal Justice Act. That is my understanding. In other words, we are talking about poor people who cannot financially afford to retain their own attorney.

Mr. SIGLER. I understand, but I would still object to attorneys at parole hearings under those conditions.

Mr. RAILSBACK. Thank you, sir.

Mr. KASTENMEIER. I would like now to yield to the gentleman from Utah, Mr. Owens.

Mr. OWENS. Mr. Sigler, I commend you for your candid statement; your admission that you disagree with every proposal, every major proposal made by the chairman's bill, which is the result of 2 years of hearings. That, I think, bodes well for our ability to talk straightforwardly and to isolate issues. I must confess a certain ignorance of the Board's background and your personal background. You had served on the Board prior to your appointment as Chairman?

Mr. SIGLER. I have been on the Board a total—well, since the first day of August 1971, when I came on the Board.

Mr. OWENS. And you made Chairman——

Mr. SIGLER. First day of July last year.

Mr. OWENS. And your background?

Mr. SIGLER. I began in the correctional service in 1939 and that is all I have ever done since. I was with the Federal Bureau of Prisons for nearly 14 years. I have been a warden for 20 years. I was director of corrections in Nebraska for 5 years. And I still do not know all the answers. I do not want you to think—I am just telling you what I have done.

Mr. OWENS. I presume you are beginning to see many problems?

Mr. SIGLER. I have seen the problems.

Mr. OWENS. If not the answers?

Mr. SIGLER. Correct.

Mr. OWENS. The Board is composed of how many members?

Mr. SIGLER. Eight.

Mr. OWENS. There is one black? Are there any other minorities represented on the Board?

Mr. SIGLER. No, I do want to say there is a woman on the Board.

Mr. OWENS. There is a majority rather than a minority in this case.

Mr. SIGLER. Yes.

Mr. OWENS. That is relevant. Thank you for mentioning it.

And there are 8 hearing examiners who handle, did I understand, 17,000 cases a year?

Mr. SIGLER. No, the way it is set up, Mr. Owens, they are supposed to handle 75 percent. We, as Board members, in addition to the way our cases are scheduled, are charged with hearing 25 percent. To be perfectly honest with you, we do not do that. We do not handle 25 percent. So the 8 examiners do handle more than 75, I would say even more than 80 percent. We do not get out as often as we should.

Mr. OWENS. I see. All eight members, however, are full-time professional employees?

Mr. SIGLER. Oh, yes.

Mr. OWENS. Public servants. Are there any other minorities among the hearing examiners?

Mr. SIGLER. There are none.

Mr. OWENS. There is one point on page 17 that I found interesting and would like to ask you about. You indicate a desire to retain, I guess, in the way of massive retaliation, all the time remaining under a man's sentence if he violates his parole. In other words, no time off for good time if he violates that parole.

Mr. SIGLER. If you do not mind, that does not sound good to me, massive retaliation.

Mr. OWENS. No, no, please go ahead and restate it in your own terms. You have been very candid. I am sure we can arrive at a medium.

Mr. SIGLER. What I believe is this should be done again in a discretionary manner. I will agree with you, many times good time is restored. Many times a man is reparoled. The fact of the matter is I voted on a man the other day on the same sentence, the fourth reparole. He is doing a lot of time, but he has failed three times and we have given him another chance.

Mr. OWENS. In effect, a man could serve 2 years of a 10-year sentence, for example, go on parole for 7 years; 9 years from the time of his original commitment, his parole could be revoked and he could serve theoretically 8 more years in prison. That is a total of 17 years on a 10-year sentence.

Mr. SIGLER. That is correct. This could be done.

Mr. OWENS. Is there any study which would back up the importance of maintaining that right of massive retaliation? I am sorry to offend you in that way. It is a massive club over his head.

Mr. SIGLER. No, that is right.

Mr. OWENS. Are there any studies which would indicate that that is helpful to you——

Mr. SIGLER. Not to my knowledge.

Mr. OWENS. Or that could justify that type of thing?

Mr. SIGLER. Not to my knowledge. There has been no study made on that.

Mr. OWENS. It is basically the gut feeling of those who are involved in this?

Mr. SIGLER. That is right, and as I say, that is not the best way to make decisions.

Mr. OWENS. I am not sure which you——

Mr. SIGLER. That the gut-level decision is not the best way.

Mr. OWENS. Do I understand you to say that that is the basis on which you say it is good to retain that club over a parolee's head?

Mr. SIGLER. No, I say this because these people, being candid again and honest, and I hope with some knowledge, are not the people who are known for their honest convictions or the things that they want to do to get along. They are not unknown to us as people who might do things unless there was some way to handle it.

For example, I can tell you about a case that I know of—and I know there will be many—that said, "Oh, if I get out there for a week or two, I do not care, if I come back; I want to get out once in a while."

Actually, there is no real reason for a man, sometimes, for a man to want to go from prison. We make mistakes, incidentally, in granting paroles, too many mistakes. If we did not, we would not have this parole failure system that we have. And I think we have to have some-

way to correct these mistakes. I am not criticizing the courts for the amount of time they give these people when they come to prison. Sometimes we release them when we should not have released them. We find a man gone back out on parole, too many men go back out on parole, who have not even made any attempt to change their way of thinking, have no idea of doing that. So I think we have to think about the protection of the man on the street and the woman on the street where some of these people are concerned. I think many people in my position, the first thing you must think about is the person involved, the guy we are talking to. But I think I would be in gross error if I ever forgot that this man is in here for stealing somebody's property or knocking somebody on the head. And if we turn him out and find out that he still has the desire or the inclinations to do things like this, I do not think it is wrong to put him back in there and say, "You are going to have to stay. And I do not believe that we should just be allowed to let this time run."

Again, I feel very strongly that the man has to have some hold on him out there to make him want to get along, to make him try a little harder.

Mr. OWENS. But that is a gut feeling, which you say is very bad.

Mr. SIGLER. But that is a gut feeling based on a lot of experience.

Mr. OWENS. I understand. Do I sense in you a philosophical objection to the concept of time off for good behavior, then?

Mr. SIGLER. I happen to believe good time in prisons is good. Now, I may be in the minority on this. I think that our statutory good time that is given is good.

Mr. OWENS. That is an incentive for rehabilitation?

Mr. SIGLER. Yes. I think it is an incentive to—that word "rehabilitation" bothers me, because I am not sure we do all these things. I think it is an incentive before a man that is made for behaving, not making wrong turns on the street because he will get pinched and it will cost him $25. I think it is an incentive to make him think and want to get along sometimes. But to use this as a method of rehabilitation, it has some value, I am sure, because it is a reward for behaving yourself, getting along, but I am not sure that it is all that strong a rehabilitative measure.

But I still would hate to run a prison, myself, without this ability to give good time or rewards for people who are trying to get along and helping us get along in these prisons.

Mr. OWENS. Then why the objection to time off for good behavior on parole? Do not the same criteria that you just talked about apply to a man on parole?

Mr. SIGLER. Well, I think it is entirely different. The people who go out on parole, our concept of parole is, you are out there, you have a job, you have a hope, you are back with your family. Everything that anybody else has you have, other than the fact that you have to report for a while. We can take a man off parole, sir, any time we want to, and we do take them off parole. We no longer supervise.

So I think that if I am capable of making a parole, that is something I do not have to have. That is just my philosophical feeling about the thing.

Again, that is what it is. It is a philosophical feeling. I feel that way about it, but I can be wrong on that.

Mr. OWENS. Okay. I have one other very short question.

Under your model, your pilot project, there will be no attorneys appointed under any circumstances for indigents, as I understand.

Mr. SIGLER. For the parole hearings?

Mr. OWENS. Yes.

Mr. SIGLER. That would be correct, under ours, yes.

Mr. OWENS. Under your model proposal.

Mr. SIGLER. Yes.

Mr. OWENS. Thank you.

Mr. KASTENMEIER. The gentleman from New York, Mr. Smith.

Mr. SMITH. Mr. Sigler, thank you for coming here today and giving us the benefit of your experience with prisons and parole over a great many years.

There was one statement, as I remember, that there were some witnesses who appeared before this committee last year who said that perhaps we ought to give up the whole parole system. I would like to ask you, from your experience, do you think that parole can work in a majority of cases if it is properly done, if perhaps we experiment in ways that you have already started and this committee is talking about?

Mr. SIGLER. I think it can, and I think that the sincere interest that people like you are exhibiting and doing what you are doing is going to help, for a lot of reasons.

In the first place, you are going to see eventually, at least, that the right kind of people are doing work and you are going to see that they get the tools to work with. I believe this.

Parole has been the poorest financed part of corrections, in my entire experience. It is kind of a stepchild of corrections. Who gets the money? Institutions get all the money. And I am not saying that they get too much, but I am saying that parole over the country—not in the Federal Government: I am not talking about that—in the States where I have been, especially my home State. I happen—in the last 5 years, sir, I was director of corrections and I had parole under my general supervision. It was the hardest thing in the world to sell the legislature on getting more parole supervisors.

One of the bad things that we have in our country today, and I was glad to see the Congress give the Probation Department not all they needed in my judgment, but a vast expansion of the probation section. We have too many people under one man or one woman out there.

Mr. SMITH. You mean probation or parole officers?

Mr. SIGLER. Both, yes. You have too many subjects under each parole officer and each probation officer, generally speaking. I believe the average in the Federal now, even with the new expansion, is around 70 or maybe more. And that is way too many.

How are you going to supervise 70 people on the street?

Mr. SMITH. Mr. Sigler, in that connection, at the present time in the Federal Government and the Federal parole system, do we provide any counseling after a man is on parole except for this overworked parole officer?

Mr. SIGLER. To my knowledge, no sir.

Mr. SMITH. Would it be a good thing to have counseling?

Mr. SIGLER. Of course, I think that the movement that is taking place in some places is good, and that is the public—what do we call them?

Mr. SMITH. They are volunteer workers.

Mr. SIGLER. Now, some of them are no good, as you well know, but a good volunteer worker, in my judgment, is as good, if he is interested, as a good paid probation officer. And I have seen this work. But we do not have a good, well-organized—in my judgment at least—volunteer system anywhere.

Now, the attorneys of the country, the young attorneys, at least, present are interested in this. And I know they are working at it. I do not know how much success it has enjoyed. But I do know that these are the type of people that can help people, because they are intelligent. A man who will take his own time, without pay, to help me is going to be appreciated much more than you if you are paid to do it. So I believe, yes, this can help.

To answer your question, I think that parole—I know it can be improved on, because we have so far to go. I believe that we—we believe that we finally are coming into something in this guideline business, first in selecting the proper people for parole. We believe that, based on very limited experience, and if you asked me to prove it, I could not prove a thing to you. But I will see that you get this material that we are using. Mr. Hoffman is our research man and heads it up. He has been working along with two of the best research people, I suppose, in America—Mr. Wilkins with the State University of New York at Albany, and Mr. Gottfredson who is now at Rutgers. They are, incidentally, still working with us as advisers on this thing.

We believe that we are beginning for the first time to use a scientific approach for decisionmaking. This is the first time that I know anything like this is being done. And this is just one of the reasons that I am sort of pleading with you to give us a chance with this.

I do not say to you that I know this is going to work. I do not know. I can say to you, though, that based on the last 7 months now, with the five institutions that we have worked with with the Federal Government, with the Bureau, the staff at the institutions are happy, the inmates are happy with it. They think it is a great step forward. Those people are.

Now, the ones that we are turning down with this process are not going to be any happier than those that we turned down under the other system. But we think—we know we are being fair, because in the guideline system, unless you can give good reasons in writing why you do not stay in these guidelines now, we say, you are staying in them. It makes it fair.

For example, you and I are Parole Board members and you are a liberal and I am conservative in my voting. So I maybe have been voting to keep them in a little longer than maybe I should and you have been doing the opposite and maybe voting to turn them out a little quicker than you should. This guideline procedure that we are using, based on the study of 5,000 cases to begin with, is bringing you in on this side and me back on this side, and the man today knows he is getting at least a consistent judgment on his parole. That is based on these five institutions.

The assistant to Mr. Carlson, who in my judgment is probably closest to this, told me the other day that this is the only—no, he said this is by far the best thing that has been done. The only thing about it is, he said, we are getting letters not only from staff, but inmates all over the country are wondering, when are you going to put this

system in an over the country? So it is getting some favorable response from them.

May I read this to you? I do not know what it is, but it has been handed to me.

This also removes some of the uncertainty of the indeterminate sentence, too. You know, in other words, we hear a lot about disparity in sentencing procedures. Again, judges are like Parole Board members, some of them are more conservative than others and some are more liberal. But again, the judges with whom we have talked about this like this. They like what we are trying to do.

You are from New York, sir?

Mr. SMITH. Yes, I am.

Mr. SIGLER. Well, I was at a Judicial Conference of the Southern District not long ago and we talked to the judges about this thing and each of them asked us to send all the material that we had to each of them when I got home, simply because they said this is the first time that anybody has tried to do anything in this way and the judiciary should have done it a long time ago. And we sent it to them. And we have not heard too much about it from them, but they were interested. Even a prosecuting attorney in this city has asked for this, just because he thinks that we may be on the right track from the standpoint of doing something consistently and fairly. And that is as far as we have gotten.

Mr. SMITH. I think we all congratulate you on this effort, this initiative to try to make the system more rational, provide guidelines so that the inmates know some of the ground rules, and also providing rights of appeal and so forth.

It seems to me that this committee, a couple of years ago, started helping you by allowing, as I remember, the hearing examiners to hear a parole application without the presence of a member of the Board. Is that not what we did?

Mr. SIGLER. Well, you—at least the Congress—gave us money to hire eight examiners. I am not sure of that. I was not here when that happened so I cannot say.

Mr. SMITH. This was about 3 or 4 years ago, but we started this thing off. I am interested to hear that you now want 30 examiners?

Mr. SIGLER. Yes, because, again, they are overloaded.

Mr. SMITH. I do not know how the Board ever did it without any hearing examiners at all. Well, you did not do it. That is what happened.

Mr. SIGLER. That is the answer.

Mr. SMITH. Now, just two short questions. You said your cost was going to double under your new proposed program, and I would expect that that is going from 8 to 30 hearing examiners.

Mr. SIGLER. That is part of it.

Mr. SMITH. Plus supporting personnel—typists, file clerks, this sort of thing?

Mr. SIGLER. Right.

Mr. SMITH. The other thing was, in your statement, you said that it was your opinion that the Parole Board should not be made independent because you appreciated the administrative support of the Justice Department. What kind of administrative support would that be?

Mr. SIGLER. Well, frankly, we work with them on the thing that I just told you. They are going to support us in getting this money. They have bought our concept of what we should do and they have helped us——

Mr. SMITH. I suppose another example would be in regard to your prepared statement, in which you say Justice Department attorneys prepared it, subject to your supervision and correction.

Mr. SIGLER. Well, I think that would be fair, because I have tried to sell the Justice Department like I am trying to sell you, frankly, on this concept, because the Board of Parole at this point in time believes in what we are doing. We do not know again—I want to make this real clear, because I do not want anybody sitting on that side of the desk thinking that I am absolutely certain that I know what I am talking about because we have not been at it long enough. All the signs point good and it takes—you know, when you ask to have your budget doubled because you want to increase the size of your personnel 100 percent, this sort of thing, that takes some support. This would be one reason, yes.

Mr. SMITH. Thank you very much, Mr. Sigler.

Mr. KASTENMEIER. The gentleman from Iowa, Mr. Mezvinsky?

Mr. MEZVINSKY. Thank you, Mr. Chairman. I know we have another witness, so I will be brief.

As a new member, Mr. Sigler, I appreciate the comments and also commend the members that have been here prior to my presence who have done a tremendous amount of work. I will initially lead off with recidivism. What is the percent of recidivism? Has it changed, has it increased in the last year, has it decreased? What has happened with it in the last year?

Mr. SIGLER. That I cannot tell you. I can tell you about the success rate as far as people living out their paroles are concerned at this point in time. And I cannot give it to you 100 percent or absolutely perfect, because I do not have it in front of me. But we have two divisions in the Board of Parole—Youth and Adult. In the Youth Division, for the most part, our members or examiners see these people soon after they get in, and especially within 90 days if they are sentenced under the Youth Act, either one of them.

They will set them off such and such a period of time. The second time around, almost 100 percent, I can say 97 percent and be safe, they will parole him. This is not contract parole by the books, but actually, it is, because we see them on time and set them off and say if you do so and so, the next time they come around, we parole them.

Our success rate there is about 64 percent—this is the result of a 2-year study. In other words, 36 percent failure in the youth. But this is turning most of them loose on the second time around, serving a short period from the standpoint of their sentence, we will say maybe 20 percent of their sentence.

Then from the standpoint of the adults, 78 percent of our people who are being placed on parole now are successfully completing their parole. On the face of it, it would look like the recidivistic type of adult prisoner is doing better. But this is not true, because we do not parole as many in the adult type.

So the figures look good, but they are not. So that is about the way we are doing from the standpoint of successful parole.

Mr. MEZVINSKY. I think your project may yield some answers on recidivism. We should have a clear picture of what is happening. So I would request whatever information you could give the committee concerning that.

The next item, I want to focus on is independence. I cannot understand why you have to tie yourself to Justice. Do you not understand that if you are a prisoner and those that are prosecuting you are part of the Department of Justice, that without a question, you have the problem as to what faith they have in the parole process? I mean do you not understand that a person who has been prosecuted by a Federal agency which is under the Department of Justice and now is having a hearing before others who are also under the Department of Justice, that he will have questions as to their objectivity?

Mr. SIGLER. I understand.

Mr. MEZVINSKY. So why do you fight so hard against independence? I do not understand it.

Mr. SIGLER. Sir, I am not fighting that hard.

Mr. MEZVINSKY. Your statement is very clear, we do not share——

Mr. SIGLER. That is right, and I believe that, and I have tried to explain why I believe that.

Mr. DRINAN. Why?

Mr. MEZVINSKY. Why? That is what we want to know.

Mr. SIGLER. As I say, maybe I did not make that very clear.

Mr. DRINAN. It was not clear at all. Why?

Mr. SIGLER. Well, again, I want to be candid. I do not feel that there is any pressure, any more pressure from them than there might be from Members of the Congress, for example. There is nothing to say that anybody in this United States cannot come to the Chairman of the Board or a member of the Board and tell him, I know so and so down at such and such a place, he has been there such and such a length of time, and I think he should be paroled. My experience over the years, only in State government, has been that with a small operation like we have, we are better in—I always like to operate in the State government under an umbrella situation under a department of institutions.

Now, I will answer your question this way: I do understand that the man in the institution would be suspicious of people who are representing the Department of Justice. I understand that, yes.

Mr. RAILSBACK. Will the gentleman yield?

Mr. MEZVINSKY. I am glad to yield.

Mr. RAILSBACK. I gather from your remarks that you believe that there is a valid reason to be tied to the Department of Justice. Last year we had a separate bill setting up a juvenile institute and some of the people from LEAA said we would be better off not having an independent juvenile institute because it is easier to get financing if you are under the Justice Department umbrella. And honestly, from listening to your remarks today, I just get the idea that you feel that because you are part of the Justice Department, you have sold them on the need for 30 hearing examiners and they are going to go to bat for you in respect to your funding. Is that what you are saying?

Mr. SIGLER. Well, Mr. Railsback, not exactly that way, but I suppose I would have to say this to you. If I have somebody fighting my battles for me like the Administrative Division of the Department of Justice—and that is their function, as you know——

Mr. RAILSBACK. I think what you say is true. However, this is what concerns me. I am not sure that I agree with your position.

Mr. MEZVINSKY. I do not want to belabor the point, and I want to say, just for the record, that if the main purpose is to provide the protection for the prisoner and for his rehabilitation, and if the argument is simply that Justice can give you the muscle to receive the funds, then I think the basic purpose of parole is being subverted.

With that, I will yield back the rest of my time.

Mr. DRINAN. May I make one point?

Mr. KASTENMEIER. Yes.

Mr. DRINAN. I do want to belabor the point. I think it is essential to our deliberations here. I think that it is very relevant to point out that your predecessor, Mr. Reed, said to this subcommittee in the April 1972 hearings, and I quote:

> One of the things I did request before accepting reappointment by Attorney General Mitchell was that there would be an examiner system, that we would have additional manpower as well as the research project that I have alluded to this morning. . . .

And he further stated:

> There were many other areas that were a part of the understanding with Attorney General Mitchell when I accepted reappointment. . . .

That shows me the necessity of independence. Mr. Reed came on the Board only after he had gone to the prosecutor and obtained the conditions of his employment. And the continuing conditions of your employment, anyone's employment, depends upon the Attorney General. I think that is precisely the reason why we want an independent Board. You have not given any reasons, with all due respect, sir, why the present situation is acceptable.

I would like to ask one last thing. What individual, precisely, cleared your testimony this morning in the Department of Justice? To whom did you submit this and who cleared it?

Mr. SIGLER. Nobody. I cannot tell you.

Mr. DRINAN. It was cleared? It was submitted to someone in the Department of Justice? Mr. Reed conceded that point a year ago here. The chairman asked whether he had cleared his statement with anyone in the Department. Mr. Reed said "yes," that he was required to clear it with someone.

Now, I am just asking, who clears it?

Mr. SIGLER. Well, I work with two lawyers in the Department of Justice.

Mr. Barry will answer that question, because he knows better than I.

Mr. BARRY. I will try to do my best, gentlemen.

Like any other comment on legislation, it merely clears through the Deputy's office, where the congressional liaison with Congress takes place so that we are taking a consistent position in this legislation, this proposed legislation, with other proposed legislation, like H.R. 6046, the administration's bill for the reform of the entire criminal code, which contains parole. This is a regular, standard operating procedure.

Mr. DRINAN. Mr. Barry, this proves my point, that you have to clear with the people who represent the Attorney General, represent the prosecution. So this all demonstrates the precise point that we have made in the bill, that the Board should be independent, that you should not have to clear the parole functions.

This is precisely the point that has been made here this morning, that we heard all over the country in Federal prisons. They do not trust the Parole Board because it is the creation of the Attorney General.

Mr. SMITH. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. SMITH. This is a philosophic argument, of course, and it would seem to me that unless there has been some showing in the hearings that you have had and so forth that the prosecutor, having finished his job of having convicted a person, his job is finished unless he has a vested interest in constant harassment and so forth. It would seem to me that even though the Parole Board was under the Justice Department, it is an entirely different function of the Justice Department and I would say perhaps has an attribute of the name of the Department—that is, Justice. Because I think it seems to me that once a prosecutor has finished his job and secured a conviction, he is through with that case. Then from then on, parole, probation, the other aspects are not his business.

But here again, it is a philosophical argument.

Mr. DRINAN. Except that 2 years ago and continuously, the Attorney General, John Mitchell, was saying how the Parole Board was going to be run. Mr. Reed went and asked for something and it was John Mitchell who said that the Parole Board shall be run thus and so. That is not discontinuing the role of the prosecution.

Mr. SMITH. No, but under the organization of the Parole Board as it has been set up, of course, you go to the head of the Department in which you are for approval of what you are going to do. Now I do not see anything bad about that. You may be perfectly right, that an independent Parole Board would be better. But I do not really think, except to the extent that an inmate may not trust the Department—but this would have to, I should think, have to be proved by the results of the Parole Board and what actions they took.

Mr. KASTENMEIER. That concludes the examination of Chairman Sigler. I would like to ask the Chairman, since we have had a far-ranging, somewhat philosophical, at times, discussion and dialog this morning, whether, confirming suggestions he made about the more technical aspects of the bill, we might be in touch with him by the staff and whether he would be available for a further session which will deal more technically with the bill? Would you or your counsel?

Mr. SIGLER. Yes, probably both of us.

Mr. KASTENMEIER. We will appreciate it. I think basically the difference this morning is that having seen what this subcommittee viewed in terms of corrections throughout the country in the Federal system, we felt that a quantum jump forward was essential in terms of the form of the structure of the parole system and its procedures, along the lines of certain court decisions. This being a government of laws and not of men, it seemed to us appropriate that there be a legislative input into that question of what, both procedurally and structurally, the Federal parole system might look like. We preferred this, rather than to proceed somewhat more tentatively along experimental grounds through your own administrative efforts, laudable as they may be and have been. I think this is the essential difference between us and that we surely seek the same ends.

Mr. SIGLER. I am sure that is true.

Mr. KASTENMEIER. Following this committee meeting, we would like to get in touch with you as to an appropriate time for your appearance, suitable for you and the committee. In any event, this morning, we are deeply indebted to you for your appearance, Mr. Chairman.

Mr. SIGLER. Thank you. May I say, it has been stimulating.

Mr. DRINAN. Thank you very much.

Mr. KASTENMEIER. It is rather late to be calling our next witness, Mr. Antonin Scalia, who is Chairman of the Administrative Conference.

I would ask Mr. Scalia to come forward. We can discuss how far we can proceed today.

Again, the Chair, in behalf of the entire committee, would like to express our thanks to Chairman Sigler for his appearance.

Mr. Scalia, with your advice and consent in the matter, let us attempt to proceed. We may be interrupted by a quorum call or a vote. At that point, we can determine whether to proceed further this afternoon or whatever is your pleasure in terms of your own problems.

TESTIMONY OF HON. ANTONIN SCALIA, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES; ACCOMPANIED BY RICHARD K. BERG, EXECUTIVE SECRETARY

Mr. SCALIA. That is fine. I am ready to proceed whichever way suits your convenience.

Mr. KASTENMEIER. We have your 18-page statement, with various materials attached.

Mr. SCALIA. Yes, sir. The attachments do not need immediate examination, I would not think, and I will try not to cover the whole 18 pages during the course of this testimony.

Mr. KASTENMEIER. You proceed as you wish. In any event, your entire statement, with attachments, will be made part of the record.

[Mr. Scalia's statement appears at p. 193.]

Mr. SCALIA. Fine.

In the course of proceeding, you have your own rules and your own desires. I am sure, but as far as I am concerned, I do not mind being interrupted as I go along. I do not rattle very easily when I am reading, anyway.

Mr. Chairman and members of the subcommittee, I am grateful for the opportunity of testifying concerning parole reform legislation. The Administrative Conference is, as you know, a permanent, independent Federal agency, charged with studying the administrative procedures of Federal agencies—and making recommendations for improvement to the Congress, the President, and the agencies.

Parole has in the past been insulated from the critical analysis of those concerned with problems of administrative procedure by the assertion that it was a privilege, a matter of grace, neither to be expected, nor to be earned, granted without necessity rhyme or reason at the indulgence of the sovereign. Since no prisoner had a right to this boon, none could complain of its denial. However accurate this view may once have been, it surely no longer comports with the real place of parole in our criminal law.

Parole cannot be viewed as simply a windfall, because in fact the entire penal system is premised on its availability. Congress pre-

scribes maximum sentences and judges sentence individual defendants with the knowledge that parole is available and in the expectation that a prisoner who demonstrates his desire for rehabilitation will not serve the maximum term or anything approaching the maximum. Grants of parole are not a series of random acts, but a major and regular part of the administration of our system of criminal justice. The U.S. Board of Parole conducts annually about 20,000 proceedings relating to the grant, denial, revocation or continuation of parole. The Board controls approximately two-thirds of the time actually served under fixed-term Federal sentences and all of the time served under indeterminate sentences. Thus, the actions of the Board have greater and more immediate impact on the average Federal prisoner than the action of the court which sentenced him. The exercise of such authority is a fearsome responsibility, and every effort should be made to assure that its exercise is rational, evenhanded and consistent with our notions of procedural fairness.

A little over a year ago my predecessor as Chairman of the Conference, Roger C. Cramton, presented testimony to this subcommittee concerning parole reform legislation similar to that which is now before you. He described a Conference study of the procedures of the U.S. Board of Parole, and a proposed recommendation arising from the study which was to be considered by the Conference at its June 1972 Plenary Session. The proposal was in fact adopted by the Conference, as its recommendation 72–3, without change and without dissent. I submit a copy as an appendix to my testimony. I will not cover that portion of my prepared statement which summarizes the recommendation, because I think all of you gentlemen are broadly familiar with it.

I would like, however, to describe our subsequent efforts to have those recommendations implemented.

On July 5, 1972, we transmitted the recommendation, after its adoption, to the then Chairman of the Board, George J. Reed. In October, we received a reply from Mr. Reed's successor, Chairman Sigler, who has just testified before you, substantially rejecting all of our proposals. I submit this correspondence for the record, together with an internal memorandum comparing the response with the recommendation.

Mr. KASTENMEIER. I must interrupt at this point, because a quorum has been called, and under the new procedures, votes and quorums take 15 minutes exactly, rather than 30 minutes which formerly gave us a little more time to complete or continue testimony.

The subcommittee will recess this hearing and Mr. Scalia's testimony until 1:45 this afternoon, at which time we will reconvene.

Until 1:45, then, the subcommittee stands in recess.

AFTERNOON SESSION, 2 P.M.

Mr. KASTENMEIER. The Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary will reconvene.

When we were interrupted by quorum call, Mr. Scalia had reached a point at the top of page 4 in his prepared statement. Mr. Scalia, if you will do so, we urge you to continue at that point.

Mr. SCALIA. Thank you, Mr. Chairman.

I would like to take care of a matter of courtesy that I omitted this morning in my haste to get in as much as possible before the bell. With me I have Mr. Richard Berg, Executive Secretary of the Administrative Conference.

Mr. KASTENMEIER. We are pleased to have Mr. Berg introduced.

I neglected this morning to say, as a preface, that this subcommittee feels particularly close to the Administrative Conference. We have authorized ceilings in the past and have had some oversight of its work, we have been very favorably impressed with the former chairmen and Mr. Cramton and yourself, Mr. Scalia, and we have noted the increase in the duties and the responsibilities of the Conference and in the work that you have gone into and we are very pleased to welcome you here today.

Mr. SCALIA. Thank you, Mr. Chairman. As you know, the feeling is mutual and we're happy to be of any assistance to this committee in particular. In this morning's episode, I think I made reference to the Conference's recommendation which you are familar with, and I was about to discuss the efforts we had made to implement that recommendation. It was adopted by the plenary session of the Conference in June. On July 5, 1972, we transmitted this recommendation to the then Chairman of the Board, George J. Reed. In October, we received a reply from Mr. Reed's successor, Maurice H. Sigler, rejecting substantially all our proposals. I submit this correspondence for the record, together with an internal memorandum comparing the response with the recommendation. They are attached to my prepared statement. We have since that time——

Mr. KASTENMEIER. Mr. Scalia, one thing you did this morning, whether you were well advised to do so or not, is to say that you might be interrupted in your presentation.

Mr. SCALIA. Yes, sir.

Mr. KASTENMEIER. In your short experience in the Conference, is it common for agencies to substantially reject your proposals? Is this sometimes done, seldom, or how would you characterize it?

Mr. SCALIA. I would think seldom would be a little too optimistic. I would say sometimes it is done. The problem is this: Most of our recommendations have not applied to individual agencies. Most of them have been of much broader applicability—to a lot of agencies which all have different problems, and for all of which the recommendations may be desirable but in different degrees.

I think it is fair to say that those of our recommendations that have been narrowly directed to a particular agency have generally been adopted. In fact, one of the recurrent debates that occurs within our membership is whether we ought to devote our attention to broader problems such as rulemaking of general applicability and public access to the process—whether we ought to get into these broad-based problems in view of the fact that it is much more difficult to implement a generalized recommendation. As our experience shows, it is much easier as far as implementation is concerned to get into one particular agency, do a complete job, and direct our recommendations specifically to that agency. Narrowing it to that class of recommendations, I think it fair to say that seldom has the recommendation been totally rejected as was the case here.

On the other hand, as I say later in my testimony, I don't mean to imply that the Board is at all outside of its rights in doing that. We are only supposed to recommend and not to decree. I also should add a fact which I do not have in my prepared testimony but which appears from Professor Johnson's report which you saw last year: The Board was very cooperative in our study. They did afford our consultant, Professor Johnson, every courtesy and let him look into every aspect of their operation. I certainly do not claim that the Board did not give this matter thorough consideration. I do say, however, that the fact is that they have, according to their October letter anyway, substantially rejected everything that we concluded is necessary.

Mr. KASTENMEIER. Perhaps I should let you conclude your remarks on this point rather than try to anticipate something regarding recommendations that are accepted or implemented.

Mr. SCALIA. Alright. I think the interruptions would be especially appropriate later on where I do have a number of individual points, one by one, in this particular area. I thought the whole process might move faster if we just jumped in as we handle each point. This whole first part is of a piece, I think.

Since receiving that letter from Chairman Sigler, we have attempted to induce the Board to change its mind by working through its parent agency, the Department of Justice—where, I think it is fair to say, we found in some quarters more sympathetic ears. This effort, however, has ultimately yielded little fruit. We have been advised informally that Justice has made a final decision concerning the extent to which it will seek implementation of our recommendation—to wit, only to the extent of permitting the assistance of counsel at the parole hearing. This seems to us of minor consequence if none of the other changes proposed in our recommendation is adopted. Without published standards governing parole, without access to the file that shows how those standards apply to the particular case, and without any requirement that a reason for denial be given, a lawyer would know neither what principles to address nor what alleged facts to refute.

Mr. COHEN. Mr. Chairman, I don't want to interrupt the testimony, but this is a point that concerned me during this morning's testimony. I noticed that there is a difference between your recommendations in that you talk in terms of counsel whereas the testimony this morning from the Parole Board talked in terms of a representative or an advocate and then later Mr. Sigler indicated that the advocate could be an attorney but only if we recognized that the attorney as an advocate cannot act in an adversary capacity. Now, the question that I raise is what is the significance of allowing an attorney or any advocate or any representative to attend a parole hearing if there can be no challenge to issues of fact?

Mr. SCALIA. Yes, sir. Well, it was my understanding that what Chairman Sigler said was that they were going to allow attorneys as we recommended—or at least in their pilot program, which is not quite the same thing as saying that they are going to do it.

Mr. COHEN. On page 5 of Mr. Sigler's testimony, he indicates "As long as he realizes that parole release determinations do not, and should not, involve an adversary presentation of issues of law or fact." The question I raise here, most administrative decisions, in terms of why go to the problem of setting up an appellate review system where,

for the most part, it simply confirms the finding of fact unless you have clear convincing evidence to overturn them. If the prisoner isn't allowed to challenge the fact upon which the Parole Board is going to base its findings, we engage in a rather meaningless effort.

Mr. SCALIA. Well, I can confess not to be clear on what the Board intends by allowing counsel, but with regard to that narrow limitation that you just read, I do not interpret—I did not interpret that to mean that the lawyer couldn't participate in the proceeding. I interpret it to mean—perhaps too optimistically—simply that the Board was not going to change the proceeding into a formal, on-the-record, adversely type proceeding. That would be like a court trial with a right to cross-examine. That is something, by the way, that the Administrative Conference does not purport to desire either. I think there is a general agreement that the proceedings should still be generally informal.

I did not interpret the chairman's comments as pessimistically as you did. I would assume that the lawyer could comment on the facts provided he doesn't intend to do it in the normal formal courtroom fashion—making formal objections, seeking to cross-examine, to subpena witnesses and so forth. I thought that was all the limitation was meant to imply. As I say, right now, it is somewhat vague and we will have to see what it really means. In any case, I think in that comment I just described what the conference intends—namely, that there be a lawyer present, who can speak to matters of fact that are brought up. Otherwise his presence is not very useful. But the proceeding is not to be turned into a section 556 or 557 APA-type proceeding.

Mr. KASTENMEIER. Further in relation to Mr. Cohen's question, do you feel there is value in having access to a lawyer, counsel, notwithstanding the fact that these are not advesary proceedings?

Mr. SCALIA. Surely. There are numerous informal adjudicatory proceedings where parties desire to have counsel present. Or even take proceedings that are much more removed from formal adjudications than these informal adjudications—legislative-type proceedings before this committee or any committee of Congress, where a witness often seeks to appear with counsel. It doesn't necessarily mean that you are going to have a courtroom trial. I think the role of counsel before the Parole Board, since it is not a legislative-type hearing, would be much different than the role before anybody of this sort. But my point is that to say it is not a courtroom trial is not to say you don't need a lawyer or that a lawyer is not appropriate.

Well, to continue with my description of what has happened since. We have received no formal communication from the Board or the Department on this subject since Chairman Sigler's letter of October 20, so I do not purport to give you their present position firsthand. I hope, of course, it has changed. Judging from Chairman Sigler's testimony this morning, I gather it has changed.

I might just describe briefly what I understand that present position to be as compared with our recommendations. Apparently, Chairman Sigler now says that the appearance of an attorney at the hearing is acceptable and that a written statement of reasons will be given. Those were two of our key recommendations. On the latter of them, it was not clear from the testimony whether that written statement of reasons will be public, which is an important part of what we think is necessary. I expect that it is intended they will be public, but I think

it is something that has to be checked on further. In any case, both of these changes, allowing attorneys and giving written statement of reasons, as I understand Chairman Sigler's testimony, only apply in the pilot program. I don't understand that this will be done in all their proceedings. This is just a part of their pilot program and pilot programs are, of course, meant to try out things and if they don't work, you drop them. So, I don't know to what extent it can be said that these recommendations have now been accepted. I don't mean to demean a pilot program. It may well be that at its current level of funding there is no way the Board could do all of this except on a pilot basis only. Maybe they don't have enough money or enough personnel to jump right in and apply it to all their hearings.

Mr. DRINAN. Could I ask a question, Mr. Chairman.

Mr. KASTENMEIER. Mr. Drinan.

Mr. DRINAN. On page 4, you say that we have been advised informally that Justice has made a final decision concerning the extent to which it will seek implementation of our recommendation. I ask you for a ballpark figure on the timing. We have had several Attorneys General since then; when was this informal advice given to you?

Mr. SCALIA. It was given just before the resignation of Mr. Kleindienst. I have not tried to reraise this matter before the new Attorney General. I frankly did not think it would be appropriate. I think it is an institutional position and I think or thought it to be that and——

Mr. DRINAN. He changed another thing. He wants to reinvestigate Kent State now and I think, Mr. Chairman, it might be appropriate for the subcommittee to find out whether he made the final decision inoperative.

To what extent did Mr. Sigler change now that the attorney was allowed and the prisoner gets a reason. Those are the two points that you feel he softened on.

Mr. SCALIA. It seemed to me, from his testimony, that they are willing to do that, though as I say it isn't clear that he is going to make the reasons public. I understand from one of the staff that is the intent. If so, and if the reasons that are given are in sufficient detail as set forth in our recommendations, then I think——

Mr. DRINAN. You have never seen a piece of paper?

Mr. SCALIA. No, sir; I have not heard of either of these changes in position until today.

Mr. DRINAN. Thank you.

Mr. SCALIA. If you read the letter of October 20, it was rather conclusive and there was no use in pressing the matter further.

Mr. KASTENMEIER. Perhaps if the gentleman from Massachusetts would learn of the Justice Department's position but that position was not then public nor is it now. That is nothing you can rely on in terms of a formal printed statement, I take it. The only thing in writing you have is Chairman Sigler's letter of October 20, is that correct?

Mr. SCALIA. Yes, sir, that is correct.

Now, as to two other provisions in which Chairman Sigler said that some changes are being made. First, there are the guidelines which he mentioned in his statement. I have not seen these guidelines and I am not sure how they read. They may be the equivalent of the rules and standards that we suggest, setting forth the factors to apply

to the determination that has to be made. If so, they would go toward implementing our recommendations. Again, however, it was not clear from the testimony whether these are intended to be made public or not. It is essential in my mind and that they be made public, and that would lead me to believe that they are intended to be made public. I also understand from one of the staff people who was here, that was the intent. If so, and if those guidelines are in sufficient detail, then apparently the Board is willing to come around on that position as well.

Last, on the matter of access to the file: As I understood the chairman's testimony, he did not say that they were now willing to permit that. He did say that he would favor it in principle if the problem that some of these documents are not within the control of the Board could be solved—that is, the fact that it is not up to the Board to release presentencing reports and such other things.

It seems to me that this knot has to be cut at some point; somebody has to start the ball rolling. The conference recommendation included a recommendation to the judicial conference that the judicial conference provide for sentencing judges to state whether and what portions of the presentencing reports could be made available to the prisoner. Now, frankly, I am not about to press the Judicial Conference to do that until it is clear to me that the Board of Parole is going to let the prisoner or the prisoner's counsel look at it because I would be asking them to do an empty thing, to make available presentencing reports which the Board of Parole says it won't let anyone look at. So, it seems to me that at some place we have to break out of the circle. And I don't know why the Board could not begin by at least allowing the prisoner and the counsel to use those papers within the file that presently are not subject to the control of some other agency and would not raise certain other problems such as revealing informants and so forth.

You might recall from Chairman Cramton's testimony last year that we did take a very small sampling of some of these files, and there was something like only 3 out of 31 that contained any confidential material or any material that should not be given to the prisoner or to his counsel.

Mr. COHEN. It wasn't marked national security?

Mr. SCALIA. No, I don't think it was classified.

I think that brings you up to date as far as I can, because I am really talking about positions I am not too clear on when I describe what the Board is now willing to do. But I think it brings you up to date as far as I can on our recommendations and the result of the attempts to implement our recommendations.

As I said before, we have been established only to recommend and not to dispose. We have no power, and no desire, to exact automatic compliance with whatever we say. But when a recommendation as well considered as this, as moderate, and as enthusiastically endorsed, is wholly rejected by the agency to which it is addressed, I think it our responsibility to bring the recommendation and the rejection as forcefully as possible to the attention of the Congress. Our proposal did not call for legislation. It was addressed to the Board of Parole, and there is nothing in it, with the exception of that portion dealing with the confidentiality of presentencing reports, which could not be implemented by the Board under its existing authority.

Up until today's testimony at least, I could say it was my conclusion, after almost a year of intensive efforts to secure implementation, that this recommendation will, in fact, not be accepted unless the Congress intervenes. I bring this to your attention both because this subcommittee is now considering parole legislation and because the Judiciary Committee has substantive jurisdiction over the conference and has demonstrated a sympathetic interest in our activities and our effectiveness.

Mr. KASTENMEIER. Mr. Scalia, on the point you just made, unlike clearly most other Federal agencies or entities, the Board of Parole is now, and has been, in terms of responding to suggestions, defensive to a fault. It had not been willing to admit that outside experts have influenced any of the changes, it has not been willing to concede that the inquiries of this committee in the past have led to anything fruitful with respect to the attitude of the Board. It has not even been willing to follow recommendations made in modest and reasonable quantity by your Conference. It would, therefore, seem that the Board even as to changes it makes, is unwilling to concede that any other entity in or outside of the Government has contributed. I think this insular attitude of the Board is very unfortunate and doesn't lend itself very well to working with other parts of the Government.

Mr. COHEN. Mr. Chairman, may I add to your comments which I think are quite accurate? It seems to be particularly striking and ironic, that one of the greatest sources of prisoner frustration is that of not giving facts or reasons for particular decisions made by the Parole Board and I thought it ironic to look at their response to your letter containing suggested recommendatitons for changing the present Parole Board. Their response to that letter gave no reasons for their rejection of your recommendations.

It is a source of frustrations right here on the committee and I am certain it is to Mr. Scalia, but I was wondering, whether or not we might request detailed reasons for that outright rejection. I wonder if we could request that?

Mr. KASTENMEIER. Yes; this indeed is one of several reasons why we have requested Mr. Sigler to come back. We would like more technical colloquy or dialog with him about the bill and other matters. This statement and the exchange of correspondence on the recommendations and other matters, will be an appropriate item of discussion.

Mr. SCALIA. Mr. Chairman, in this connection, I am moved to say one thing in defense of the Board—which also happens to be part of our recommendation: I have felt somewhat guilty in making these broad gage recommendations and describing the failure to implement them, when I have recalled that at the time our consultant's study was made, the Board consisted of eight Commissioners and eight Hearing Examiners to conduct approximately 20,000 proceedings in the course of a year. There is no way that these recommendations could even be commenced with that kind of a staff and I am sure that the inadequacy of staff and funding has caused the Board to think small. It could not do otherwise. I think it must be borne in mind that is an essential ingredient of the whole problem, and if we are going to talk about making many of these improvements without a substantial increase in the size of that funding we are being absolutely unrealistic.

Mr. KASTENMEIER. The point is well taken, you may continue.

Mr. SCALIA. Let me now turn to the bill before you, H.R. 1598. Title I of the bill would establish an independent Board of Parole and make major changes in Federal parole procedures. Its provisions are drawn in large part from last year's bills, H.R. 13118 and H.R. 13293, on which we commented at that time. I am pleased to note by the way that some of the provisions of H.R. 1598 reflect our previous comments. Title II of the bill would amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to prescribe minimum standards for State parole systems as a condition of eligibility for Federal grants. I will limit my comments to those provisions of the bill which deal with Federal parole procedures and will not deal with matters of substantive parole policy—on which we have no particular expertise—or on the proposed amendment to the Omnibus Crime Control Act.

I should emphasize at this point that the assembly of the conference, which adopted our recommendations and which alone has authority to make formal conference recommendations, has not had an opportunity to consider this bill. Consequently, the views I express are those of my office but not necessarily those of the full conference.

Let me first call attention to some of the organizational and structural provisions in the bill. H.R. 1598 would create a Board of Parole as an independent establishment in the executive branch, severing its present connections with the Department of Justice. The Board would consist of a seven-member National Board and five Regional Boards of three members each. As under present law, members would be appointed for 6-year terms by the President with the advice and consent of the Senate, and there is no provision that members may be removed only for good cause. The principal functions of the National Board would be to establish general policies and rules for the Board of Parole and to conduct appellate review of the determinations of the Regional Boards regarding grant or revocation of parole.

First of all, as to removing the Board from the Department of Justice: This was one of the recommendations in Professor Johnson's report, but it was not included in the conference recommendation. Though I have no strong views on the subject, on balance I think it preferable to keep all criminal law enforcement and penal activities of the government under the control of a single agency—particularly when that agency has been as responsible over the years and has such a high repute among lawyers within and without the government as the Department of Justice. Independence for the Board is not, I think, necessarily desirable in all matters.

Decisions in individual parole cases should certainly be almost judicial in nature and free from supervisory influence. But the establishment of parole policies seems to me inherently bound up with prosecutory, enforcement, and penal policies, and should rationally be subject to the same overall direction. In such matters, independence is far from an unmixed blessing. I confess that my opinion on this point may be colored by the fact that the Department was much more receptive than the Board to the reasonable procedural changes that we proposed. But the attitude which that displays may not be entirely irrelevant. The Department has a broader view, and hence can perhaps judge policy matters pertaining to parole more objectively. This relates to the chairman's comments a moment ago about insularity, I think the

word was. I think that has to be increased by rendering the Board entirely independent.

Mr. DRINAN. Mr. Chairman, do you mind if we interject?

Mr. KASTENMEIER. Before I yield to the gentleman from Massachusetts, I must point out that there is a quorum call. I will ask that we continue this hearing but that those members desiring to do so may be excused to answer the quorum. I would ask that you return forthwith, as soon as you answer the call. The Chair may or may not incidentally respond to that particular call, but I do think that it is necessary to continue this. The witness has been extremely cooperative with this committee and should not be forced to a further recess. With that announcement, I yield to the gentleman from Massachusetts.

Mr. DRINAN. Would you tell us, Mr. Scalia, why the recommendations of Professor Johnson was not included in the Conference recommendations?

Mr. SCALIA. I was not only not chairman, I was not a member of the Conference at the time. I have no personal recollection of that at all.

Mr. BERG. It was deleted in committee.

Mr. SCALIA. I believe it was deleted in committee, not on the floor, so it would take the committee or a staff member of our office who was attached to the committee to provide the information.

Mr. DRINAN. As you know, the body of the evidence is that Federal prisoners do not, in fact, feel that the Board of Parole is independent from those who put them in jail. I see the reasoning behind your statement that these things somehow should be unified. I am wondering if this committee and the bill that we have could modify the language or explain the language about the independence of the Board so that it would win the approval of the Administrative Conference.

Mr. SCALIA. Well, I don't think you have to do anything to meet approval because we haven't disapproved it. The Conference just has not spoken at all as to whether it should be independent or not.

Mr. DRINAN. Well, as I see it, this is one of the essential things in the bill that the chairman has followed, and some others have followed and I would not want to compromise on it. It seems to me rather essential that it be an independent agency such as the U.S. Commission on Civil Rights and/or some other agency that is not tied to the Department of Justice. I think you were here this morning when I made reference to John Mitchell a year ago making commitments to the predecessor of Mr. Sigler about adding personnel. It seems to me that when you have an independent director like that the Parole Board is consciously or otherwise intimidated or otherwise influenced by the law enforcement people.

Mr. SCALIA. Well, if I may respond to that.

Mr. DRINAN. Yes.

Mr. SCALIA. I am sure that you're correct about the attitude of the prisoners. I am not entirely sure that there may not be some things that could be done short of cutting off the Board entirely from the Department of Justice to help that. I don't think they ought to use Department of Justice stationery in dealing with the prisoners—that one minor change might help somewhat. As I suggest in my written testimony, I think you can achieve greater independence where independence is really necessary—that is, in the individual determinations—by providing greater security for the Board members so that

they do not merely serve at pleasure but can be removed for only good cause.

Mr. DRINAN. Yes, we do that, we could add that to the legislation.

Mr. SCALIA. If you are making the Board an independent agency, presumably that is not necessary. I am not sure that—I think it may be unrealistic to assume that by making it an independent agency you're going to somehow eliminate any influence of the Justice Department that now exists. It is still going to be within the executive branch. In the event of a dispute between Justice and this Agency on a matter in which they have mutual interest—and there will be many such matters—I can't believe, knowing the way that the executive branch operates, that this little Agency is going to win in a head-to-head confrontation on a major matter like that. Justice has more clout by far in the executive branch and is going to win out anyway.

So I think all you may achieve by granting independence is to heighten insularity and nothing more. Most of all, I want to point out to you that your assumption may be wrong. At least in my experience in trying to solve these problems, it hasn't been Justice that has worn the black hat. We received much more help within the Justice Department than we did within the Board of Parole.

Mr. DRINAN. You admitted that your judgment was colored by that fact.

Mr. SCALIA. I also said that the fact was relevant, that my judgment should be colored by it.

Mr. DRINAN. On appointment, the original appointment of these people, obviously Justice pretty much writes their own ticket. They can get whom they want and they presumably would carry out a law enforcement philosophy rather than any new philosophy on parole. At least, it has been going that way for 30 or 40 years. I assume the objective would be the same.

This question came up last year and Mr. Cramton wasn't very certain about it either and he did not know why the Administrative Conference didn't go on record and it is one of the mysteries of the Administrative Conference why this recommendation of Mr. Johnson's gets lost along the way. But thank you, and proceed with your testimony.

Mr. SCALIA. I just had one more point I wanted to make about the separation and that is this, that the Justice Department in any case is a known quantity, staffed with attorneys who are among the most respected in the Government. I would not discard that value too readily. It seems to me that an appropriate degree of independence, where independence is needed, might be achieved more desirably by promoting greater security of tenure for Board members than by moving the Board out of the Department.

Whether parole administration should be decentralized through the establishment of Regional Boards depends so heavily upon questions of operational efficiency which we have not studied that I do not feel qualified to advise you. I will note, however, the obvious fact that decentralization increases the difficulty of achieving consistency and predictability—and especially the difficulty of achieving them through an essentially "case law" process. This is a matter I will address in another context later on.

The provisions of the bill relating to the organization of the Regional Boards raise in my mind some technical questions. These Boards

are to consist of three members appointed by the President with the advice and consent of the Senate, and each Board is to have assigned to it up to six Hearing Examiners. The principal function of the Regional Board is to hear and decide parole determination and parole revocation cases. For purposes of these hearings, it is evidently intended that the Board and its Examiners sit in panels. Section 4207(a) requires that a parole determination hearing be held before a panel of three individuals of whom at least one must be a Board member, and the other two members or Examiners. For parole revocation hearings, however, section 4215(g) merely provides that they "be conducted by at least one member of the Regional Board;" not only does it not require other officers on the panel to be Examiners, it does not require a panel at all. This is surely an anomaly. A parole revocation hearing is ordinarily attended with more formality than a parole determination hearing, and its effect on the prisoner is likely to be more significant. Moreover, while it is expressly provided (in section 4207(a)) that the panel sitting in the determination hearing has authority to make the decision for the Regional Board, it is not clear whether the officer or officers presiding over the revocation hearing may be authorized to make the decision. Section 4203(b) suggests that they may not; section 4203(c) that they may.

Mr. KASTENMEIER. Mr. Sigler suggested that they would like to use Hearing Examiners to make the ultimate decisions by Examiners themselves. Do you think this is presently authorized by law or can be done without authorizing legislation. Does not present law contemplate that the ultimate decision would be made by the Board of Parole as opposed to Examiners or functionaries of the lower level?

Mr. SCALIA. I must confess that this is not a deeply informed answer. I would expect that it could be delegated under current law provided, of course, also that the Board has the right to review and reverse any lower determination. But I am not that well informed on the precise provision and I would be happy to look it up and check on it.

Mr. KASTENMEIER. Presumably. Incidentally that might be if it followed that procedure, it might be tested in a case if you got an adverse determination by an examiner.

Mr. SCALIA. One wonders, of course, how much the present system may in reality differ from that, whether it does in theory or not. With this large number of cases, one wonders if in fact the recommendation of the hearing examiner must not be almost cursorily reviewed. I don't know.

Mr. KASTENMEIER. Should it be a conclusion of this committee in the formulation of this bill, that public confidence and confidence in inmates whose future is thereby determined would reside, perhaps superficially so, in a determination by the Board or by members of the Board itself, rather than by delegated Examiners?

This is—we appreciate why we put Examiners out into the region and the examiner—that is to say members of the Board and have them sit on every determination of this sort.

Mr. SCALIA. Yes, sir, I think that is likely true. Placing myself in the position of someone whose fate for two-thirds of a sentence would be determined by someone in Washington, but actually heard by someone who writes up a report that gets sent to Washington, I wouldn't have a comfortable feeling. I don't mean that as a criticism of the

procedure that the Board uses. Given their staffing, I don't know that it is feasible to do it any other way right now.

I think that feature of the bill is certainly an attractive one—to have an actual member sitting in on the case.

Mr. KASTENMEIER. But you do not have a firm view on whether or not Examiners can be delegated to make ultimate decisions?

Mr. SCALIA. You mean under current law?

Mr. KASTENMEIER. Under current law.

Mr. SCALIA. If I had to make a judgment on it, I think they probably can. I would have to go back and look at the statutes.

Mr. KASTENMEIER. I will be appreciative if you will verify that for us.

Mr. SCALIA. I would be happy to do it.

There are a number of respects in which some greater flexibility in organization and structure might be desirable. For example, it is not clear that a regional board can determine to review or reconsider a parole determination made by a panel. There is no provision for such a procedure, and section 4203(a) could be read to preclude it. Similarly, it is not clear that the National Board can review or reconsider a decision of one of its panels. May a regional board member be assigned temporarily to sit on another regional board or on the National Board, and if so, who makes the designation? It is not hard to imagine a situation in which there are two or more vacancies on a particular regional board; yet the processing of cases must somehow continue, despite the impossibility of getting more appointments immediately. These problems are readily soluble, but I think it worthwhile to bring them to your attention.

I now would like to address myself to the parole procedures themselves which are, of course, at the heart of this legislation. I won't describe them as my written testimony does; I will go right into my comments upon them.

These procedural provisions would implement some of the most important aspects of the conference recommendation I discussed earlier—in particular the provisions for access to the prisoner's file, representation by counsel, and a written statement of reasons for denial of parole. Subject to some reservations I will get to in a moment, I of course applaud these portions of the bill. The bill does not, however, implement that portion of the conference recommendation which is directed to the establishment of rules and standards by which the grant or denial of parole may be consistently applied and reliably predicted. I refer to the very first paragraph of the recommendation, calling for the Board "to formulate general standards to govern the grant, deferral, or denial of parole"—we recommend this be done by rule when possible, and by the use of typical hypothetical illustrations where necessary. Section 4202(a)(1) of the bill grants the National Board power to "establish general policies and rules * * * including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole." But the current Board already has that power, and, as I have indicated, it has not been and will not be exercised. It is true, of course, that the issuance of such rules seems to be almost expected by this bill, as it is not by present law. Nevertheless, because of past experience and because of the absolute indispensibility of this feature to the fairness of the parole

process, it would seem to me desirable to make this not merely a power, but a positive obligation of the National Board. There should be left open no risk whatever that an attorney will have to sift through the 20,000 cases decided each year to determine on what basis it will be decided whether his client's release would be "incompatible with the welfare of society."

This raises another point that I might mention in passing. I presume it is the intent of the bill (as it was of the conference recommendation) that the decisions and opinions in parole cases be publicly available. Whether this is accomplished by the language of the bill depends upon the effect of section 4223(a), which renders the Administrative Procedure Act (including 5 U.S.C. § 552, the so-called Freedom of Information Act) applicable to the Board. More specifically, it depends upon whether parole determinations are to be considered, within the meaning of 5 U.S.C. § 552(a)(2), "final opinions [or] orders made in the adjudication of cases." I think the normal meaning of that language would embrace them, but it would be well to have some legislative history to make it abundantly clear.

I also note the absence of any provision for Board development of what our recommendation called "prototype decisions"—that is, a body of fully reasoned decisions applying to typical or recurrent fact situations and usable as timesaving precedents. These will be useful whether or not published rules exist. Perhaps this absence is due to the bill's intention that all decisions be fully reasoned—which I think would be undesirable for reasons I will discuss shortly.

Having mentioned the respects in which the legislation would not go as far as the conference recommendation, let me now turn to some respects in which it goes further—perhaps too far. It must be borne in mind that parole determinations are unavoidably a high volume operation. The additional protections contained in this bill can be expected to increase the number of hearings beyond the current 20,000 annual rate. In such circumstances, informality and flexibility are not merely useful but absolutely necessary if the system is not to break down. Moreover, whereas in some other areas of the law superfluous procedural protections can be provided with relative impunity, here it may be predicted with confidence that prisoners will make indiscriminate and hence in many cases undesirable use of whatever legal remedies are provided. They have nothing to lose, and time weighs heavy on their hands. Accordingly, in this field one must be more careful than ever to provide only those safeguards that are reasonably necessary, and to avoid embellishments that may seem to provide a superabundance of fairness but in fact only harm the society at large and the prisoners themselves by causing the parole system to bog down in triviality and frivolousness.

In this connection, I am concerned about the provision of section 4208(e) and section 4215(h) which requires "maintenance of a full and complete record of the hearing." If this means, as one would normally suppose, that a verbatim transcript must be prepared in each case, it imposes to my mind an unnecessary and enormously burdensome requirement. It should be noted that this requirement will not in any case serve the normal purpose of enabling "on the record" review by the courts under 5 U.S.C. § 706(2)(E); for elsewhere in the bill (section 4223(a)) this section of the Code is specifically rendered inapplicable. On the whole, it would seem to me that minutes of the hearing, prepared by one of the panel members, should suffice.

I might add in this regard, it is the case now that a verbatim stenographic record of the hearing is kept when the hearing is held before a hearing examiner. That is evidently for the purpose of enabling that hearing to be reviewed in Washington by the actual members of the Board, since it is they who decide it. In this bill, however, we have a structure where the matter is to be decided in the field, and for this type of high volume operation to require a verbatim transcript, when the decision is being made out there and you don't have to decide it from reading the verbatim transcript, seems to me more than is necessary and perhaps more harmful than helpful.

Also in the area of needless complication, I do not agree with the feature of section 4208(e) which requires the regional board to provide to the prisoner who is denied parole "a summary of the evidence and information supporting the finding." It is noteworthy that no such requirement is imposed with respect to parole revocation determinations, where the procedural rights should normally be greater. In fact, one might observe that no such requirement was imposed upon the judge or jury which found the prisoner guilty in the first place; adequate evidence of guilt must have appeared in the case, but the particular items relied upon did not have to be specified. I think this provision contains great potential for encouraging frivolous appeals where one item relied upon may have been erroneous even though the rest alone would suffice to uphold the determination.

Section 4208(e) and section 4215(j) require that when an adverse parole decision has been made the affected prisoner be given a written statement of reasons "with particularity." This provision is desirable—and indeed implements our own recommendation—so long as the quoted words do not mean to imply that the notice will be anything but brief. The conference recommendation specifically notes that it would be acceptable to use a check-list form, with only a sentence or two of more individualized explanation. I take this to be the intent of the bill as well. If, on the other hand, these provisions are intended (together with the "summary of the evidence" provision just discussed) to require the writing of a full-dress opinion in every case, then a procedure is established which seems to me clearly unsuited to the volume and the character of these determinations. I would recommend that the bill make it absolutely clear that this is not the case. The unique value of full-dress opinions in bringing visible consistency and predictability to the entire parole process can be achieved at least as effectively and infinitely more economically by making provision for the issuance of a limited number of "prototype decisions," as the conference recommended and as I have discussed above.

Mr. DRINAN. Would you explain to us a bit more? It is my understanding that a large number are turned down automatically on the occasion of their first petition. I guess it is common knowledge among the Federal prisoners to try again and that must high volume that you recommend, that you note, must continue. If administrative convenience is the norm for writing the new law, I would have to agree with you. But if we have a different norm than that and I think that norm is in fact in our bill, then that norm would be as an aid to the rehabilitation of the prisoner that the real purpose of the Parole Board

would be to tell these prisoners why he thinks he is not rehabilitated. So, it seems to me, you can't have short answers or long answers or explanations that your norm right here as I understand it here, the administrative convenience, I don't think that should be the norm of the parole people.

Mr. SCALIA. It's of course always a matter of striking a happy balance. And when I speak of administrative convenience, you should understand that I don't desire it for the pleasure of the bureaucrat, but rather for the healthier operation of the whole system. I just think if you want a full lawyer-like opinion in every one of these cases, if indeed you want particularized statements of reasons and a summary of the evidence as the other provision suggested, if you're talking in other words about something like a judicial opinion in each case, I don't think the system can bear it. I think it will just bog down; it will take longer to make the parole determination. Ultimately, this will cause more injustice to the prisoners than perhaps even the present system.

I think there is a happy medium. I think reasons can be provided but in some abbreviated form. In addition to that, there could be prototype decisions which will enable the consistency to develop that is essential and that the case law normally encourages.

Mr. DRINAN. Do you have, offhand would your assistant have some statistics with regard to the number who are turned down on their first or second application?

Mr. SCALIA. No, sir.

Mr. DRINAN. I think that is essential to the whole thing. You get back to the present Federal prisoners and everybody here has talked to them and had correspondence with them, they say the first is for kicks, just to find out how, they never, never, never get over it, they don't even take it serious and the Board doesn't take it seriously. This is why they have this administrative backlog. I think what we have to do is dig and say what is the basic purpose of this.

Mr. SCALIA. Let us say the reason for that, for that phenomenon which I accept to be the case—I am not informed myself about it——

Mr. DRINAN. Yes?

Mr. SCALIA. That is, the high rate of rejection on initial parole applications. Let us assume that the reason for that is what I believe under the American Law Institute standards or reasons would be described simply by the phrase "to grant parole at this time would understate or diminish or depreciate the gravity of the offense."

That could be said, if that is indeed the case. If that is why this is done all the time, it seems to me that could be stated in one sentence. If could be put on a checklist and checked. I don't ask you to agree with the validity of turning down parole for that reason; but assuming that reason is valid, I don't know why you need a full-dress opinion in order to state it. I think it can be brought to the prisoner's attention just by checking it off the first time on a form, and most of the first-time rejections would have checked "granting parole at this time would"—what word do you suggest?

Mr. BERG. Depreciate.

Mr. SCALIA. "Depreciate the gravity of the offense."

Mr. DRINAN [presiding]. Well, why don't they tell everybody ahead of time that armed robbers don't apply until after a year. It is cruel

to them, they don't know that, they don't know that armed robbers always get turned down the first time.

Mr. SCALIA. That I agree with, that should be stated in the rules, if it is a standard rule, and it should also be one of the items on the checklist, simply to be checked off that is. I think it easy to bring that to the prisoner's attention. All I am arguing against, Mr. Drinan, is not the giving of reasons but the writing of a full blown opinion in each case. I don't think this kind of operation can handle it.

Mr. DRINAN. If you believe in rehabilitation, I will come back to that, the Parole Board is supposed to give guidance to these people or at least give standards so they can know what is wrong with them and prototype decisions, you know, you get form F back, the prisoners would know that they sent me this in the mail. I don't think that is any improvement on the present system.

Mr. Cohen.

Mr. COHEN. You pointed out that as far as requiring a fully reasoned opinion that would go beyond that which we require courts to do, but we do require the court upon a finding of guilt, upon the request of the defendant, to make findings of fact and conclusions of law. Would you recommend a similar type of approach here by having the Board simply state its findings of facts and state the law that is applicable.

Is that an unreasonable burden for the Board to set forth their findings and conclusions of law.

Mr. SCALIA. I think much of that would appear from the checklist we're talking about—when you have a checklist.

Mr. COHEN. I guess I come back to the same point made by the chairman and Father Drinan, when you see checklist, there is an attitude that no one is really dealing with that particular prisoner. I am trying to get at the frustration of the prisoners. We just don't want to think of them as some part of a mechanized system. We ought to be personalized. We ought to have it personalized as much as we can, giving due regard to the administrative delay that would be encountered. I understand there are 17,000 parole decisions made a year, but a checklist would be offensive to me if I were sitting in jail and was just sent a piece of paper showing a couple of boxes marked off.

Mr. SCALIA. I think there is a constant tension between efficiency and personalization. The best way to underpersonalize a relationship is to spend some time with somebody. It is time and attention that they want.

Mr. COHEN. If the Parole Board is going to consider the case and consider the facts that are brought to them, they must make findings of fact in order to base their conclusions. This is in order to grant parole or to deny parole.

Mr. SCALIA. They obviously must—well, it depends on what the reason is. If the reason is what I just suggested—that we don't give parole the first time around, or on a charge of this sort, whatever it is, because it would make the offense appear to be more trivial than it is—for that kind of a reason, one does not need a finding of fact unless you're talking about a finding of fact that the man is guilty of burglary which I assume we don't want to retry.

Mr. DRINAN. But, of course, I didn't understand that as a matter of fact, if the law requires, let's say you have a minimum sentence of 2½ to 5, that he becomes eligible within a particular period of time

prior to the elapse of the 2½ years, or the time off for good behavior, and so forth. It seems to me that the administrative policy which actually counterbans the position of sentence itself, you say, 2½ to 5, you are eligible, but as an administrative policy, we don't grant any parole. That to me doesn't seem to be consistent with the spirit of the law.

Mr. SCALIA. Except that this points up one of the interesting aspects that I think we mentioned earlier about the parole system—the way it is somehow intertwined with the whole sentencing process, the penalties imposed by statute and so forth. The reason that in many cases of this sort the man may be turned down for the reason that "it would make the offense more trivial" may well be that the man was given a sentence much lighter than would normally be given. What I am suggesting that the parole process has been used as a means of achieving somewhat more uniformity nationwide in sentencing than otherwise would be the case.

Mr. COHEN. Well, this is precisely the reason that we don't stand for uniform, mandatory sentences in trying to give the judge the flexibility of sentencing defendants in the first place. If, after taking all of the recommendations, after the conviction of an individual, considering all of the recommendations of the probation officer and those that do the investigating, and the judge comes up with a conclusion that this case warrants a 2½ to 5 years, it seems to me that what you're doing, you're actually circumventing it by imposing a further sentence when the law would not require that. Through administrative regulations, that doesn't seem to be consistent with what we're talking about.

Mr. SCALIA. I am not arguing for the goodness or badness of it. I believe that the point was made in our consultant's study that one of the things that the parole system now does achieve, is to bring to the overall sentencing system more uniformity than would otherwise be possible, because the individual judges sentencing don't have the kind of knowledge of what the general practice is that the nationwide Board of Parole does. Whether you think that is good or bad, that is beyond my knowledge.

Mr. COHEN. It would be far more preferable, in my opinion, in keeping within the letter of the law that we simply mandate a uniform system of sentencing of minimum and maximum sentences. For example, the crime of robbery should receive 5 to 10 years with a minimum of 5 years. I think there should be some flexibility in such a system. I just think to condone the system which basically circumvents the law by imposing a uniformity which is not in the best interest of the criminal justice flies in the very heart of the frustration of individuals. Individuals may say I am entitled under the law to be considered for release on parole and suddenly he comes before the Board and they say we never grant parole the first time around. I think that undermines the whole system. I have no further questions, Mr. Chairman.

Mr. DRINAN. Sir, I think that this discussion of Mr. Cohen and myself is tied in with the norms that we set forth on which the Parole Board would operate. There on page 11 of our bill and we fought and fumed over these for months, and it says that the

Regional Board shall release a prisoner whose record shows that he has substantially observed the rules of the institution in which he is confined on the

date of his eligibility for parole, unless the Regional Board determines that he should not be released on such date for one or both of the following reasons:

"(1) there is a reasonable probability that such a prisoner will not live and remain at liberty without violating any criminal law; or

"(2) there is a reasonable probability that such release would be incompatible with the welfare of society."

Mr. SCALIA. I assume you intended No. 2 to say, in essence, "anything else." I think you could squeeze within No. 2 the kind of reasons that we have been talking about—for example, that it would make the crime appear to be too trivial. You could squeeze within No. 2 the Board's determination that it ought to be the function of the Board to achieve some uniformity of sentencing throughout the country which district judges do not achieve. The Board may well determine that that is the only course of action "compatible with the welfare of society." I had not read that phrase as precluding this type of determination by the Board.

Mr. DRINAN. Alright, this point is pretty crucial to the whole thing. If you agree, maybe we could have counsel comment or ask questions, Mr. Eglit, who has worked with us for months and months and Mr. Mooney also, and if you are so inclined, Mr. Sigler, if you would like to make a point as to how we can meet the criticism or suggestions that Mr. Scalia has without depreciating the bill.

Mr. EGLIT. One point in having reasons stated with particularity, is that this exercise requires intellectual responsibility. That is having to articulate sensibly and coherently the reasons for a decision leads to the enhancement of the sensibility and rationality of the decision itself. I think that is a basic justification for requiring some statement of particularity as to what they are doing.

Secondly, there is the matter of individualization. I don't see how one can ignore or slight this issue. Of coure, I suspect, that there is a good possibility that you are going to have fairly stock opinions coming in—whether you call them prototype decisions or whatever.

The problem is that the whole criminal justice system is perverted by parole; the Parole Board operates as a separate sentencing organization, outside the courts. It does things like setting up by administrative fiat new sentencing rules that it will not parole anybody the first time around.

It is very difficult to get around this. But one way of inducing some responsibility, eventually, in the courts so that hopefully they will be required to really look into Parole Board decisions, is to require the Board to give a statement of reasons with particularity. Then, at least a man can challenge the denial of his parole by showing that the stated reason simply has no basis in reality, or it does not apply to him. He can demonstrate that the decision was arbitrary and capricious, and the courts can begin to instill some reality into this parole system.

You mention the advancement of uniformity as being one of the functions of the Parole Board. The Parole Board in its most recent biennial report states that Selective Service law violators who receive long sentences generally often receive parole, while the short sentences are not given parole. Thus, this type of Board decisionmaking results in a balance between individuals and time served, despite the wide disparity in the sentencing by the courts. I personally would like to represent the Selective Service law violators who were denied—who happened to get a judge who gave them a short sentence. Of course,

I think the problem is that once you fall into the trap of accepting any of the Board's justifications for what it does, such as relieving sentence disparity, you sort of have lost the game. This is because they have surrealistic justifications for what they do, and reality compels cutting through whatever they claim they need and looking at the system as a whole.

Mr. SCALIA. I think there are two separate problems you're just discussing. The first is basic disagreement with the Board as to what ought to constitute a good reason. No amount of a reasoned decision is going to make that come out differently. They might make more words but they would still follow the same policy of seeking to standardize sentences—saying in more words that it would depreciate the gravity of the offense to grant parole at this time. You basically disagree with that reason and I don't think that a longer opinion is going to make that come out any differently.

The second point you make is something quite different, I think, and I cannot argue with it. Without a doubt there are advantages to be gained from the discipline of having to sit down and write a full report, a full blown decision. It does insure greater deliberation, and so forth. There is no response to that except to take the total number of hearings that you are going to have for the year and divide it by the number of people that you are going to have for the year and see how much time you are going to have to write a full-blown opinion in every case.

I think as a matter of fact you can get your reasons—and can take them for review if that is what you want—in 90 percent of the cases from a checklist where they can be checked off and no more really needs to be said.

Mr. EGLIT. If I may make one more comment. If these people with Selective Service violations who received short sentences were given opinions with the stated reason that they were denied by the Board of Parole because they received short sentences, this would clearly be subject to legal challenge on equal protection grounds. So a statement of reasons would at least be something to use, instead of trying to figure out Board policies and actions through the claptrap that comes out of the biennial reports. If they gave particularized reasons the way H.R. 1598 suggests, at least there would be a fighting chance to make the argument that these reasons have no relation to this individual unless you give some higher body a basis for review, so that it can compare the Board's methodology, with the reality of the individual, you're leaving the individual essentially defenseless and he cannot make a case for himself. So unless you get behind the checklist form of reasons, and you have got to require the Board to say why it checked off A, C, and F, you are never going to give these prisoners an opportunity to make a case for themselves.

Mr. DRINAN. Thank you. I will come to Mr. Mooney in a moment.

Sir, I think your fine statement said that this itself on page 1 you said "Board controls approximately two-thirds of the time actually served under fixed-term Federal Sentences and all of the time served under indeterminate sentences. Thus the actions of the Board have a greater and more immediate impact on the average Federal prisoner than the action of the court which sentenced him." So, I say, if they need personnel and law clerks and parole clerks, we call them, they are more important than Federal judges.

Mr. MOONEY. Thank you Father, I am not sure I understand. You're not criticizing section 4205, which shifts the burden of proof.

Mr. SCALIA. I believe I stated that is a matter of parole policy and not procedure and I have nothing to say about that.

Mr. MOONEY. As I recall, Mr. Chairman, when the subcommittee was putting that section together last year it did give a great deal of thought to the burden of requiring that particular reasons be given for denial of parole. The subcommittee unanimously felt that with this increased number of personnel authorized by the bill, the 30 more hearing examiners, 7 National Board members and 15 Regional Board members, would be sufficient to handle the added burden of giving reasons for the denial of parole.

Mr. SCALIA. I am concerned about careful, just action in these cases I think as much as you are. The reason for our disagreement I suppose is that I don't think that 30 examiners and whatever the total number of Board members now adds up to will come anywhere near putting a dent into the problem if you require a full-blown opinion in every case. I am recommending against that. I would rather have the time—the time devoted to writing up opinions that will stand up on appeal or whatever—I would rather have that time devoted to really considering the man's case carefully. You can't do both on the same amount of time.

Mr. DRINAN. They are doing neither now.

Mr. SCALIA. Yes, sir; that is perhaps correct.

Mr. DRINAN. So, take your choice, you want to tell the prisoner what they think of him or do you want to have mass production. Maybe it is not that clear but you see the point. At least the prisoners feel that way, they're doing neither at the moment.

Mr. SCALIA. All I can say is that we perhaps come to a disagreement on this. The Conference considered the point carefully, and its judgment at least was that the happy balance would be struck by requiring a few sentences of particularized explanation; the rest could be adequately covered by a checklist.

Mr. DRINAN. A few sentences, a few good sentences, all right, and, Tom, did you want to say any more?

Mr. MOONEY. No.

Mr. DRINAN. Thank you, Mr. Mooney.

You may proceed.

Mr. SCALIA. I am troubled and perplexed, perhaps more perplexed than troubled, by section 4223(b)(1), which renders inapplicable to the Board the "general statements of policy" exception to the informal rulemaking requirements of the Administrative Procedure Act. Section 553 of that act provides procedures for what is called informal rulemaking—simply publishing the rules and accepting written comments by the public. However, there is an exception to that provision for—and I am going to quote now—"interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." Now, section 4223(b)(1) would delete for purposes of the Board of Parole that portion of what I just read which says, "general statement of policy"; they would not be excepted from informal rulemaking.

I think it is absolutely impossible to conduct an informal rulemaking for every authorized general statement of policy—for example, the statement that, "the Board will henceforth redouble its efforts to

assure equal treatment." If this provision is meant merely to insure that the rules with respect to factors taken into account in granting parole, referred to in section 4202(a)(1), are subject to informal rulemaking procedures, it is an unnecessarily broad means of achieving this. Moreover, it is not a clearly effective means, since these rules may in any event be subject to the "interpretative rules" exception of the APA, which is not excluded.

I might finally note—and I don't note this in my written testimony—that the Parole Board might well assert that those rules are subject to yet another exception, to wit, the exception that excuses informal rulemaking when the agency for good cause finds that the notice-and-public-comment procedures are impractical, unnecessary, or contrary to the public interest. I think with the history of this legislation, the Board would be ill advised to make that determination.

Mr. DRINAN. On this point, we need your assistance. We negotiated on this difficult point on more than one occasion, shall I say, and we would appreciate the Administrative Conference participating with us and counsel in making it acceptable.

Mr. SCALIA. We would be happy to do that, sir.

The provisions which seem most likely to slow down and encumber the parole process are those relating to renewal of parole determination hearings, agency review, and appeal to the courts. Provisions of this character are essential, but care should be taken to make them as efficient and as immune to abuse as possible. With respect to renewal of determination hearings: You will recall that the bill requires a hearing each year before a panel of three, one of whom must be a regional board member. It seems to me that in the very act hearing. The examiner could make recommendations to the regional of assuring more frequent hearings, this provision imposes such an administrative burden that it practically guarantees less thorough hearings. I think justice might better be served by a hearing before the full panel at 3- or 5-year intervals, with annual review before a hearing examiner, limited to the prisoner's progress since the previous hearing. The examiner could make recommendations to the Regional Board, which would decide whether to grant parole, order a new hearing immediately, or leave the previous denial in effect until the next full-panel hearing.

As to administrative appeals, these are not only desirable but absolutely essential if a decentralized system is adopted, in order to enforce the standards of the National Board, and to insure a rough uniformity throughout the system in the application of those standards. I think section 4216 of the bill is correct in making administrative appeal available not merely with respect to denial or revocation of parole, but also with respect to forfeiture of parole good time, imposition of parole conditions, and parole modification. I think you should consider, however, making the appeal discretionary with the National Board. so that it may decline those numerous appeals that are likely to be frivolous. I do not read section 4216 as requiring the National Board to hear oral argument, so that even if it is compelled to accept all appeals it will doubtless dispose of many in a summary fashion that is indistinguishable in all but form from a considered denial of discretionary appeal. Given the predictably overwhelming number of appeals. I frankly cannot conceive that it could possibly do otherwise. Nor should it. Its time and energy should be concentrated upon those

situations in which the result seems out of line with national standards. Since this is probably the intent of the bill, and will doubtless be its outcome, I would prefer to call a spade a spade, and make the appeal discretionary.

Finally, as to judicial review: Section 4223(a) contemplates judicial review of standards and individual decisions under the "arbitrary, capricious or abuse of discretion" standard. I think this is sound and would certainly not recommend a stricter test. There is no avoiding the fact that this legislation, by making Board action reviewable and by seeking to establish firm substantive and procedural guidelines for this important area of Government activity, will open the gates to an inevitable flood of judicial petitions. The danger is not so much that the courts will be likely to second-guess the Board; I think they will be most hesitant to do so. It is rather that the courts will be inundated with petitions for review of parole action. Yet there is no less reason to be willing to accept that consequence here than there is in the field of habeas corpus—where, likewise, judicial protection is afforded with the virtual certainty that it will frequently be abused. There is really no solution to this problem of potential abuse; it is one of the inevitable effects—and perhaps one of the honorable marks—of a system of law.

And incidentally, I might say with respect to the judicial review features of the bill: I don't think it really matters whether you say—as the bill does—that the judicial review provisions of the Administrative Procedure Act are available or not. I think once you establish standards as the bill does, judicial review is going to come whether or not the bill specifically provides for it. The only reason it is not available now is that all of the agency actions are deemed to have been committed to the Agency's discretion. Once they are uncommitted from Agency discretion by establishment of firm standards that must be followed, I think they will be reviewable.

The foregoing remarks might be deemed to apply with equal force to the requirements for public provision of counsel contained in sections 4208(c)(2), 4215(h)(2) and 4216(a) of the bill. Though it is admittedly difficult to draw a distinction, I do not mean to endorse those provisions. In the course of its deliberations concerning recommendation 72-3, the cognizant Conference Committee considered recommending public funding of attorneys' services; the conference ultimately declined to do so, and took no position on the point. Speaking strictly for myself, I do not see how the provision of counsel for all desired purposes in the parole process can be possible. To be sure, we now provide counsel at criminal trials—but there it is the Government that is the initiator of the litigation, so that there is some responsible limit upon the call for attorneys' services. In the parole process, on the other hand, it is the prisoner who initiates the action and then the appeal, and there is absolutely no theoretical or, I think, practical limit upon the number of occasions on which he can be expected to do so. To deny public counsel cannot be compared with a determination to deny judicial review. It is not absolute—it does not entirely exclude all legal assistance. Legal aid societies, public service law firms, and public spirited lawyers will remain available—except that they will be able to limit their activities to those cases that are meritorious. I think compulsory legal assistance might feasibly be provided if you were to

adopt the suggestion I made earlier concerning discretionary review by the National Board. It would seem to me possible to provide attorneys in those cases in which review has been accepted, and for subsequent judicial appeals following that review. This would limit the scheme to a manageable number of cases—and to those which are presumably the more meritorious.

In giving testimony as chairman of the Administrative Conference, I find that my statements are almost always overwhelmingly critical rather than laudatory. There is, of course, a reason for this: The function of the conference is to provide intelligent, informed adivce—and when that advice is sought with respect to a course of action already plotted in a particular bill, our most useful service is to point out where that course goes astray.

Nonetheless, though my testimony today has unfolded in a minor key, I would like at least to end on a joyful, enthusiastic, congratulatory tone. The area of parole is one in which Government action profoundly affects a segment of mankind that does not have ready access to the instruments of reform, or even to the sympathies of the public. The conference has labored in several vineyards of this sort—not just parole reform, but procedures for labor certification of aliens, for the handling of natural resources belonging to Indian tribes, for the bringing of suits against the Government, for the representation of diffuse and unorganized groups in agency rulemaking, for the adjudication of claims in small-amount, mass-volume benefit programs, and for the change of status of aliens. There is not much glory or public visibility attached to the achievement of such reforms; and for that reason these are the areas where radical improvement is most frequently needed. I think the demythologizing and legitimation of the parole process is an unappealing and politically thankless task that very much needs doing. It fills me with hope for our system that the subcommittee is willing to devote its attention to the matter.

Thank you.

Mr. DRINAN. I thank you very much, sir, and, in return, give you my joyful and enthusiastic and congratulory words upon your statement. I hope that it is not entirely politically thankless, this job that we have. I really wanted to thank you for your statement; it's been enormously helpful to me to refocus on this matter. I know that you and your associates will be keeping in touch with the subcommittee. We hope to be able to finalize this legislation and we had this hearing and we have another one in a week from today with the Federal Bureau, with the head of Federal Bureau, to familiarize new members and to try to get some improvement before we report this again to the full committee. There is opportunity for any final comment that you would like to make, Mr. Scalia, you or your associate.

Mr. SCALIA. I only have one and I meant to say it earlier: Needless to say—I always hope it is needless to say—I and my staff are entirely at the disposition of the committee and its staff if we can be of any further assistance.

Mr. DRINAN. Thank you. I know that Congressman Railsback, the ranking minority member of this committee, would appreciate that, too, and I will indicate that to him.

Thank you very much for coming.

The meeting is adjourned.

[Whereupon, at 3:25 p.m., the subcommittee adjourned.]

[Mr. Sigler's statement referred to at p. 135 follows.]

Department of Justice

STATEMENT

OF

MAURICE H. SIGLER
CHAIRMAN
BOARD OF PAROLE

BEFORE

SUBCOMMITTEE NO. 3
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

THE

PAROLE REORGANIZATION ACT - H.R. 1598

JUNE 21, 1973

Mr. Chairman: Thank you for this opportunity to appear before you to discuss H.R. 1598, your "Parole Reorganization Act of 1973." While I have not previously had the pleasure of testifying before this Subcommittee, I am aware, Mr. Chairman, of your keen interest in the area of parole reform, and I wish to commend you for the fine work you have done.

Before I discuss specific features of H.R. 1598, I believe that it would be useful to bring the Subcommittee up to date on the progress the Board of Parole has made in improving the paroling process. I think you will find that many of the structural and procedural changes which we intend to implement on a nationwide basis in the very near future are similar to those suggested in your legislative proposal. While we do object to several of the provisions of the bill, I think that it is fair to say that we are in agreement on many fundamental issues, and I am hopeful that we can work in close cooperation toward achieving the common goal of a better decision making process.

As I mentioned, the Board intends to initiate changes in both the structure of the Board and its procedures on a nationwide scale. We believe we are in a position to do this very soon, perhaps within several months, because of the great success we have experienced in our Pilot Regionalization Project. As you may know, the Board conceived some time ago the idea of establishing a pilot project to test both the concept of regionalization as well as new parole procedures. The project went into effect last October in the Northeast region of the United

States, and the results have been so encouraging that we have now made definite plans to extend many of the project's innovative features to the other regions of the country.

Let me outline now the organization of the project and the procedural changes that have been adopted. As I proceed, I would like to bring to the Subcommittee's attention some of the results from our first six months of experience.

The Northeast region of the United States consists of the following federal institutions: the Federal Reformatory, Petersburg, Virgina: and the Robert F. Kennedy Youth Center, Morgantown, West Virginia (youth institutions); also the U.S. Pentitentiary, Lewisburg, Pennsylvania; the Federal Reformatory for Women, Alderson, West Virginia; and the Federal Correctional Institution, Danbury, Connecticut (adult institutions).

For purposes of the project, parole interviews are conducted by a panel of two hearing examiners. Their recommendations are then forwarded to the Board in Washington where a parole decision is made. The decision is then communicated back to the institution.

The project is innovative in many respects. First of all, parole decisions are based on explicit guidelines designed to provide fairness and reasonable uniformity in the parole process. Briefly the guidelines take into account the severity of the offense as well as the parole prognosis, i.e. the probability of favorable parole outcome. Once these elements are known, the general range of time to be served before release can be determined. For example, an inmate who was convicted of a low severity offense and who has a very high probability of favorable parole outcome will generally serve a relatively short period of time before release; an inmate with a low severity offense, but only a fair probability of favorable parole outcome will generally serve a longer period of time; etc. The time periods are specified for each combination of elements.

After the range of time to be served is determined, other factors are then considered, such as the subject's institutional behavior and participation in institutional programing the results of institutional testing community resources, and the parole plan. When exceptional factors are present, such as extremely good or poor institutional performance, and a decision falling outside of the guideline range is made, the hearing examiner must cite the reason for this exception.

These guidelines provide a generally consistent parole policy, and in individual cases, serve to alert reviewing officers to unique decisions so that either the special factors in the case may be specified or the decision may be reconsidered. It is felt that the use of these guidelines will serve not to remove discretion, but to enable it to be exercised in a fair and rational manner.

For purposes of the pilot project, an inmate is also permitted to have a representative or advocate present with him at the parole interview. The function of the representative is to assist the inmate in summarizing the positive features of his case. This aspect has been well received by inmates and has proved to be especially helpful in cases where an inmate has had difficulties expressing himself. For the first six months of the project, representatives appeared at over 40% of the interviews.

I would like to point out here that up until recently inmates have not been permitted to be represented by legal counsel. The Board is now of the opinion that there is no need to preclude an attorney from appearing as an inmate's representative in our pilot project cases simply because he is an attorney, as long as he realizes that parole release determinations do not, and should not, involve an adversary presentation of issues of law or fact. Starting this month, therefore, inmates will be permitted to appear at the initial interview with a representative who may be an attorney.

Another objective of the pilot project is to render speedier parole decisions. One of the frequent criticisms leveled at the Board, and justifiably so, is the decision making process has been too cumbersome and slow. This is in large part due to the fact that some 17,000 parole-related decisions must be made during the course of a year within an administrative framework that is far from perfect.

We established a goal in the project of notifying the institution of the Board's decision within a very short period of time, and I can report that 99.5% of all decisions have been made known to the inmates within five working days. We believe that this is a very significant accomplishment, since it tends to minimize the anxiety which the inmates understandably face during the waiting period.

In addition, inmates are provided with written reasons in cases when parole is denied. The providing of reasons has been a frequent suggestion from those

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who have studied the parole process, and we believe that the suggestion is sound. This belief has been reinforced by the results of the project. We have found that inmates who are advised of the reasons for parole denial are better able to understand what steps they must take to improve their chances. Furthermore, the cloak of secrecy is removed from the decision making process when the reasons for the decision are communicated to the inmate.

The pilot project also involves a new review/appeal mechanism. Briefly, under this procedure inmates are permitted to file for review thirty days after a parole decision has been rendered if there is new and significant information which was available at the time of the interview, but not considered, or if the written reasons provided to the inmate do not support the order of the Board.

The petition by the inmate is considered by a Regional Board member, who may affirm the decision; grant a review hearing in Washington, D.C., at which the inmate may be represented; grant a re-interview at the institution; or modify the original decision. During the first six months, 104 requests for review were acted upon. The decision was affirmed in approximately 70% of the cases.

If the inmate is not satisfied with the action taken upon review, he may then appeal the decision to the Board after a 90-day waiting period. If a member of the Board determines that the appeal should be considered, he and two other members render a final decision.

This then is a general description of our Pilot Regionalization Project. As I have already indicated, the results after six months have been very encouraging. We intend to continue the project and make appropriate improvements until such time as it is absorbed into a general parole reorganization.

As I suggested at the outset, the Board of Parole is also actively planning a general reorganization, based on our experience with the pilot project, to expand the procedural and substantive reforms to federal parole applicants throughout the United States. I would like now to outline the form of the reorganization as it is presently contemplated.

First of all, there will be a basic structural change in the Board of Parole in order to effect regionalization on a national scale. The plan calls for the creation of five parole regions, each headed by a Regional Board Member, hereafter referred to as Regional Director. Each regional office would have responsibility for handling the total parole function within the particular geographical area. In addition, three Board Members, hereafter referred to as National Directors, would sit in Washington, D.C., as a National Appellate Board. Moreover, authority for original case decisions would be delegated to Parole Hearing Examiners who would work in two man panels using explicit decision guidelines promulgated by the Board, such as those I have discussed. In cases in which decisions outside of the parole guidelines were made, each Hearings Examiner panel would be required to specify the unique factors considered. Furthermore, each inmate would be permitted to have a representative who may be an attorney, to assist him at his parole hearing; parole denial would be accompanied by written reasons; and the right to a two level appeal process would be provided.

Under our proposal, the Regional and National Directors would function as an appellate and policy setting body. The Regional Director would consider appeals from the case decisions of the Hearing Examiner panels within his region, and his decision could then be appealed to the three National Directors sitting as a National Appellate Board. The decision of the National Appellate Board would be final. In essence, the procedural details would be similar to those of the pilot project discussed previously.

In addition, original jurisdiction in certain cases, such as those that are especially sensitive or notorious, would be retained by the National Appellate Board. Also the Regional and National Directors would meet as the U.S. Board of Parole at regular intervals to develop, modify, and promulgate Board procedures, rules, and policies.

This then basically describes the reorganization plan as presently envisioned. We think that implementing the plan would meet the criticisms leveled at the Board by achieving the following major goals:

1. providing timely, well reasoned decisions based upon personal interviews of inmates by a professionally trained hearing panel;

2. developing and implementing an explicit general paroling policy to provide greater consistency and equity in decision making;

3. affording an efficient, effective, and legal method of reviewing case decisions; and

4. establishing a more effective and responsive liaison with the institution, courts and related personnel, as well as with the persons under the supervision of the Board.

Before turning to the specific features of H.R. 1598, I would like to say that we are in favor of accomplishing the reforms administratively, rather than by legislation. Our view is that administrative changes would have the advantage of much greater flexibility and permit us to continue experimentation until the best parole process can be achieved. We are dealing with an inexact science and should be in a position to make additional changes, necessitated by experience, mistake, or advance in the state of the art.

Mr. Chairman, at this point I would like to proceed with a discussion of your legislation. I hope that it is apparent that many of the bill's features are included in both our Pilot Regionalization Project and the planned general reorganization. For this reason, I will address myself only to those provisions of the bill with which we have significant difficulty.

First of all, we do not share the belief that the Board should be independent from the Department as section 4201(a) would require. There is no doubt in my mind that our decisions are rendered independently, yet we benefit from the administrative support of the Department. Also, I note that section 4201(b) would require, to the extent feasible, that the Board of Parole represent the ethnic and racial composition of the federal prison population. It is our opinion that this requirement fails to take into consideration the fact that the Board represents the American public as well as federal prisoners. Moreover, we are not aware of not released earlier under the provisions discussed immediately above, the Regionparole decisions than one whose composition is determined solely on merit considerations. By way of comparison, permit me to point out that there is no such requirement for federal judges who play an equally important role in determing the length of time an individual will spend in prison.

We find section 4205 especially troublesome. Under present law, the granting of parole is discretionary with the Board. The Board must make a positive finding that there is a reasonable probability that the prisoner would not violate the law and that his release would not be incompatible with the welfare of society.

Section 4205, however, would appear to establish a presumption in favor of parole by requiring that the Board release a prisoner unless it finds certain factors to be present. This procedure would be weighted heavily in favor of the inmate. We believe, however, that it is not unreasonable to require a positive finding by the Board that he can assume the responsibility of leading a law abiding life. The welfare and protection of society demand nothing less.

Subsection (b) of section 4205 would require that with respect to any prisoner not released earlier under the provision discussed immediately above, the Regional Board would have to release him after two-thirds of his sentence unless it finds a "high probability" that he will engage in criminal conduct. Again, we believe that the burdens are reversed.

In our opinion, the present standard should remain in effect, namely that it must appear to the Board that there is a reasonable probability that the inmate will not engage in further violations of law and that his release at that time is not incompatible with the welfare of society.

Section 4207, which deals with the parole determination hearing requires that in any case in which parole is denied or delayed, subsequent parole determination hearings must be held annually thereafter. We agree that the rule should be for at least annual reviews; however, we believe that discretion should be left to the Board to decide against annual review in cases where it appears clear that a release order after an additional year would be inappropriate. In such cases we would wish to retain discretion to defer a further hearing for a maximum of three years. This discretion would be exercised in those situations where it could be realistically seen that a longer period would be needed to meet minimum release requirements. Annual review in such cases would only mislead the inmate and over-burden the Board.

The provisions of section 4208 pose problems which bar our endorsement. Specifically, that section would make available to any inmate or his representative the files, reports or documents used in parole decision making. Exceptions are made for documents which constitute diagnostic opinions, or which reveal sources of information obtained confidentially, but the bill would require that the prisoner be given written notice of the exceptions and that he be provided with the substance of the documents.

It is the present policy of the Board not to permit access to these materials. First of all, many of the documents do not belong to the Board and we are in no

position to unilaterally release them. For example, certain reports are compiled by the Bureau of Prisons. In addition, the presentence report is the property of the sentencing court, and we are not permitted to release the contents without specific authorization. I must say, however, Mr. Chairman, that if these problems could be solved, I would favor limited access to file materials.

Section 4208 also permits a prisoner to be represented at a parole determination hearing, either by an attorney or any other qualified person. Attorneys may either be retained or appointed under the provisions of the Criminal Justice Act. With respect to representation, it had been the policy of the Board in our pilot project to permit an inmate to appear with an advocate, so long as the advocate was not an attorney. This position was based on the fact that the parole hearings are not adversary proceedings. The non-adversary nature of the proceedings is of course well supported in law.

Our concern was that the presence of lawyers would have the effect of turning the parole hearing into a legal or factual confrontation between the prisoner and the hearing examiner. Our position has been modified, as I mentioned earlier, and we are now permitting representation by attorneys in our pilot project so long as the attorneys recognize the non-adversarial nature of the hearing.

We are opposed, however, to appointment of lawyers for parole applicants under the Criminal Justice Act. The Criminal Justice Act now in force does not permit appointment of attorneys for parole hearings, and even for parole revocation hearings it provides for appointment of counsel only if the Court finds that the interests of justice require such appointment for an indigent prisoners. By contrast, this bill would require appointment both for parole and parole revocation hearings at the request of the prisoner.

For both types of hearings we feel the law should remain as it stands. With respect to revocation, appointments of counsel should be left to the Courts' discretion as the Criminal Justice Act provides. This view is in accord with the latest Supreme Court ruling on the subject. (See *Gagnon* v. *Scarpelli*, No. 71–1225, decided May 14, 1973.) In parole hearings we believe that no court appointment of counsel, discretionary or otherwise, should be provided. Again, the nonadversary nature of the parole hearing is such that attorney representation is not required. This indeed is the obvious rationale of the existing law's exclusion of parole hearings from the requirements of attorney appointments.

We can foresee that if lawyers are available for the asking, then every inmate will surely demand one. Very soon, all inmates will have legal counsel, and the inevitable result will be the development of a formalized, legalistic parole hearing. This of course would necessitate a vast augmentation in Board personnel. We are unconvinced that such an eventuality would result in better and quicker parole decisions.

Section 4210 deals with the jurisdiction of the Board of Parole. The bill, like present law, starts with the notion that the period of parole, absent special factors, is the maximum term of imprisonment reduced by the time served in prison prior to parole. This creates an anomoly, since persons released earlier have a possible parole term which is longer than those released later. The latter group however, presents greater parole risks. I would like to mention that the Administration's proposal to reform the federal criminal laws, introduced as H.R. 6046, makes the term of parole independent of the amount of time served prior to parole. We believe this to be the better approach.

I would also like to point out that the Administration's code reform legislation rejects the concept of "good time," both for persons in prison and those on parole. Our experience indicates that good time serves only the function of more rapidly terminating paroles and not necessarily deterring misconduct. We believe that the approach taken in section 4212, which permits the early termination of parole, is wholly adequate to deal with excessive parole terms.

Under section 4214, the parole term served before a parole violation cannot extend the term of the Board's jurisdiction over the individual. Thus, the parolee receives 100% credit for parole time upon modification or revocation, even though he may forfeit good time. This progressively reduces the sanctions available to deter violations by parolees. Such credits have been rejected in H.R. 6046.

Section 4215 outlines the procedures for revocation of parole, and we are in general accord with its provisions, which track the requirements of *Morrissey* v. *Brewer*, 408 U.S. 417, and our own established procedures.

We cannot endorse subsection (e), however, which in effect provides for release of a parolee on his own recognizance (except if deemed dangerous

or likely to flee), following the preliminary interview and pending the revocation hearing. Present law provides that persons at this point in service of sentences may be released, even on bail, only in very extraordinary circumstances. It should be pointed out of course that expedited revocation hearings unde regionalization will eliminate any unnecessary delay.

Section 4215 also provides an opportunity for the parolee to compel the appearance of witnesses at a revocation hearing. This would be possible because of the bill's provisions for subpoena power in the National Board. The power would run nation-wide and be enforceable through the United States District Courts. We do not believe, however, that such subpoena power is required to enable the Board to conduct fair parole revocation hearings. The *Morrissey* decision, in which the Supreme Court listed the necessary elements for a fair revocation hearing including a conditional right to cross examine adverse witnesses, significantly did not mandate compulsory process for the attendance of witnesses, though this possibility could not have escaped the Court's attention. Our experience has not indicated any necessity for compulsory process to obtain witnesses for the parolee's cause. He is permitted to have voluntary witnesses and he has the right under *Morrissey* to cross examine any adverse witnesses who appear. Further, any adverse witnesses whom he wishes to attend are requested to appear, provided that this is not determined to be dangerous, or unwise for other good reasons, as provided in *Morrissey*.

If a parolee could compel witnesses' attendance as in a criminal trial, revocation hearings would be delayed and obstructed with no real benefit to the parolee. Under present law, as mentioned above, the parolee is provided counsel where the interests of justice require an attorney's assistance, such as in cases of factual dispute. The attorney of course will see to it that any favorable testimony by voluntary witnesses, either in person or by affidavit or other documentation, is presented.

We have one further objection to Section 4215, that being with respect to its provision for a revocation hearing upon termination of an assignment of a prisoner to a Community Treatment Center. This termination of assignment, as we read the bill, constitutes a mere change in a condition of his parole, not a revocation of parole. We do not see the necessity for a formal revocation-type hearing where revocation is not being decided; indeed, it would appear anomalous to provide such a hearing on the issue of whether the parolee should be placed in a situation perhaps less restrictive of his liberty than the Community Treatment Center assignment. Further, if a hearing of this nature were required, it might inhibit the free use of such centers for parolees, thus discouraging use of a most useful rehabilitative tool.

Sections 4214 and 4215 also might be read to require a revocation-type hearing for modification of any condition of parole. While we doubt that this is the intent of the bill, we would of course oppose such provisions.

Section 4216 provides for automatic appeals in all cases where parole has been denied or revoked, or where parole good time has been withheld or forfeited, or where parole conditions have been imposed or modified. Appeals shall be decided by at least three members of the National Board, except where parole conditions have been imposed or modified, in which case at least two members are required. We believe that these appeals should be discretionary, and that there should be a mechanism to screen out those frivolous cases that will only clog the appellate system.

Title II of the bill provides for an amendment to that section of the Crime Control and Safe Streets of 1968 dealing with grants for correctional institutions and facilities. The amendment would add a new paragraph to section 453 of part E of the Act which now enumerates certain correctional standards which must be met by states desiring grants for such institutions and facilities. The amendment would require, among other things, that the state assure LEAA that its parole system includes certain specified elements, such as procedures for equitable and expeditious disposition of parole hearings including access to files, representation of prisoners, and quick notification of decisions. Minimum standards with respect to parole revocation would also be required.

Certain of the requirements set forth in the amendment have been discussed above, and to the extent that we oppose the requirements with respect to the federal parole system, we oppose their imposition on state programs.

Even to the extent that we favor some of the correctional requirements, however, we would not at this time recommend amending the Safe Streets Act. As you know, the Administration's Law Enforcement Revenue Sharing proposal is now being considered by the House and Senate, and for the time being we oppose specific amendments to the present statute since such amendments are contrary to the proposal's concept. We would prefer to wait until we have had an opportunity to study the final version of our legislation before making recommendations.

Mr. Chairman, this concludes by prepared statement. I wish to point out in closing that I have discussed only our major criticisms with the legislation. If the Subcommittee decides to proceed with the legislation, we would request that our attorneys be permitted to work with the Subcommittee staff in ironing our technical difficulties. Of course we do hope that the Subcommittee will agree that it is best to allow the Board to proceed with the reorganization administratively.

[Mr. Scalia's statement referred to at p. 163 follows:]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C., June 21, 1973.

TESTIMONY BY ANTONIN SCALIA

Mr. Chairman and Members of the Subcommittee: I am grateful for the opportunity of testifying before this Subcommittee concerning parole reform legislation.

The Administrative Conference is, as you know, a permanent, independent Federal agency, charged with studying the administrative procedures of Federal agencies—and making recommendations for improvement to the Congress, the President and the agencies themselves. Parole has in the past been insulated from the critical analysis of those concerned with problems of administrative procedure by the assertion that it was a privilege, a matter of grace, neither to be expected nor to be earned, granted without necessary rhyme or reason at the indulgence of the sovereign. Since no prisoner had a right to this boon, none could complain of its denial, or of the arbitrariness with which it often appeared to be conferred. However accurate this view may once have been, it surely no longer comports with the real place of parole in our criminal law.

Parole cannot be viewed as simply a windfall, because in fact the entire penal system is premised on its availability. Congress prescribes maximum sentences and judges sentence individual defendants with the knowledge that parole is available and in the expectation that a prisoner who demonstrates his desire for rehabilitation will not serve the maximum term or anything approaching the maximum.

Grants of parole are not a series of random acts, but a major and regular part of the administration of our system of criminal justice. The U.S. Board of Parole conducts annually about 20,000 proceedings relating to the grant, denial, revocation or confirmation of parole. The Board controls approximately two-thirds of the time actually served under fixed-term Federal sentences and all of the time served under indeterminate sentences. Thus, the actions of the Board have greater and more immediate impact on the average Federal prisoner than the action of the court which sentenced him. The exercise of such authority is a fearsome responsibility, and every effort should be made to assure that its exercise is rational, even-handed and consistent with our notions of procedural fairness.

CONFERENCE RECOMMENDATION 72–3 AND ATTEMPTED IMPLEMENTATION

A little over a year ago my precedessor as Chairman of the Conference, Roger C. Cramton, presented testimony to this Subcommittee concerning parole reform legislation simlar to that which is now before you. He described a Conference study of the procedures of the U.S. Board of Parole, and a proposed recommendation arising from the study which was to be considered by the Conference at its June 1972 Plenary Session. The proposal was in fact adopted by the Conference, as its Recommendation 72–3, without change and without dissent. I submit a copy as an apendix to my testimony. I would like, if I may, to refresh your recollection concerning the contents of that Recommendation, and to describe our effort to have it accepted by the Board of Parole. Both these items bear upon the desirability and necessity of the bill before you.

The elements contained in the Conference Recommendation represent, I am sure you will agree, a very modest proposal:

(1) First, we urge that the Board of Parole formulate general standards to govern the grant, deferral or denial of parole. Where the adoption of general rule is not possible, the Board should attempt to formulate standards through use of typical hypothetical illustrations.

(2) Second, the prisoner's file should be disclosed to him or his representative in advance of the parole hearing, except for information in the file as to which disclosure is clearly unwarranted or has been determined by the sentencing judge to be improper. Such information might include psychiatric and medical reports and statements which would disclose confidential informants. Where information is not directly disclosed from the file, the prisoner should be given a summary or indication of the nature of information withheld.

(3) Third, the prisoner should be allowed to be assisted by counsel or other representative of his choice. This would not be for the purpose of turning the parole hearing into a trial but merely out of recognition that in a matter of such great significance to the prisoner, the assistance of an experienced and articulate adviser seems important.

(4) Fourth, we urged that where parole is deferred or denied, the prisoner be provided a statement of reasons—perhaps simply a check-list form, but with at least a sentence or two of individualized explanation added. We also recommended in this connection that the Board develop and make publicly available a body of fully reasoned prototype decisions—granting, denying, or deferring parole—which might serve as a body of "case law" and assist in the formulation of standards.

(5) Fifth, with respect to parole revocation proceedings we urged greater procedural safeguards than for parole hearings. The parolee or his counsel should have access to the written evidence against him and should be entitled to hear and cross-examine adverse witnesses. He should have an opportunity to comment on the hearing officer's recommended decision, and, of course, the Board's final decision should include a statement of reasons.

On July 5, 1972 we transmitted this Recommendation to the then Chairman of the Board, George J. Reed. In October we received a reply from Mr. Reed's successor, Maurice H. Sigler, rejecting substantially all our proposals. I submit this correspondence for the record, together with an internal memorandum comparing the response with the Recommendation. We have since then attempted to induce the Board to change its mind by working through its parent agency, the Department of Justice—where, I think it is fair to say, we found in some quarters more sympathetic ears. This effort, however, has ultimately yielded little fruit. We have been advised informally that Justice has made a final decision concerning the extent to which it will seek implementation of our Recommendation—to wit, only to the extent of permitting the assistance of counsel at the parole hearing. This seems to us of minor consequence if none of the other changes proposed in our Recommendation is adopted. Without published standards governing parole, without access to the file that shows how those standards apply to the particular case, and without any requirement that a reason for denial be given, a lawyer would know neither what principles to address nor what alleged facts to refute.

We have received no formal communication from the Board or the Department on this subject since Chairman Sigler's letter of October 20, so I do not purport to give you their present position first-hand. I hope, of course, it has changed. But as far as we have been advised, and despite extensive and continuing efforts, our Recommendation has met with substantial rejection. It is an understatement to say that this is a keen disappointment. The proposal is, as I have said, a modest one. It was based on a careful and scholarly study by our consultant, Professor Phillip Johnson of the University of California at Berkeley, a copy of which I provide for your information, and, if you wish, for inclusion in the record. It was adopted by the Conference not only without dissent but with expressions from our membership indicating a breadth of consensus most unusual in any assemblage of lawyers.

The Administrative Conference, of course, was established by the Congress only to recommend and not to dispose. We have no power, and no desire, to exact automatic compliance with whatever we say. But when a Recommendation as well considered as this, as moderate, and as enthusiastically endorsed, is wholly rejected by the agency to which it is addressed, I think it our responsibility to bring the Recommendation and the rejection as forcefully as possible to the attention of the Congress. Our proposal did not call for legislation. It was addressed to the Board of Parole, and there is nothing in it,

with the exception of that portion dealing with the confidentiality of presentencing reports, which could not be implemented by the Board under its existing authority. It is my conclusion, however, after almost a year of intensive efforts to secure implementation, that this Recommendation will in fact not be accepted unless the Congress intervenes. I bring this to your attention both because this Subcommittee is now considering parole legislation and because the Judiciary Committee has substantive jurisdiction over the Conference and has demonstrated a sympathetic interest in our activities and our effectiveness.

Let me turn now to the bill before you, H.R. 1598. Title I of the bill would establish an independent Board of Parole and make major changes in Federal parole procedures. Its provisions are drawn in large part from last year's bills, H.R. 13118 and H.R. 13293, on which we commented at that time. I am pleased to note that some of the provisions in H.R. 1598 reflect our previous comments. Title II of the bill would amend Title I of the Omnibus Crime Control and Safe Streets Act of 1968 to prescribe minimum standards for State parole systems as a condition of eligibility for federal grants to correctional institutions and programs. I will limit my comments to those provisions of the bill which deal with Federal parole procedures and will not deal with matters of substantive parole policy—on which we have no particular expertise—or on the proposed amendment to the Omnibus Crime Control Act.

I should emphasize at this point that the Assembly of the Conference, which adopted our Recommendation 72-3 and which alone has authority to make formal Conference Recommendations, has not had an opportunity to consider this bill. Consequently, the views I expressed are those of my Office but not necessarily those of the full Conference.

ORGANIZATIONAL AND STRUCTURAL PROVISIONS

H.R. 1598 would create a Board of Parole "as an independent establishment in the executive branch," severing its present conditions with the Department of Justice. The Board would consist of a seven-member National Board and five Regional Boards of three members each. As under present law, 18 U.S.C. § 4201, members would be appointed for six-year terms by the President with the advice and consent of the Senate, and there is no provision that members may be removed only for good cause. The principal functions of the National Board would be to establish general policies and rules for the Board of Parole and to conduct appellate review of the determinations of the Regional Boards regarding grant or revocation of parole.

Removing the Board from the Department of Justice was one of the recommendations in Professor Johnson's report, but it was not included in the Conference Recommendation. Though I have no strong views on the subject, on balance I think it preferable to keep all criminal law enforcement and penal activities of the Government under the control of a single agency—particularly when that agency has been as responsible over the years and has such a high repute among lawyers within and without the Government as the Department of Justice. Independence for the Board is not, I think, necessarily desirable in all matters. Decisions in individual parole cases should certainly be almost judicial in nature and free from supervisory influence. But the establishment of parole policies seems to me inherently bound up with prosecutory, enforcement, and penal policies, and should rationally be subject to the same overall direction. In such matters, independence is far from an unmixed blessing. I confess that my opinion on this point may be colored by the fact that the Department was much more receptive than the Board to the reasonable procedural changes we proposed. But the attitude which that displays may not be entirely irrelevant. The Department has a broader view, and hence can perhaps judge policy matters pertaining to parole more objectively. It is in any case a known quantity, staffed with attorneys who are among the most respected in Government. I would not discard these values too readily. It seems to me that an appropriate degree of independence, where independence is needed, might be achieved more desirably by promoting greater security of tenure for Board members than by moving the Board out of the Department.

Whether parole administration should be centralized through the establishment of regional boards depends so heavily upon questions of operational efficiency which we have not studied that I do not feel qualified to advise you. I will note, however, the obvious fact that decentralization increases the difficulty of achieving consistency and predictability—and especially the difficulty of achieving them through an essentially "case law" process. This is a matter I will address in another context later on.

The provisions of the bill relating to the organization of the Regional Boards raise in my mind some technical questions. These Boards are to consist of three members appointed by the President with the advice and consent of the Senate, and each Board is to have assigned to it up to six hearing examiners. The principal function of the Regional Board is to hear and decide parole determination and parole revocation cases. For purposes of these hearings, it is evidently intended that the Board and its examiners sit in panels. Section 4207(a) requires that a parole determination hearing be held before a panel of three individuals of whom at least one must be a Board member, and the other two members or examiners. For parole revocation hearings, however, section 4215(g) merely provides that they "be conducted by at least one member of the Regional Board;" not only does it not require other officers on the panel to be examiners, it does not require a panel at all. This is surely an anomaly. A parole revocation hearing is ordinarily attended with more formality than a parole determination hearing, and its effect on the prisoner is likely to be more significant. Moreover, while it is expressly provided (in section 4207(a)) that the panel sitting in the determination hearing has authority to make the decision for the Regional Board, it is not clear whether the officer or officers presiding over the revocation hearing may be authorized to make the decision. Section 4203(b) suggests that they may not; section 4203(c) that they may.*

There are a number of respects in which some greater flexibility in organization and structure might be desirable. For example, it is not clear that a Regional Board can determine to review or reconsider a parole determination made by a panel. There is no provision for such a procedure, and section 4203(a) could be read to preclude it. Similarly, it is not clear that the National Board can review or reconsider a decision of one of its panels. May a Regional Board member be assigned temporarily to sit on another Regional Board or on the National Board, and if so, who makes the designation? Cf. 28 U.S.C. Ch. 13. It is not hard to imagine a situation in which there are two or more vacancies on a particular Regional Board; yet the processing of cases must somehow continue. These problems are readily soluble, but I think it worthwhile to bring them to your attention.

PAROLE PROCEDURES

The heart of the bill is, of course, its provisions regarding grant of parole. Section 4205 provides that where a prisoner has attained eligibility for parole (usually after serving one-third of his sentence) and his record shows that he has substantially observed the rules of the institution, he shall be released unless the Regional Board determines that there is a reasonable probability he will violate a criminal law or that his release would be "incompatible with the welfare of society." When he has served two-thirds of his sentence he shall be released on parole unless the Board determines that there is "a high likelihood that he will engage in conduct violating any criminal law." The effect of section 4205 appears to be to reverse the burden of persuasion presently applicable in parole proceedings, *cf.* 18 U.S.C. § 4203(a), by requiring parole to be given unless the Board can point to some reason why it should not. Whether this is desirable is a question of penology and not of administrative procedure.

Sections 4207 and 4208 prescribe the procedure for parole determinations. Unless the Regional Board determines without hearing to release on parole, it shall hold a hearing. The hearing will be conducted by a panel of three composed of one Board member, who presides, and two other Board members or examiners. Where parole is denied, such a hearing will be conducted at least annually thereafter. The prisoner is to be allowed access to his files, except for material that is not relevant, diagnostic opinions disclosure of which might disrupt a program of rehabilitation, and material revealing sources of information which may have been obtained in confidence. When such material cannot be disclosed directly, the Board shall ordinarily make available its substance. The prisoner is entitled to be assisted by counsel prior to and at the hearing, and where he cannot afford counsel, there is provision for appointment of counsel in accordance with the procedure in Federal criminal cases. A full record of the

*The whole purpose and effect of section 4203(b) are somewhat hard to fathom. Its language seems clearly intended (as the last sentence of section 4207(a) indicates) to prohibit delegation by the Board; but this effect is entirely eliminated by the next subsection. It seems to me that the only remaining function of section 4203(b) is to impose a reasonable but extraordinary prohibition upon the Board's adopting a requirement of unanimous vote.

parole hearing shall be kept, and within fourteen days the Regional Board shall notify the prisoner in writing of its determination, stating with particularity the grounds, and including a summary of the evidence and information supporting the finding.

These procedural provisions would implement some of the most important aspects of the Conference Recommendation I discussed earlier—in particular the provisions for access to the prisoner's file, representation by counsel, and a written statement of reasons for denial of parole. Subject to some reservations I will get to in a moment, I of course applaud these portions of the bill. The bill does not, however, implement that portion of the Conference Recommendation which is directed to the establishment of rules and standards by which the grant or denial of parole may be consistently applied and reliably predicted. I refer to the very first paragraph of the Recommendation, calling for the Board "to formulate general standards to govern the grant, deferral, or denial of parole"—by rule when possible, and by the use of typical hypothetical illustrations where necessary.

Section 4202(a)(1) of the bill grants the National Board power to "establish general policies and rules . . . including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole." But the current Board already has that power, and, as I have indicated, it has not been and will not be exercised. It is true, of course, that the issuance of such rules seems to be almost expected by this bill, as it is not by present law. Nevertheless, because of past experience and because of the absolute indispensibility of this feature to the fairness of the parole process, it would seem to me desirable to make this not merely a power but a positive obligation of the National Board. There should be left open no risk whatever that an attorney will have to sift through the 20,000 cases decided each year to determine on what basis it will be decided whether his client's release would be "incompatible with the welfare of society."

This raises another point that I might mention in passing. I presume it is the intent of the bill (as it was of the Conference Recommendation) that the decisions and opinions in parole cases be publicly available. Whether this is accomplished by the language of the bill depends upon the effect of section 4223(a), which renders the Administrative Procedure Act (including 5 U.S.C. § 552, the so-called Freedom of Information Act) applicable to the Board. More specifically, it depends upon whether parole determinations are to be considered, within the meaning of 5 U.S.C. § 552(a)(2), "final opinions [or] orders made in the adjudication of cases." I think the normal meaning of that language would embrace them, but it would be well to have some legislative history to make it absolutely clear.

I also note the absence of any provision for Board development of what our recommendation called "prototype decisions"—that is, a body of fully reasoned decisions applying to typical or recurrent fact situations and usable as time-saving precedents. These will be useful whether or not published rules exist. Perhaps this absence is due to the bill's intention that *all* decisions be fully reasoned—which I think would be undesirable for reasons I will discuss shortly.

Having mentioned the respects in which the legislation would not go as far as the Conference recommendation, let me now turn to some respects in which it goes further—perhaps too far. It must be borne in mind that parole determinations are unavoidably a high volume operation. The additional protections contained in this bill can be expected to increase the number of hearings beyond the current 20,000 annual rate. In such circumstances, informality and flexibility are not merely useful but absolutely necessary if the system is not to break down. Moreover, whereas in some other areas of the law superfluous procedural protections can be provided with relative impunity, here it may be predicted with confidence that prisoners will make indiscriminate and hence in many cases undesirable use of whatever legal remedies are provided. They have nothing to lose, and time weighs heavy on their hands. Accordingly, in this field one must be more careful than ever to provide only those safeguards that are reasonably necessary, and to avoid embellishments that may seem to provide a superabundance of fairness but in fact only harm the society at large and the prisoners themselves by causing the parole system to bog down in triviality and frivolousness.

In this connection, I am concerned about the provision of section 4208(e) and section 4215(h) which requires "maintenance of a full and complete record of the hearing." If this means, as one would normally suppose, that a verbatim transcript must be prepared in each case, it imposes to my mind an unnecessary and enormously burdensome requirement. It should be noted that this require-

ment will not in any case serve the normal purpose of enabling "on the record" review under 5 U.S.C. § 706(2)(E); for elsewhere in the bill (section 4223(a)) this section of the Code is specifically rendered inapplicable. On the whole, it would seem to me that minutes of the hearing, prepared by one of the panel members, should suffice.

Also in the area of needless complication, I do not agree with the feature of section 4208(e) which requires the Regional Board to provide to the prisoner who is denied parole "a summary of the evidence and information supporting the finding." It is noteworthy that no such requirement is imposed with respect to parole revocation determinations, where the procedural rights should normally be greater. In fact, one might observe that no such requirement was imposed upon the judge or jury which found the prisoner guilty in the first place; adequate evidence of guilt must have appeared in the case, but the particular items relied upon did not have to be specified. I think this provision contains great potential for encouraging frivolous appeals where one item relied upon may have been erroneous even though the rest alone would suffice to uphold the determination.

Section 4208(e) and Section 4215(j) require that when an adverse parole decision has been made the affected prisoner be given a written statement of reason, "with particularity." This provision is desirable—and indeed implements our own Recommendation—so long as the quoted words do not mean to imply that the notice will be anything but brief. The Conference Recommendation specifically notes that it would be acceptable to use a check-list form, with only a sentence or two of more individualized explanation. I take this to be the intent of the bill as well. If, on the other hand, these provisions are intended (together with the "summary of the evidence" provision just discussed) to require the writing of a full-dress opinion in every case, then a procedure is established which seems to me clearly unsuited to the volume and the character of these determinations. I would recommend that the bill make it absolutely clear that this is not the case. The unique value of full-dress opinions in bringing visible consistency and predictability to the entire parole process can be achieved at least as effectively and infinitely more economically by making provision for the issuance of a limited number of "prototype decisions," as the Conference recommended and as I have discussed above.

I am troubled and perplexed by section 4223(b)(1), which renders inapplicable to the Board the "general statements of policy" exception to the informal rulemaking requirements of the Administrative Procedure Act. I think it is absolutely impossible to conduct an informal rulemaking for every authorized general statement of policy—for example, the statement that "the Board will henceforth redouble its efforts to assure equal treatment." If this provision is meant merely to insure that the rules with respect to factors taken into account in granting parole, referred to in section 4202(a)(1), are subject to informal rulemaking procedures, it is an unnecessarily broad means of achieving this. Moreover, it is not a clearly effective means, since these rules may in any event be subject to the "interpretative rules" exception of the APA, which is not excluded.

The provisions which seem most likely to slow down and encumber the parole process are those relating to renewal of parole determination hearings, agency review, and appeal to the courts. Provisions of this character are essential, but care should be taken to make them as efficient and as immune to abuse as possible. With respect to renewal of determination hearings: You will recall that the bill requires a hearing each year before a panel of three, one of whom must be a Regional Board member. It seems to me that in the very act of assuring more frequent hearings, this provision imposes such an administrative burden that it practically guarantees less thorough attention. I think justice might better be served by a hearing before the full panel at 3- or 5-year intervals, with annual review before a hearing examiner, limited to the prisoner's progress since the previous hearing. The examiner could make recommendations to the Regional Board, which would decide whether to grant parole, order a new hearing immediately, or leave the previous denial in effect until the next full-panel hearing.

As to administrative appeals, these are not only desirable but absolutely essential if a decentralized system is adopted, in order to enforce the standards of the National Board, and to insure a rough uniformity throughout the system in the application of those standards. I think section 4216 of the bill is correct in making administrative appeal available not merely with respect to denial or revocation of parole, but also with respect to forfeiture of parole good time, imposition of parole conditions, and parole modification. I think you should consider, however, making the appeal discretionary with the National Board,

so that it may decline those numerous appeals that are likely to be frivolous. I do not read section 4216 as requiring the National Board to hear oral argument, so that even if it is compelled to accept all appeals it will doubtless dispose of many in a summary fashion that is indistinguishable in all but form from a considered denial or discretionary appeal. Given the predictably overwhelming number of appeals, I frankly cannot conceive that it could possibly do otherwise. Nor should it. Its time and energy should be concentrated upon those situations in which the result seems out of line with national standards. Since this is probably the intent of the bill, and will doubtless be its outcome, I would prefer to call a spade a spade, and make the appeal discretionary.

Finally, as to judicial review: Section 4223(a) contemplates judicial review of standards and individual decisions under the "arbitrary, capricious or abuse of discretion" standard. I think this is sound and would certainly not recommend a stricter test. There is no avoiding the fact that this legislation, by making Board action reviewable and by seeking to establish firm substantive and procedural guidelines for this important area of Government activity, will open the gates to an inevitable flood of judicial petitions. The danger is not so much that the courts will be likely to second-guess the Board: I think they will be most hesitant to do so. It is rather that the courts will be inundated with petitions for review of parole action. Yet there is no less reason to be willing to accept that consequence here than there is in the field of habeas corpus—where, likewise, judicial protection is afforded with the virtual certainty that it will frequently be abused. There is really no solution to this problem of potential abuse: it is one of the inevitable effects—and perhaps one of the honorable marks—of a system of law.

The foregoing remarks might be deemed to apply with equal force to the requirements for public provision of counsel contained in Sections 4208(c)(2), 4215(h)(2) and 4216(a). Though it is admittedly difficult to draw a distinction, I do not mean to endorse those provisions. In the course of its deliberations concerning Recommendation 72-3, the cognizant Conference Committee considered recommending public funding of attorneys' services; the Conference ultimately declined to do so, and took no position on the point. Speaking strictly for myself, I do not see how the provision of counsel for all desired purposes in the parole process can be possible. To be sure, we now provide counsel at criminal trials—but there it is the Government that is the initiator of the litigation, so that there is some responsible limit upon the call for attorneys' services.

In the parole process, on the other hand, it is the prisoner who initiates the action and then the appeal, and there is absolutely no theoretical or, I think, practical limit upon the number of occasions on which he can be expected to do so. To deny public counsel cannot be compared with a determination to deny judicial review. It is not absolute—it does not entirely exclude all legal assistance. Legal aid societies, public service law firms, and public spirited lawyers will remain available—except that they will be able to limit their activities to those cases that are meritorious. I think compulsory legal assistance might feasibly be provided if you were to adopt the suggestion I made earlier concerning discretionary review by the National Board. It would seem to me possible to provide attorneys in those cases in which review has been accepted, and for subsequent judicial appeals following that review. This would limit the scheme to a manageable number of cases—and to those which are presumably the more meritorious.

In giving testimony as Chairman of the Administrative Conference, I find that my statements are almost always overwhelmingly critical rather than laudatory. There is, of course, a reason for this: The function of the Conference is to provide intelligent, informed advice—and when that advice is sought with respect to a course of action already plotted in a particular bill, our most useful service is to point out where that course goes astray.

Nonetheless, though my testimony today has unfolded in a minor key, I would like at least to end on a [illegible] enthusiastic, congratulatory tone. The area of parole is one in which Government action profoundly affects a segment of mankind that does not have ready access to the instruments of reform, or even to the sympathies of the public. The Conference has labored in several vineyards of this sort—not just parole reform, but procedures for labor certification of aliens, for the handling of natural resources belonging to Indian tribes, for the bringing of suits against the Government, for the representation of diffuse and unorganized groups in agency rulemaking, for the adjudication of claims in small-amount, mass-volume benefit programs, and for the change of status of aliens.

There is not much glory or public visibility attached to the achievement of such reforms; and for that reason these are the areas where radical improvement is most frequently needed. I think the demythologizing and legitimation of the parole process is an unappealing and politically thankless task that very much needs doing. It fills me with hope for our system that the Subcommittee is willing to devote its attention to the matter.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C.

RECOMMENDATION 72-3: PROCEDURES OF THE UNITED STATES BOARD OF PAROLE

(Adopted June 9, 1972)

EXPLANATORY INTRODUCTION

The United States Board of Parole consists of eight members and employs a staff of eight examiners. It conducts about 17,000 proceedings a year relating to the grant or denial of parole, involving about 12,000 prison interviews, and close to 2,000 proceedings relating to the revocation or continuation of parole. The Board controls approximately two-thirds of the time actually served under fixed-term Federal prison sentences and all of the time served under indeterminate sentences.

1. *Parole.* The Parole Board has published a list of 27 unweighted factors which guide its decision whether to grant or deny parole. These factors point to the ultimate judgment as to whether release in the case of a particular prisoner is likely to lead to further law violation, with collateral attention to equalizing disproportionate sentences for similar offenses. A more specific formulation of the standards of decision should be possible after the development of a body of reasoned decisions, and after the completion of a pending computer study by the National Council on Crime and Delinquency.

Parole is ordinarily granted or denied largely upon information and impressions obtained from the prisoner's file and a brief personal interview. Under present procedures, the prisoner has no direct knowledge of what is in his file, but will usually be given some indication of the file's contents by the prison counsellor or the hearing examiner. The prisoner cannot always be given unrestricted access to this file, because it may contain documents such as psychiatric reports or current criminal investigation reports which, if disclosed, might be damaging to the prisoner or jeopardize the investigative process. In addition, the primary document in the file is usually the pre-sentence report prepared by a probation officer, which may have been withheld from the prisoner or his counsel in the discretion of the sentencing judge.

The Board hearing examiner or, less frequently, a Board member conducts the parole "hearing" or interview at the prison. The interview is conducted, after examination of the file, with only the prisoner, the prison counsellor and a stenographer present, and typically lasts 10–15 minutes. Counsel for the prisoner is not allowed. The examiner's recommendation is dictated after the prisoner leaves the room, but in the presence of the prison counsellor.

The examiner's recommendation is not made available to the prisoner. The recommendation is considered by a panel of the Board, consisting of two members of the Board who call in a third in the event of disagreement. The members consult together only in cases of difficulty, and typically simply note their conclusion in the file. Under recent practice, the deciding members may grant a "Washington Review Hearing" at which relatives or counsel may supply written or oral statement, but this occurs in only a small portion of the cases. In cases of unusual difficulty or notoriety, an *en banc* decision is made by a quorum of the full Board. Typically advocates or opponents of parole appear before the *en banc* Board. Some notation of the reasons for grant or denial is added to the file after *en banc* consideration but usually not otherwise.

The reasons for Board action are not disclosed to the prisoner. Despite legal requirements of public availability, the Board's orders and opinions are open to public inspection only when the Board determines this to be the public interest.

2. *Revocation.* On finding that a probation officer's report of a parole violation seems well-founded, a member of the Parole Board will issue a warrant for the parolee. The Board is in the course of formulating standards to govern this discretionary action. When the parolee is taken into custody and there is a

dispute of fact, he is given a hearing either in the locality or at the prison to which he will be returned. The prisoner may retain counsel or, if he is indigent, may request the appointment of counsel by the District Court. The hearing is conducted before a Board examiner or, more rarely, before a member of the Board. It rarely lasts more than a few hours. The parolee may be represented by counsel and introduce evidence. While the warrant will specify the charges, neither the parolee nor his counsel may examine the documentary evidence or hear or cross-examine adverse witnesses. At the conclusion of the hearing the examiner prepares a report and recommendation, which are not shown to the prisoner or his counsel. The Board's decision is usually unexplained, and reasons are not given the parolee.

3. *Workload.* A rough approximation of the Board's workload indicates that it must enter about 80 parole and 10 revocation decisions each working day, and that each examiner must make about 10 parole recommendations each working day. Even a minimal explanation of decisions will put some strain upon the Board's Washington staff. Any provision for more careful examination of the prisoner's file or for more thorough interviewing, both of which seem desirable, will require an increase in the number of examiners.

RECOMMENDATION

A. Rules and Standards

The United States Board of Parole should formulate general standards to govern the grant, deferral or denial of parole. This articulation of standards can appropriately be deferred until it can reflect both the results of the pending computer study of parole decisions and the accumulation of a usable number of reasoned decisions. The Board in formulating its standards should use typical hypothetical illustrations in significant areas where promulgation of general rules is not yet possible.

B. The Prisoner's File

1. *Access to the file.* Under guidelines issued by the Board, the prison counsellor should disclose the file to the prisoner or his representative in advance of the parole hearing, except for any information as to which disclosure is clearly unwarranted or which has been determined by the sentencing judge to be improper. The prisoner should be given an oral summary or indication of the nature of any relevant adverse information which is not directly disclosed to him.

2. *The pre-sentence report.* The Judicial Conference of the United States should be requested to consider directing the sentencing judge to indicate on the face of the pre-sentence report (a) whether it has been shown to the prisoner or his counsel at the time of sentencing and (b) if not, whether it or any designated part should remain undisclosed in connection with parole proceedings. Disclosure of pre-sentence reports should be encouraged except to the extent that the report contains information as to which disclosure is clearly unwarranted.

C. Right to Counsel at the Parole Interview

The prisoner should be allowed to be assisted by counsel, or other representative of his choice, both in the examination of his file and at the parole interview. The participation of the prisoner's counsel or representative should ordinarily be limited to offering remarks at the close of the interview between the examiner and the prisoner. Bar associations, public interest law firms, and other professional organizations should be urged to offer assistance to indigent prisoners pending evaluation by appropriate governmental institutions of the need for and desirability of public funding of these legal services.

D. The Parole Decision

1. *Reasons for deferral or denial.* A statement of reasons for the deferral or denial of parole should in all instances be given the prisoner. In some cases the Board can simply adopt as its own decision the examiner's recommendation. The cases where this is not appropriate may well be so voluminious as to require the use of a check-list form, such as that with which the Board is now experimenting, but there should in each such case be added at least a sentence or two of individualized explanation.

2. *Prototype decisions.* The Board shall develop a body of fully reasoned decisions—whether granting, denying or deferring parole—in typical or recurrent fact situations. These decisions should serve as time-saving precedents and as the raw material for the subsequent formulation of standards.

3. *Public availability.* The Board's decisions should be open to public inspection. These decisions, including examiners' recommendations which may be adopted by the Board, should be worded impersonally and designed to allow deletion of the prisoner's name in order to avoid a clearly unwarranted invasion of privacy.

E. Parole Revocation

1. *Adverse evidence.* The parolee or his counsel should have access to the written evidence against him, and should be entitled to hear and examine adverse witnesses who appear at the revocation hearing.

2. *Recommended decision.* A copy of the hearing officer's recommendation should be given the parolee, and he should be given an opportunity to comment or reply in writing before the Board enters its decision.

3. *Board decision.* The Board should state the reasons for its decisions and make them available to public inspection in the same manner as recommended above for decisions denying or deferring parole.

F. Implications for Board Staffing.

Prior to its next budget request, the Board should estimate the additional personnel needed to implement these recommendations or otherwise to improve its procedures, such as, for example, doubling its staff of examiners to permit more thorough consideration of parole applications. The Board should then make a vigorous effort to secure the increase in authorization and appropriations which it considers necessary to this important end.

JULY 5, 1972.

Hon. GEORGE J. REED,
Chairman, U.S. Board of Parole,
Washington, D.C.

DEAR MR. REED: On June 9, 1972, at its Seventh Plenary Session, the Administrative Conference of the United States adopted Recommendation 34: *Procedures of the United States Board of Parole,* which I am pleased to transmit to you for consideration by the Board.

This recommendation, as you know, was based on extensive study by the Committee on Informal Action of the Administrative Conference. The Committee and the Conference had the benefit of an elaborate report prepared by Professor Phillip Johnson of the University of California (Berkeley) Law School. The Board provided the fullest cooperation to the Conference with respect to this study and its views were communicated to the Conference. The recommendation was carefully considered by the Conference membership and was approved by a unanimous vote.

I respectfully request that you give careful consideration to the adoption of the procedures recommended in Recommendation 34. I am convinced that improved performance of its statutory responsibilities by the Board will result from implementation of this recommendation. As you know, there is considerable legislative and judicial concern about the parole process: the adoption of this recommendation would assist in the continuation of public confidence in the Board.

I would appreciate very much having a report by November 1, 1972, on the steps taken or proposed to be taken by the Board to implement this recommendation. In this connection, a courtesy copy of this letter is being sent to the Attorney General and to Mr. Sol Lindenbaum, the member of the Administrative Conference designated by the Department of Justice.

Sincerely yours,

ROGER C. CRAMTON, *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
U.S. BOARD OF PAROLE,
Washinton, D.C., October 20, 1972.

Mr. JOHN F. CUSHMAN,
Executive Director, Administrative Conference of the United States, Washington, D.C.

DEAR MR. CUSHMAN: This is in response to Mr. Roger Crampton's letter of July 5, 1972 addressed to Mr. George J. Reed, who was Chairman of the Board of Parole at that time.

The Board has given considerable study to Recommendation 34, Procedures of the United States Board of Parole, and has decided to work out methods to attempt to adopt some of the recommendations of the Administrative Conference as stated below.

(A) Rules and Standards: The Board has published in its Rules the factors it considers in granting or denying parole. Refinements may be possible after completion of its present study on Improved Decision-Making.

(B) The Prisoner's File: At this time the Board does not plan to permit access to the file at the time of or before parole consideration. This matter is under study, especially in light of a recent Supreme Court decision (*Morrissey* v. *Brewer*) which provides for some disclosure of the file in certain revocation proceedings.

(C) Right to Counsel at the Parole Interview: The Board does not plan, at this time, to permit counsel at a parole interview. The presence of an advocate (not an attorney) to assist the inmate at the interview is currently being permitted in a pilot project the Board is now conducting to explore the effects of a regional operation. Experience gained from this project should aid the Board in its future discussions about the matter generally.

(D) The Parole Decision:

(1) Reasons for Deferral or Denial :

A "check-list" giving reasons for deferral or denial was tied in two institutions for several months this year. The system proved to be rather unsatisfactory and has now been dropped in favor of another experiment. In five institutions included in the pilot project mentioned above, the inmates will be told in person why they were not paroled. This will occur within five days after the parole interview and will be done by the persons who conducted the interview.

(2) Prototype Decisions: Since the Board's decisions are highly individual in nature we feel that the providing of prototype decisions would serve little, if any, value. Further, it is doubtful if there would be any real interest in this type of material, and the Board does not plan to develop such prototype decisions.

(3) Public Availability: The Board feels no value would occur by the preparation of "masked" Board decisions and making them available to the public. We believe there would be little, if any, interest in such decisions and the workload involved would be very large.

(E) Parole Revocation:

(1) Adverse Evidence. The Board now complies with the recent Supreme Court decision mentioned above (*Morrissey* v. *Brewer*) which compels, under certain conditions, limited access to evidence and the confrontation of adverse witnesses.

(2) Recommended Decision. The Board does not plan to provide a copy of the hearing officer's recommendation to the parolee. This seems to be an unnecessary step in the Board's present procedures which are believed to be quite complete and fair. A copy of the Board's revocation procedure has been furnished to you previously.

(3) Board Decision. The Board does not plan to state or make public its decision relative to revocation for the same reasons stated in Section D(3) above, which applies to parole decisions.

(F) Implications for Board Staffing: The Board, in its fiscal year 1974 budget request, has submitted justifications for twenty-three additional staff (the present authorized strength is sixty-six positions). These would include eight additional Parole Hearing Examiners. The primary purpose of the augmented staff would permit operation on a regional basis. Regional operation should facilitate the making of prompt decisions by the Board, furnishing of reasons for deferral and denial and the establishment of an internal appeals procedure. Our budget requests will be deferred pending action of the Board and the Department of Justice after the results of the projects have been analyzed.

Sincerely,

MAURICE H. SIGLER, *Chairman.*

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C., November 2, 1972.

MEMORANDUM TO FILE

Subject: Evaluation of Parole Board Response to Recommendation 34.

The Parole Board, by letter dated October 20, 1972, replied to our inquiry concerning implementation of the procedures proposed by Recommendation 34.

The purpose of this memorandum is to evaluate the extent of actual and planned compliance.

In the discussion below, each paragraph of the recommendation is set forth separately, followed by the Parole Board's response, followed by a comment describing the degree of acceptance. No attempt has been made to refute asserted reasons for rejection; almost none of them is new. A copy of the February 1972 Board of Parole memorandum is attached for further background as to its position.

A. RULES AND STANDARDS

RECOMMENDATION

Recommendation: "The United States Board of Parole should formulate general standards to govern the grant, deferral or denial of parole. This articulation of standards can appropriately be referred until it can reflect both the results of the pending computer study of parole decisions and the accumulation of a usable number of reasoned decisions. The Board in formulating its standards should use typical hypothetical illustrations in significant areas where promulgation of general rules is not yet possible."

Parole Board response: "The Board has published in its Rules the factors it considers in granting or denying parole. Refinements may be possible after completion of its present study on Improved Decision-Making."

Comment: Apparent rejection. A listing of "factors" was contained in the Board's rules at the time the recommendation was adopted. This is simply not the same thing as the formulation and articulation of standards, and much more than mere "refinement" is necessary to make it so. The Board's reply does not comment on the development and use of "hypothetical illustrations"; presumably there is no change in its position that this is not feasible.

B. THE PRISONER'S FILE

Recommendations: "1. *Access to file.* Under guidelines issued by the Board, the prison counsellor should disclose the file to the prisoner or his representative in advance of the parole hearing, except for any information as to which disclosure is clearly unwarranted or which has been determined by the sentencing judge to be improper. The prisoner should be given an oral summary or indication of the nature of any relevant adverse information which is not directly disclosed to him."

"2. *The pre-sentence report.* The Judicial Conference of the United States should be requested to consider directing the sentencing judge to indicate on the face of the pre-sentence report (a) whether it has been shown to the prisoner or his counsel at the time of sentencing and (b) if not, whether it or any designated part should remain undisclosed in connection with parole proceedings. Disclosure of pre-sentence reports should be encouraged except to the extent that the report contains information as to which disclosure is clearly unwarranted."

Parole Board response: "At this time the Board does not plan to permit access to the file at the time of or before parole consideration. This matter is under study, especially in light of a recent Supreme Court decision (*Morrissey* v. *Brewer*) which provides for some disclosure of the file in certain revocation proceedings."

Comment: Clear rejection for the present. Whether any hope is held out for the future depends upon whether "study . . . in light of" the *Morrissey* case implies a willingness to extend the salutary principles of *Morrissey* by analogy. The case would not compel any change, since it related to revocation rather than granting of parole, and since it only required disclosure of the particular evidence relating to the revocation. In view of the Board's past intransigence on this point, and in view of the fact that it has already had four months to study the decision, it seems most unlikely that the Board means to extend *Morrissey* beyond its narrow bounds. Accordingly, the rejection of this recommendation is probably total and permanent.

C. RIGHT TO COUNSEL AT THE PAROLE INTERVIEW

Recommendation: "The prisoner should be allowed to be assisted by counsel, or other representative of his choice, both in the examination of his file and at the parole interview. The participation of the prisoner's counsel or representative should ordinarily be limited to offering remarks at the close of the interview between the examiner and the prisoner. Bar associations, public interest law firms, and other professional organizations should be urged to offer assistance to indigent prisoners pending evaluation by appropriate governmental institutions of the need for and desirability of public funding of these legal services."

Parole Board response: "The Board does not plan, at this time, to permit counsel at a parole interview. The presence of an advocate (not an attorney) to assist the inmate at the interview is currently being permitted in a pilot project the Board is now conducting to explore the effects of a regional operation. Experience gained from this project should aid the Board in its future discussions about the matter generally."

Comment: Clear rejection, inasmuch as the recommendation seeks representation by legal counsel. It is not even certain that the "advocate (not an attorney)" in the Board's limited pilot project is selected by the inmate rather than assigned by the institution. (The Board had earlier talked of permitting the inmate's prison counsellor to appear with him at the hearing.)

D. THE PAROLE DECISION

Recommendation #1: "1. *Reasons for deferral or denial.* A statement of reasons for the deferral or denial of parole should in all instances be given the prisoner. In some cases the Board can simply adopt as its own decision the examiner's recommendation. The cases where this is not appropriate may well be so voluminous as to require the use of a check-list form, such as that with which the Board is now experimenting, but there should in each such case be added at least a sentence or two of individualized explanation."

Parole Board response: "A check-list giving reasons for deferral or denial was tried in two institutions for several months this year. The system proved to be rather unsatisfactory and has now been dropped in favor of another experiment. In five institutions included in the pilot project mentioned above, the inmates will be told in person why they were not paroled. This will occur within five days after the parole interview and will be done by the persons who conducted the interview."

Comment: Clear rejection, since it is central to the recommendation that there be a statement of reasons *in writing*, in order that the decision may be made publicly available (see (3) below).

Recommendation #2: "2. *Prototype decisions.* The Board should develop a body of fully reasoned decisions—whether granting, denying or deferring parole—in typical or recurrent fact situations. These decisions should serve as time-saving precedents and as the raw material for the subsequent formulation of standards."

Parole Board response: "Since the Board's decisions are highly individual in nature we feel that the providing of prototype decisions would serve little, if any, value. Further, it is doubtful if there would be any real interest in this type of material, and the Board does not plan to develop such prototype decisions."

Comment: Clear rejection.

Recommendation #3: "3. *Public availability.* The Board's decisions should be open to public inspection. These decisions, including examiners' recommendations which may be adopted by the Board, should be worded impersonally and designed to allow easy deletion of the prisoner's name in order to avoid a clearly unwarranted invasion of privacy."

Parole Board response: "The Board feels no value would occur by the preparation of 'masked' Board decisions and making them available to the public. We believe there would be little, if any, interest in such decisions and the workload involved would be very large."

Comment: Clear rejection.

E. PAROLE REVOCATION

Recommendation #1: "1. *Adverse evidence.* The parolee or his counsel should have access to the written evidence against him, and should be entitled to hear and examine adverse witnesses who appear at the revocation hearing."

Parole Board response: "The Board now complies with the recent Supreme Court decision mentioned above (*Morrissey* v. *Brewer*) which compels, under certain conditions, limited access to evidence and the confrontation of adverse witnesses."

Comment: Substantial acceptance, under the acknowledged compulsion of Morrissey. It is unclear what the Board means by "under certain conditions,"

unless it is a peculiar reference to *Morrissey's* indication that the general rule requiring confrontation of adverse witnesses may be departed from where the hearing officer finds good cause. It is unclear what the Board means by "limited access to evidence," unless it is a peculiar reference to the fact that *Morrissey's* language only applies to all adverse evidence.

Recommendation #2: "2. *Recommended decision.* A copy of the hearing officer's recommendation should be given the parolee, and he should be given an opportunity to comment or reply in writing before the Board enters its decision."

Parole Board response: "The Board does not plan to provide a copy of the hearing officer's recommendation to the parolee. This seems to be an unnecessary step in the Board's present procedures which are believed to be quite complete and fair. A copy of the Board's revocation procedure has been furnished to you previously."

Comment: Clear rejection.

Recommendation #3: "3. *Board decision.* The Board should state the reasons for its decisions and make them available to public inspection in the same manner as recommended above for decisions denying or deferring parole."

Parole Board response: "The Board does not plan to state or make public its decision relative to revocation for the same reasons stated in Section D(3) above, which applies to parole decisions."

Comment: Clear rejection—and also clear violation of *Morrissey* requirement of "a written statement by the factfinders as to . . . reasons for revoking parole."

F. IMPLICATIONS FOR BOARD STAFFING

Recommendation: "Prior to its next budget request, the Board should estimate the additional personnel needed to implement these recommendations or otherwise to improve its procedures, such as, for example, doubling its staff of examiners to permit more thorough consideration of parole applications. The Board should then make a vigorous effort to secure the increase in authorization and appropriations which it considers necessary to this important end."

Parole Board response: "The Board, in its fiscal year 1974 budget request, has submitted justifications for twenty-three additional staff (the present authorized strength is sixty-six positions). These would include eight additional Parole Hearing Examiners. The primary purpose of the augmented staff would permit operation on a regional basis. Regional operation should facilitate the making of prompt decisions by the Board, furnishing of reasons for deferral and denial and the establishment of an internal appeals procedure. Our budget requests will be deferred pending action of the Board and the Department of Justice after the results of the project have been analyzed."

Comment: Apparent acceptance. The last sentence, however, leaves the matter in some doubt.

[Subsequently, the following statement by Representative Biester was submitted for the record:]

STATEMENT OF EDWARD G. BIESTER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I appreciate this opportunity to submit a statement on behalf of H.R. 1598, the Parole Reorganization Act of 1973. During the 92nd Congress when this legislation was originally considered, I was privileged to be a member of this Subcommittee and to participate in the drafting of the parole reorganization act. You and the other members of the Subcommittee are to be commended for recognizing the need for this legislation and supporting it as you have.

Reform in the criminal justice system remains more the subject of intellectual and academic discussion than practical application. The urgency of the problem cannot be ignored, yet the prevailing sentiment among the public continues to be seeming indifference, if not overt hostility, to any substantive action which would overhaul antiquated correctional facilities, practices and attitudes. Until the public recognizes its personal stake in a humanized criminal justice system in this country, the average citizen will continue to tolerate a dysfunctional correctional program and have to live through its failures.

The problem, of course, is exceedingly complex—an interlocked series of relationships which reinforce one another and succeeded in discouraging attempts to break apart the cycle. Considering the personality and background influences

of most criminals, the negative impact of the prison experience followed by the trauma of the post-release return to society all combine to present a formidable barrier to the effective rehabilitation of the criminal. There are numerous points at which the cycle may be affected and where criminals may be reached, but due to the nature of the many reinforcing factors involved, actually breaking the circle requires sustained and simultaneous attention at all points. An all-out coordinated effort at all points which have a direct and major influence on criminal behavior is, unfortunately, most difficult to achieve. As a result, successes in one area can be offset by failures in another, yet this must not deter us from making those changes in the system which hold promise for more adequately meeting the problem.

Re-structuring parole apparatus and procedure will facilitate the establishment of a more responsive attitude on the part of correction officials at a critical period during the criminal's confinement. At the same time it will instill a sense of confidence in the prisoner that, if he follows the rules and makes an honest effort to reform, he has no reason not to expect a fair and objective parole hearing.

A justifiable criticism leveled against the prison system is that the deadening and de-humanizing experience in most prisons fails to encourage the inmate to rehabilitate himself. Educationally, vocationally and culturally there are few effective incentives within the prison experience to encourage the inmate that he can better himself—and his prospects for parole—by working to change himself. The lack of sufficient effective rehabilitative opportunities in the prison reinforces an attitude among the general population that works against a broadened rehabilitative program. Contributing to this has been the failure of the present parole system to offer hope to the inmate that satisfactory behavior will be enough to earn him parole. Since this is a goal toward which virtually every inmate strives, failure to achieve this due to the policy shortcomings and operational problems of the Board of Parole just adds to the hopelessness with which most inmates view their existence within the prison.

This legislation addresses a crucial aspect of the criminal-prison syndrome which has long inhibited the achievement of an effective system of criminal justice. Several features of the bill are especially worth noting.

Under the provisions of H.R. 1598, the Board will become an independent agency apart from its current status within the Department of Justice. Its proposed breakdown into five regional boards will help promote a more efficient, effective and personal means of dealing with individual parole cases. Furthermore, the provision that the Board's composition reflect the racial and ethnic characteristics of the prison population goes a long way toward establishing a parole board which can be more sensitive to the backgrounds and life experiences of the inmates.

Current law leaves the parole decision up to the discretion of the Board, taking into account the prisoner's behavior in the institution and the probability that he will lead a law-abiding life when released. Under this legislation, the regional Board shall release the prisoner when he is eligible for release providing he has or is likely to meet parole requirements. This new language, therefore, improves the possibility of a prisoner's parole assuming there is nothing in his record to indicate or suggest he would not be a good parole prospect. In other words, the burden is placed on the Board to prove that a prisoner should not be placed on parole. Such a devision would serve to eliminate discretionary attitudes on the part of the Board which have tended to reject some parole requests on less than reasonable grounds.

This legislation requires that a parole hearing be held when the prisoner becomes eligible, and it specifies the nature of the hearing—composition of the panel, when it is to convene, factors in the prisoner's record to be considered and the rights of the prisoner during the hearing procedure. The absence of such provisions in existing law and regulations has been a serious deficiency. The indeterminate nature of hearing frequency and procedure is corrected in this legislation, and it provides the prisoner with assurances of what he can expect when he does become eligible for consideration for release on parole.

Under current hearing procedure the prisoner cannot be represented by counsel, and the records indicating the reasons for denying parole are too often unavailable to the prisoner. These regulations have served to restrict the ability of the prisoner to effectively present his case or learn the reasons for his parole denial. It is not difficult to appreciate the affect such policies have in undermining prisoner morale and confidence in the fairness of Board consideration. H.R. 1598 improves this situation by permitting the inmate counsel and providing him with reasons for parole denial.

In the crucial post-release period, this legislation strengthens current law and Board regulations by requiring the parolee to meet certain conditions appropriate to his particular background and situation. If the parolee satisfactorily follows the conditions stipulated in his parole, he receives deductions from the length of his parole term. If he violates them, his parole is modified accordingly. Adverse decisions made during the hearings or the parole period may be appealed, and procedures are specified for this. Obviously, a key element in the success of the independent Board will be the effectiveness of the operation of the parole program. To help insure that parolees will adhere to the conditions imposed on them, the legislation provides for improved training programs and supportive assistance for parole workers. States are encouraged to improve their own parole systems through LEAA grants.

I strongly support the intent of this legislation and I believe the provisions of this bill will accomplish the objectives of a realistic and effective parole system. The existing parole arrangement has not produced the kind of positive results we are seeking, and this failure reinforces a general prevailing attitude which works against overall criminal justice reform.

True rehabilitation of the criminal should be a priority societal goal, but we cannot expect to achieve this unless we are willing to make substantive changes in the system. Such changes should not be dismissed as "coddling the criminal" or "soft-headed justice." Rather, they should be recognized as efforts to return criminals to society with a reasonable guarantee that they will become self-sufficient, productive members of the community. A reformed parole system, as set forth in H.R. 1598, acknowledges the necessity for a realistic program which works neither for nor against the inmate, but with him toward results beneficial to the inmate and society at large.

In closing, it is my hope that this legislation will be reported favorably. Having served on Subcommittee #3 and worked with you on this measure, I again wish to commend you, Mr. Chairman, the ranking minority member (Mr. Railsback) and the other members of the subcommittee of your strong interest in and concern for parole reform legislation.

PAROLE REORGANIZATION ACT

THURSDAY, JUNE 28, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Drinan, Owens, Railsback, and Cohen.

Also present: Herbert Fuchs, counsel, and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The meeting will come to order.

We have convened this morning to receive further testimony concerning H.R. 1598, the Parole Reorganization Act of 1973. I am very pleased personally to greet the distinguished Director of the U.S. Bureau of Prisons, the Honorable Norman A. Carlson. I furthermore would like to say there are a series of bills, in addition to this, about which the subcommittee would like your comments. Probably next month and the month following we will have occasion to invite you to give remarks on other pieces of legislation. I would say for purposes of the subcommittee one of those is the prisoners furlough bill which has received favorable consideration in the Senate which, in time, will probably come to the House for our consideration of it.

In any event, Mr. Carlson, you are indeed welcome. You have been before us many times. We are happy to see you today. You may proceed, sir, as you wish. You may identify your colleagues accompanying you.

Mr. CARLSON. Thank you, Mr. Chairman. I am accompanied by Mr. Larry Taylor, who is Executive Assistant to the Director of the Federal Bureau of Prisons.

Mr. Chairman, I have a prepared statement which, with your permission, I would like to introduce into the record and then briefly summarize for you.

Mr. KASTENMEIER. Without objection, your 9-page statement will be received and made part of the record.

[The statement referred to appears at p. 242.]

TESTIMONY OF HON. NORMAN A. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS; ACCOMPANIED BY LARRY TAYLOR, EXECUTIVE ASSISTANT TO THE DIRECTOR, FEDERAL BUREAU OF PRISONS

Mr. CARLSON. Thank you, Mr. Chairman. First, I want to express my appreciation personally and also for the Federal Bureau of Prisons for the support and interest on the part of this Committee. As you mentioned, over the years we have had an opportunity to discuss on a number of occasions the legislative program of the Bureau of Prisons and some of the changes that we have planned. Also, you have visited several of our institutions.

I want again to extend a welcome to you and all members of the committee and staff, at any time you have an opportunity, to visit our institutions and see for yourself some of the problems we have and some of the progress we are making.

Mr. KASTENMEIER. The Chair would like to say that we do intend to resume our visits to Federal and non-Federal correctional institutions later this summer and in the fall. As soon as we are over the hurdle of a couple of major pieces of legislation we are presently considering I think we will have the time to resume the visits which were used so profitably in the last 2 years as a setting for the bill we are considering.

Mr. CARLSON. Mr. Chairman, in my statement I have discussed the importance of parole as it relates to the correctional process. I believe Mr. Sigler, the Chairman of the U.S. Board of Parole testified several weeks ago about the specifics of the bill. He, of course, is the representative of the Department of Justice so far as specific aspects of the bill are concerned.

Let me say there is no question in my mind, based on my experience in the field of corrections, that parole is by far the most important incentive in the entire correctional process when it comes to involving offenders in institutional programs. Inmates are primarily concerned with one thing and one thing only. That is their freedom. They want to get back out in the community and spend their time with their families out of the institutional setting.

Parole has far more importance than the other aspects of an institutional operation—the food, the clothing, the medical care, and so forth. The opportunity for parole and the freedom that parole represents is of great concern.

The possibility of parole is a very strong motivational force in an institution to encourage offenders to use their time profitably and to take advantage of available opportunities such as education, vocational training, and other activities. It encouraged them to utilize their time in a way that will result in eventual release from custody through the parole process. There are several major areas of concern on the part of the offenders that I have observed, and I am sure you and the members of the committee have too. The concerns, of course, relate to the parole process. The first, and perhaps most important, concern is a prompt response. If there is one thing that the offender wants, it's a prompt response when parole is being considered. Unfortunately, delays frequently do occur, not only in the Federal system but also in the State systems. They create a great deal of anxiety and

I am afraid it serves a very destructive purpose as far as the offender's attitude is concerned. The fact that he has to wait for several weeks, or perhaps even longer, will have a very traumatic effect on both the offender and, of course, on his family. The uncertainly of whether or not he is going to be able to rejoin his family and return to the community or not causes a major problem.

Second offenders want an explanation when parole is denied. If parole is granted, they are naturally not concerned about the reasons. If the parole is not granted, however, they are obviously concerned with the reasons why they have been denied and what they can do in the future to get an opportunity for more favorable consideration.

Third, as I have indicated in the statement, offenders are looking for a uniform policy, so that there is a consistency in the parole process. They want a parole process that is applied uniformly across the board to all offenders, with the maximum amount of consistency possible.

Historically, as you know, there have been three components in the correctional process—probation, imprisonment, and parole. During the last 5 years, we have seen a rather rapid expansion of a variety of other alternatives that provide flexibility in the correctional process. Of course, I am referring now to such programs as community treatment centers or halfway houses, work and study release programs, the use of furloughs, and a variety of other techniques.

The key to whatever progress we are making in the field of corrections is essentially developing a great deal of additional flexibility into the correctional system. We recognize that we deal with a very heterogeneous group of individuals. With only the three components, it was impossible to meet the needs of all the offenders that we deal with.

As you know, the Federal Bureau of Prisons has attempted to develop a balanced program, recognizing that there are some offenders who must be incarcerated in an institution to protect society. We have 28 institutions and have 6 more under construction at the present time. In addition, we have 15 community treatment centers or halfway houses which we use both for offenders about to be released and also for offenders who are sent to community centers in lieu of incarceration. In other words, as an alternative the courts can either place a defendant on probation and initially require him to live in a community treatment center or commit him directly to a center to serve a short sentence.

In addition, we contract with a number of State, local, and private agencies to provide these sources in areas of the country where the Federal caseload does not justify a separate Federal facility.

At the present time, Mr. Chairman, we have a great many problems in the Federal prison system. I don't want to go into great detail, but I would like to call your attention to the fact that our inmate population is continuing to expand very rapidly. At the present time our inmate population stands at 23,200. It has gone up over 1,200 in the past year. During the past 2 years our average increase has been approximately 100 additional inmates every month. We are overcrowded, as you well know from your visits to our institutions. It's a problem we are trying to face up to in every way possible by developing additional facilities and alternatives to handle the expanding Federal prison caseload.

In addition, the type of offender we see coming into the Federal prison system is changing, and changing rapidly. I have already discussed with you the change in bank robbery, for example, where it's now the largest single offense category. Roughly 20 percent of all new commitments today in the Federal system are for armed bank robbery, which is, of course, a serious offense and an offense for which most courts impose rather substantial sentences. As a result, we are seeing a continuation of a trend over the last 3 to 4 years of longer sentences being imposed by the courts. This is because the type of offender coming into the Federal prisons system is a much more serious offender in terms of the offense he commits and also in terms of his prior record.

At the same time probation has been siphoning off a great many cases, as it should. The rate of probation at the Federal court level has continued to stay near 50 percent of all defendants sentenced. We are seeing a continuation of the trend of the use of probation for offenders who are not a threat to society and who can respond to community supervision.

Mr. KASTENMEIER. May I interrupt just to inquire? You mentioned higher incidence of bank robberies, at least as far as inmate commitments are concerned. I take it this is partly due to the fact that the authorities move more effectively against those who commit that type of felony as opposed to other felonies that are committed which are not brought to trail, which are not brought to justice.

Mr. CARLSON. That is correct, Mr. Chairman. I understand that the rate of apprehension for armed bank robbery is substantially higher than for other crimes. There are several factors, not the least of which is modern technology, such as the use of closed circuit television cameras in the banks. Through these means and other, law enforcement officials are able to apprehend a substantial number of offenders who commit armed bank robbery.

In addition, of course, there has been a proliferation of small branch banks all across the country, the suburban type bank which is a ready target for any offender who wants to obtain some cash. I think the two factors—the increase in the number of branch banks and the increase in apprehensions—resulted in the substantial increase in this offense category.

I would also comment, Mr. Chairman, the figures indicate that approximately 30 percent of all the defendants now being committed had histories of drug usage at the time of commitment. Offenders in this category have also been increasing rather steadily.

I testified yesterday before the House Government Operations Committee on this subject. I won't go into detail, but we are very much concerned with the narcotic addict because he is a different type of offender and requires specialized treatment, both in the institution and following release, to make sure, if at all possible, he does not revert to the use of narcotics.

Two weeks ago, as you mentioned in your opening statement, I testified before the National Penitentiary Subcommittee of the Senate Judiciary Committee chaired by Senator Burdick. At that time I discussed the provisions of S. 1678, which is a bill to expand our furlough program. The companion bill has been introduced in the House by Chairman Rodino. I was very pleased, Mr. Chairman, to learn you plan to hold hearings on the bill. We think it will have

tremendous importance in terms of helping us to find better ways of dealing with the problem of the incarcerated offender. I personally think the use of furloughs can have a very positive effect.

We have had a furlough program for the past 5 or 6 years, but it has been substantially limited by legislative authority. It speaks primarily in terms of family emergencies, such as illness, death, and so forth. We would like to be able to use furloughs for offenders who do not present a threat to the community, and who we feel could profit by having an opportunity to occasionally see their families and have contacts with their own communities.

Mr. Sigler, 2 weeks ago in his testimony, commented on the pilot project which the Board of Parole has undertaken. I only want to comment that the feedback that I have received, both from inmates that I have talked with as I visited the institutions involved and also with our staff members, is very positive. I think the Board is trying to address the issues that I mentioned—the prompt response, trying to provide reasons for the offenders, where parole is denied, and a consistent policy so far as the application of parole is concerned.

I think that this has been a positive step forward. I certainly hope the Board will continue and expand this project. I think it will have significant effect upon the general climate of our institutions.

In closing, Mr. Chairman, let me say that I, as a correctional administrator, view parole as a tremendously important part of the correctional process. I think it's one thing that can have impact throughout the system. It has a very strong motivational force on offenders.

In addition, I think it has an effect on the morale of the inmates in an institution. It certainly does affect their morale. We know they are much concerned and interested in the parole process. They follow it with great interest. I think that it's a key element of the entire correctional process.

Mr. KASTENMEIER. Thank you very much, Mr. Carlson, for your statement.

You indicated in your statement that you defer to Mr. Sigler's views on pending legislation. You are both part of the Justice Department. Are you required to defer to his views on legislation?

Mr. CARLSON. Mr. Chairman, his statement is the statement of the Department of Justice. He is the Chairman of the Board of Parole and, of course, does have primary responsibility for the parole process. His statement and the section-by-section comments he makes would be the Department of Justice position on the proposed legislation.

Mr. KASTENMEIER. Actually, you are not in a position to disagree with his statement, are you?

Mr. CARLSON. No, sir, Mr. Chairman. I work very closely with Mr. Sigler and members of the Board of Parole. Obviously, we have to have close collaboration. I assure you that, in terms of trying to work together, we do have collaboration in every way possible. I agree with much of the statement and certainly support the comments of Mr. Sigler.

Mr. KASTENMEIER. On the other hand, of course, you do have different insights of problems seen from a different perspective than the Board of Parole may have. In this connection, you may have a different comment on, let us say, this pending legislation. Would you agree that more equitable procedures, affecting parole imbedded in the statute so that prisoners could be assured of what the law is, as opposed

to what it might be as a matter of transistory policy, would be a better state of affairs?

Mr. CARLSON. Yes. I think the offenders are looking for consistency and uniformity and would like to have the better knowledge of how the parole process works. I would certainly subscribe to that notion.

Mr. KASTENMEIER. I take it, that as a prominent national corrections official, indeed as the most prominent in terms of the office, you feel that if the entire corrections procedure continues, there is a greater opportunity for dealing satisfactorily with a prisoner outside of institutional walls than inside, other things being equal?

Mr. CARLSON. Yes. I think if we are talking about rehabilitation or corrections, Mr. Chairman, we are essentially talking about what can be done in the community, not what can be done in an institution.

To me, there is no good institution and there never will be. I think, any time you deprive a man of his freedom and his contacts with his family and community, you impose a set of constraints which are very, very great. If the prime objective of the criminal justice system is one of correction, it should be done in the community. However, I feel institutions are very necessary for offenders who cannot or will not respond to community supervision and certainly for those who present a serious threat to society in terms of the type of criminal activity they have become involved in. I am referring particularly, of course, to the assaultive and aggressive offender.

Mr. KASTENMEIER. In your statement, Mr. Carlson, you express support of S. 1678, the furlough bill. Will you briefly describe to us how this would operate?

Mr. CARLSON. Mr. Chairman, in the present statute, title 18 provides us with an opportunity to grant furloughs to offenders for purposes of emergencies in the family, such as death, serious illness, et cetera, or for offenders nearing release for assistance in finding a job.

It does not, however, give us the rather broad authority which we would like to have which would enable our institutional staff to use furloughs whenever they feel it would be appropriate. I am thinking, for example, of religious holidays or other occasions. It is not infrequent that I have a request for a family when a daughter is getting married or graduating from college or some other significant event, and they would like their husband or father there. We simply have no mechanism at the present time to permit this.

I think broadening the statute would give us greater flexibility in utilizing furloughs when we think they are appropriate. I think it would do much to negate the damage that institutions do to an offender. Any institution has a negative impact on an offender. I think the use of furloughs appropriately can negate much of that damage.

Mr. KASTENMEIER. This is not precisely the same as, or does it have quite the same purpose as, so-called conjugal visitations?

Mr. CARLSON. No, I am opposed to conjugal visitations. By conjugal visitations, I mean where conjugal visiting takes place in an institution and a wife comes into the institution for that purpose. I am opposed for several reasons, not the least of which is that only 25 percent of the inmates in our system—and I suspect the same is true of the State or local system—are married or have any type of marital relationship, either common law or legal. I would prefer to see us use furloughs for a variety of purposes, again, for those offenders who

are not a threat to the community and who can go out and rejoin the community for short periods of time while they are confined.

Mr. KASTENMEIER. Mr. Sigler expressed a preference for administrative reform rather than legislative reform. That is to say, he would rather make up the reforms in procedure instead of changing the statutes with respect to parole. I don't know how he would react to your furlough bill. Possibly, he would rather do that administratively, too.

Mr. CARLSON. No. Mr. Chairman, I have a close relationship with the Board and with Mr. Sigler personally. The Board did support the proposed legislation. It has been discussed with them. He is definitely in support of the proposed bill which would expand our furlough legislation. He has not testified formally before the Congress on the bill, but I can assure you it has been discussed with him.

Mr. KASTENMEIER. In any event, you certainly prefer the legislation for furloughs but, as far as general parole legislation goes, you do not express a preference in that connection, I take it?

Mr. CARLSON. That is correct, Mr. Chairman. Let me add that it would require legislative authority so far as the furlough legislation is concerned. There is no question but what the present statute does not give us that authority. Therefore, we have no alternative, other than to seek legislative change to accomplish our purpose.

Mr. KASTENMEIER. I would like at this point to yield to the gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Carlson, for coming. I am afraid I must say in all candor I am disappointed in the testimony of Mr. Sigler. As you know, the bill we have prepared is the first substantive reform of parole that Congress has offered in 42 years. Mr. Sigler came and, in disregard of what the Administrative Conference had recommended, said in effect, "no." Now you have come and said that this is the position of the Department of Justice. I find this very disappointing. All you can offer is that in 5 of the 28 institutions you have a trial experiment. I find this very discouraging, if this is the official position of the Department of Justice.

I am obliged to say and reiterate that you and Mr. Sigler are acting in rejection of everything that has been said about parole. I have been involved in this area, not as professionally as you, but it seems almost insulting for this Board to say, "Go away. We don't need you. Just continue to appropriate money and we will take care of everything." You haven't asked for a single, single revision of the law with regard to parole, except a matter you discussed with the chairman.

It seems to me, given this deplorable state of affairs—where you say that we just don't know, where Mr. Sigler has said earlier this past January in a speech in Washington, "We simply don't know why we release people"—the best we can do should be done, and yet you are not asking the Congress for anything. In all candor, I find it extraordinarily disappointing. You come and say this is the position of the Department of Justice. You and Mr. Sigler are the Department of Justice as to prisons and paroles. Does it go to John Mitchell or somebody else? Has Elliot Richardson seen this position? I don't believe he would agree with it, frankly, if he did see it.

I am sorry if I am angry and annoyed, but I am disappointed. We have spent months and months on this legislation. I think it's almost an

affront to come and say, "We are not even interested in this." I would like your reaction to that reaction.

Mr. CARLSON. Congressman Drinan, I have no responsibility for administration of the parole systems. I am sure you understand I am Director of the Bureau of Prisons but have absolutely no responsibility for the administration of the parole process. That is a separate board, totally independent of the Federal Bureau of Prisons. My responsibility is for the administration of the Federal prison system.

Mr. DRINAN. But you have said you agree with the statements of Mr. Sigler. I would like to know which ones you agree with and what you disagree with. If you agree with his statements, I think it's preposterous.

Mr. CARLSON. Congressman Drinan, that is the statement of the Chairman of the Board of Parole, which represents the Department of Justice's position on the matter. I am not in a position to refute the statement which Mr. Sigler made.

Mr. DRINAN. What would you say this committee could constructively do to help you in connection with parole as it profoundly affects the 23,000 inmates?

Mr. CARLSON. Congressman Drinan, as I indicated earlier, I think there are three basic points. The prompt response, the reasons for denial, and consistency. I would say those are the top three considerations so far as the parole process is concerned. I don't know exactly how it should be handled to make sure that all of those elements are provided.

Mr. DRINAN. If you want those elements, you will not be enforcing what Mr. Sigler said because Mr. Sigler said, "Leave us alone. We are doing this in five Federal prisons by way of experiment," and he didn't go into all the other things—that this person, according to our bill, should have a right to counsel, and so on. But this is happening only in five institutions at most.

Mr. CARLSON. That is correct.

Mr. DRINAN. You don't agree with Mr. Sigler then, because you have said that we should have promptness, we should have reasons stated for everybody, Right?

Mr. CARLSON. As I have said in the statement, I would hope that what the Board is doing could be expanded to our entire system. The feedback we received is very positive, both from the offenders and from staff. I certainly subscribe to the notion of trying to provide the promptness and the reasons to offenders. I would hope that at a very early date the Board could expand this project.

Mr. DRINAN. This bill also recommends that the Parole Board be an independent agency outside of the Department of Justice. Would that be advantageous to you?

Mr. CARLSON. I don't think so, Congressman Drinan. To me, there has to be a criminal justice system. I think one of the problems in the past, as well as with some of the State systems today, is that there is no system of criminal justice. I think to take the parole authority out of the Department would in effect tend to splinter the existing system that does exist.

Mr. DRINAN. In the appropriation on which we will vote tomorrow for the Department of Justice, is there any money requested there for doing what you recommend should be done; namely, give a prompt answer to the people who apply for parole?

Mr. CARLSON. Frankly, I don't know. I only know about our appropriation, which is a part of the total Department. I am not sure on the Board of Parole.

Mr. DRINAN. If you want these reforms we want also, its part of your responsibility, it seems to me, to recommend to the Parole Board that they request funds to make possible the implementation of the recommendations you say are urgent to make Federal prisons good. But you haven't done it.

Mr. CARLSON. No, I have never discussed the appropriation with the chairman.

Mr. DRINAN. With regard to possible political influence on the Board and on the release of prisoners, has the FBI in particular, or the late Mr. Hoover, ever influenced or recommended strongly to the Parole Board that a particular individual, who may possibly have murdered an FBI agent, should not be released?

Mr. CARLSON. I understand that did occur. That was prior to my assuming the job of Director. But I can recall from statements a number of years ago there was such an incident.

Mr. DRINAN. Despite this, you don't think the Parole Board should be independent of the Department of Justice?

Mr. CARLSON. No, sir. I do not think making it an independent agency would serve any useful purpose. I do not think it would solve that particular problem, if it does exist.

Mr. DRINAN. How do you solve that problem?

Mr. CARLSON. Father Drinan, I don't know exactly how it could be solved. I don't think the independent status would resolve it, however.

Mr. DRINAN. It's a problem that should be solved and you have the obligation, it seems to me, because this festers in Federal prisons. I get letters every day, Members of Congress do, and you get more than we do, saying they know this is unjust, that a particular individual is red-flagged on his file and that Mr. Hoover doesn't want him out. This is basically unjust. You have to take a position. We have taken the position this should be an independent agency and you pooh-pooh that. What is your solution, sir, to what you have said just now is a problem?

Mr. CARLSON. My suggestion, Congressman Drinan, is to retain the Board of Parole in the Department of Justice so there will be a criminal justice system that can operate in a systematic fashion without having to go outside to an independent agency for a critical part of the process. This is one of the problems we have had in the past.

Mr. DRINAN. That is totally unresponsive! You have admitted that it has been political influence which is enormously damaging to the inmates. You say that there is no solution for that. We propose a solution. You have no solution. All I can say is that you will continue to live with political influence.

Mr. CARLSON. No, sir; I didn't say that, Congressman Drinan, in all due respect to you.

Mr. DRINAN. What is your solution?

Mr. CARLSON. I am saying there are cases where people are concerned about the parole process as well as the transfer of offenders from one institution to another. I have calls from a variety of sources asking for certain things for offenders. We manage our system as it has operated for many, many years—that is, totally independent. We operate the way we feel it should be operated for offenders committed

to custody. The independent action of the Administrator is the key to responsible management.

Mr. DRINAN. When you say that the position that we heard the other day is the position of the Department of Justice, who has cleared it?

Mr. CARLSON. Frankly, I dont' know, Congressman Drinan. My statement, of course, as any statement of the Department, is sent through the Assistant Attorney General for Legislative Affairs. This is the pattern in the Department of Justice.

Mr. DRINAN. Is that Mike McKevitt?

Mr. CARLSON. Yes, sir, the former Congressman.

Mr. DRINAN. He approved of this?

Mr. CARLSON. I don't know.

Mr. DRINAN. I think we have a right to know who approved it.

Mr. CARLSON. I have to say I don't know.

Mr. DRINAN. I have a right to say I just reject it. I don't believe it, until somebody says it and takes responsibility for it and acts as a witness.

Mr. CARLSON. My statement was written by myself and my colleague on my right. No one else was involved.

Mr. DRINAN. But you have explicitly and implicity endorsed what Mr. Sigler says. That is your position. You say vaguely this has been cleared by somebody unnamed. I say if its Mr. McKevitt, let him come forward and justify this by testifying here. We have a right to say to the world and to this Congress that this is not the position of the Department of Justice. He is not authorized. It will have to go to Elliot Richardson or somebody else who is duly appointed to clear these things.

I am sorry to be impatient with you. As you know, we have worked for almost 2 years now on this bill. We are the first ones to say that it could be improved. We had hoped from Mr. Sigler and yourself that we would have concrete suggestions as to how it could be improved. All I gather from Mr. Sigler's testimony, and to some extent from yours, is that you don't want Congress to interfere. You want that bill we talked about, and that is fine. I wish there were more bills that we could help you with.

I get the impression that the Parole Board, after 42 years of no change whatsoever by the Congress, just says, "Leave us alone and we are going to solve our problem." Well, it's probably the fault of Congress not doing anything about the Parole Board for 42 years, but I frankly feel frustrated. I feel that the administration is going to oppose any interference, and Chairman Sigler, too. You won't help us with any enactment of this bill. I am afraid this bill is in limbo. Would you have any comment on that?

Mr. CARLSON. Congressman Drinan, I can just reiterate what I have said. I have tried to give you my frank views on the concept of parole. I am not chairman of the Board of Parole and I have no responsibility, administrative or otherwise, for the operation of the parole system. I have tried to be very candid and give you my views on the parole process as I see them and the tremendous importance it presents.

Mr. DRINAN. Would it be helpful to you if we did, in fact, restructure the situation so you did have some input into the Board of Parole? Obviously, the decisions of that Board enormously affect what you are trying to do. Maybe we should think in those terms.

Mr. KASTENMEIER. Let me ask a question, if the gentleman will yield.

Mr. DRINAN. Yes.

Mr. KASTENMEIER. The Chairman of the Board of Parole and yourself, as Director of the U.S. Bureau of Prisons, are responsible to the Attorney General and to the President of the United States, presumably. Really, those are the only two people you are directly responsible to in the system.

Mr. CARLSON. That is correct, Mr. Chairman.

Mr. KASTENMEIER. Obviously, you deal in terms of legislation through the Attorney General's Assistant Attorney General for legislation.

Mr. CARLSON. That is correct.

Mr. KASTENMEIER. But that person is an agent of the Attorney General.

Mr. CARLSON. That's right, Mr. Chairman.

Mr. KASTENMEIER. That is whom we are talking about. We are talking about the Attorney General and ultimately the President himself. I am sorry, was the gentleman from Massachusetts finished?

Mr. DRINAN. One last question. Going back to the question of the political influence, the notorious release of Jimmy Hoffa has been brought up before this committee before. It's my understanding that he was denied parole and then he received a Presidential commutation.

Mr. CARLSON. That is correct.

Mr. DRINAN. I talked with people in Federal prisons about their reaction to this matter. Do you think that is undue political influence?

Mr. CARLSON. Frankly, I cannot give you a response on that, Congressman Drinan. I was not involved in the decisionmaking in any way.

Mr. DRINAN. One last question. Coming back to the point I was trying to raise, what could we do constructively by way of changing statutes to make the Board of Parole act in a way that would assist you in your really devoted and dedicated work to help these 23,000 people?

Mr. CARLSON. I hate to sound like a broken record, Congressman Drinan, but I think the comments I made—promptness, the reasons for denial, and a systematic approach of assuring uniformity—I would say are the three key elements in a good parole system.

Mr. DRINAN. Sir, if we drew up a bill with only these three elements, could we get the support of the Department of Justice?

Mr. CARLSON. Congressman Drinan, I cannot comment on that because it would have to go through the Board of Parole. They would have the decisionmaking responsibility on that. But those are the elements I believe, as a correctional administrator, as tremendously important in the parole process.

Mr. DRINAN. Thank you for coming. We hope we can make some improvements by collaboration and cooperation. Thank you.

Mr. CARLSON. Thank you, Congressman Drinan.

Mr. KASTENMEIER. The gentleman from Utah, Mr. C s.

Mr. OWENS. I think the gentleman from Massachuse pretty much covered the area I wanted to talk about except for one thing. It is a policy in Federal prisons to give time off for good behavior. Do you favor that policy in terms of parolees for time on the street?

Mr. CARLSON. Congressman Owens, the proposal to reform the Federal Criminal Codes does away with the concept of good time. I personally think we have reached the point in time where we really don't need good time. It's an anomaly in many ways. For example, the Youth Corrections Act which was passed by this committee back in 1950 does not provide any good time for youthful offenders. So no matter what they do, they cannot earn good time. If a person is sentenced under the adult statute, he does get good time, but a youth offender does not earn good time. To me, this is a poor situation because you have a disparity built into the present statutory provisions of title 18. I candidly would favor the proposal of the Brown commission and others to completely do away with the concept of good time. The sentence would be imposed by the court and the Parole Board would determine when parole should be granted. I think that would be far more equitable than the present system.

Mr. OWENS. How do you presently handle good time then?

Mr. CARLSON. Good time is, frankly, almost an automatic process. It is provided by statute. An offender who does not get involved in disciplinary incidents acquires statutory good time automatically. It's determined by the length of his sentence. As I say, it's almost an automatic process.

Mr. OWENS. Do you think there ought to be more discretion with that with the Board of Parole?

Mr. CARLSON. Good time should be done away with totally in favor of more flexibility. I think flexibility in the system rather than the automatic provision of good time would be far more effective.

Mr. OWENS. In essence, you are suggesting good time.

Mr. CARLSON. I think all sentences should have total flexibility as far as parole eligibility is concerned rather than having an absolute date fixed by the sentence imposed by the court. With the adult sentencing provisions, an offender has to serve one-third of his time before he is eligible for parole. Under the Youth Corrections Act, he is eligible at any time. This is a built-in conflict between two statutes, and it does present a problem to us and to the offenders in our institutions.

Mr. OWENS. You think it would be more helpful from an administrative viewpoint if you could give to the Board of Parole complete discretion so even within the first third of the sentence time they could release prisoners?

Mr. CARLSON. That is correct. I would favor that, as it would be comparable to the Youth Corrections Act, which I think is basically a good piece of legislation.

Mr. OWENS. Would those similar principles carry over to the administration of probation time?

Mr. CARLSON. Probation, of course, is a condition imposed by the court for a stipulated period of time. There is no good time involved.

Mr. OWENS. I understand that. I am asking you would those similar principles be helpful in administering probation time?

Mr. CARLSON. Yes; but a probationer does not earn good time. Instead, the court can modify the conditions of probation or terminate it at any time.

Mr. OWENS. That is right. But if a prisoner is sentenced to 48 months and is paroled at the end of 20 months, he is on parole for 16 months and then breaks parole and sent back to prison, then through

this policy that you presently have in the Justice Department he then may well serve the other 16 months or 18 months. In effect, he has been under the court's direction for a couple of years beyond the original sentence.

Mr. CARLSON. That is correct, with the present system.

Mr. OWEN. Did I understand you to say that you thought this concept of flexibility with the probation, the court which directs the probation period to give time off from the probationary period would be helpful, administratively?

Mr. CARLSON. Yes. Again what I am referring to is complete flexibility without the automatic provisions of good time.

Mr. OWENS. I understand that. You are suggesting that that same flexibility should apply to the parolee's probation time as well?

Mr. CARLSON. Yes.

Mr. OWENS. That is a contrary statement to the position taken by the Chairman of the Board of Parole. I was trying to ascertain whether, from your viewpoint, that has been helpful.

Mr. CARLSON. The Youth Corrections Act is the best example I can give, because we are familiar with its implementation. I prefer the Youth Corrections Act as established, where the total sentence, for example, is 6 years and the defendant can never be held beyond 6 years. As a matter of fact, he can never be held in an institution beyond 4 years. But there is no good time provision. The Board has discretion to release him at any time and has total flexibility in making that decision.

Mr. OWENS. Mr. Chairman, we do find that there is some diversity of thought permitted in the Justice Department of some interest.

Mr. KASTENMEIER. The gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. Frankly, I find an inconsistency in your statement, Mr. Carlson.

I would like to follow up a point made by the gentleman from Utah. On the one hand, you suggested in your statement there is a great need for uniformity. Then you just indicated that you would prefer to see some flexibility as well. I would suggest that those do run counter and to cross purposes.

I was somewhat surprised to hear you say you were opposed to time off, good time behavior credit being given, because of the disparity in treatment between the youthful offender, and the adult offender. It seems to me you could very well do away with this disparity by providing good time credit for the youthful offender.

Mr. CARLSON. That would require legislative change. Existing language in title 18 doesn't provide good time for persons committed under the Youth Act.

Mr. COHEN. I understand that. But in terms of analyzing whether it's an effective inducement to people who are incarcerated in our institutions, it seems to me to take a very narrow view to say, because, we don't have it for youthful offenders that therefore we shouldn't grant it to the adult offender if, in fact, it does grant incentives to those who are incarcerated.

Mr. CARLSON. It does have some minimal impact as far as inducement or incentives are concerned. But parole has far more impact than good time. Good time of 5 days a month doesn't have nearly the impact on the offender as does the possibility of parole. Therefore, I would

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prefer to see parole used rather than the good time credits which are taken off the sentence.

Mr. COHEN. You would agree, I assume, that there is something drastically wrong with our criminal justice system as it exists.

Mr. CARLSON. Yes, sir.

Mr. COHEN. We have some national statistics that indicate we have a 70 percent recidivist rate nationally.

Mr. CARLSON. It's very difficult to pin down the rearrest rate. It has been about 65 percent. Again rearrest is the criterion utilized, not recidivism.

Mr. COHEN. On pages 2 and 3 you stress the importance of parole and its impact upon the Bureau of Prisons.

Mr. CARLSON. Very definitely.

Mr. COHEN. I would assume the present system has a very negative impact upon prisoners in terms of lack of access to files, speedy determinations as far as their review hearings, and so forth.

Mr. CARLSON. Yes, sir. Historically this has been a great problem. I have worked in a number of institutions myself and can attest to the fact that it has a negative effect on the offender.

Mr. COHEN. I would like to follow up a point. Mr. Sigler expressed some opposition to a section of the bill which gives an inmate access to files compiled on him. He cited as one of the reasons that the files belonged to the Bureau of Prisons and not the Parole Board. I would like your opinion as to why that should be an insurmountable problem.

Mr. CARLSON. As far as we are concerned, we have no objection to the offender in parole, status having access to the reports prepared about him by our staff. In the youth institutions today offenders know what is contained in their reports. They are told what the report says and what recommendation has been made. I would have no objection to offenders seeing the reports that we prepare in all our institutions.

There are other reports, of course, in their file that are not our property. I cannot comment on them. For example, the presentence report is the property of the sentencing court.

Mr. COHEN. On page 5 of his statement before this committee, Mr. Sigler said that the Board is now of the opinion that:

> There is no need to preclude an attorney from appearing as an inmate's representative in our private project cases simply because he is an attorney, as long as he realizes his parole release determinations do not, and should not, involve an adversary presentation of issues of law and fact.

Do you think an inmate or prisoner ought to have an opportunity to challenge certain facts which are submitted to the Parole Board for their consideration in either approving or denying his application?

Mr. CARLSON. Yes, I do. If the material prepared by the institutional staff is in error, I think he should have a right to comment on that to the paroling examiner and make known his views so there can be an opportunity to straighten out the record if it is in error.

Mr. COHEN. And to the extent he has a representative, which we now apparently would concede would not be too troublesome to have that representative be an attorney, then you would allow that attorney to challenge those issues of fact which have been submitted for the Board's consideration?

Mr. CARLSON. This would present no problem to me at all.

Mr. COHEN. Do you think the Parole Board should give to the prisoner a short statement of the basis for its decision and the facts upon which it relies in denying his application?

Mr. CARLSON. Yes; I think in the case of denial the reason should be stated so he can understand what the rationale was for the denial.

Mr. COHEN. That is not the case right now.

Mr. CARLSON. In the pilot project it is. In the five institutions they are working with now they do provide reasons to offenders as to why parole was not granted.

Mr. COHEN. Not only would it provide for him a basis of determining why the Parole Board denied his application and perhaps gave him some guidance as to what he has to do in the future, but it also would provide a basis for a court subsequently to determine whether the Board has acted arbitrarily in denying his application. Is that correct?

Mr. CARLSON. That is correct.

Mr. COHEN. I was a little bit troubled at the last meeting we had, Mr. Chairman. You stated that you like to see more uniformity in the Parole Board decisions.

Mr. CARLSON. Yes.

Mr. COHEN. In my opinion, uniformity can breed as much frustration as flexibility or even arbitrariness if it's pushed to the degree it is, in some prisons, for example, where some parole boards apparently deny parole on the first application by an inmate just on the basis that they feel that they need some uniformity in sentencing. Would you agree with that?

Mr. CARLSON. No; I do not think the turning down of parole on the basis of developing uniformity in sentencing is appropriate after the court has imposed a sentence.

But the decisions regarding release are under the jurisdiction of the Board of Parole.

You commented on my use of the terms "uniformity" and "flexibility." I would like to straighten the record out. I was referring to uniformity in the decisionmaking process so there is equity and the offender knows there is a consistent policy so far as the paroling process is concerned.

The flexibility I referred to is that the Board can release at any time during the period of incarceration. They don't have to wait for one-third or one-half or any other magical date. They have total flexibility so far as determining when the offender should be released.

Mr. COHEN. Thank you on that point. You disagree with that policy as it has been implemented in various prisons. From your own personal professional knowledge, do certain parole boards deny an inmate parole simply on the basis that he has only served a minimal sentence, despite the fact that he has had good behavior in the institution. Are they trying to achieve some uniformity which the courts do not always achieve in terms of robbery or rape or murder or whatever it might be, and it is a policy on the part of some parole boards simply to deny the first application outright on the basis that he hasn't served enough time? Does that take place?

Mr. CARLSON. I am certain it does take place, but I know of a number of cases where the U.S. Board of Parole granted parole at the time of an offender's first hearing. To my knowledge they don't have a rigid policy against granting parole on the first hearing.

Mr. COHEN. But apparently there are cases where they do have a uniformity and policy in that regard?

Mr. CARLSON. Yes.

Mr. COHEN. Which doesn't work to enhance the inmate's aspirations for gaining freedom?

Mr. CARLSON. It's counterproductive so far as the correctional process is concerned, Congressman Cohen.

Mr. COHEN. I am happy to hear you say that, because I think you would probably agree with me, if parole boards are in fact doing that, they are actually circumventing the law because the court imposes the minimum and the maximum. For a parole board to simply deny parole, even though a fellow may be eligible for it, on the basis he hasn't served quite long enough in their opinion would be to set up a separate sentencing procedure which would be clearly outside of the law. Do you agree?

Mr. CARLSON. It would be in a sense retrying the case.

Mr. COHEN. Thank you.

Mr. KASTENMEIER. I would like to compliment my colleague on his line of questioning.

I recognize the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I want to welcome our witness and express to him my feelings which are that, despite the hard line of questioning that he has been submitted to, since I have been involved on the Judiciary Committee, it has been my observation that he has directly been responsible for some of the most imaginative and innovative reforms that we have seen, even though we still have a long way to go.

What has been your experience with the pilot project of the Board of Parole? In other words, how have you participated?

Mr. CARLSON. Congressman Railsback, I have had no direct participation. However, the wardens of the five institutions have commented to me, both in their written reports and also verbally, their pleasure with the project. Also, I have visited several of the institutions involved and have had a chance to talk with offenders. I find that they are receptive to the idea. The timeliness of the response is something which they have continually been complaining about for many, many years, as I am sure you and the other members of the committee are aware. They get their responses essentially in a matter of several days. It enhances a great deal their attitude about the parole process. I have nothing qualitative or quantitative to point to other than feedback which I received from the institutions involved.

Mr. RAILSBACK. I notice from your testimony you do favor giving reasons for denial of parole. Also I would be interested in your comments about the two-tier system contained in H.R. 1598. Mr. Sigler indicated that he was in favor of this two-tier system which we have been advocating in our legislation. Do you also favor that kind of approach?

Mr. CARLSON. Yes, I do. I like the regional approach, which the Board is considering that assigns examiners and Board members to regions nearer to the institutions. I believe it will do two things: One, insure that the same members or examiners go to the institutions on a regular basis so you don't have different people every time. Secondarily, it will facilitate communication between inmates, institutional staff and the Board of Parole. For those reasons, I like that approach.

However, I also think there is need for a national body for policy-making and policy setting. Therefore, I like the two-tiered concept.

Mr. RAILSBACK. When a convicted felon enters the prison system he first is evaluated and diagnosed. Is that right? Is there a psychological testing? Tell us briefly what happens.

Mr. CARLSON. Congressman Railsback, when a new offender is sentenced to one of our institutions, we first designate an institution which is most appropriate for him in terms of his age and his place of residence. We try to keep him as close to home as we possibly can. Also, to place him in an institution where he is with people of his own age group, the younger offender being separated, of course, from the adult offender.

Shortly after his arrival, he is given a battery of tests, both medical, psychological, and educational. He is evaluated by a classification team and is assigned to a program in the institution. They try to determine what his needs are in terms of correctional treatment.

Mr. RAILSBACK. Are all of these people seen by a psychiatrist?

Mr. CARLSON. Not all are seen by a psychiatrist, but virtually every institution now has a clinical psychologist. They are generally seen by a psychologist. Where we do have psychiatrists, we use them for referrals of cases which appear to have rather serious emotional disorders.

Mr. RAILSBACK. How many people are involved? You have a clinical psychologist? Who else does the incoming inmate see? In other words, I would like to have you explain what kind of a file is developed for use by the Parole Board. I would like to know what goes into an inmate's file from the time of his entry into the prison system, as far as the counselor's report and as far as the warden's report. I am interested also in the initial entry into the system.

Mr. CARLSON. The caseworker is the person responsible for the preparation of the basic report. The classification study which is prepared on all offenders, includes a number of elements. First is a statement of the offense. Second is a statement of the inmate's version of the offense, trying to find out from him what the motivational factors may have been. Third is a social history, the life history of the offender in terms of family, school, community contacts, employment, et cetera. A psychological report is made which includes the various tests that are given. An educational supervisor or one of the teachers also evaluates the defendant after he has had an IQ test and an aptitude test to find out what his educational deficiencies may be.

All of these reports are prepared and are submitted to a classification committee or classification team. They take these reports and, on the basis of what is in them try to find out what can be done for the defendant while he is in custody. The staff sit down with the offender and determine what the best program would be for him during his period of incarceration.

We have also implemented a new system which categorizes inmates into three essential groups. In group 1 are offenders who have the greatest need for correctional programs—the young school dropout, for example. The other extreme would be group 3, which might include a white collar offender who may be a lawyer or doctor. Obviously, there are few correctional needs for the latter group. They are essentially committed for deterrent purposes.

We try to allocate our resources to the category 1 offender. This is the person we feel has a definite correctional need, particularly in

the areas of education and vocational training. They have priority throughout our system so far as involvement in programs is concerned. If there are two offenders who are being considered for a vocational training, the one who is considered to be in the first category would have priority at all times over the one who is in the third category.

Mr. RAILSBACK. Let me ask you this: After this initial examination and evaluation, then he is assigned, to a particular job and who makes a report and how often is a report made of the conduct of the inmate? In other words, what reports go into his file which are considered and used by the parole board?

Mr. CARLSON. It depends on the type of institution we are talking about. In our youth institutions there is a formal progress report prepared at least every 6 months, sometimes more frequently.

Mr. RAILSBACK. Who is that prepared by?

Mr. CARLSON. It is coordinated by the case worker, but he has input from the work supervisor, quarters supervisor, and other members of the institutional staff that have contact with the offender.

Mr. RAILBACK. How many altogether would you say?

Mr. CARLSON. Depending on the number of programs he is involved in, it can be four or five. A minimum of two or three staff members would be asked for comments and evaluations of the defendant. These are summarized in a formal written report which is part of the file.

Mr. RAILSBACK. Who has access to that file?

Mr. CARLSON. Members of the institutional staff and members of the Board of Parole. A copy is sent to the probation office and in some cases to the sentencing judge who may specifically request he have access to them.

Mr. RAILSBACK. And correctional officers in the institution?

Mr. CARLSON. Any member of the staff.

Mr. RAILSBACK. Does the individual himself see these reports?

Mr. CARLSON. The defendant himself does not see the reports prepared. He does not get a copy. He does generally know, however, the contents of the report.

Mr. RAILSBACK. I think there is a big difference. Do you think it would be wise to permit an attorney for the inmate that is seeking parole to see those documents?

Mr. CARLSON. This wouldn't bother me, Congressman. As a matter of fact in some of our institutions the defendant does get a chance to read the progress reports that are prepared. To me, if they are factual, there is no reason why the offender should not read them.

Mr. RAILSBACK. Pursuing the line of questioning of Mr. Cohen, I agreed with your response to his question that they ought to be able to challenge facts. If there is an alleged incident of misconduct and it is reported in his file, he doesn't get to see it, and yet the Parole Board sees it and the Parole Board denies his parole because of that incident even though it may be uncorroborated, and maybe he could get a statement from someone who knows, from other institutional officers, that that is not the way it happened. I think it is a good idea that he be permitted to see those files so he could challenge on a factual basis.

Mr. CARLSON. If I may, any disciplinary report written by any staff member is given to the offender. That is part of our disciplinary process. He automatically gets a copy when the report is filled out by

the staff member. Also he gets a copy of the disposition. In other words, when the committee makes a determination of disposition, he is given a written copy. The reports I was talking about earlier essentially dealt with what progress the offender is making in school, on the job, and in quarters. He does not get a copy of that report. Any disciplinary report which may affect his parole negatively is given to him and he can send it to his attorney or do anything else he wants with it.

Mr. RAILSBACK. Right now is he assigned a counselor before he goes before the Parole Board or is this a caseworker?

Mr. CARLSON. Actually we have two different groups or staff members. The caseworker is the professional, with a degree in social work or one of the behaviorial sciences. We also have correctional counselors that work in the housing units and have responsibility to handle the day-to-day problems of the offender. We found that caseworkers are simply overwhelmed with the case load, and have created correctional counselors in all institutions that have full-time responsibility to relate to a much smaller group of offenders than the caseworker. The inmate has contact with two individuals, a correctional counselor and a caseworker. This is in addition to his teachers, work and quarters supervisors, and other staff.

Mr. RAILSBACK. What is the caseload per caseworker?

Mr. CARLSON. The average across the system, as I recall, Congressman Railsback, is presently about one caseworker to 112 offenders. This varies from institution to institution. At Morgantown, for example, it is one caseworker for 30 inmates. At Atlanta it is one for about 300.

Mr. RAILSBACK. Let me just say in our investigation of the California system, which is not the Federal system but the State system, we talked to inmates that told us they were able to see their so-called counselor like maybe once before they went before the Parole Board, which you know is grossly inadequate. Do you feel you need more caseworkers?

Mr. CARLSON. Very definitely we need more professional staff in all of our institutions. I might describe, however, what we are doing to try to solve the problem.

In most of our youth institutions we have adopted what we call the functional unit concept, where the staff are assigned full time directly to a living unit. The offices are right in the dormitory. You have a case in the unit. They work schedules so they have access to the inmate population. They don't work from 8 to 4:30, they generally work from noon to 8:30 in the evening. There is direct day-to-day access with the offender.

We found by taking staff and moving their offices physically to the inmate living unit does a great deal to facilitate communications.

Mr. RAILSBACK. What is the average stay of confinement under the Youth Corrections Act?

Mr. CARLSON. I am afraid I will have to supply that for the record. I don't have it with me.

Mr. RAILSBACK. Would you also supply for the record what the average stay is under the adult provision?

Mr. CARLSON. Yes, sir.

[The information referred to follows:]

TABLE C-5.—AVERAGE SENTENCE AND AVERAGE TIME SERVED OF PRISONERS RELEASED FROM BUREAU OF PRISONS INSTITUTIONS FOR THE FIRST TIME FROM THEIR SENTENCES

[By sentence procedure, race, and type of release, fiscal year ended June 30, 1972]

Sentence procedure	Releases except of prisoners sentenced under the Youth Corrections Act												Youth Corrections Act releases	
	All prisoners				By parole				By expiration of sentence and mandatory release					
			Average time served				Average time served				Average time served			
	Number	Average sentence	Months	Percent of average sentence	Number	Average sentence	Months	Percent of average sentence	Number	Average sentence	Months	Percent of average sentence	Number	Average time served
Total	9,900	37.3	18.9	50.8	3,124	64.3	24.3	37.9	6,776	24.8	16.5	66.3	1,124	[1] 20.0
Reg	5,985	35.7	19.3	54.0	1,613	61.2	24.9	50.8	4,372	26.3	17.2	65.3		
4208–B	83	24.5	14.9	60.7	39	31.3	15.5	49.6	44	18.5	14.3	77.4	1,095	26.3
Juv													29	30.4
YCAB														
YCAC														
428A1	36	59.3	27.0	45.5	26	60.9	24.0	39.3	10	55.2	34.8	63.0		
428A2	2,211	55.1	26.1	47.4	1,139	69.4	25.5	36.8	1,072	40.0	26.8	66.9		
741	1,219	5.7	4.2	73.0	7	25.3	10.3	40.7	1,212	5.6	4.2	73.9		
Min	198	39.6	20.1	50.7	144	42.6	18.4	43.1	54	31.7	24.6	77.8		
NARA20	162	88.3	18.3	20.7	156	90.0	17.9	19.8	6	44.0	28.8	65.5		
State														
Other	6	15.3	13.5	88.0					6	15.3	13.5	88.0		

[1] Almost all offenders in the category are released by parole.

Mr. RAILSBACK. Let me say in closing I am inclined to disagree with you about providing so-called absolute flexibility for the adult system similar to the youth corrections system, especially if it is analogous to the present indeterminate sentence used in California where instead of helping the inmates, it has been used apparently by the institutions as a tremendous lever held over the inmates.

Mr. CARLSON. We agree wholeheartedly, Congressman. When I talked about flexibility I didn't mean the California system of zero to life. What I meant was that if the court imposed a 5-year sentence, the Parole Board could parole the defendant the next day if they believed such was indicated. They wouldn't have to wait for one-third of the sentence. I think the court should impose the sentence and leave the flexibility of release up to the Board. I agree the California system has a definite demoralizing effect on the program.

Mr. RAILSBACK. Perhaps we ought to have good time credits, to make certain an individual can be released at the proper time under proper conditions.

Mr. KASTENMEIER. I would like to recognize as present, the gentleman from Michigan who served on the Subcommittee on Corrections and sat in with us a while this morning before he had to leave.

I have one or two questions suggested by Mr. Cohen's question about how many of those who were paroled had to be rearrested. You indicated 65 percent. I think anyone would regard that as very high, as failure at some point in the parole system. It is an intolerable rate and we ought to work to reduce it. To what would you attribute the rearrest percentage? Why are approximately two-thirds rearrested? Where do we break down?

Mr. CARLSON. Let me clarify. That figure was of all releasees and not parolees. The rate of violations for parolees is far less.

Rearrest data can be very misleading. For example, at many of our institutions, particularly the large penitentiaries, offenders have detainers filed against them by a State or local authority. When they complete their Federal sentence they are immediately taken into custody by a sheriff and taken back to other jurisdictions. This counts as an arrest. I have difficulty saying that is a failure of our system. The defendant never had a chance to succeed. He was immediately arrested upon discharge from the institution.

Mr. KASTENMEIER. I recognize that. So let me rephrase the question then. What percentage of those paroled against whom detainers are not lodged are rearrested during the time of their parole?

Mr. CARLSON. To my knowledge that information hasn't yet been available. It is now in our computer information system which has been in existence for 6 months, and we will soon start getting the feedback. The new system has a direct tie in with the FBI arrest data. The figure I was citing was from the uniform crime statistics of the FBI several years ago which referred to a rearrest rate of 65 percent. That data was not broken down by dischargee or parolee.

I think we also must realize the offender being released from an institution has a far higher chance of being rearrested than the average citizen because he goes back to the same neighborhood and is known to the enforcement authorities. I think there is a greater likelihood of his rearrest than of the average person because he is known to the criminal justice authorities in the community.

There is a difference between rearrest and recidivism. I would define recidivism as a person convicted of a subsequent crime and not the fact that he was arrested for perhaps a minor traffic violation.

Mr. KASTENMEIER. What is the recidivism rate of those paroled in the federal system?

Mr. CARLSON. There were no warrants issued in fiscal year 1972 on about 73 percent of all offenders released that year on parole. The Board generally does revoke in the case of conviction of a felony or other serious crime. I would add at the Kennedy Youth Center where we are following all offenders released from the facility we find a 70-percent rate who are not reconvicted or recommitted to institutions. They may however be rearrested. Again, I would differentiate a rearrest from a reconviction.

Mr. KASTENMEIER. But it is about 70- to 72-percent clean and upwards of 30-percent failure.

Mr. CARLSON. Which is still too high. With our adult population the success rate goes down. I am not saying they are all at the 70-percent level, but I do say at an institution like the Kennedy Youth Center we have established the fact we can reduce failures by intensifying programs.

Mr. KASTENMEIER. By intensifying programs in institutions?

Mr. CARLSON. That is correct, Mr. Chairman.

Mr. KASTENMEIER. What about the 30 percent? Was the Parole Board wrong in 30 percent of the cases or is it inevitable, or was it a failure on the part of the system to give adequate supervision and counseling during the period of parole for one reason or another?

Mr. CARLSON. I think it would be a fallacy to try to achieve a 100-percent success rate, because in doing that you would keep many, many people in institutions that deserve a trial. As you well know, there is no behavioral science to date that has been able to predict adequately what human behavior is going to be under a given circumstance. To try to achieve a 100-percent success rate I think would be a serious mistake.

Mr. KASTENMEIER. I quite agree, but I am looking to how to improve the 30 percent.

Mr. CARLSON. I think much needs to be done, and I think community supervision is the key. I think one thing needed in the system is more intensive community supervision for offenders released from custody.

Mr. KASTENMEIER. Mr. Cohen.

Mr. COHEN. You mentioned under the Federal parole system that parole would be revoked only upon conviction of a crime or evidence of substantial or major criminal activity. Is that right?

Mr. CARLSON. Again, Congressman Cohen, I am not responsible for the parole system, but I do know from my experience they generally only revoke when there is a conviction of a serious crime. For a so-called technical violation like we used to see, for example the offender who didn't report or dropped out of the system for a couple of weeks, they don't bring them back unless a further crime has been committed.

Mr. COHEN. That raises the question in my mind, because I know some of the restrictions that are placed upon parolees, and I would like to get your opinion of those restrictions because they include, or have included in the past, prohibitions against drinking, consuming alcoholic beverages, and being in by such and such a time, and associating with those who do not have criminal records and so forth.

I would like to get your opinion. Do we impose too stringent or overstringent regulations which in themselves contribute to perhaps a sense of frustration, of anxiety, or apprehension which ultimately leads to recommission of a crime, that he simply can't meet that kind of an intolerable burden in the sense of just sitting down and having a beer, for example, or that he could be brought in or his parole could be revoked on that basis? In your opinion as a professional in this area, has that contributed to the commission of crimes by those who have been paroled?

Mr. CARLSON. I think it has. I think in the past we have had some unrealistic expectations, not only in terms of this parolee personally, but in terms of Bureau of Prisons programs where we had prohibitions which were totally unenforceable and unrealistic in terms of the offender. For example, the concept of the association with other offenders when the parolee is returning to the same area where he came from. He may have neighbors or relatives that have been involved in prior criminal activity, and to say he can absolutely not associate with persons who have been arrested in the past, I think, is unrealistic and certainly can have a negative effect on his behavior.

Mr. COHEN. I would compliment you on that particular opinion, and I agree wholeheartedly. I think maybe it causes problems. If those regulations were stringently enforced, we have a situation where we may set too high a standard for those particularly without a job and so forth. If they are not enforced, it seems to me you have the opposite situation where if they disregard meaningless regulations it breeds contempt for the law, and both of those grounds ought to be taken out.

Mr. CARLSON. I would agree when restrictions are imposed they should be enforceable and ones that are realistic.

Mr. COHEN. Thank you.

Mr. KASTENMEIER. Maybe this would be difficult to do, and I am not sure it is a useful exercise, but could you characterize for the federal system the average parolee as released from your institution? For example—I am guessing—would he be age 23, a two-time offender, white, a car thief, with tenth grade education? Could you give a typical individual as released from your institution on parole who maybe served a 3-year term?

Mr. CARLSON. I think I could give you a fairly good definition. First of all, about 70 percent of our inmates are white, 30 percent minority, and about 26 to 28 percent are black. Average length of time incarcerated about 19 months which is less than 2 years. The average sentence he is serving is about 5 years. So he is released earlier than the full time of the sentence imposed. He would have had at least two prior convictions. In other words, this is not his first offense by any means. He is returning to a large urban area, has no family ties. He may have brothers and sisters but no family in terms of wife and children. He has less than a tenth grade education and in the majority of cases does not have an employable skill. In other words, he is not a skilled craftsman. He has work skills but not of the type you commonly think of as a plumber, electrician, and so forth.

Mr. KASTENMEIER. What age would he be about?

Mr. CARLSON. Essentially the age you described. The average age is about 26½.

Mr. KASTENMEIER. I will yield to Mr. Railsback.

Mr. RAILSBACK. What is the cost per capita to maintain an adult offender in a Federal prison? How much per year?

Mr. CARLSON. Our overall average, Congressman Railsback, is about $13 per man per day. I want to point out that varies from institution to institution. The cost at the Kennedy Youth Center is three times as high. At Leavenworth or Atlanta with 2,000 inmates it would be closer to $9 per man per day.

Mr. RAILSBACK. Could you supply us with those figures? Does the $13 include the youthful offender?

Mr. CARLSON. It includes all of the camps, youthful offenders institutions, and major institutions.

Mr. RAILSBACK. Could you give us a breakdown on the type of institutions?

Mr. CARLSON. We will be happy to.

[The information referred to follows:]

Bureau of Prisons per capita cost fiscal year 1972

Alderson	$16.863	Milan	$14,668
Ashland	18.061	Montgomery	6.362
Atlanta	7.752	Morgantown	33.294
Danbury	9.700	New York	13.302
Eglin	6.299	Petersburg	16.162
El Reno	13.240	Safford	7.682
Englewood	24.018	Sandstone	12.849
Florence	12.447	Seagoville	16.525
Fort Worth	44.261	Springfield	21.657
La Tuna	10.752	Tallahassee	15.657
Leavenworth	8.593	Terminal Island	10.968
Lewisburg	9.717	Terre Haute	9.908
Lompoc	10.709	Texarkana	12.557
Marion	22.465	Average for institutions only	12.492
McNeil Island	11.823		

Mr. KASTENMEIER. On behalf of the committee I want to express our appreciation for your appearance here this morning. I realize that your views on parole are naturally somewhat guarded in light of your own responsibility and if your testimony comes as a disappointment to some they will understand that it was presented in this context.

In any event the committee has great confidence in you, Mr. Carlson, and will look forward to your helping us again on another problem.

Mr. CARLSON. Thank you, Mr. Chairman. It is a pleasure.

Mr. KASTENMEIER. I would like to call before the committee now Howard Eglit, former counsel to the committee, who has labored long and hard in pursuit of reform in this area and has been of enormous assistance to this committee in the past. He is now of Chicago and the legal director of the Illinois Division of the American Civil Liberties Union. We welcome Mr. Eglit who will speak in his own personal capacity. He has sent us a report. You may proceed.

TESTIMONY OF HOWARD EGLIT, ESQ.

Mr. EGLIT. It is indeed a pleasure for me to appear before you; Mr. Railsback, the ranking minority member; and the other distinguished members fo this subcommittee. I have had the privilege of sitting on the other side of the dais, as counsel to this subcommittee, and I can

therefore state may views today with a particular appreciation of your endeavors. I also want to extend my appreciation for your very kind words regarding my work in the area of parole legislation when you opened these hearings last week. Needless to say, whatever I was able to do was in large measure due to the interest of you and the members of the subcommittee.

I can well attest that both you and the ranking minority member are very largely responsible for this legislation. I know because I participated in many days of painstaking, sometimes excruciating. line-by-line, word-by-word analysis in the writing of this bill.

I do have a prepared statement and some attachments. With your permission I would like to submit them for the record. You may want to exclude some of the attachments; I will leave that up to your judgment.

Mr. KASTENMEIER. Without objection the statement and attachments A, B, C, D, and E will be accepted. In connection with the section by section analysis in attachment D, I think perhaps we already have this in the record. I am not sure. These are working from last year's bill as I recall?

Mr. EGLIT. That is correct. They are not in the record, however, and you may want to exclude them.

Mr. KASTENMEIER. We will make our judgment on that point.

[The statement with attachments appear at p. 244.]

Mr. EGLIT. I hope to be brief and I will pick out those parts of the statement which I think are particularly relevant for direct statement today.

First of all, I would like to say that I think this subcommittee does deserve a lot of credit for what you have done. It seems to me, having worked for that Congress for several years, that the Congress has been largely put in the position of receiving legislation from the Executive. This subcommittee, however, took what I consider to be fairly significant steps in deciding upon what it wanted to do—that is, to legislate in the area of parole, creating legislation to effect this, and holding hearings on that legislation. I thing that is a welcome effort, and despite the counsels of the people representing the administration, I would urge in the strongest terms that you not fall back from maintaining the commitment and initiative you have demonstrated. It seems to me ultimately clear that the Congress is the repository of legislative activity and that you must act. You may not act on this bill, but ultimately it is up to you to lead, not follow.

I am not going to go through the history of parole as it developed in this country. That is in my prepared statement. Let me just say that this bill before you represents the first endeavor in 42 years by the Congress to legislate in the area of parole. I think that no agency, particularly an agency which has control over the lives of people in very real terms, should be allowed to luxuriate in the soothing balm of obscurity as has the U.S. Parole Board. I would note that despite the disclaimers and reticence of Mr. Sigler when he testified last week, I am firmly convinced that the U.S. Board of Parole would not have taken the few steps it has indeed taken but for the efforts of this subcommittee. Whether this legislation ever becomes law or not, I think you can claim the credit for pushing a very obdurate and

resistant agency into doing things that it would have been years in doing.

I might add that the Board, in fact, continues its resistant posture in the courts. Despite the welcome seeeming candor of Mr. Sigler last week, the fact is that in every case brought throughout this country against the U.S. Board of Parole, the Board maintains a resistant posture. It does not give an inch. There was a case in the District of Columbia District Court about 2 months ago involving the Berrigan brothers and their desire to go to North Vietnam. Eventually the Board was upheld in the denial of permission for them to go to Vietnam. What is important to note here, is that the Board never appeared before the court; they refused to come in just as they refused to come in, in *Sobell* v. *Reed*, and just as they have refused to come in, in any case.

This type of resistance, which seemed to be giving a little when the Chairman of the Board was before you last week, still exists in very firm form. What changes you get come very grudgingly, and do need the type of push this subcommittee has been able to provide.

Let me briefly run through the bill, and point to what I think are the nine major reforms in the Parole Reorganization Act.

First, the bill creates a two tier system made up of five Regional Boards and one National Board. I think this is essential. There is no way of dealing with the caseload of the Board unless you create the structure the bill envisions.

Second, the bill envisions the Board as an independent agency. I agree there is no way of preventing J. Edgar Hoover or someone else from expressing concerns as to who should be paroled or who should not be paroled, whether the Board is an independent agency or not. But I do think one of the things that demonstrates how it might be useful to have the Board become an independent agency is the Kafkaesque situation which confronted you here. Last week Mr. Sigler came in and said he was speaking for the Board of Parole and that his testimony didn't have to be cleared by the Justice Department, even though the Justice Department happened to clear his statement. This morning, Mr. Carlson from the Bureau of Prisons comes in and says Mr. Sigler's statement represents the view of the Department of Justice and he is precluded from saying anything in disagreement with the position expressed by the Board of Parole. So one wonders whose position is being articulated. Mr. Sigler claims he is free, he doesn't have to abide by the Justice Department, and Mr. Carlson claims he is not free and does have to abide by the Justice Department, and yet the Justice Department is apparently directly yet to be heard from. I think this type of situation is some demonstration of why it might be useful to make this agency independent.

Third, the bill, and this is something that hasn't been emphasized——

Mr. KASTENMEIER. May I interrupt to act perhaps as the devil's advocate on this point.

If indeed the Board of Parole is made independent, ought not the Bureau of Prisons be independent as well?

Mr. EGLIT. As you, I am sure, know, the 1967 President's Commission on Law Enforcement and Administration of Justice, which produced the major body of criminal justice study ever propounded by the Government, did, in fact, recommend there be created a Department of Corrections. And, in addition, the National Commission on Reform of the Federal Criminal Laws, of which you, the chairman, was a member, also suggested the creation of a Department of Corrections. As to the former recommendation, that of the 1967 Commission, they recommended that the Department be an independent agency. I am not sure whether the National Commission on Reform of the Federal Criminal Laws similarly recommended independence.

I think that, yes, it is generally the case, when you look at the States, that the Department of Corrections is an independent agency outside of the State attorney general's office; the Federal Government is somewhat different in the sense that the Bureau of Prisons is lodged within the Justice Department.

I would strongly recommend that the Bureau of Prisons become an independent agency and be allied with the Board of Parole. I don't see any problem with the Board of Parole and the Bureau of Prisons being together in an independent agency. I see a problem when they are lodged within the Department of Justice.

Mr. KASTENMEIER. Implicit in the question, I guess, is: Might we be undertaking, really, a breakup of the Justice Department in terms of organizational functions which, historically, have served as an umbrella over the years, perhaps even other areas, probation and parole and other services as well?

Mr. EGLIT. I don't think that is the case. Probation officers are under the jurisdiction of the Administrative Office of the U.S. courts. The Attorney General can direct them to act with regard to parolees, but, as to probationers, they act in accordance with the wishes of the sentencing judge. So that part of the criminal justice system is outside of the Justice Department, already.

With regard to ex-offender programs, many of these are funded by OEO, the Department of Labor, and the Department of Health, Education, and Welfare, so you have that part of the criminal justice system, and perhaps the most important part—that is, helping the people as they get out of prison—already outside of the Department of Justice.

I think you do not have at this point in time an umbrella organization which deals with the problem of criminal justice, and therefore I don't view the removal of the Board of Parole from the Justice Department as dismantling what is now a contiguous system in all respects.

Mr. KASTENMEIER. Furthermore, would you not agree that neither the Director of the Bureau of Prisons or the Chairman of the Board of Parole appears to be free and actually embraces independence?

Mr. EGLIT. I agree entirely, and I think it is a very sad thing. I recall last year when the former Director of the Bureau of Prisons, James Bennett, appeared before this subcommittee, and made some adverse comment with regard to the Board of Parole. However, he also had made clear to me that he had consulted with the then-Chariman of the Board of Parole, George Reed, as well as officials within the Justice Department, in writing his testimony.

We don't seem to be able to break through and get someone who really knows what is going on to come forward and say what is going on. It is my belief, and of course, this is hearsay, that, in fact, the Bureau of Prisons and the Board of Parole in personal terms hate each other. They are at bureaucratic loggerheads. They regard each

other as having contradictory aims. They do not get along. They regard each other's decisions as very unfortunate decisions. I think this is an unfortunate situation where you cannot get anyone to come forward and actually say they interact, what are the problems, what is actually being done to determine each other's effectiveness. So far we haven't heard that.

I appreciate the constraint the witnesses who appeared here are under. I don't know how you get around those types of constraints, but they do clearly exist, and they do clearly impede the forthcoming of true analysis.

Very quickly, the remaining aspects of this bill which I regard as significant reforms are as follows: The bill allows the Board to purchase services. This is something the Board currently cannot do. Whatever allocation of money is provided for by the Congress for probation officers is the limit as to what type of supervision can be provided parolees. No agency can go out and pay for additional supervision or services. This bill does enable the Board to contract with the local YMCA for lodging, wtih a local placement agency for employment assistance, et cetera. I think this is essential and good.

I would say that this at least the Board would support, since it would be getting a few bucks more to get a bigger bang for the dollar or, something of that nature.

Fourth, the bill moves toward the posture of having to demonstrate why a man or woman should be retained in prison. I think this is long overdue. You have these lonely and inarticulate prisoners coming forward, very nervous, trying to demonstrate why they should be released.

I am sure you recall the testimony of Mr. Hoffa last year about how the Spanish-speaking prisoner who couldn't speak English was coached for a prepared speech to give before the Board. For months he practiced before the mirror so he could say something before the Board. This may be an extreme case, of course, but I think we have to somehow get around this situation, so that the Board starts to have to justify what it does.

Incidentally, I would point out this is the recommendation of the National Commission on Reform of the Federal Criminal Laws, and lest anyone think this is some wide-eyed organization, there were well respected conservative individuals on it—Mr. Poff, a former member of this committee, and Senator Hruska having been members of that Commission.

Fifth, the Parole Reorganization Act opens up the crucial parole hearing to infusion of due process, which is absolutely essential. I think it is ridiculous and also tragic that the most mundane affairs which ocur in the country, although I admit maybe they are not mundane to the individual involved, are loaded up with due process. Here we have a bureaucratic procedure going on where years hang in the balance, and due process is totally lacking.

Sixth, this legislation assures the parolee full credit for street time. Notwithstanding what Mr. Sigler said, I can't believe denial of credit for clean street time is necessary to the Board. Moreover, notwithstanding the fact several courts have upheld the provision of present law, I cannot believe it is constitutional—I don't see how a judge can sentence a man to 10 years in prison and that many may wind up serving 17 years.

There is the case of one man now at Leavenworth who originally had a 10-year sentence. He had been out on the street on parole for 7 years. About a month before his parole term was to be completed, he was revoked, and he is now back in prison for an additional 7 years. If he does not get paroled he will have served 17 years on a 10-year sentence. This is not uncommon.

Seventh, the bill recognizes the basic fact that lawyers are trained in our society to marshal facts and structure arguments, and proceeds from that recognition to assuring the provision of counsel at parole revocation hearings and at parole release hearings.

Eighth, the bill creates a research and dissemination function for the U.S. Board of Parole, an aspect of this bill to which the Board in its apperances before your subcommitee has never addressed any attention. Surely, it seems to me, this is something they would like to have. Yet they refuse even to extend the courtesy of commenting on that.

Ninth, the act provides for judicial review, which I will discuss a little later and which I think is essential.

I don't like going about testimony in an adversarial manner but I do want to try quickly to deal with the obdurancy of the Board's representatives who have appeared before you.

I think the Board has taken a negative attitude in appearing before the subcommittee. Mr. Sigler's testimony represented the second time the Board has appeared here to comment on your legislation, and all they seem to be able to say is "No".

In this regard, I would like to point out that Mr. Sigler in January had this to say about the Board's activities:

> The topic for presentation—are parole boards using the right factors for parole selection?—calls for a straightforward answer. Unfortunately, the best answer available at this time is an unassured possibility. The problem is that we don't know. Not only do we not know whether they are the right factors, most often we do not even know what factors they are.

This is an admirable confession of ignorance, but it is of little solace to me or to the 23,000 people currently in the system and the thousands who will come into the system that this is the best the Board can come up with. It seems to me that with this type of internal understanding of their problems, the Board would have been before the subcommittee a long time ago requesting your help. Obviously this is far short of the position they have taken.

Let me address, also, the Parole Board's regional pilot experiment, of which they seem to be very proud. I think it is commendable they are trying to do things different, but I want to stress that there is nothing inconsistent between this bill and their experiment. All they are trying to do is to set up some sort of mechanical way of dealing with decisions. Your bill deals with the procedures whereby these decisions are made. The two are in utter congruity.

I must confess it makes me a little angry to hear the Chairman of the Board use this pilot program as an excuse for you to stop action. There simply is no excuse to stop action on the basis of this pilot program they have, and I want to urge upon you as strongly as possible, if you should decide not to proceed, that this is not the reason for not proceeding.

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Let me also say that I do have considerable concern about what the Board is doing, on a couple of levels in terms of the regional program.

First, the Board claims it is setting guidelines so that as soon as an offender comes into the system he will be classified in terms of how long he is going to be serving. It sounds like what the Board is saying is "Forget what the judge has determined the sentence should be, forget what the Congress says it should be in terms of statutory guidelines, we are setting up a new sentence, cut out of whole cloth, by administrative fiat." This means that some determination of the Board a man who has a zero to 10-year sentence is going to be classified by the Board as someone who should do, on the basis of the probability of parole outcome combined with the severity of offense, a 3- to 6-year sentence. This is entirely outside the law, and I am a little baffled that the Board should willingly come forward and explain what they are doing.

I might add they have given no one an opportunity to comment on what they have been doing and this is a real problem. Surely a major undertaking like this, even if conceivably within the prerogatives of the administrative function, should be subject to public comment as well as congressional comment.

In addition, there is a simple matter of pragmatics here. If the board has indeed devised guidelines which are valid in terms of assessing the outcome of the man or woman who comes into the system, why not turn these over to the sentencing judge? The sentencing judges around the country complain that they don't know what they are doing, that they don't know how to sentence people. If we now have in this Government a system of guidelines that works, let's give it to judges so they don't have to fish around. Let's not have a judge sentence a man to a minimum of 5 and a maximum of 15 if the guidelines are going to say this man needed a 3-year sentence.

Related to this point is the work of Prof. Jack Heinz, at Northwestern University Law School, who is in the process of completing a study of the Illinois parole system. He has come up with the conclusion, on the basis of the study of 350 cases analyzed by computers and other expert analysis, that the primary criterion in terms of board decisions in Illinois is the diagnostic report made by the probation officer before the fact of sentencing. There is virtually 100-percent correlation between the board decisions and the diagnostic reports. The conclusion I draw is that parole boards are therefore largely unnecessary. So if we have guidelines or diagnoses which tell what to do with an offender, give it to the judge. Let's not postpone this type of thing.

At this point, I'll conclude. I do address in my prepared statement specific rebuttals, as I see them, of the points made by Chairman Sigler last week. I am sure you can all address those as you wish, and I don't know whether it is really necessary for me to go through those point by point. I will be glad to if you want. Otherwise you may want to raise questions. I know all of the members sitting here are experts in this field, and I know that there are few questions that need yet to be asked or answered. I leave it to your pleasure.

Mr. KASTENMEIER. Perhaps at this point we ought to yield for questions. I will yield to the gentleman from Ilinois, Mr. Railsback.

Mr. RAILSBACK. Mr. Chairman, I want to compliment the witness for the job that he has done for this committee. In my opinion he has performed at the highest level in serving this committee. I only hope that as he enters into his new job he still feels some responsibility to keep us in mind and maybe offer other constructive suggestions in other areas. I know that he has been interested in pretrial diversion, and he has been interested in a minimum wage for inmates. He has been concerned about prison industries, he has been concerned about a number of things that we have not had a chance to reach.

I think regardless of what happens to this legislation, and I recognize it is a very complicated bill, our parole reform bill, I think that much of the work product should be credited to him and to our other counsels, Mr. Fuchs and also to Tom Mooney. But I just think he has performed the highest quality service.

I do have one question I want to ask him. Mr. Scalia, when he testified, on page 8 of his testimony, raised a question about the composition of the board as it sat on parole revocation hearings. He pointed out that section 4215(g) of the bill merely provided that a parole revocation hearing be conducted by at least one member of the regional board. Not only does this section not require other officers of the panel to be examiners, it does not require a panel at all.

He goes on to point out this is an anomaly that a parole revocation hearing is actually a more formal type proceeding than the initial parole determination hearing, and that its effect on the prisoner is likely to be more significant. And then he points out that it isn't clear whether the officer or officers presiding on revocation hearings may be authorized to make this decision. Section 4203(b) suggested they may not, section 4203(c) suggested that they may.

I wonder what your feeling is about that and whether we should change that?

Mr. EGLIT. I don't have a strong feeling but I can explain my rationale for this.

It is very clear that parole revocation is of much concern to the courts at this point. In fact, the Supreme Court in June of 1972 decided the landmark case of *Morrissey* v. *Brewer*, and in May of this year it decided *Gagon* v. *Scarpelli*. Both of these dealt with due process rights at parole revocation.

What you have is a situation where there is a lot of due process in the parole revocation stage and there is clearly judicial review—whether we like it or not the courts have been and are reviewing revocation decisions. The Parole Reorganization Act reflects this. But as the act is structured, there is much less due process in the parole hearing stage: section 4208 provides that there is some disclosure of files; the prisoner is allowed to appear represented by his attorney or he can appear on his own behalf; a record is kept of the hearing; and reasons are given to him. But he is not allowed to confront or cross-examine witnesses, nor can he compel the presence of adverse witnesses. So to balance off this greater informality, you might want to have a joint decision on the basis of three people bringing to bear their intelligence and expertise.

Moreover, in the revocation decision, you are not making a judgment about whether the man is "good" or "bad" or whether he has "changed"; you are simply making a judgment as to whether he did an act which is going to justify putting him back in prison. This it seems to me, is more readily a situation where you can have one decisionmaker, because the issue is easier, because there is more due process

involved, and because the decision will clearly be susceptible to judicial review.

That is my understanding of the distinction. I think it is a reasonable distinction, but I won't say damage would be done if it is discarded.

I don't know if you are also interested in the question of whether examiners should be allowed a vote in a decision or not. It was my understanding that in the hearing stage a panel could be made up of one board member and two examiners and the two examiners would have a vote in the decision. Again, this goes along with the idea of spreading the case load around.

Mr. RAILSBACK. I can't help but comment about your concerns expressed in your statement in reference to Chairman Sigler's testimony about how they go about their decisionmaking process and how arbitrary it seems to be, and how actually it seems to completely dominate or preempt the normal sentencing process.

I would only ask you, even under our bill which you are an expert on—even under our bill we really don't get away from that same problem. In other words, it is virtually impossible to frame guidelines or anything else that provides some absolute degree of certainty.

Mr. EGLIT. I think there is no way of doing that. One of the things about this bill is that it is not some phenomenal breakthrough in terms of completely turning around the system. It is a very logical, moderate approach. And you are right about the problems to be resolved. This bill is not going to preclude the Board from using the guidelines it sets up. But the bill at least does provide, in section 4202(a)(1), that the Board shall establish general policies and rules, including rules with respect to the factors to be taken into account in determining whether or not a prisoner should be released on parole.

I believe the factors can be articulated. I believe that the Board can come up in a rulemaking procedure with those things which should be taken into account. That is the way the government operates under the Administrative Procedure Act, which is what this keys into. An agency comes up with some regulations; Congressmen, committees, the public are allowed to comment upon them; and after due course these things become official regulations. That is the way it should be, and that is what this bill envisions.

What the Board has done with these guidelines, however, has in virtually complete secrecy. They come up with guidelines which obviously have a profound effect upon individuals, and yet I don't find any basis for their doing so.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. The gentleman from Maine, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. Eglit, I have not had the privilege of working with you on this particular legislation, but you won the accolades of our distinguished chairman and also the distinguished gentleman from Illinois, Mr. Railsback, and I must concur, after listening to your statement and reading the statement, in their high regard for you.

I would only add that you have also succeeded in carrying us to the heights of literary enlightenment as well. In the past we have had Father Drinan take us to the Latin catacombs, item paritem, and now you have given us the dramatic vagaries of Franz Kafka. I think that has enlightened all of us sitting here today. Apparently Mr. Sigler conceded one point, and that is those inmates who would be appearing

before a parole board be at least entitled to a representative or counsel, and conceded that counsel might even be an attorney as long as he behaves himself and doesn't serve in an adversary capacity in questioning issues of fact. I know attorneys are not held in such high regard generally as they are apparently by the Parole Board.

I have one question. Mr. Scalia in making his recommendations thought the Board of Parole ought to at least issue a checklist for reasons of denial.

That offends my own sensibility about a checklist being given back to the prisoner. To me it doesn't really enhance his understanding of why he was denied parole, but it would be considered to be a part of the conveyor belt that goes through the Board of Parole. This doesn't seem constructive to my mind. Do you have any comments on that?

Mr. EGLIT. I would agree entirely. In fact I believe the Board in the pilot program did start out with a checklist and found it unsatisfactory. Also last year before this subcommittee Professor O'Leary, head of the National Parole Institutes, was asked the question if using a checklist would be satisfactory. If anyone is an expert in the field he is, and his answer was a very clear "no."

I don't see how anyone could pretend to say a checklist would be adequate.

Mr. COHEN. That is all I have.

Mr. EGLIT. I would like to interject one thing here. I appreciate very much all of your nice comments about me. I can only say again, as when I began, that it was a privilege for me to be on the other side of the dais. Granted, I am somewhat chauvinistic, but I am convinced I worked for the best subcommittee in the Congress. Certainly whatever I was able to do was because of the commitment and intelligence and concern of the people who sat on this subcommittee.

I have at times a somewhat sour view of the Congress, but I think this subcommittee is one of those rare entities which rebuts that sour opinion. I only wish that it were replicated by 200 other subcommittees here.

Mr. KASTENMEIER. The subcommittee appreciates those kind remarks as well.

In any event I trust we will have the benefit of your counsel if not on a regular basis, on an irregular basis.

Mr. EGLIT. Freely and willingly.

Mr. KASTENMEIER. We appreciate your appearance this morning.

Mr. Mooney, do you have any questions?

Mr. MOONEY. I want to add Mr. Chairman, with your indulgence, a personal note to Mr. Eglit. I worked with him very often on this bill. I would like to say that he is a very able lawyer and scholar of the law.

I would like to ask just one question and I think a very important question.

I note that his lovely bride-to-be, Ms. Barbara Weiner, is in the audience, and I am wondering whether or not she approved this statement.

Mr. EGLIT. Implicitly, in any event.

Mr. MOONEY. After Sunday probably she will have more input.

Mr. EGLIT. She will have a direct say-so then.

Mr. KASTENMEIER. The very best wishes of the subcommittee go with you and your future bride. We trust we will be able to see you from time to time in the future.

Mr. EGLIT. You will. Thank you again.

Mr. KASTENMEIER. The subcommittee, accordingly, at the completion of Mr. Eglit's testimony stands adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

[Mr. Carlson's statement referred to at p. 209 follows:]

STATEMENT OF NORMAN A. CARLSON, DIRECTOR, FEDERAL BUREAU OF PRISONS, BEFORE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE, JUNE 28, 1973

Mr. Chairman, members of the committee, I appreciate the opportunity of appearing before you today as you consider H.R. 1598, the Parole Reorganization Act of 1973.

I have had the pleasure of appearing before this Committee on a number of occasions. I know of your concern with the criminal justice system and your interest and helpfulness in its improvement.

This proposal relates to the specific area of parole within the criminal justice system and proposes a replacement of the present legislation governing federal paroles and parole revocations. Mr. Maurice Sigler, Chairman of the United States Board of Parole, who appeared before this Committee last week commented at length on the many specific provisions included in H.R. 1598. Of course, as the Chairman of the Board, Mr. Sigler bears the primary responsibility for the administration of the federal parole system and therefore is in the best position to assess the various proposals and their impact upon the administration of the parole system. Consequently, I feel that it is appropriate for me to defer to Mr. Sigler's views and comments on the specific proposals. I will confine my brief remarks to my views of the impact and role of parole upon the total correctional system, especially as it affects the inmate and the responsibilities of the correctional administrator.

Obviously, as a correctional administrator, I am very much aware of the importance of parole and concerned with its effect upon our mission to return the inmate to society as quickly as is compatible with both his needs and the interests of society. Of course, the primary objective shared by virtually all offenders in institutions is their understandable desire to be released from custody. Thus, the manner in which a parole system is administered is uppermost in the minds of both offenders and correctional personnel. It can, if properly administered, provide a strong motivational force which encourages offenders to make positive adjustment in the institution, to participate in various programs and activities which are provided, and to make a sincere effort to succeed upon release.

On the other hand, if it is improperly administered it can have a significantly adverse affect upon the hopes, aspirations and future of the offender. The parole decision, of course, is difficult because it requires a delicate balance between the needs of the offender and the interests of society to be safe and secure to the extent possible. It should be noted that a positive response to institutional programs is not the only factor that must be considered in granting a release of an individual prior to the time he would normally be released by operation of law. As mentioned before, the parole process is part of the entire criminal justice system which has as a common objective among others, the responsibility to provide the community with protection.

I believe there are several areas of significant concern experienced by offenders when they apply for parole. First, they want a prompt decision. The time lapsing from the parole interview to the notification is one of great anxiety and directly affects the offender's attitude and ability to function. The longer the uncertainty, the more the feeling of frustration and its inevitable consequences intensify. Secondly, the offender wants to know in factual terms the reason for his denial of parole. He wants to know where he failed to meet the standards by the Board and what he will have to do in the future to obtain favorable consideration. Like anyone else, the offender can only feel comfortable if he is convinced that the decision made is based upon rational and equitable considerations. Thirdly, the offender would feel more comfortable in knowing that the parole decision marker has a uniform policy which is consistently applied and that decisions are not affected by the happenstance of whoever conducts the hearing.

Probation, Prisons and Parole have been the three traditional elements of corrections. Historically, offenders who were not considered to be a threat to society were diverted out of institutions with supervision being provided in the community under probation. Other offenders were committed to institutions with an opportunity to be released prior to the expiration of their sentence through parole. Still others were retained in institutions until their sentences expired and then released without any supervision and very little assistance or community acceptance. The options available to correctional administrators were seriously limited. Recently, however, an additional array of correctional programs have been developed to provide the courts and correctional administrators with greater flexibility in coping with the diverse problems presented by a heterogeneous offender population. These have included halfway houses, community treatment centers, work and study release programs and community furloughs.

I recognize the great potential of community based programs and I believe that individuals who do not pose a threat to the community should be diverted from institutions altogether, or at least from long periods of confinement whenever possible. At the same time, I do not view community programs as a cure-all and realize that some offenders must be confined to control their behavior. For that reason, we have sought to develop a balanced program of corrections designed to meet the wide-spread needs of various offender groups.

In addition to 28 major institutions we also operate 15 community treatment centers and contract with more than 70 state, local and private agencies for similar services. Most of our institutions also sponsor work and study release programs and all facilities utilize furloughs when circumstances indicate that a temporary release to the community is compatible with the interest of society and is consistent with the total treatment effort and existing legislation.

Within the past few weeks, I appeared before the Senate Judiciary Committee's subcommittee on Penitentiaries in support of S. 1678 which, if passed, would give the Bureau of Prisons increased flexibility in the area of furloughs. Essentially, the bill amends Title 18, Section 4082—and removes the rather narrowly defined conditions under which a furlough can be granted. Under current legislation inmates can only qualify for a temporary release for emergencies such as a death or critical illness in the family and for release planning during the last six months of their sentence.

S. 1678 and its counterpart on the House side, H.R. 7352, introduced by Congressman Rodino, would give institution administrators the added authority to approve furloughs for any significant correctional reason. The proposed legislation would have a vital impact on Bureau programming efforts because it would give us an opportunity to increase family involvement in the correctional process for a greater number of offenders. The family obviously plays an important role in an inmate's ultimate favorable adjustment and there are times when his release for a temporary home visit can be justified for reasons other than emergencies or release planning. Under the new legislation we would also have the option of using furloughs more frequently in corrections with the concept of gradual release and as an additional measure for testing the readiness of selected offenders for return to the community under parole supervision.

As Mr. Sigler commented in his testimony, the United States Board of Parole recently established a pilot project in five federal institutions. The objective of the project is to be more responsive in those areas I have described—to provide offenders with a more rapid reply on parole hearings and to explain to them the reason for parole denials. While the project is still in its infancy, indications I have gotten from both inmates and Bureau of Prisons' employees are that it is a significant improvement in the parole system. I hope that these early indications will hold true and that this project can be expanded soon to include all federal institutions.

The question of when an offender should be released from an institution to the community is a most difficult one. For some offenders, release can come at a very early date in their sentence without jeopardizing the communities to which they will return. In other cases, a longer period of incarceration is required if we are to adequately protect society. As I pointed out, we are seeking an increased use of community alternatives to confinement for the less serious offenders with

even more in the offing. At the same time we have observed an increased concern by law enforcement agencies, the courts and the community in general over crimes involving drug traffic, the use of weapons, or the threat of violence. The average length of sentence has steadily increased from 33.1 months in 1960 to just over 47 months in FY 1972. I think this is a reflection of the community's concern over violent crimes. We have also observe a change in the nature of the inmate population in the Federal Prison System. The number of individuals committed for violent offenses such as assault, homicide, kidnapping, rape, and robbery has risen from about 12 per cent of the total population in 1961 to almost 25 per cent in 1972.

Unfortunately, with regard to the question of parole, the behavioral sciences including psychology and psychiatry have provided us with few clues as to when an offender is ready for release. However, I think our immediate attention should be focused on developing a parole system that is more capable of rendering objective and consistent decisions that can be justified and explained to inmates on the basis of all available information. Much more research is needed to develop reliable prediction of an individual's readiness for release but I am convinced that this goal can be accomplished through the combined efforts of universities, and the various components of the Criminal Justice System.

The inability to say precisely which offenders should or should not be released is only one of many obstacles which continue to impede the development of a totally effective correctional system. It is closely related to the problem of knowing which treatment programs should be provided for which individuals while they are still institutionalized. And a necessary prerequisite to effective treatment programs is the development of modern institutions to replace the dehumanizing prisons in which so many offenders are still forced to live.

In spite of the many obstalces which confront all areas of our correctional system, there has been significant progress in recent years. The Federal system, especially, has been fortunate in that the Congress has been most responsive to the need for increased resources as well as more flexible correctional legislation which recognizes that offenders have differing, individual needs.

I needn't elaborate on the deficiencies of the federal correctional system today because I think we're all painfully aware of them. Certainly much needs to be done to reach our objective of making corrections—and I refer here to both the operation of institutions and the administration of parole—an effective part of the criminal justice system. These shortcomings are recognized, however, and many important steps have been taken to overcome them. The U.S. Board of Parole's pilot project represents a significant improvement which we hope will continue to be developed and expanded.

Mr. Chairman, this concludes my statement and I want to thank you for the opportunity to present my views. If there are any questions I'd be glad to respond.

[Mr. Eglits' statement, with attachments referred to at p. 233, follows:]

STATEMENT OF HOWARD EGLIT, ESQ., BEFORE SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE, JUNE 28, 1973

Mr. Chairman, it is indeed a pleasure for me to appear before you; Mr. Railsback, the ranking minority member; and the other distinguished members of this Subcommittee. I have had the privilege of sitting on the other side of the dais, as counsel to this Subcommittee, and I can therefore state my views today with a particular appreciation of your endeavors. I also want to extend my appreciation for your very kind words regarding my work in the area of parole legislation when you opened these hearings last week. Needless to say, whatever I was able to do was in large measure due to the interest of you and the Members of the Subcommittee.

Before addressing the specific issue of parole, I would like to venture a short note on a more philosophic plane. It seems to me that the work of this Subcommittee over the past one and one half years signals a significant step of courage and commitment which, to be candid, is particularly notable for its rarity in the Congress in general. As I am sure you know, for several decades now the Congress has, in the area of legislative initiative, become what some might consider a subsidiary appendage of the executive. This of course was not always the case; in the 19th century and at the beginning of this century, Congress both proposed and disposed.

Notwithstanding the more or less typical posture of the Congress in recent years as a recipient of legislation envisioned, drafted, and pushed by the executive, this Subcommittee has indeed charted its own course. You have selected the area of parole reform as your first major endeavor in the field of corrections, and you have labored long and hard to draft the Parole Reorganization Act of 1973—line by line and word by word. I think this initiative is, in itself, a most commendable attribute of this Subcommittee, and one well worth duplicating.

I raise this philosophical note because just last week the Chairman of the United States Board of Parole appeared before you to urge legislative inaction. This of course in part stems from the now long reigning bureaucratic state of mind which views Congress as little more than a provider of funds. I most strong urge that that state of mind be rejected by you and that you continue your progress in a field which most compellingly calls for legislative action.

Let me now turn more directly to the issue before us—parole.

The historic antecedents of parole are diverse. Parole as we know it today did not develop from any one specific source or experiment. Rather, it is an outgrowth of a number of measures: the conditional pardon, the apprenticeship by indenture, the transportation of criminals to colonies in America and Australia, the English and Irish experiences with the system of ticket-of-leave, and the work of American prison reformers during the nineteenth century.

The first American parole statute was enacted by the New York State legislature in 1877. By 1901, 20 states had parole statutes, and today every state has laws concerning release on parole. In 1970, 54% of the adults released from prison in a total of 46 reporting jurisdictions left as parolees. Their number exceeded 54,000. In the various jurisdictions, parole as a mode of release ranges from a little over 2% to 97%. Moreover, the frequency with which parole is utilized as a means of release is rising. In addition, in some jurisdiction mandatory releasees are deemed to be released on parole for purposes of assuring control over them.

Congress extended parole to the Federal correctional system in 1910. For eight years thereto, Federal prisoners had been able to shorten their time in prison by earning good time credits. There was no supervision in the community, however, once the offender was released. By the Act of June 25, 1910, ch. 387, § 1, 36 Stat. 819, Congress created a system of parole boards located at each of the Federal prisons, which were then very few in number. Each prison had its own board, composed of the warden, the medical officer, and an official of the Department of Justice, who was an ex-officio member of each institutional board. These boards recommended parole, and the Attorney General made the final decision. Supervision in the community was provided by a parole officer assigned to each institution; he served mainly as a clearing house for the volunteer workers and U.S. Marshals who had personal contact with the parolees.

Abolition of the institutional boards, and creation of a central board, occurred by act of Congress in 1930. Sole authority to grant and revoke parole was given to a three-member Board which, while having independent decision-making authority, was placed in the Bureau of Prisons for administrative purposes. Members were appointed by the Attorney General. Five years prior thereto—and since that time—the responsibility for the supervision of Federal parolees has been lodged with United States probation officers, who are employees of the Division of Probation of the Administrative Office of the United States Courts.

In 1945, the Attorney General ordered the Board to report directly to him for administrative purposes, thereby severing the direct link with the Bureau of Prisons, which is also an arm of the Department of Justice. In 1948, the number of Board Members was increased from three to five. In 1950, the Congress passed legislation providing specialized treatment for youth offenders under the Youth Corrections Act, and created a Youth Correction Division within the Board. This raised the membership of the Board to eight. At that time, also. Congress changed the method of appointment to the Board, providing that appointment would thenceforth be by the President, with the advice and consent of the Senate. I should note, however, that the chairman of the Board is designated by the Attorney General.

Today, all personnel of the Board are stationed in Washington, D.C. The eight members of the Board are assisted by eight parole examiners, who conduct approximately two-thirds of the hearings with prisoners, the Members conducting

the other one-third. I should note here that last week Chairman Sigler reported that in fact Board members conduct 20% or less of the hearings. Final decisions are made by concurrence of two Members. During Fiscal Year 1970, the members and examiners conducted 11,784 personal hearings, and an additional 5,669 decisions on the basis of records were made by the members, producing a total of 17,453 decisions. During this same fiscal year, there was an average of 20,687 prisoners in Federal institutions.

As the parole process—both in the Federal system and in the State systems—has come to play an increasingly integral role in the entire corrections continuum—increased study has been made of this process. Significantly, this study has come to a fairly uniform consensus—parole in America is in very bad shape. Your hearings last year amply established that the United States Board of Parole, in terms of both its procedures and premises, is all too well characterized by this dismal conclusion.

Needless to say, this is a very serious matter. Parole, it appears, perhaps serves best only to embitter those who are its clients. Even in purely pragmatic terms, we must be concerned about this, since between 95 and 98 per cent of those who are incarcerated will one day be again walking our streets, and their frustrations while caught up in the criminal justice system can hardly redound to the general public weal.

H.R. 1598, the Parole Reorganization Act of 1973, is the next—and logical—step in the development and improvement of the Federal parole system. It is also the product of the first substantive Congressional scrutiny of the Federal system in 42 years. And on this score, too, I commend this Subcommittee. No governmental activity should be allowed to luxuriate in the soothing balm of obscurity as has the United States Board of Parole. Save for your efforts, the Board would. I am convinced, have taken far fewer steps administratively than it has in the past year. What little grudging progress has been forthcoming thus far is because of your work.

Having alluded to the grudging posture of the United States Board of Parole—a posture replicated, I might add, by most parole boards throughout the states—I want to address the testimony of Chairman Sigler, who appeared before this Subcommittee on June 21. I do not particularly like dealing with a subject so important as the Parole Reorganization Act in the somewhat negative manner of rebutting an earlier witness, but I simply cannot forego putting to rest the negativism and obstructionism articulated by the spokesman of a body which ideally should be a leader but, instead, takes a position of solid resistance to reform.

With what undoubtedly is a too brief synopsis, I would assess the Parole Reorganization Act as embodying nine major reforms. In the general order of their appearance in the bill, but in no particular order of ranked importance, they are as follows:

(1) H.R. 1598 embodies a responsible and constructive approach to dealing with the very large caseload of the Board by creating a two-tier system, made up of a 7-member National Board and five 3-member Regional Boards, which are further strengthened by the authorization of a maximum of six hearing examiners for each Regional Board.

(2) The bill withdraws the Federal parole board from its lodging within the Department of Justice, and creates an independent agency.

(3) The bill provides authority for the Board to purchase services, so that it can begin to create the community involvement in the parole process which is so essential. This authority will enable the Board to contract with the local YMCA for housing for parolees, or with the local social service agency for counseling personnel, or with local employment agencies for job placement assistance.

(4) H.R. 1598 moves the Board toward the posture of having to demonstrate why a man or woman should be retained in prison. This is a long overdue movement away from the notion of governmental grace being dispensed when the Board so chooses, with the lonely and often inarticulate prisoner struggling to make his case to the Board and establish why the Board should dispense its grace upon him.

(5) The Parole Reorganization Act significantly opens up the crucial parole hearing to infusion of due process, an absolute essential. After all, due process is a basic facet of governmental activity common in the most mundane situations; its absence in the parole hearing, where years of a person's life are at issue, is therefore even more grossly dismaying.

(6) This legislation assures the parolee full credit for street time. Presently, we have the anomaly, unfortunately sanctioned by several court decisions, that a man who may have served seven years on parole of a ten-year sentence, after having served the first two years in prison, can be revoked and returned to prison to serve those full seven years again, as well as his remaining one year—meaning a total service of seventeen years for what was ostensibly a ten-year sentence.

(7) The bill recognizes the simple, yet basic, fact that lawyers are trained in our society to marshall facts and structure arguments, and proceeds from that recognition to assuring the provision of counsel at parole revocation hearings and at parole release hearings.

(8) H.B. 1598 creates a research and dissemination function for the United States Board of Parole—an essential role in a field all too notable for its lack of study, research, and cross-fertilization of ideas.

(9) The Parole Reorganization Act articulates the simple, but pragmatic, realization that agency action, unchecked by external scrutiny, is apt to be, at least on occasion, abusive action. Judicial review must be feasible, so that the impartial checks of the judiciary may be brought to bear.

These nine elements of the Parole Reorganization Act make this legislation a significant advance in the field of corrections. They deserve welcome by anyone who is concerned with bringing to pass true justice. But let us be candid and acknowledge that this legislation is no radical assault upon parole as a discipline, or upon the United States Board of Parole as an entity. They simply reflect a reasoned consensus concerning what tack to take in response to the expert opinion which has been registered before this subcommittee in its hearings on parole last year. And lest anyone question whether the Board is much in need of the benefit of this expert opinion, let me just note Federal District Court Judge Marvin Frankel's trenchant observation that "parole officials carry on for the most part the motif of Kafka's nightmare."

Thus, to be straightforward about the matter, I cannot help but view the posture of the Board of Parole, as expressed last week by Chairman Maurice Sigler, as backward resistance whose motivations cannot be the betterment of justice as a concept or as a reality.

Mr. Sigler offered you a convincing openness about the shortcomings of parole. He made even clearer these shortcomings this past January, in a speech delivered in Washington, when he said:

> The topic for presentation—are parole boards using the right factors for parole selection?—calls for a straightforward answer. Unfortunately, the best answer available at this time is an unassured *possibility*. The problem is that we don't know. Not only do we not know whether they are the *right* factors, most often we do not even know what factors they are . . .

Frankly, I find this statement astounding. Thousands of people have been, and are being, granted or denied parole yearly, and the best we have as explanation of the awesome power exercised by the Board of Parole is an admission of ignorance. Given this deplorable state of affairs, I should think the Board would have long ago come beseeching this Subcommittee for help in cleaning up a very messy operation. Obviously, the Board has done anything but come forward seeking your assistance.

What the Board is claiming is that you should abort your efforts, call them off—because it is now embarked upon a regional pilot program allowing advocates and giving reasons. Moreover, this plan involves guidelines setting up what parameters prisoners fall into in terms of minimum length of sentence to be given.

In a sense, I consider the Board's position insulting to you. In another sense, I think it sad. And in still another way, I deem it fraught with grave constitutional problems.

Let's be clear about this. The Parole Reorganization Act is concerned with rights—the right to counsel, the right to a fair hearing, the right an appeal. Its structural reforms are aimed at securing an institution in which those rights can effectively work. Mr. Sigler's plan is concerned with mechanics for the substance of the decision—not the procedures, save the minimal gestures of allowing an advocate and of giving reasons.

So let us put Mr. Sigler's bogey-man of legislative interference to rest. It is little more than insult to your intelligence and to your endeavors. There is nothing in the Parole Reorganization Act which interferes with the guts of the Board's pilot program—the guidelines for categorizing prisoners n terms of time to be served.

I said earlier that I regarded the Board's position as sad. I do. After all the criticism, after all this Subcommittee's work, after the entreaties of the Admin-

istrative Conference of the U.S., the best the chairman of the U.S. Board of Parole could come forward with is a message of one word—NO. That, to me, is a sad commentary on the state of our system of justice—criticism is rebuffed, reform rejected.

Finally, I regarded the Board's plan as raising grave constitutional issues. Mr. Sigler, in his prepared statement last week, described the guidelines the Board is using in its pilot program in this way:

> "[T]he guidelines take into account the severity of the offense as well as the parole prognosis, i.e., the probability of favorable outcome. Once these elements are known, the general range of time to be served before release can be determined. For example, an inmate who was convicted of a low severity offense and who has a very high probability of favorable parole outcome will generally serve a relatively short period of time before release; an inmate with a low severity offense but only a fair probability of favorable parole outcome will generally serve a longer period of time, etc."

In a way, the presumptuousness of the Board can only be viewed with respect for its daring. The Chairman of a division of the Department of Justice has come before you, a legislative body of Congress, and told you, in effect, that it doesn't matter what sentences you create legislatively. Nor does it matter what sentence is imposed by the trial judge. Rather, the Board, by administrative fiat—which, by the way, the public has been given no opportunity to comment upon—is going to impose its own sentence. By means of "guidelines." What a delightful work this is. No need for laws nor judges. Merely turn a man or woman over to the Board and everything will be taken care of—the Board will decide if the offense is severe, thereby registering its role as moral arbiter; the Board will decide just how bad this man or woman before it is—thereby registering its role as some sort of hocus-pocus mind reader; and, finally, the Board will set the sentence, thereby taking care of its role as trial judge.

One is tempted to silently gulp at all this being done behind the closed doors of the Board chambers. At the least—at the very least—one might venture to ask why, if this thing works, and I mean if it has validity, the judge just doesn't do it? Why go through all the trouble of a trial and sentencing without the prognosticative information? Would it not make more sense to have the judge use these guidelines and sentence a man accordingly, rather than having the judge fish around in ignorance, impose a guesswork sentence and only sometime later—maybe even years later—have the Board step in to say that the guidelines indicate that subject X should only have been incarcerated for 1½ years instead of the five year minimum imposed by the judge?

Apart from this pragmatic question of timing, what of the issue of the rights attendant upon a trial—the predecessor to the sentence? Here a new sentencing is occurring by pure and simple agency fiat.

Finally, by what claim does the Board justify its prognostications? Psychiatrists engage in intensive, long sessions with articulate people actively seeking help, and still they cannot plumb their inner-most psyches. Yet, the Board presumes, on the barest of contact with a prisoner, to employ prognosticative devices on which years hang in the balance.

Hopefully, I have at least laid to rest any temptation to delay and give the Board a few more years of grace. So let me turn now to some of the specific points made by Mr. Sigler.

Mr. Sigler told you last week that the Board would now allow attorneys to appear as "advocates." Putting aside his further statement that these attorneys would not be involved in adversary presentation of issues of law or fact, I want to address the Chairman's shorting out of this seemingly progressive step by resisting appointment of counsel for indigents. His opposition to appointed counsel of course makes the embracement of counsel's presence ludicrous, for if any one group of individuals can be readily identified as destitute, it is the men and women in our prisons. To say they can retain counsel is to just as well say they can fly to the moon on weekends. Certainly, what was really being articulated before you was little short of intellectual irresponsibility, and certainly it is a position which does violence to the constitutional notion of equal protection.

I am not going to dwell on the issue of counsel further, but I would call your attention to attachments A and B which I have appended to my prepared statements. Attachment A provides a brief discussion concerning the practices concerning counsel in the parole process. Attachment B presents my computation of the cost involved in providing appointed counsel pursuant to the Parole

Reorganization Act—a figure which I compute as $954,500 annually, as well as overall costs of the bill before you.

Another specific objection raised to the Parole Reorganization Act besides the opposition to appointment of counsel was Mr. Sigler's criticism of the shifted burden embodied in Section 4205. Of course, Mr. Sigler failed to mention that by espousing such a position, he was thereby rejecting the suggestion of the National Commission on Reform of Federal Criminal Laws, which proposed that very shifting. That aside, I would also point out that given Mr. Sigler's candid acknowledgment of the Board's wandering in the desert, so to speak, in terms of really knowing even what factors to use in making a parole decision, it is difficult to ascertain what brief the Board has for resisting this proposal. If it does not know how to make a parole decision, it can hardly maintain with clean hands, to use an old equity law term, that it nevertheless should have unbridled power to make that very decision, free from the intellectual responsibility which Section 4205 imposes upon it.

Chairman Sigler also opposed the crediting of clean street time to parole revokees, a position so utterly without redeeming merit that there really is no way to defend it, it seems to me. To disallow a man years of good behavior and make him serve that time over again in prison is simply to exalt brutal punishment over any modicum of compassion.

Chairman Sigler also went on to oppose release of parolees pending a revocation hearing. Such release is carefully restricted under your bill and certainly raises little dangers. What this provision does do, however, is to bring this area of the justice system into line with the constitutionally based notion that we don't lock up people simply because they are accused of wrongdoing. And lest it be forgotten through some semantic misplay, parolees are, lo and behold, people.

Another point of opposition lies in Mr. Sigler's resistance to compelling the appearance of witnesses in revocation proceedings. Once again, the Board Chairman blithely skips over reality. He notes that the potential revokee is permitted to have "voluntary witnesses" and that "any adverse witnesses whom he wishes to attend are requested to appear." That, to me, is largely meaningless. If an adverse witness does not want to appear, he's not going to, and apparently the Board's view is—the parolee be damned.

Chairman Sigler also disputes a hearing for termination from a Community Treatment Center. Had he more carefully read the Parole Reorganization Act, he would perhaps have realized that a hearing right only arises when the termination is for negative reasons. In such instance, the parolee is indeed going to be in worse shape, and a hearing is very much on point.

One notable issue which Chairman Sigler did not address was judicial review—a surprising omission in light of my understanding of the Justice Department's position. Perhaps the witness assumed that the expressed opposition of the Judicial Conference would suffice.

Let me say that I do realize the potential problems attendant upon judicial review. Were there a satisfactory alternative, I would choose it. But there is not. True, some burden on the courts will ensue. My computations suggest that as many as 5,400 appeals may be filed annually, and I detail this more fully in Attachment C. This would amount to approximately 4% of the cases filed in the federal district courts in fiscal year 1971—not, in fact, an overwhelming increase. But no matter what the burden—and I do stress that it does not appear unmanageable—justice simply cannot recede before administrative convenience. And justice will not exist unless the courts can act as an external examiner of Board procedures.

I can really express this view no better than in the words of the other witness who appeared before you last week—Mr. Antonin Scalia, Chairman of the Administrative Conference of the United States. Mr. Scalia stated:

> There is really no solution to this problem . . .; it is one of the inevitable effects—and perhaps one of the honorable marks—of a system of law.

I suspect that there are at least some questions which you have which I have not addressed. Perhaps one helpful resource will be Attachments D and E, which are long and short summaries of the Parole Reorganization Act and which you may want to include in the record. Attachment D includes, along with an analysis of H.R. 1598, a comparison to existing law and Parole Board regulations and to the recommendations of the National Commission on Reform of the Federal Criminal Laws.

In closing—and perhaps this closing will be somewhat overextended—I think several points should be made.

First, parole is clearly a dominating concern—perhaps the dominating concern—of all prisoners. At one level, the prisoner's preoccupation with parole is readily understandable. Parole is the avenue to the street. Virtually every man and woman wants out, and for most, parole is the quickest means to get there. But more than this, parole epitomizes for most inmates a system of whim, caprice, inequity, and nerve-wracking uncertainty. They find the issue of their liberty governed by a system where no reasons for parole denial are provided—or if they are, they are given in some cursory bureaucratic shorthand; the prisoner's file, to which the inmate is barred access, governs decision-making; adverse witnesses are undisclosed and favorable ones prohibited; hearings are limited to a perfunctory three or four or five minutes; disparate treatment is accorded with no discernible justification; and the courts turn a deaf ear to inmate complaints. The New York State Commission on Attica reported that parole as perceived by prisoners is "an operating evil," and I think that report is all too sadly accurate.

Second, reform of the parole system is no wild-eyed radical proposal. Those who have studied this system are virtually unanimous in finding it very, very deficient. In fact, no less a prestigious gathering than the Annual Chief Justice Earl Warren Conference on Advocacy, in its 1972 recommendations, looked toward the abolition of parole, recommending that "*until such time as the present parole system is eliminated* by short definite prison terms, due process should apply to both the initial granting and revocation of parole or good conduct time." (Italic added). Note that the bare minimum recommended is due process—which is really the maximum proposed by the Parole Reorganization Act.

Third, reform of parole is indeed in the public interest. We hear constant condemnation of the recidivism rate, yet we rarely hear those who are complaining the loudest condemn the breeding grounds of despair and frustration which house offenders. I realize that the reform such as you on this Subcommittee are seeking is not the easiest course; I also contend it is the only responsible course.

Fourth, I urge upon this Subcommittee that it can no longer accept the obstructionism of the United States Board of Parole, which seems only able to say "no"—and, in its usual fashion, gives only the most perfunctory reasons, if any at all, for so saying. I would suggest that the Chairman of the Board be required to respond, in writing, to your request that the Board address the Parole Reorganization Act section by section, subsection by subsection. What does it oppose; what does it favor? And why? Twice now, the Chairman of the Board has appeared before this Subcommittee, and twice now you have received vague statements addressed to perhaps one-third of the legislation, with silence prevailing as to the remainder.

Fifth, let me call your attention to the Working Papers of the National Conference on Criminal Justice, convened in January of this year. These Working Papers are the product of what was described in a Department of Justice press release on January 14, 1973 as "a blue-ribbon panel of criminal justice experts." Here are some of the things this "blue-ribbon panel," who, by the way, were appointed by the President, had to say—and I think they will evoke some striking contrasts with the views of the United States Board of Parole:

> (T)he correctional authority, rather than the inmate, should bear the burden of proof (however evaluated from jurisdiction to jurisdiction) that an inmate is not ready for release. (Page C–196.)
>
> (T)he preference should be for releasing an inmate on parole when he is first eligible. . . . (Page C–196.)
>
> Parole procedures should permit disclosure of information on which the hearing examiner bases his decisions. Sensitive information may be withheld, but in such cases nondisclosure should be noted in the record so that subsequent reviewers will know what information was not available to the offender.
>
> Parole procedure should permit representation of offenders under appropriate conditions, if requested.
>
> The person hearing the case should specify in detail and in writing the reasons for his decision, whether to grant parole or to deny or defer it.

Finally, let me quote from a letter written by a Federal prisoner to this Subcommittee:

> This board serves no usefull (sic) function. (sic) on the contrary, it is a terrible detriment to any meaningfull (sic) rehabilitation of convicted persons. This board causes frustration, anger, and terrible bitterness not only in men incarcerated but in their families as well. I don't think I have to remind you that it is society as a whole who must pay the price for years of bitter frustration and anger. Probably the board of parole, more than any other single "thing" is the prime cause of the very high rate of recidivism in our prisons.

ATTACHMENT A—REPRESENTATION BY COUNSEL IN THE PAROLE PROCESS

H.R. 1598 provides for representation by counsel, both at the parole determination stage (Section 4208(c)) and the parole revocation stage (Section 4215(h)). In addition, the assistance of counsel is authorized in appeals to the National Board from certain decisions of the Regional Boards. (Section 4216(a)). Provision is made for the appointment of counsel for indigents under the Criminal Justice Act. (Sections 4208(c), 4215(h), 4216(a)).

PAROLE REVOCATION

Since 1959, the right to retained counsel has been guaranteed in the Fedreal parole system. *Robbins* v. *Reed*, 106 U.S. App. D.C. 51, 269 F. 2d 242 (1959). In *Hyser* v. *Reed*, 318, F 2d 225, cert. denied, 375 U.S. 957 (1963), then Circuit Court Judge Burger reaffirmed the right to retained counsel, pointing out that this right rested on statutory language—e.g., 18 U.S.C. 4207, which provides that a potential revokee "shall be given an opportunity to appear before the Board, . . ."

This right to retained counsel has been lodged in Board practice by virtue of regulation (28 CFR § 2.41), which provides that "each alleged parole violator or mandatory release violator shall be advised that he may be represented by counsel . . . Provided, that that alleged violator arranges for the appearance of counsel . . . in accordance with procedures prescribed by the Board."

Thus, for years now, there has been little argument as to the right of the alleged parole violator being represented by retained counsel.

Furthermore, Congress acted in 1970 to amend the Criminal Justice Act so as to provide for the appointment of counsel for indigents in parole revocation cases "whenever the United States magistrate or the court determines that the interests of justice so require . . ." P.L. 91–447, subsection (a), amending 18 U.S.C. 3006A.

The Criminal Justice Act further provides for retention of such counsel in cases where the matter for which the attorney was appointed is appealed. 18 U.S.C. 3006A(c).

The situation vis-a-vis the states is not so clear. A number of jurisdictions now allow retained counsel to appear at the revocation hearing by virtue of explicit statutory language.[1] In some other jurisdictions the courts have established the right to retained counsel.[2]

Decisions on indigents' right to appointed counsel are not uniform. In some states, statutes provide for appointed counsel.[3] In others, the courts have ruled that such appointed counsel must be provided.[4]

In June, 1972, the Supreme Court, in *Morrissey* v. *Brewer*, confronted the issue of due process in the parole revocation setting. Mr. Justice Burger, writing for the six-member majority, rejected the right-privilege distinction so often invoked in parole cases, stating: "It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege. By whatever name the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment . . ." The issue specifically left open was whether the parolee was entitled to the assistance of retained counsel or to appointed counsel if he is indigent. Justices Brennan and Marshall, concurring in the result, held that representation of retained counsel is required, leaving open the issue of appointed counsel. Mr. Justice Douglas held that the parolee should be entitled to counsel.

On May 15 of this year, the Supreme Court handed down its decision in *Gagnon v. Scarpelli*. The Court there faced the question of whether an indigent probationer or parolee has a due process right to be represented by appointed counsel at his revocation hearing. The court concluded that there was indeed

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[1] Alabama, District of Columbia, Florida, Georgia, Michigan, Montana, Texas, Washington.
[2] Connecticut, Delaware, Maryland, New York, Pennsylvania.
[3] Puerto Rico, Maryland, West Virginia.
[4] *Warren* v. *Parole Board*, 23 Mich. App. 754, 179 N.W. 2d 664 (1970); *United States ex rel Bey* v. *Board of Parole*, 443 F. 2d 1079 (2d Cir. 1971); *Goolsby* v. *Gagnon*, 322 F. Supp. 460 (E.D. Wis. 1971); *Commonwealth* v. *Tinson*, 433 Pa. 328, 249 A. 2d 549 (1969).

a right to counsel, although a limited one. Mr. Justice Powell, writing for the Court, stated:

> We think, rather, that the decision as to the need for counsel must be made on a case-by-case basis in the exercise of a sound discretion by the state authority charged with responsibility for administering the probation and parole system. Although the presence and participation of counsel will probably be both undesirable and constitutionally unnecessary in most revocation hearings, there will remain certain cases in which fundamental fairness—the touchstone of due process—will require that the State provide at its expense counsel for indigent probationers or parolees.
>
> Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present. In passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself. . . .

Supporting counsel at parole revocation are the President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society 368 (1968); the National Council on Crime and Delinquency; the American Civil Liberties Union; and the Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice 49. The ABA Project on Minimum Standards (Approved Draft 1968) also recommends the appointment of counsel in parole revocation proceedings. The American Law Institute's Model Penal Code provides for the assistance of counsel. (Model Penal Code, § 301.4, § 301.15(1) (Proposed Official Draft 1962)).

PAROLE RELEASE DECISION

The large majority of jurisdictions statutorily mandate a hearing for the parole release decision. Of these, 18 provide that a prisoner may have legal counsel either in the preparation for the hearing or at the hearing itself.[5]

Supporting representation by counsel are the National Council on Crime and Delinquency, the American Civil Liberties Union, former U.S. Bureau of Prisons Director James V. Bennett; Professor Vincent O'Leary, Director, National Parole Institutes; and the Administrative Conference of the United States. The President's Commission on Law Enforcement and the Administration of Justice (Task Force Report 86) recommends representation by retained counsel.

The Parole Board also supports assistance to the prisoner—in this case, assistance by "advocates." Such advocates formerly could not be attorneys, but, rather, a family member, friend, fellow inmate, employer, prison guard, etc. They would be remunerated by the Board.

The thrust of support for counsel at the parole determination hearing is not necessarily to convert this hearing into an adversarial contest, but, rather, to provide the prisoner, who is often ill-educated, and inarticulate, or quite nervous, with the assistance of a trained individual equipped to marshal the facts and statements the prisoner wishes to make. In other words, the attorney need not be a litigator, but, rather, a mediator, an organizer of the facts and issues to be presented, and an advisor both to the Board and the prisoner.

[5] Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Louisiana, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, Pennsylvania, Tennessee, Virginia, Utah, and Washington. (In some of these, the attorney's role is limited to advising the prisoner before the hearing or making oral or written arguments after the hearing.)

ATTACHMENT B—COSTS OF IMPLEMENTATION OF THE PAROLE REORGANIZATION ACT

Following is a recitation of the current costs of operation of the United States Board of Parole, and an analysis of the costs of implementation of H.R. 1598, the Parole Reorganization Act of 1973.

	Current board, fiscal year 1973	H.R. 1598
Personnel compensation:		
(Not including payroll-budget staff)	[1] $1,241,000	$1,[illegible]470
Payroll budget staff	30,000	150,000
Capital asset expenditures		132,000
Contract funds		1,200,000
Funds expended by LEAA for research for Board's purposes, and by U.S. Probation Office for parole supervision (The Board is having conducted a $400,000, 18-month study by the NCCD re parole predictions. The money comes out of LEAA; under the new bill, the Board could contract for this itself. Under the new bill, also, the Board could contract with private groups for supervision of parolees; currently, it cannot do so. So, at present, these funds would come out of the budget of the Probation Office, a division of the administrative offices of the U.S. courts)	1,200,000	
Travel and transportation	50,000	75,000
Operating expenses (Currently, the Board is lodged within the Justice Department for administrative purposes, and thus operating expenses would come out of the Department's budget)	273,020	463,423
Criminal Justice Act fund requirements	?	954,500
Total	[1] 2,794,020	4,931,393
Difference	2,137,373	

[1] Chairman Sigler testified on June 21 before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice that the Board was requesting a doubling of its budget.

I.—TOTAL COST, H.R. 1598

	In dollars
Personnel compensation, national board	612,270
Personnel compensation, regional boards	1,494,200
Capital asset expenditures	132,000
Contract funds	1,200,000
Travel and transportation	75,000
Operating expenses	463,423
Criminal Justice Act funds requirement	954,500
Total	4,931,393

II.—BOARD OF PAROLE

ESTIMATED OPERATING EXPENSES AND CAPITAL ASSET EXPENDITURES, NATIONAL BOARD AND REGIONAL BOARDS

Operating expenses:	
Total of selected operating expenses, expressed as a percentage of personnel compensation [1]—	
Personnel benefits. Transportation of things. Rent, communication, utilities. Printing and reproduction. Other services. Supplies and materials. Equipment.	
Total	$463,423
Travel and transportation of persons	75,000
Total operating expenses	500,503

[1] The Department of Justice budget shows a ratio of operating expenses to personnel compensation of 1+:5, or, more exactly, operating expenses equalled 22% of personnel compensation. This was the percentage used here. (Department of Justice Budget for 1971—Legal Activities and General Administration).

Capital asset expenditures:	
Furniture and accessories	$132,000
Criminal Justice Act funds requirement [2]	954,500
Research program funds [3]	200,000
Contracts for parole supervision services [4]	1,000,000

[2] This figure was obtained as follows:

Adults in Federal prison (FY '71)	17,750
Admissions (FY '71)	15,959
Releases (FY '71)	14,550
Admissions (FY '71)	15,959
Non-adults	—1,465
Pre-sentence study cases	1,116
Parole revokees	—1,442
Adult admissions (FY '71)	11,936
Adult admissions	11,936
A-2 sentences (18 USC 4208(a)(2))	—2,489
Adult regular sentences	9,447

The 2,489 "a-2" sentences would be eligible for hearings. So, too, would the 1,442 parole revokees. The average sentence of a regular sentence is 47 months. Since a regular sentence is not eligible for a parole hearing until having done ⅓ of his sentence, none of the 9,447 regular sentences would be eligible for a hearing in the first year under H.R. 16276.

However, one can assume that in any given year ⅔ will be eligible for hearings, since the average sentence is 47 months. This means 6,200 regular sentencees are eligible for hearings in any given year.

Thus, the total eligible for hearing is: 2,489, 1,442, and 6,200 for a total of 10,131.

Of these, 15% can be assumed to be releasable with no hearing necessary, so 8,611 would require hearings.

In addition, assuming a revocation number of approximately 1,650, there would be a total of 10,261 hearings (8,611+1,650).

Figuring appointment of counsel for 90% of the parole determination hearings at $25 per hour, for 2 hours work per hearing, the figure arrived at for *parole determination hearings* is 7,750×$50+$377,500. In addition, assuming 80% of these appeal, at 2 hours' work per appeal, there is an additional $344,500. As to revocation hearings, also at 2 hours' work per hearing, the cost is $82,500. Appeals to the courts is an unknown, and an additional $150,000 is arbitrarily computed. Thus, the total is: $377,500, $344,500, $82,500, and $150,000 for a total of $954,500.

[3] The Board is given authority to enter into contracts for research, etc. The arbitrary figure of $200,000 was selected as the first year effort.

[4] The Board is given authority to enter into contracts with public and private organizations for the supervision of parolees, a function now filled exclusively by the Federal Probation Service. The arbitrary figure of $1,000,000 was elected as the initial expenditures on such contracts, which such costs would presumably be somewhat offset by the released demands on the Probation Service.

III.—National Board Personnel Compensation

Board members:	
1 chairman, executive level III, $40,000	$40,000
6 members, GS-17, $34,335	206,010
Total	246,010
General counsel:	
1 general counsel, GS-17, $34,335	34,335
1 assistant general counsel, GS-15, $25,583	25,583
2 general counsel staff, GS-14, $21,960	43,920
Total	103,838
Contracts monitoring staff:	
1 project monitor, GS-15, $25,583	25,583
2 monitor assistants, GS-11, $13,309	26,618
Total	52,201
Payroll-budget staff: 15 staff, at average of $10,000	150,000

Administrative support staff:	
1 administrative assistant, GS-9, $11,406	$11,406
3 secretarial-stenographers, GS-7, $9,053	27,159
1 secretarial-clerical, GS-6, $8,153	8,153
1 secretarial-clerical, GS-5, $7,319	7,319
1 secretarial-clerical, GS-4, $6,544	6,544
Total	60,221
Total personnel compensation, national board	612,270

IV.—Regional Offices Personnel Compensation

1. regional board; members: 3 members, GS-17, $34,335	103,005
1 Regional board; hearing examiners: [1] 6 hearing examiners, GS-14, $21,960	131,760
1 Regional board; legal staff: 1 legal counsel, GS-14, $21,960	21,960
Regional board; administrative support staff:	
1 administrative assistant, GS-9, $11,046	11,046
1 secretarial-stenographer, GS-7, $9,053	9,053
1 secretarial-clerical, GS-6, $8,153	8,153
1 secretarial-clerical, GS-5, $7,319	7,319
1 secretarial-clerical. GS-4, $6,544	6,544
Total	42,115
Total personnel compensation, 1 regional board	298,840
Total personnel compensation, all regions	1,494,200

Attachment C—Judicial Review of Parole Board Decisions

H.R. 1595 explicitly provides for judicial review of National Board decisions, by virtue of its incorporation of the judicial review provisions of the Administrative Procedure Act. (Section 4223). While judicial review is somewhat circumscribed,[1] in large measure the review standard set for all other administrative actions of the government is brought into play vis-a-vis the Parole Board.

The impact on the courts of this action is very difficult to ascertain. There could be as many as 5,414 court appeals annually,[2] or there could be considerably less.

[1] Section 4223 precludes judicial review of decisions made by the Board pursuant to Section 4216(b)—that is, decisions concerning parole conditions, or modifications thereof (short of denial of forfeiture of parole good time). In addition, Section 4223 precludes application of 5 USC 705, which authorizes courts to provide relief pending review of an agency decision.

[2] The figure of 5,414 was derived as follows:

Admissions to Federal prisons in FY '71	15,959
Non adults (not covered by H.R. 16276)	—1,465
Pre-sentence study cases	—1,116
Parole revokees	—1,442
Adults admissions	11,936

Of these 11,936, 9,477 were regular sentences—that is, they must serve ⅓ of their sentence before they are eligible for parole consideration. The other 2,489 were "a" sentencees, and thus immediately eligible for parole consideration. In any given year, approximately ⅔ of the regular sentencees will be eligible for consideration, however. Thus, you have a total number of people considered by the Board annually of: 2, 489 "a" sentences, 6,200 regular sentencees and 8,689 total.

Of these, approximately 25% will receive parole, leaving 6,517 with denials. In addition, there will be 1,442 revocations, plus 4,000 additional prisoners from preceding years, of whom 25% will receive parole, leaving 3,000 denied. Thus, a total of 10,959 individuals will receive adverse decisions. Assuming 80% of these appeal to the National Board, the National Board will decide 8,767 cases. Assuming 80% of these appeal, there will be 5,414 complaints filed in the courts.

This is not an overwhelming burden on the federal district courts, in which 134,686 cases were filed in fiscal year 1971, of which ⅔, or 93,396 were civil in nature.

Attachment D—Section-by-Section Analysis, H.R. 1590, Parole Reorganization Act of 1973

Section 4201—Board of Parole; structure; membership; etc.

Reconstitutes the U.S. Board of Parole as an independent agency consisting of a National Board and 5 Regional Boards. (Subsection (a)).

Provides for Presidential appointment of Board members, with the advice and consent of the Senate, and with the caveat that to the extent feasible, Board composition should reflectt he racial and ethnic makeup of the Federal prison population. (Subsection (b)).

Provides for a National Board of 7 members, with six-year terms, and a limitation of service on the National Board to a maximum of 12 years. (Subsection (c)).

Provides for 5 Regional Boards of 3 members each, with six-year terms, and a limitation of service on a Regional Board to a maximum of 12 years. (Subsection (c)).

Provides for designation of the Chairman of the Board of Parole by the President, and designation by such Chairman of the chairmen of the Regional Boards. Such Board Chairman and Regional Board chairmen are to be appointed to a minimum of 2-year terms and a maximum of 6-year terms. (Subsection (d)).

Provides for the National Board setting the boundary lines of the Regional Boards. (Subsection (e)).

Provides that all members except the Chairman of the Board of Parole are to be GS–17's, while Chairman is to be paid at the rate of Level III of the Executive Schedule. (Subsection (f)).

Existing Law—18 U.S.C. 4201

U.S. Board of Parole is a component of the Department of Justice.

Board consists of 8 members, appointed by the President with the advice and consent of the Senate.

Board Chairman is appointed by the Attorney General.

Members are appointed to 6-year terms, with no limit on maximum years of service.

Members are GS–17's.

National commission on reform of the Federal criminal laws

Nothing.

Board regulations

Nothing.

Section 4202—Powers and duties of National Board

The National Board is empowered to:

(1) Establish general policies and rules.
(2) Conduct appellate review of Regional Board actions.
(3) Hire personnel.
(4) Enter into contracts.
(5) Accept free services.
(6) Request information, data, and reports from other Federal agencies.
(7) Arrange for other Federal agencies to perform functions.
(8) Request probation officers and other individuals and agencies to provide supervision of, and assistance to, parolees.
(9) Issue subpenas, subject to the witness immunity provisions of the Organized Crime Control Act. (Subsection (a)).

The National Board is authorized to delegate powers and functions to Regional Boards, except:

(1) Power to hire hearing examiners,
(2) Power to set general policies and rules. (Subsection (b)).

Other Federal agencies are authorized to assist the Board. (Subsection (c)).

Votes of the National Board are to be by a majority of members, except where otherwise provided by the Act. (Administrative appeals are not, by virtue of section 4217, required to be decided by a majority of the members.) Individual members' votes as to adoptions of policy and interpretations are to be made public. Subsection (d)).

Existing Law

The U.S. Board of Parole, as a constituent part of the Department of Justice, has such powers as it derives from the Department.

Current 18 U.S.C. 3651 authorizes the Attorney General to request probation officers to act as parole officers. The Attorney General has delegated this authority to the Board.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

Section 4203—Powers and authority of Regional Boards

The Regional Boards are authorized to conduct parole hearings, and such other duties as are prescribed. (Subsection (a)).

Actions to be taken by the Regional Board are to be taken by majority vote of the members, unless otherwise provided. (Parole determination hearings would not have to be decided by majority vote of the members, pursuant to Section 4207(a)). (Subsection (b)).

Authorizes any member or agent of the Regional Board to act for the Regional Board, except when otherwise provided by law. (Subsection (c)).

Existing Law

Currently, the U.S. Board of Parole is not regionalized. The full Board is empowered to release people on parole, revoke parole, issue warrants, and set conditions of parole.

National Commission on Reform of the Federal Criminal Laws

Authorizes the Board (not regionalized) to do same as under existing law.

Board Regulations

Nothing.

Section 4204—Time of eligibility for release on parole

A prisoner subject to a "regular" sentence is eligible for consideration for release on parole after having served ⅓ of his sentence, or, in the case of a prisoner sentenced to 30 years or more, after serving 10 years of his sentence. (Subsection (a)).

A prisoner as to whom a minimum sentence is prescribed is eligible for consideration for release on parole after having served that judicially prescribed minimum. (Subsection (b)(1)).

A prisoner as to whom no minimum sentence is prescribed, and who is sentenced to a so-called "(a)(2)" sentence, is eligible for consideration for release on parole no later than 150 days after being imprisoned. (Subsection (b)(2)).

A prisoner who is reimprisoned following revocation of his parole is eligible for consideration for re-parole no later than 150 days after his reimprisonment. (Subsection (c)).

Existing Law

As to prisoners sentenced to "regular" sentences, 18 U.S.C. 4202 provides that they shall be eligible for release on parole after having served ⅓ of their sentence, or, in the case of a prisoner sentenced to 45 years or more, after having served 15 years.

Existing law is the same as subsection (b)(1) of H.R. 16276. 18 U.S.C. 4208 (A)(1).

Existing law is virtually the same as subsection (b)(2) of H.R. 16276, except that existing law provides that the prisoner sentenced to an "(a)(2)" sentence is immediately eligible for consideration for release, while subsection (b)(2) of H.R. 16276 provides that he is eligible no later than 150 days after imprisonment. 18 U.S.C. 4202(a)(2).

Existing law is virtually the same as section 4204(c) of H.R. 16276 as to a prisoner who has been reimprisoned after revocation of his parole, except that under existing law he is immediately eligible for release on parole, whereas subsection (c) provides that he is eligible *no later than* 150 days after reimprisonment.

National Commission on Reform of the Federal Criminal Laws

Offenders sentenced to less than 3 years' imprisonment are eligible for consideration for release on parole no later than 10 months after imprisonment. (Section 3401).

Offenders sentenced to less than 3 years' imprisonment as to whom a minimum sentence is set are eligible for consideration at least 60 days prior to the end of their minimum sentence. (Section 3401).

As to offenders sentenced to more than 3 years' imprisonment, they shall not be released on parole during the first year of their imprisonment except in the most extraordinary circumstances. (Section 3402).

Board Regulations

Nothing.

SECTION 4205—RELEASE ON PAROLE

The Regional Board *shall* release a prisoner when he is eligible for release, provided:

(1) He has substantially observed the rules of the institution;

(2) There is a reasonable probability that such prisoner will live and remain at liberty without violating any criminal law: and

(3) There is a reasonable probability that his release would be compatible with the welfare of society. (Subsection (a)).

In the case of a prisoner who has not been released on parole, he shall be released after having served ⅔ of his sentence, or after 20 years in the case of a sentence of 30 years or longer, unless the Regional Board determines there is a high likelihood he will engage in conduct violating any criminal law. The caveat is that this does not apply to "special dangerous offenders", as defined by the Organized Crime Control Act. (Subsection (b)).

If a prisoner has not yet served the minimum required, but (1) there is a reasonable probability that he will live and remain at liberty without violating any criminal law, and (2) there is a reasonable probability that his release would not be incompatible with the welfare of society, the Board in its discretion can apply to the court for an adjustment in his sentence so as to make him eligible for consideration for release on parole. The court in its discretion can accordingly so order.

Existing Law

"If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner wil live and remain at liberty without violating *the laws*, and if in the opinion of the Board such release is not incompatible with the welfare of Society, the Board *may in its discretion* authorize" his release. 18 U.S.C. 4203(a). In addition, the prisoner's record must show that he has observed the rules of the institution in which he is confined. 18 U.S.C. 4202.

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A prisoner eligible for release on parole *shall* be released unless the Board is of the opinion that his release should be deferred because:

(*a*) There is undue risk that he will not conform to reasonable conditions of parole;

(*b*) His release at that time would unduly depreciate the seriousness of his crime or undermine respect for law;

(*c*) His release would have a substantially adverse effect on institutional discipline; or

(*d*) His continued correctional treatment, medical care or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date. (Section 3402).

As to long-termers, they shall be released on parole after having served 5 years, or ⅔ of their sentence, whichever is longer, unless the Board is of the opinion that there is a high likelihood that they would engage in further criminal conduct. (Section 3402(a)).

As to those prisoners who have not yet served their minimum sentence, the court shall have the authority to reduce an imposed minimum term to time served upon motion of the Bureau of Prisons. (Section 3201(4)).

(*Note:* It is very important to note that the National Commission, in its revision of sentencing, proposes a maximum sentence of 30 years. Thus, in regard to long-termers, when the Commission proposes release on the standard of "high likelihood" of further criminal conduct after having served 5 years or ⅔, whichever is longer, this standard would come into play no later than 20 years, since the maximum sentence is 30 years. This is the same as section 4205(b) proposes.)

Board Regulations

Nothing.

SECTION 4206—FACTORS TANEN INTO ACCOUNT: INFORMATION CONSIDERED

Establishes that, in determining whether a prisoner shall be released on parole, the Regional Board shall consider those factors which the National Board establishes, by rule-making procedure, as the general factors to be considered in all cases, or classes of cases, as well as

(1) reports and recommendations of prison staff
(2) prior criminal record
(3) presentence investigation report
(4) recommendation of the sentencing judge
(5) reports of physical, mental, or psychiatric examinations
(6) such other additional relevant information as is available, including information submitted by the prisoner.

Existing Law

Nothing

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Nothing

Board Regulations

The Board considers:

The application submitted by the prisoner

His prison classification study and all reports assembled by all the services which have been active in the development of the case, which may include the reports by the prosecuting officer, the sentencing judge, FBI records, social agency reports, correspondence, etc.

All available relevant and pertinent information, including information submitted by interested persons. (28 CFR § 2.14).

Forfeiture of prison good time will be deemed to indicate that the prisoner has violated the rules of the institution to a serious degree, and parole will not be granted in any case in which such a forfeiture remains effective against the prisoner. Any withholding of good time shall be deemed to indicate that the prisoner has engaged in some less serious breach of the rules of the institution, and, except in unusual circumstances, a parole will not be granted in any such case unless and until such good time has been restored. (28 CFR § 2.13).

(*Note:* In response to criticism, the Board has now open listed the general factors considered in its decision making:

A. Sentence Data:
   (1) Type of Sentence
   (2) Length of Sentence
   (3) Recommendation of Judge, U.S. Attorney and other responsible officials

B. Facts and Circumstances of the Offense:
   (1) Mitigating and aggravating factors
   (2) Activities following arrest and prior to confinement, including adjustment on bond or probation, if any

C. Prior Criminal Record:
   (1) Nature and pattern of offenses
   (2) Adjustment to previous probation, parole, and confinement
   (3) Detainers

D. Changes in Motivation and Behavior:
   (1) Changes in attitude toward self and others
   (2) Reasons underlying changes
   (3) Personal goals and descriptions of personal strengths or resources available to maintain motivation for law-abiding behavior

E. Personal and Social History:
   (1) Family and marital
   (2) Intelligence and education
   (3) Employment and military experience
   (4) Leisure time

(5) Religion
(6) Physical and emotional health

F. Institutional Experience:
(1) Program goals and accomplishments in areas:
(a) Academic
(b) Vocational education, training, or work assignments
(c) Recreation and leisure time use
(d) Religion
(e) Therapy
(2) General Adjustment:
(a) Inter-personal relationships with staff and inmates
(b) Behavior, including misconduct

G. Community Resources, Including Release Plans:
(1) Residence, live alone, with family, or others
(2) Employment, training, or academic education
(3) Special needs and resources to meet them

H. Use of Scientific Data and Tools:
(1) Psychological and psychiatric evaluations
(2) Pertinent data from the uniform parole reporting system
(3) Other statistical data
(4) Standardized tests

I. Comments by Hearings Member of Examiner:
Evaluative comments supporting a recommendation, including his impressions gained from the hearing.

(Rules of the U.S. Board of Parole, January 1, 1971, pp. 14–16.)

SECTION 4207—PAROLE DETERMINATION HEARING: TIME

Requires Regional Board to conduct a hearing when prisoner becomes eligible for consideration for release on parole, unless the prisoner's record indicates he will be released and therefore hearing is unnecessary. Hearing is to be conducted by a panel of 3 individuals, with a Regional Board member presiding. The other 2 individuals can be fellow Board Members or hearing examiners. This panel has the authority to make the decision whether to grant or deny parole. (Subsection (a)).

In the case of a prisoner with a minimum sentence, the hearing shall be held, whenever feasible, not later than 60 days prior to the expiration of that minimum sentence. In the case of a prisoner with no minimum, the hearing shall be held, whenever feasible, not later than 90 days after imprisonment (or reimprisonment, in the case of a prisoner reimprisoned following parole revocation). (Subsection (b)).

Following the first parole hearing, subsequent hearings shall be held annually until the prisoner is released (whether mandatorily or by parole). (Subsection (c)).

Existing Law

Nothing as to who conducts hearing, or when it is held, or even whether a hearing is required or not.

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No requirements as to hearings being held, or as to who would hold them, were they held. Does require annual consideration of the prisoner.

Board Regulations

Prisoner submits application for release on parole. (28 CFR § 2.12). Regular hearings are scheduled at institutions, to be held either by Board members or hearing examiners. The person who conducts the hearing cannot make the decision alone, but must submit a recommendation to the Board for final action. (28 CFR § 2.15). The Board, by special progress reports, or otherwise, makes periodic reviews. (28 CFR § 2.21).

(*Note:* The Board requires the concurrence of 2 Board Members in decisions concerning whether or not to grant parole. If a prisoner does not receive parole at his initial hearing, and his term is more than 3 years, an institutional review will be conducted some time within the next 3 years. Such review will be on the basis of another hearing. If he is again denied, he may be set-off for as long as 3 years, with further review whether by hearing or review of the file. In no case can a prisoner go for longer than 5 years without a hearing.

In addition, the Board at its discretion may conduct a Washington Review Hearing at which attorneys, relatives, and other interested persons may appear.

Approval of the request for such a hearing is based on receipt of significant new information sufficient in the judgment of the Board to justify the reopening of the case. A quorum of 2 members is required.

In special cases, decision regarding parole is made by Board en banc—cases involving national security, organized crime key figures, national or unusual interest, major violence, long-term sentences.) (Rules of the U.S. Board of Parole, January 1, 1971).

SECTION 4208—PROCEDURE OF PAROLE DETERMINATION HEARING

Within a reasonable time prior to the hearing, the Regional Board is to provide the prisoner with written notice of the time and place of the hearing, and make available to him the files to be used by it in making its determination. (Subsection (a)).

As to the files to be made available to the prisoner, the Board may withhold any portion of any file, report, or other document which:

(1) Is not relevant;

(2) Is a diagnostic opinion which might seriously disrupt a program of rehabilitation;

(3) Reveals sources of information which may have been obtained on a promise of confidentiality.

When the Regional Board does withhold such files, it shall so state and shall provide the prisoner with written notice of its findings that either 1, 2, or 3 applies, with reasons. Further, it shall provide the substance of any such withheld file, except when this would endanger, in the opinion of the Board, the safety of any person other than the prisoner. (Subsection (b)).

The prisoner is allowed to consult wtih his attorney, and by mail, or otherwise as provided by the Board, with any other person, concerning his forthcoming hearing. He can be represented, if he chooses, by an attorney or other qualified person at the hearing. As to indigents, attorneys will be appointed by the court pursuant to the Criminal Justice Act. (Subsection (c)).

The prisoner is allowed to appear and testify on his own behalf. (Subsection (d)).

A full record of the hearing is kept, and within 14 days after the hearing, the Regional Board shall notify him in writing of its determination and furnish him with a written notice stating with particularity the grounds on which its determination was based, including a summary of the evidence and information supporting the Regional Board's finding that there is a reasonable probability he will not live and remain at liberty without violating any criminal law, or there is a reasonable probability that his release would be incompatible with the welfare of society, or that he has not substantially complied with the rules of the institution. Also, when feasible, the Board shall advise the prisoner of what he ought to do to enhance his prospects for parole. (Subsection (e)).

Existing Law

Nothing.

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Nothing.

Board Regulations

Representation by counsel, or any other person, is not allowed. The hearings are not open to the public, and the records of such hearings are confidential and shall not be open to inspection by the prisoner or by any other unauthorized person. (28 CFR § 2.16).

SECTION 4209—CONDITIONS OF PAROLE

Directs Board to impose conditions it deems reasonable necessary to ensure that parolee will lead a law-abiding life or to assist him in doing so. Directs Board to impose as a condition that the parolee not commit any criminal offense. (Subsection (a)).

Authorizes Regional Board to set as a condition that the parolee reside in, or participate in the program of, a residential community treatment center. In the case of a parolee who is a drug addict or a drug dependent person, authorizes Board to set as a condition that the parolee participate in a community supervision program. If the parolee can derive no further benefit from such program or residence, or if his residence or participation adversely affects other residents or

participants, he can be terminated from it. Regional Board is authorized to require parolee to pay the costs of his residence. (Subsection (b)).

In imposing conditions of parole, the Regional Board is to consider that:

(1) There should be a reasonable relationship between the condition imposed and both the prisoner's previous conduct and his present capabilities;

(2) The conditions are sufficiently specific to serve as a guide. (Subsection (c)).

Prisoner is given a certificate setting forth the conditions of parole. (Subsection (d)).

Existing Law

Parolee is allowed, in the discretion of Board, to return to his home, or elsewhere, upon such terms and conditions as the Board prescribes .The Board can require him to do the same as is provided in subsection (b) of Section 4209 of H.R. 16276. 18 U.S.C. 4203.

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The conditions of parole shall be such as the Board deems reasonably necessary to insure that the parolee will lead a law-abiding life or to assist him in doing so. The Board shall provide as an explicit condition that the parolee not commit another crime. As conditions of parole the Board may require that the parolee:

(*a*) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

(*b*) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;

(*c*) Attend or reside in a facility established for the instruction, recreation or residence of persons on probation or parole;

(*d*) Support his dependents and meet other family responsibilities;

(*e*) Refrain from possessing a firearm, destructive device or other dangerous weapon unless granted written permission by the Board or the parole officer;

(*f*) Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abuseable drug without a prescription;

(*g*) Report to a parole officer at reasonable times as directed by the Board or the parole officer;

(*h*) Permit the parole officer to visit him at reasonable times at his home or elsewhere;

(*i*) Remain within the geographic limits fixed by the Board, unless granted written permission to leave by the Board or the parole officer;

(*j*) Answer all reasonable inquiries by the parole officer and promptly notify the parole officer of any change in address or employment;

(*k*) Satisfy other conditions reasonably related to his rehabilitation.

Board Regulations

It is the general rule that a parolee may travel outside his supervision district only with the prior approval of the Board. (28 CFR § 82.28). All parolees shall make such reports as may be required. (28 CFR § 82.29).

SECTION 4210—JURISDICTION OF BOARD OF PAROLE

Except as otherwise provided, the jurisdiction of the Board terminates no later than the date on which the individual's maximum term for which he was sentenced expires, except that jurisdiction shall terminate sooner to the extent parole good time is accrued, and, in the case of mandatory releases, 180 days prior to the expiration of the maximum term for which he was sentenced. (Subsection (a)).

Parole runs concurrently with any other parole or probation. (Subsection (b)).

In the case of a parolee who intentionally refuses or fails to comply with any reasonable request, order, or warrant of the Regional Board, jurisdiction of the Board may be extended for the period of his noncompliance. (Subsection (c)).

In the case of any parolee imprisoned pursuant to another sentence during his parole, the jurisdiction of the Board may be extended for a period equal to the period of his imprisonment. (Subsection (d)).

As to any prisoner sentenced before June 29, 1932, the prisoner's parole shall be for the remainder of his term, less prison good time allowances.

Existing Law

The parolee receives no credit for "clean street time". 18 U.S.C. 4205.

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The parolee receives credit for "clean street time". In addition, the period of parole shall run concurrently with any Federal, State, or local jail, prison or parole term for another offense to which the parolee becomes subject during his period of parole.

Board Regulations

Board's jurisdiction can be extended so long as the parolee has failed to pay any fine imposed upon him by the committing court. (28 CFR § 2.31).

SECTION 4211—PAROLE GOOD TIME

A parolee whose record shows that he substantially observed his conditions of parole receives deductions from his parole term, computed as follows:

(1) 5 days for each month of parole, if his parole period is more than 6 months but less than 1 year;

(2) 6 days for each month of parole, if his parole term is more than 1 year but less than 3 years;

(3) 7 days for each month of parole, if his parole term is more than 3 years but less than 5;

(4) 8 days for each month of parole, if his parole term is more than 5 years but less than 10 years;

(5) 10 days for each month of parole, if his parole term is 10 years or more. (Subsection (a)).

Parole good time may be forfeited or withheld, pursuant to a parole modification hearing. (Subsection (b)).

Parole good time forfeited or withheld may be restored by the Regional Board at any time.

Existing Law

While prisoners who are incarcerated earn prison good time according to the same formula provided in Section 4211 of H.R. 16276, as well as industrial good time, parolees do not receive credit for parole good time.

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Nothing.

Board Regulations

No credit for good time is allowed. (28 CFR § 2.30).

SECTION 4212—EARLY TERMINATION OR RELEASE FROM CONDITIONS OF PAROLE

Upon its own motion, or upon petition of a parolee, the Regional Board is authorized to terminate its jurisdiction as to a parolee, or to release a parolee from any condition of parole.

Existing Law

Nothing.

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The Board may discharge the parolee from supervision or release him from one or more conditions at any time after the expiration of one year of successful parole if warranted by the conduct of the parolee and the ends of justice. It may modify his parole conditions at any time.

Board Regulations

When the Board shall have modified the reporting requirement of a parolee and a period of at least one year shall have passed since the modification occurred, the Board may order that the parolee be released from all supervision. He may be reinstated to supervision, or revoked, at any time prior to the expiration of his sentence, however. (28 CFR § 2.42).

SECTION 4213—ALIENS

Authorizes Regional Board to release an alien prisoner who is subject to deportation when released, on condition that he be deported. Such prisoner, when released, is delivered to the immigration officials.

Existing Law

Section 4213 of H.R. 16276 is the same as current 18 U.S.C. 4204.

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Nothing.

Board Regulations

Alien prisoners who are deemed fit for release into community supervision by the Board, even though they may eventually be deported, may be paroled, provided that immigration authorities are notified. (28 U.S.C. § 2.10).

SECTION 4214—PAROLE MODIFICATION AND REVOCATION

Authorizes Regional Board to modify or revoke parole. (Subsection (a)).

Precludes any order of parole revocation or modification from extending beyond the termination of the Board's jurisdiction over the parolee. (Subsection (b)).

Provides the penalties for technical violation of parole, where such violation is not frequent or serious:

(1) Intensification of parole supervision and reporting;
(2) Additional conditions of parole imposed;
(3) Parole good time be forfeited or withheld. (Subsection (c)).

In the case of a parolee who has been convicted of a criminal offense, or whose violations of parole are frequent or serious, his parole may be modified, or it may be revoked—e.g., he may be reimprisoned. (Subsection (d)).

Existing Law

Provides for revocation of parole—e.g., modification of conditions of parole or reimprisonment, with the revokee receiving no credit for the time he has served on parole. In other words, the jurisdiction over him is in effect extended. For example, if a man is sentenced to 10 years in prison, paroled after 4 years, and serves 2 years on parole, he would only have 4 more years to go on parole. But, if he is revoked after the 2 years, he may be reimprisoned for 6 more years—e.g., he receives no credit for the 2 years he served on the street. He may be re-paroled, of course. 18 U.S.C. 4207.

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If the parolee violates a condition of parole, his conditions may be enlarged or modified, or, if such is not appropriate, he may be reimprisoned. If reimprisoned, he does receive credit for his time on the street. He also does get credit for time done on another sentence—that is, his parole does run concurrently with any other sentence imposed while he was on parole. (Sections 3403, 3405).

Board Regulations

Nothing.

SECTION 4215—PAROLE MODIFICATION AND REVOCATION PROCEDURES

If there is probable cause to believe that a parolee has violated a condition, or there is probable cause to support the termination of his assignment to a center or program (to which he was assigned as a condition of parole), the Regional Board may (1) order him to appear before it, or (2) issue a warrant and take him into custody.

If a parolee is charged with a criminal offense, this charge constitutes probable cause. In such case, issuance of the order to appear and take into custody may be suspended pending disposition of the charge. (Subsection (a)).

Any order or warrant issued is to provide the following:

(1) the conditions of parole alleged to have been violated;
(2) the time, date, place, and circumstances of the alleged violation;
(3) the parolee's rights;
(4) the time, date, and place of the scheduled hearing;
(5) the possible action which may be taken by the Regional Board.

(Subsection (b)).

An order or warrant shall be issued as soon as practicable. It shall be issued by one or more Regional Board members. Imprisonment of the parolee shall not be deemed grounds for delaying its issuance. (Subsection (c)).

Any Federal penal or correctional officer, or any officer authorized to serve criminal process, to whom a warrant is issued, is directed to take the parolee and return him to the custody of the Regional Board, or to the Bureau of Prisons if the Regional Board so directs. (Subsection (d)).

An alleged parole violator or program terminee who is retaken can be reimprisoned if the Regional Board determines, by means of a preliminary hearing

at which the parolee is allowed to testify, that there is substantial reason to believe that he will not appear for his hearing, or that he constitutes a danger to himself or to others. (Subsection (e)).

Prior to the modification/revocation hearing, the Regional Board may impose such additional conditions on the parolee as it deems necessary. (Subsection (f)).

If an alleged parole violator, or terminee from a program, contests the fact of the violation, or the propriety of the termination, a hearing is to be held within 30 days of the issuance of the order to appear, or his being retaken into custody. The hearing is to be local and is to be conducted by at least one member of the Regional Board. If the parolee is in prison, the hearing shall be conducted there, or at a nearby site at which he can appear. If the Regional Board finds by a preponderance of the evidence that he did commit the violation, or that his termination from a program was proper, it can modify or revoke his parole. (Subsection (g)).

The modification/revocation hearing includes the following:

(1) proper and timely opportunity for the parolee to examine the evidence against him;
(2) representation by counsel, unless waived by the parolee;
(3) opportunity for the parolee to appear and testify;
(4) opportunity to subpena witnesses and to confront and cross-examine witnesses;
(5) maintenance of a record of the hearing. (Subsection (h)).

As to a parolee who has been convicted of a criminal offense, or does not contest his modification or revocation, no full hearing shall be held. But the parolee shall be allowed to appear at a dispositional hearing conducted by at least one member of the Regional Board, to determine what disposition shall be made of the parolee. (Subsection (i)).

Within 14 days of the modification/revocation hearing, or the dispositional hearing, the Regional Board shall inform the parolee in writing of its finding and disposition, stating the reasons therefor with particularity. (Subsection (j)).

Existing Law

A warrant to retake a violator is to be issued only by at least one member of the Board. It shall be issued within the maximum term or terms for which the individual was sentenced. 18 U.S.C. 4205.

The warrant is delivered to a correctional officer, or any other Federal officer authorized to serve criminal process, and is executed by the retaking of the violator and returning him to prison. 18 U.S.C 4206.

A violator is authorized to appear before the Board, a member thereof, or an examiner. The Board may then, or at any time in its discretion, terminate the parole, or modify the terms and conditions thereof. 18 U.S.C. 4207

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The power of the Board to revoke parole shall be extended beyond the termination of the Board's jurisdiction when such extension is reasonably necessary for the adjudication of matters arising before the termination, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the termination of jurisdiction and that every reasonable effort is made to notify the parolee and to conduct the hearing prior to termination. (Section 3405).

Board Regulations

The standard for issuance of a warrant is "satisfactory evidence". (28 CFR § 2.35).

In those instances where the prisoner is serving in an institution on a new sentence, the warrant may be placed there as a detainer. The prisoner shall be advised that he may communicate with the Board relative to disposition of the warrant. Where the facts merit, the Board shall direct a member or a designated examiner to conduct a dispositional interview at the institution. At such interview, the prisoner may be represented by counsel of his own choice and may call witnesses in his own behalf, provided he bears the expenses. He shall be given timely notice of the dispositional interview and its procedures.

Following the interview, the Board may take any appropriate action relative to the warrant. The dispositional interview may be construed as a revocation hearing in those cases where the Board does not withdraw its warrant but determines that the violator term shall begin to run concurrently with the new sentences then being served. (28 CFR § 2.37).

A parolee retaken shall, while being held in custody awaiting possible reimprisonment, be afforded a preliminary interview by an official designated by the Board. Following receipt of a summary or digest of this interview, the Board shall afford the prisoner an opportunity for him to appear before it, a member thereof, or an examiner. If the prisoner requests a local hearing prior to return to a Federal institution in order to facilitate the retention of counsel or the production of witnesses, and if he has not been convicted of a crime committed while on parole, and if he denies the violation, he shall be afforded a local revocation hearing. Otherwise, his hearing shall be at the institution to which he is returned. (28 CFR § 2.39).

Representation by counsel and appearance by voluntary witnesses are allowed at the revocation hearing, provided that the violator arranges for such. (28 CFR § 2.41).

SECTION 4216—APPEALS

A prisoner denied release on parole, a prisoner whose parole has been revoked, and a parolee whose good time has been forfeited or withheld can pursue an administrative appeal. To do so, he must submit his appeal papers within 45 days of being informed of the adverse action. The appeal is to be decided by no less than 3 National Board members, who must decide within 60 days. The prisoner is allowed representation by counsel, either retained or appointed. (Subsection (a)).

A prisoner may appeal conditions, or modifications thereof, by submitting appeal papers within 45 days of the adverse action. The appeal is to be decided by no less than 2 National Board members. No provision for counsel is made.

Existing Law

Nothing.

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Nothing as to administrative appeals.

Board Regulations

"Washington Review Hearings" may be held, at discretion of Board, at which attorneys, relatives, and other interested persons may appear. Except in extraordinary circumstances, such hearings will not be held within 90 days after a previous hearing concerning the prisoner. 2 members constitute a quorum. (28 CFR § 2.22).

The Board may review cases upon the receipt of any new information of substantial significance. (28 CFR § 2.16). (Such review may be made pursuant to a request by the prisoner or a responsible person acting in his behalf.)

(NOTE: The Rules of the U.S. Board of Parole also provide for appellate review en banc, on the motion of 2 members, or upon the receipt of new and significant information in a case involving national security, a key organized crime figure, national or unusual interest, major violence, or long-term sentences. Such review is discretionary with the Board).

SECTION 4217—FIXING ELIGIBILITY FOR PAROLE AT TIME OF SENTENCING

Authorizes sentencing judge to either:

(1) sentence prisoner to a minimum term, which shall not be more than ⅓ of the maximum, and after having served which, he shall be eligible for parole; or

(2) specify that the prisoner will be eligible for parole whenever the Board determines. (Subsection (a)).

Authorizes court to commit defendant to Attorney General for study to determine what sentence to impose. The results of such study to be furnished to the court within 3 months, or, if the court grants additional time (not to exceed 3 months), within 6 months. (Subsection (b)).

Directs the Director of the Bureau of Prisons to conduct a study of the prisoner once he has been sentenced. (Subsection (c)).

Existing Law

Section 4217 of H.R. 16267 is the same as existing 18 U.S.C. 4208.

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Nothing relevant for purposes of H.R. 16276.

Board Regulations

Nothing.

SECTION 4218—YOUNG ADULT OFFENDERS

Authorizes sentencing youths aged 22–25 under Youth Corrections Act, if the court finds that such will benefit from treatment under that Act.

Existing Law

Section 4218 of H.R. 16276 is the same as 18 U.S.C. 4209.

National Commission on Reform of the Federal Criminal Laws

Nothing relevant to H.R. 16276.

Board Regulations

Nothing.

SECTION 4119—WARRANTS TO RETAKE CANAL ZONE VIOLATORS

Authorizes those authorized to serve criminal process to execute warrants issued by the Governor of the Canal Zone for retaking of parole violators, to execute such warrants by taking the prisoner and holding for return to the Canal Zone.

Existing Law

Section 4219 of H.R. 16276 is the same as existing 18 U.S.C. 4210.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

SECTION 4220—CERTAIN PRISONERS NOT ELIGIBLE FOR PAROLE

Savings Provision to ensure that nothing in H.R. 16276 shall be construed to provide that any prisoner shall be eligible for parole if he is ineligible under any other provision of law.

Existing Law

Nothing.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

SECTION 4221—TRAINING AND RESEARCH

Directs National Board to:

(1) Collect data;
(2) Disseminate data;
(3) Publish data;
(4) Conduct research;
(5) Conduct regional seminars and workshops for parole workers;
(6) Conduct training programs for parole workers;
(7) Develop technical training programs to aid in the development of state and local training programs for parole workers.

Existing Law

Nothing.

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Nothing.

Board Regulations

Nothing.

SECTION 4222—ANNUAL REPORT

Directs Board to report annually to Congress.

Existing Law

Nothing.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board regulations

Nothing.

SECTION 4223—APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

Makes the Administrative Procedure Act (5 U.S.C. § 551 et seq) applicable to the Board of Parole, with certain exceptions. Thus, the APA applies as follows:

Section 551, titled "Definitions" applies, thereby defining the Board of Parole as an agency within the meaning of the APA.

Section 552, titled "Public information; agency rules, opinions, orders, records, and proceedings" applies, with one exception.

This section requires that each agency state and publish in the Federal Register an organizational description, a statement of its operation, its rules of procedure, and substantive rules it has adopted, and statements of general policy or interpretations of general applicability it has adopted.

The section further requires that the agency shall make available for public inspection and copying: final opinions made in the adjudication of cases, including concurring and dissenting opinions; statements of policy and interpretation adopted by the agency but not published in the Federal Register; and administrative manuals and instructions to staff that affect a member of the public. The agency is authorized to delete identifying details to protect against unwarranted invasions of privacy.

Section 552 further provides that certain matters are not covered by the section—e.g., matters kept secret in the interest of national defense or foreign policy; matters relating solely to internal personnel rules; matters specifically exempted from disclosure by statute; trade secrets and commercial or financial information obtained from a person and privileged or confidential; inter-agency or intra-agency memos or letters which would not be available by law to a party other than an agency in litigation with the agency; personnel and medical files, and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy; investigatory files compiled for law enforcement purposes, except to the extent available by law to a party other than an agency; matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and geological and geophysical information and data.

One section of Section 552 has been made specifically not applicable to the Board of Parole—that is subsection (4) of Section 552 of the APA, which requires that an agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

Section 553, titled "Rule-making," has been made applicable to the Board of Parole. This section requires that general notice of proposed rule-making shall be published in the Federal Register. After such notice is given, interested parties shall have an opportunity to submit written data, views, or arguments with respect to the proposed rule, and, in the discretion of the agency, may be allowed to provide an oral presentation.

Section 553 erects some exceptions to the requirement for giving notice of proposed rule-making—that is, in the case of interpretative rules, general statements of policy, rules of agency organization, procedure or practice; or when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Subsection (b) of Section 4223 of H.R. 16276 specifically withdraws this exception with regard to "general statements of policy," thereby requiring that in all cases of general statements of policy, notice of a proposed rule must be given by the Board. (A rule is defined by Section 551 of the APA as meaning "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.")

Section 554 of the APA, titled "Adjudications," is made not applicable to the Board of Parole.

Section 555 of the APA, titled "Ancillary Matters," is made not applicable to the Board of Parole.

Section 556 of the APA, title "Hearings; presiding employees, powers and duties; burden of proof; evidence; record as basis of decision," is made not applicable to the Board of Parole.

Section 557 of the APA, titled "Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record," is made not applicable to the Board of Parole.

Section 558 of the APA, titled "Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses," is made applicable to the Board of Parole, although in fact most of this section, concerning licenses, is irrelevant as to the Board. This section does provide that a sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

Section 559 of the APA, titled "Effect on other laws; effects of subsequent statute," is made applicable to the Board of Parole. This section provides that it, and various other procedural sections, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. In addition, except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons.

Section 701 of the APA, titled "Application; definitions," is made applicable to the Board of Parole. This section defines the Board as an agency within the meaning of chapter 7 of Title 5, which is titled "Judicial Review." By so defining the Board, chapter 7 is made applicable except to the extent that statutes preclude judicial review, or that agency action is committed to agency discretion by law.

Section 702 of the APA, titled "Right of review," is made applicable to the Board of Parole. This section provides that a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

Section 703 of the APA, titled "Form and venue of proceeding," is made applicable to the Board of Parole. This section provides that the form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, in a court of competent jurisdiction.

Section 704 of the APA, titled "Actions reviewable," is made applicable to the Board of Parole. This provides that agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action.

Section 705 of the APA, titled "Relief pending review," is made not applicable to the Board of Parole.

Section 706 of the APA, titled "Scope of review," is made applicable to the Board of Parole, with the exception of Subsections (2)(E) and (F) of Section 706, which are made specifically not applicable to the Board. This section provides that, to the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall:

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(b) contrary to constitutional right, power, privilege, or immunity;

(c) in excess of statutory authority, jurisdiction, or limitations, or short of statutory right;

(d) without observance of procedure required by law.

In making such determinations, the court shall review the whole record or those parts of it cited by a party, and due account is to be taken of the rule of prejudicial error. (Subsection (a)).

Deletes the exception which section 553 of the APA erects, whereby general notice need not be given as to general statements of policy. (Subsection (b)).

Deletes from the ambit of judicial review decisions made by the National Board concerning conditions of parole or modifications of conditions involving intensification of supervision or additional conditions. (Subsection (c)).

Existing Law

Nothing.

National Commission on Reform of the Federal Criminal Laws

Provides for judicial review only as to the denial of constitutional rights or procedural rights conferred by statute, regulation, or rule.

Board Regulations

Nothing as to review.

As to disclosure of records, provides that the following principles relating to the confidentiality of parole records shall be followed:

Dates of sentence and commitment, parole eligibility dates, mandatory release dates, and dates of termination of sentence will be disclosed in individual cases upon proper inquiry by a party in interest.

Whether an inmate is being considered for parole, has been granted or denied parole, and if granted parole, the effective date set by the Board, may be disclosed by the Board in its discretion whenever the public interest is deemed to require it.

Who, if anyone, has supported an application for parole may be revealed at the Board's discretion only in the most exceptional circumstances, with the express approval of such person(s), and after a decision to grant parole has been made.

Other matters contained in parole records will be held strictly confidential and will not be disclosed to unauthorized persons. (28 CFR § 2.48).

The Board deems itself not covered by the Administrative Procedure Act.

SECTION 4224—DEFINITIONS

Defines "prisoner" for the purposes of this chapter, concerning the Board of Parole, as being a Federal prisoner other than a juvenile delinquent or a committed youth offender. (Subsection (a)).

Defines "parolee" to mean any prisoner released on parole or released pursuant to mandatory release. (Subsection (b)).

Existing Law

Existing law confines the application of Chapter 311, the chapter concerning parole, to non-juvenile delinquents (who are dealt with under chapter 403 of Title 18) and non-committed youth offenders (who are dealt with under chapter 402 of Title 18). That is, existing law and the definition provided in Subsection (a) of Section 4224 of H.R. 16276 are in agreement.

Section 4164 of Title 18 specifies that a prisoner released pursuant to mandatory release shall be deemed as if released on parole. Thus, subsection (b) of Section 4224 of H.R. 16276 maintains existing law.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

SECTION 102—CONFORMING AMENDMENTS

SEC. 102(a)(1)—Amends 5 U.S.C. § 3105, titled "Appointment of hearing examiners," to enable the appointment of hearing examiners for the purposes prescribed by H.R. 16276.

SEC. 102(a)(2)—Amends 5 U.S.C. § 5314, titled "Positions at level III," to include the position of chairman of the Board of Parole as a level III appointee for compensation purposes.

SEC. 102(a)(3)—Amends 5 U.S.C. 5108(c)(7), titled "Classification of positions at GS–16, 17, and 18." to withdraw from the Attorney General the authority to place a total of 8 positions of member of the Board of Parole in GS–17 salary levels.

SEC. 102(b)(1)—Amends 18 U.S.C. 3655. Currently, this section directs probation officers to perform such duties with respect to parolees as the Attorney General shall request. The section is amended to provide that the requesting authority shall be the Board of Parole.

SEC. 102(b)(2)—Amends 18 U.S.C. 3006A(a). Section 3006A(a) directs each District Court to establish a plan for furnishing counsel for indigents, including indigents subject ot revocation of parole. This is amended to provde that such plan shall provide for the furnishing of counsel for indigents whenever such

counsel is authorized pursuant to H.R. 16276—e.g., the parole determination hearing, the parole revocation hearing, appeals—thereby conforming the parole process to other aspects of the criminal justice system.

SEC. 102(b)(3)—Amends 18 U.S.C. 3006A(g). Section 3006A(g) provides that court-appointed counsel for indigents subject to parole revocation shall be provided in the discretion of the court, whenever it is determined that the interests of justice so require. This is amended to delete this proviso, thereby rendering court-appointed counsel a requirement, rather than an act of discretion.

SEC. 102(b)(4)—Amends 18 U.S.C. 5005. Section 5005 establishes as a component of the Board of Parole a Youth Correction Division, made up of members of the Board. The appointing authority for both the members of the Division, and the chairman of the Division, is the Attorney General. This is amended to provide that the appointing authority shall be the chairman of the Board of Parole.

SEC. 102(b)(5)—Amends 18 U.S.C. 5008. This section directs U.S. probation officers to perform such duties with respect to youth offenders as the Attorney General shall request. This is amended to make the chairman of the Board of Parole the requesting authority.

SEC. 102(c)—Amends 28 U.S.C. 509. This section refers to the functions of the Attorney General, and makes reference to the Board of Parole. This reference is deleted.

SEC. 102(d)—Amends 29 U.S.C. 504(a)(B). This Section erects a prohibition against certain persons holding office in a labor organization, unless the Board of Parole "of the United States Department of Justice" determines that such person's service would not be contrary to the purposes of the chapter. The reference to the Justice Department is stricken.

SEC. 102(e)—Amends 42 U.S.C. 3746(a). This provision of the Omnibus Crime Control and Safe Streets Act authorizes LEAA to carry out programs of educational assistance after consultation with the Commissioner of Education. This is amended to provide that, with regard to training and education assistance concerning parole, the LEAA is to consult with the Chairman of the Board of Parole, also.

SECTION 103—EFFECTIVE DATE OF TITLE

This section provides that the effective date of Title I of H.R. 16276 shall be 180 days after the date of enactment. The title shall apply to any person sentenced prior to that effective date, except as provided by the "Transitional Rules" section.

SECTION 104—TRANSITIONAL RULES

This section establishes the rules to be followed where literal application of Title I would not be possible. Thus, if by reason of any computation of (1) eligibility for parole, (2) time of entitlement to release on parole, (3) termination of the jurisdiction of the Board of Parole, or (4) parole good time, or by reason of any other circumstances, the literal application of Title I is not practicable, the National Board shall prescribe such transitional rules and regulations to apply as may be fair, equitable, and consistent with the purposes of this title.

TITLE II—GRANTS TO STATES

SECTION 201

Amends Part E of the Omnibus Crime Control and Safe Streets Act to require, as a part of the state plan submitted to LEAA, that the application for funds provides satisfactory emphasis on the development and operation of community-oriented programs for the supervision of and assistance to parolees and provides satisfactory assurances that the State parole system shall include, to the extent feasible, the following elements:

(A) employment programs for parolees;

(B) parole determination procedures, including:

(1) periodic hearings at intervals of not more than 2 years;

(2) personal appearance and testimony of the prisoner;

(3) disclosure of files concerning the prisoner to the prisoner, except to the extent that the file is irrelevant, is a diagnostic opinion the disclosure of which might seriously disrupt a program of rehabilitation, or reveals sources of information which may have been obtained on a promise of confidentiality. If the file is not disclosed, the finding that one of these caveats exists shall be specifically made on the record, and the substance of such file shall be

disclosed except when such disclosure would endanger the safety of any person other than the prisoner.

(4) representation by counsel or other qualified person unless representation is waived;

(5) expeditious disposition of the case, and a statement to the prisoner with particularity of the grounds on which a denial of parole was based.

(C) parole revocation procedures, including:

(1) a hearing, at which the parolee can appear and present witnesses and documentary evidence;

(2) disclosure of the files to the parolee, subject to the same procedures as provided in (B) (3) above;

(3) representation by counsel or other qualified person unless representation is waived;

(4) confrontation and cross-examination of adverse witnesses;

(5) expeditious disposition, and a statement with particularity to the parolee of the grounds on which the disposition was based;

(6) opportunity for appellate review.

Existing Law

Part E now requires that the state plan shall provide satisfactory emphasis on the development and operation of community-based correctional facilities and programs, including . . . community-oriented programs for the supervision of parolees. (42 U.S.C. § 3750b(4)).

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

SECTION 202

Amends 42 U.S.C. 3750e, which provides that LEAA, after consultation with the Federal Bureau of Prisons, shall by regulation prescribe basic criteria for applicants and grantees under Part E. The amendment provides that, as to funding concerning parole, the Board of Parole shall be consulted by LEAA.

Existing law

Nothing.

National Commission on Reform of the Federal Criminal Laws

Nothing.

Board Regulations

Nothing.

ATTACHMENT E—SUMMARY OF H.R. 1598, THE PAROLE REORGANIZATION ACT OF 1973

(Note: Page number references are to the pages of H.R. 1598)

SECTION 4201—BOARD OF PAROLE; STRUCTURE; MEMBERSHIP; ETC. (PP. 1–5)

This section reconstitutes the United States Board of Parole as an independent agency. The Board is to be made up of two constituent parts—(1) a National Board, consisting of 7 Members, and (2) five Regional Boards, consisting of 3 members each. The Members are to be appointed by the President, with the advice and consent of the Senate.

The President appoints the Chairman of the National Board, who in turn designates the individuals who are to be the chairmen of the Regional Boards. Current salary levels for Board members are retained—e.g., GS–17, with the Chairman of the National Board being designated as an Executive Schedule Level III individual. Membership is limited to a maximum of 12 years on the National Board and 12 years on a Regional Board.

SECTION 4202—POWERS AND DUTIES OF NATIONAL BOARD (PP. 5–10)

This section prescribes the powers and duties of the National Board, vesting it with the same general powers and duties which a typical agency possesses.

SECTION 4203—POWERS AND AUTHORITY OF REGIONAL BOARD (P. 10)

This section prescribes the duties of the Regional Boards, which are chiefly those of conducting parole determination and revocation hearings, and performing such other duties as shall be delegated by the National Board pursuant to its powers under Section 4202.

SECTION 2404—TIME OF ELIGIBILITY FOR RELEASE ON PAROLE (PP. 10–11)

This section prescribes the point in time when an offender shall be eligible to be considered by the Board for parole.

In the case of offenders sentenced under the so-called "regular" sentence, eligibility for consideration arises after having served ⅓ of the sentence, or 10 years in the case of a life sentence or a sentence of over 30 years.

In the case of a prisoner sentenced by the judge to a specific minimum, eligibility for consideration arises when the judicially specified minimum has been served.

In the case of a prisoner as to whom the judge has provided that he shall be eligible for consideration at any time, eligibility for consideration arises not later than 150 days after imprisonment.

In the case of a prisoner who has been reimprisoned following revocation of his parole, eligibility for consideration for re-parole arises not later than 150 days after such reimprisonment.

SECTION 4205—RELEASE ON PAROLE (PP. 11–12)

This section prescribes the criteria the Board is to take into account when considering a prisoner who has become eligible for consideration for release on parole. These criteria are: substantial observance of the rules of the institution; whether or not there is a reasonable probabilty that the prisoner will live and remain at liberty without violating any criminal law; and whether or not there is a reasonable probability that his release would be incompatible with the welfare of society.

In the case of long term offenders, where comparatively early release might be deemed to be incompatible with the welfare of society—usually because such release would not perhaps comport with the severity of the crime—and where it is therefore likely they would not in fact be released, the criteria change after ⅔ of the sentence has been served, or 20 years in the case of a sentence of 30 years or more. In this case, release would not occur if the Regional Board determined there was a high likelihood that the offender would engage in conduct violating any criminal law.

In the case of offenders who have not yet served their prescribed minima, the Board will have the flexibility to be able to request the court to adjust the sentence so as to make the offender eligible for consideration for release on parole. This request by the Regional Board will be discretionary, and prefaced by a reasonable probability that the offender will live and remain at liberty without violating any criminal law and that his release is not incompatible with the welfare of society. Likewise, action on the court's part will be discretionary with the court.

SECTION 4206—FACTORS TAKEN INTO ACCOUNT; INFORMATION CONSIDERED (PP. 12–13)

This section establishes that the Board, in considering a prisoner for release on parole, shall consider those factors which the National Board prescribes, as well as additional specific information, such as institutional reports, etc.

SECTION 4207—PAROLE DETERMINATION HEARING; TIME (PP. 13–14)

This section specifies the make-up of the parole hearing panel, and the time of hearings to consider those prisoners who are eligible for consideration for release on parole. The panel shall consist of 3 individuals, the presiding officer being a Regional Board member.

SECTION 4208—PROCEDURE OF PAROLE DETERMINATION HEARING (PP. 14–16)

This section establishes the procedures for the Regional Board in conducting the hearing to determine whether a prisoner shall be released on parole. The section provides for disclosure of the files to be used in considering the case, with caveats designed to avert any potential harm to the prisoner, himself, or to others.

The prisoner is entitled to representation by counsel or other qualified person, and to appear on his own behalf. Within 14 days, the Regional Board is to let him know of its decision, giving reasons why it either granted or denied release on parole.

SECTION 4209—CONDITIONS OF PAROLE (PP. 17–18)

This section prescribes both specific conditions to be imposed upon the parolee, and the general parameters for any other conditions. Thus, a specific condition is the non-commission of any criminal offense while on parole. In addition, the prisoner can be assigned to a residential community treatment center as a condition of his parole. Other conditions can be set, in accordance with the general parameters provided.

SECTION 4210—JURISDICTION OF BOARD OF PAROLE (PP. 18–19)

This section defines the period of time for which the parolee is on parole. The maximum is that period of time which ends on the date his sentence ends. This period can be extended if the parolee is imprisoned on a new offense, and if he refuses to respond to any reasonable request of the Regional Board. This extension is equal to the new period of imprisonment, or the period of non-response.

The period of jurisdiction is lessened by the award of parole good time.

SECTION 4211—PAROLE GOOD TIME (PP. 19–21)

This section provides that the parolee shall receive parole term deductions, the number of deductions being a number of days for each month of parole. Such credits are received only for merit, and are not automatic.

SECTION 4212—EARLY TERMINATION OR RELEASE FROM CONDITIONS OF PAROLE (P. 21)

This section gives the Regional Board the discretion to provide for early termination of parole, or for release from one or more conditions of parole.

SECTION 4213—ALIENS (P. 21)

This section, the same as existing law, authorizes the Regional Board to release a prisoner on parole on condition that he be deported. Such a prisoner is, upon release, turned over to the immigration officials.

SECTION 4214—PAROLE MODIFICATION AND REVOCATION (PP. 21–22)

This section establishes the penalties for a parolee who does not conform to the conditions of his parole, including both modification of conditions and reimprisonment.

SECTION 4215—PAROLE MODIFICATION AND REVOCATION PROCEDURES (PP. 22–27)

This section establishes the procedures for the Board to follow in modifying or revoking parole. When the Regional Board has probable cause to believe a parole violation has occurred, it may either order the parolee to appear before it, or retake him by means of a warrant. Incarceration pending the modification or revocation hearing is allowed, if the Regional Board has substantial reason to believe that the parolee will not appear for his hearing, or that he constitutes a danger to himself or others. Pending the hearing, also, the Board may impose any additional conditions of parole which may be necessary.

If the alleged parole violator contests the alleged violation, a hearing is held. The attributes of such hearing include notice, representation by counsel or other qualified person, opportunity for the parolee to appear, and cross-examination and confrontation. If the violation is established by a preponderance of the evidence, parole modification or revocation follows.

If the alleged parole violator does not contest the alleged violation, he may request to appear before a Board member concerning what disposition should be made of him.

SECTION 4216—APPEALS (PP. 27–28)

This section provides for administrative appeals from denials of release on parole, parole modifications, parole conditions, and parole revocations. Such appeals are conducted by means of submission of appeals papers—that is, such appeals are not trials de novo, nor is personal appearance of the party provided. He is allowed the assistance of counsel or other qualified person.

SECTION 4217—FIXING ELIGIBILITY FOR PAROLE AT TIME OF SENTENCING (PP. 28–30)

This section merely restates existing law—18 U.S.C. 4208.

SECTION 4218—YOUNG ADULT OFFENDERS (PP. 30–31)

This section merely restates existing law—18 U.S.C. 4209.

SECTION 4219—WARRANTS TO RETAKE CANAL ZONE VIOLATORS (P. 31)

This section merely restates existing law—18 U.S.C. 4210.

SECTION 4220—CERTAIN PRISONERS NOT ELIGIBLE FOR PAROLE (P. 31)

This section is in the nature of a savings provision to ensure that any prisoner who is, by reason of any other provision of law, ineligible for release on parole, shall not be rendered eligible by virtue of this Act.

SECTION 4221—TRAINING AND RESEARCH (PP. 31–32)

This section provides authority for the Board of Parole to collect and disseminate information; conduct research; conduct regional seminars; devise and conduct short-term training programs for parole personnel; and develop technical training programs to aid in the development of State and local training programs.

SECTION 4222—ANNUAL REPORT (PP. 32–33)

This section provides for the Board's reporting annually to the Congress.

SECTION 4223—APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT (P. 33)

This section specifies in what respects the Administrative Procedure Act does, and does not, apply to the Board. The sections of APA concerning definitions, information dispensing, rule-making, and judicial review, do apply. The sections of the APA concerning adjudication, hearings, and status of decisions, do not apply.

In addition, those sections of the APA concerning stay of an order pending judicial review, judicial review based on the substantial evidence rule, and judicial review in terms of trial de novo, do not apply.

SECTION 4225—DEFINITIONS (P. 33)

This section defines the terms "prisoner" and "parolee."

EFFECTIVE DATE (P. 36)

The Act is to become effective 180 days after enactment. As to people paroled or imprisoned prior thereto, the Act shall also apply, except that the Board is authorized to prescribe transitional rules to meet the purposes of the Act where literal application would not be feasible.

TITLE II—GRANTS TO STATES

SECTION 201 (PP. 37–40)

This section amends the Omnibus Crime Control and Safe Streets Act to provide that the State plan which is submitted in order to receive Part E Corrections Grants is to include, to the extent feasible, assurance of the existence in the State parole system of the minimal due process components prescribed by Title II.

SECTION 202 (PP. 40–41)

This section amends that provision of the Omnibus Crime Control and Safe Streets Act which specifies that LEAA, after consultation with the Federal Bureau of Prisons, is by regulation to prescribe basic criteria for applicants and grantees. Section 202's effect is to make the Board of Parole the body to be consulted by LEAA in the case of grants concerning parole.

○

END

TERRORISM—
Part 1

HEARINGS

BEFORE THE

COMMITTEE ON INTERNAL SECURITY
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

FEBRUARY 27 AND 28, AND MARCH 21, 22, AND 26, 1974

(INCLUDING INDEX)

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CONTENTS

The House Committee on Internal Security is a standing committee of the House of Representatives, constituted as such by the rules of the House, adopted pursuant to article I, section 5, of the Constitution of the United States which authorizes the House to determine the rules of its proceedings.

RULES ADOPTED BY THE 93D CONGRESS

House Resolution 6, January 3, 1973.

RESOLUTION

Resolved, That the Rules of the House of Representatives of the Ninety-second Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, and the Legislative Reorganization Act of 1970, as amended, be, and they are hereby adopted as the Rules of the House of Representatives of the Ninety-third Congress * * *

* * * * * * *

RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress,

* * * * * * *

(k) Committee on Internal Security, to consist of nine Members.

* * * * * * *

RULE XI

POWERS AND DUTIES OF COMMITTEES

* * * * * * *

11. Committee on Internal Security.

(a) Communist and other subversive activities affecting the internal security of the United States.

(b) The Committee on Internal Security, acting as a whole or by subcommittee, is authorized to make investigations from time to time of (1) the extent, character, objectives, and activities within the United States of organizations or groups, whether of foreign or domestic origin, their members, agents, and affiliates, which seek to establish, or assist in the establishment of, a totalitarian dictatorship within the United States, or to overthrow or alter, or assist in the overthrow or alteration of, the form of Government of the United States or of any State thereof, by force, violence, treachery, espionage, sabotage, insurrection, or any unlawful means, (2) the extent, character, objectives, and activities within the United States of organizations or groups, their members, agents, and affiliates, which incite or employ acts of force, violence, terrorism, or any unlawful means, to obstruct or oppose the lawful authority of the Government of the United States in the execution of any law or policy affecting the internal security of the United States, and (3) all other questions, including the administration and execution of any law of the United States, or any portion of law, relating to the foregoing that would aid the Congress or any committee of the House in any necessary remedial legislation.

The Committee on Internal Security shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Internal Security, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * * * *

28. (a) In order to assist the House in—

(1) Its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and

(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.

* * * * * * *

TERRORISM

Part 1

WEDNESDAY, FEBRUARY 27, 1974

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Internal Security met, pursuant to notice, at 10:08 a.m., in room 311, Cannon House Office Building, Washington, D.C., Hon. Richard H. Ichord [chairman] presiding.

Committee members present: Representatives Ichord of Missouri, Claude Pepper of Florida, Richardson Preyer of North Carolina, Mendel J. Davis of South Carolina, John M. Ashbrook of Ohio, Roger H. Zion of Indiana, J. Herbert Burke of Florida, and Tennyson Guyer of Ohio.

Staff members present: Robert M. Horner, staff director; Robert A. Crandall, counsel; Audrey Rollins, associate to counsel; DeWitt White, minority counsel; Herbert Romerstein, minority chief investigator; and William G. Shaw, research director.

Chairman ICHORD. The committee will come to order.

The announcement for this series of hearings states that it deals with the subject of terrorism. This is not a new subject matter to this committee. During the course of extensive hearings concerning the Students for a Democratic Society in 1969—and concerning the Black Panther Party in 1970—and in 1971 concerning those antiwar groups which were Communist-controlled—and concerning the Revolutionary Union and Venceremos organizations in 1972 and 1973—the committee has had repeatedly called to its attention terrorist activity by groups espousing violent revolution in the United States. Also, in August 1973, the committee published a study of political kidnapings and has recently issued a short study concerning the Symbionese Liberation Army.

Although the Chair predicted in August 1973, that we could expect political kidnapings in the United States, little attention was given to those comments at that time, and it has taken the bizarre kidnaping of Patricia Hearst to awaken the country to the overall problem of terrorism which I and the members of this committee have been studying for the past 5 years.

These hearings have been planned for some time, and it is opportune that they have begun when there is great interest in the subject.

I anticipate these hearings to consist of two phases. First, we will acquire some additional knowledge of the problem of terrorist activity on a worldwide basis and, of course, with particular emphasis on the

relationship of such activity to the internal security of the United States. We will hear first from psychiatrists expert in the field of terrorism and aggression in the hope that we will gain what might be called a profile of the terrorist. We will also have testimony today from a representative of the International Association of Chiefs of Police with whom we will explore the topic as it relates to the law enforcement officer who does stand in the first line of defense against terrorist groups.

After learning more concerning the dimensions of the problem, we will go into a second phase of the hearings at which we expect to hear testimony from representatives of the executive branch of the Federal Government who have been studying the matter. Our purpose will be to look at the existing legislation in the field and to determine if positive legislation is necessary or consider recommendations for specific action by the executive branch.

I want also to comment that I wish we could find some other more suitable expression than "political kidnapings" or "political terrorism," particularly as the subject is used by the news media, which seem to suggest somehow that what are purely and simply criminal acts can be justified because they are perpetrated in the name of politics or social reform.

We have as our first witness today Dr. F. Gentry Harris, who is Chief of the Department of Psychiatry of the U.S. Public Health Service Hospital in San Francisco, Calif. He is a prominent psychiatrist and psychoanalyst and has done extensive research in the problem of skyjackers and skyjacking as part of a study group that worked very closely with the Federal Aviation Agency. This study group included many prominent people, psychiatrists, media analysts, criminologists, air industry officials, and air crews.

It is very evident, I think, that Dr. Harris is extremely conversant in the field of the criminal terrorist and terrorist activities. We are fortunate to have him as a witness today.

Mr. Counsel, do you have anything to offer prior to the recognition of Dr. Harris?

Mr. CRANDALL. Yes, Mr. Chairman.

At this time I would like to request that the committee act on two items. The first item is a document that has been prepared by the staff. It relates to terrorist groups and terrorists who have functioned in the country and even other parts of the world.

Now, this document is a comprehensive study. It contains information that is material and relevant to this hearing. It was only completed yesterday, so there has been no opportunity for it to be circulated to the members. However, because of its importance, I think it should be included as an exhibit in these hearings. I offer it as an exhibit, subject, however, to its circulation to the members and its approval in a subsequent committee meeting.

Chairman ICHORD. For inclusion in the record. I originally thought this staff study, which is an updating of the political kidnaping report that was issued by the committee in 1973, had been circulated. However, I now believe that the members have not had sufficient time to examine the same.

So, let it be accepted conditionally at this time as an exhibit, unless there are any objections.

Mr. ASHBROOK. What does the Chair mean by "conditionally"? Are we going to vote on it at a later time?

Chairman ICHORD. I think the members should have an opportunity to study it.

Mr. ASHBROOK. I would object to its inclusion at this time. I would like to study it. As near as I can tell, it was done without cooperation from our side of the staff, which I would like to talk to the Chairman about later. So I wouldn't like to have it accepted at this time.

Chairman ICHORD. It will be accepted for use by the members but not for inclusion in the record.

What was your other matter?

Mr. CRANDALL. A request that the committee approve taking part of the testimony of Dr. Harris, and also of Dr. Hubbard who will testify tomorrow morning, in executive session.

They both have indicated that they have important information of a sensitive nature that should be made available to the committee but not to the public.

Chairman ICHORD. Gentlemen of the committee, I briefly discussed this matter with Dr. Harris. Tomorrow we are to hear Dr. Hubbard; and, after hearing Dr. Hubbard in open session, I think it will be necessary to go into executive session because there are some specific items which I do not think would be appropriate to take up in open session. So, the Chair would entertain a motion at this time that that part of the hearings tomorrow be held in executive session.

Mr. ZION. I move that part of the hearings which are sensitive, to be held tomorrow, be in executive session.

Chairman ICHORD. The gentleman from Indiana moves that part of the hearing tomorrow be held in executive session.

Is there any discussion?

If not, the Chair will put the question.

I think that will have to be done by roll-call vote under the new rules.

Madam Clerk.

The CLERK. Representative Ichord.

Chairman ICHORD. Aye.

The CLERK. Representative Pepper.

Mr. PEPPER. Aye.

The CLERK. Representative Ashbrook.

Mr. ASHBROOK. Aye.

The CLERK. Representative Zion.

Mr. ZION. Aye.

The CLERK. Representative Burke.

Mr. BURKE. Aye.

The CLERK. The vote is five in favor. Unanimous.

Chairman ICHORD. By your unanimous vote you have ordered that part of the hearings tomorrow be held in executive session.

How long will the hearings in executive session take?

Mr. CRANDALL. They would like to have the better part of an afternoon.

Chairman ICHORD. That portion of the testimony will be held in executive session.

Mr. CRANDALL. Dr. Harris has a written statement he will read into the record, after which he will entertain questions from the committee.

Chairman ICHORD. Thank you.
You are invited to proceed as you wish, Dr. Harris.

STATEMENT OF DR. F. GENTRY HARRIS

(The following represents private opinion and not necessarily that of the U.S. Public Health Service.)

Dr. HARRIS. Thank you, Mr. Chairman.

I think my task here today is to try to convey to you some aspects of psychiatry, as I have come to see them, in the public interest, particularly with regard to the increasing waves and varieties of terrorism and violence which we see about us.

Aware of your primary interest in legislation, I must nevertheless ask your indulgence in first trying to give a picture of what is involved in the view from where I stand. I hope it will be relevant to your concerns in creating appropriate legislation, and I will offer some specific recommendations at the end.

Let me begin with a personal experience.

One day in the fall of 1969, at the height of the Zodiac killings in the San Francisco area, I was riding home with a colleague. We were speculating about the Zodiac killer, and impressed by the solipsistic, bizarre, horrible, and revolting nature of his behavior, and yet mindful of what seemed to us to be his seeking for attachment to things, in his insistence on publicity and acknowledgement for his crimes. We could not explain these matters.

In this dilemma, I made a prediction to my friend: that sooner or later we would begin to see the perpetration of similar acts, only they would not be so isolated and solipsistic. They would be committed ostensibly in the interest of socially approved causes. I cited two areas of concern at that time: environmental quality and conservation issues on the one hand, and business and industrial exploitation on the other.

At once, after making this prediction, I withdrew it. I said, No, this could not be; it would take reasonably normal persons to do it, and such persons would not be able to commit such acts.

I was wrong in withdrawing my prediction. A year later we had the Frazer killings of the Ohta family and secretary in Santa Cruz. The note the killer left was this:

> Today World War III will begin as brought to you by the people of the Free Universe. From this day forward anyone and/or company of persons who misuses the natural environment or destroys same will suffer the penalty of death by the people of the Free Universe. I and my comrades from this day forth will fight until death for freedom, against anything or anyone who does not support natural life on this planet, materialism must die or mankind will stop. (Signed) Knight of Wands, Knight of Cups, Knight of Pentacles, Knight of Swords.

Now, I am not a Nostradamus. There was nothing esoteric about my prediction. I simply keep up fairly well with what is going on in the world; and I also have considerable experience with psychiatric patients and those who deal with them (and, I might add, in ways which I don't always consider to be following the conventional theoretical "party line" of my own profession).

The flaw in my approach on this occasion was my idealistic scepticism, which interferes sometimes with a proclivity to trust my own guts.

I don't think for a minute that the social-political-economic concerns which Frazer cited in his note had any direct, causative bearing on what he did. They were simply at hand as convenient rationalizations.

By no means, however, do I wish to imply that these issues are unimportant in the context. Though they are not the makings of his acts, they may be precipitants, just the amplification needed to set him off. Or they may be just the kind of concerns to inspire others no less inclined to deranged or self-styled "corrective measures" according to their limited versions of "how things are" and of "how they ought to be". Such matters may be primitive in the extreme, but I wager none of us is entirely free of them. Thus they are subject to our understanding, and there are messages in their connections.

Peculiar things like this don't just happen. They are explainable. Another of my friends, Walker Percy, a novelist, related to me not long ago a striking experience. Shortly after the incident of the sniper atop the Howard Johnson motel in New Orleans he received a phone call late one night from a New York Times correspondent:

> Are you Dr. Walker Percy?
> Yes.
> The author of "Love In The Ruins?"
> Yes.
> Where it begins with a sniper atop the Howard Johnson motel in New Orleans? . . .

Walker had finished the novel some 1½ years before. He had never thought of the connection. Uncanny! There probably was no connection, in the ordinary, causative sense of the term. It is just that there are plenty of bridges between fantasies, whoever, whatever, or wherever we may be in the maelstrom that surrounds us.

This may be one crux of the matter. I will say more about it presently. But for the moment let us pause at the question: What kinds of persons become so overwhelmingly absorbed in their fantasies or delusions as to seek to translate them into realities—that is, actualize them—and under what circumstances?

Subsequent to my prediction in 1969 I became heavily involved with Dr. David Hubbard and others in the phenomenon of skyjacking. I learned a great deal about answers to the question I have just raised.

All of the skyjackers studied so far, about 60, have been seriously deranged or maladapted, and most of them turned out to have acted in classifiably characteristic ways. I must say here that I do not wish this way of putting the matter to reflect on the question of skyjackers' responsibility for their acts.

I must also add that there may be skyjackers who are exceptions to the above characterization—but we have not had access to them, particularly those who may have been genuinely politically motivated—Active negotiations were under way with Israel to interview the Lod Airport Japanese skyjacker when, unfortunately, the Israeli-Arab war broke out—but so far we have not found political motivation to be the basic ingredient in the acts of these individuals. Moreover, there is no reason to assume that even genuine political motivation guarantees mental normality.

From these studies we predicted a good deal about the evolution of skyjacking and what actually took place later. For example, after Hubbard discovered a connection between manned space shots and skyjacking, for a while we could tell you approximately when the

next batch of skyjackings was going to occur. The mutation of extortioning jumper-jacking was also predicted, as well as the eventual hookup between the ordinary skyjacker type and the identified ordinary criminal type.

Of much help to our orientation was my intensive study, still continuing, of a schizophrenic South American man who had his first psychotic break while watching the first moon walk on TV.

This is a man who suffers from marked imbalance and lability in the functioning of his inner ears, which is the vestibular system—nothing to do with hearing. That is, he cannot process the stimulation of gravity in a normal manner. His whole life has been an utter failure. He barely earns a living. He is obsessed and distressed with murderous fantasies, is fascinated with flying, and feels that man has raped the moon, and that there is going to be a great earthquake. When his anger is mobilized in my office, he feels the room shake, he gets dizzy, and his head aches. He is, in many respects, not unlike a typical skyjacker. We don't understand all of what is going on here—yet. Dave Hubbard earlier discovered clinical evidence of abnormal vestibular functioning in many skyjackers and bank robbers. We want to look into this and related matters very carefully and thoroughly.

During all of these efforts we became aware of other connections, such as a rough inverse relationship between skyjacking and kidnaping/hostage-taking. When one was on the increase, the other tended to decrease in frequency. And finally they interbred, so that we had instances of hostage-holding and skyjacking combined.

We do not consider these relationships to be stable. They change and evolve. But we have not had enough support in our studies to figure out whether there are identifiable general trends or patterns, much less support for what conceivably might be done about them based on knowledge so gained.

So far there has not been one single move on the part of any Federal agency to take up the matter of what we are dealing with in terms of the individuals involved, as either perpetrators or victims. Every official approach has been a procrustean effort to fit matters to an existing and obviously inadequate structure. Failure after failure has resulted, as history attests. The standard ideology evidently has such strong roots that even the public suffers a certain deception. The public thinks the present airport security measures have reduced the incidence of skyjacking. The incidence was decreasing long before, for reasons not yet entirely clear, but probably having more to do with a period of general social and political tranquility and removal of havens. Security measures were a Johnny-come-lately to take up the credit. And how many have ridden, and are still riding, on this bandwagon?

Not long ago I ran a little experiment. I asked 36 intelligent, well-informed people to tell me the significance, for this country and for us, as Americans, of the recent Rome-Athens skyjacking. All felt that as far as this country is concerned the problem of skyjacking had been licked, discouraged largely by present security measures. Only one person in the 36 could tell me that 14 Americans lost their lives and a 707 Pan American jet was destroyed in that one incident. The others received my revelation of the facts with incredulity—though they recalled having been aware of them through the news media.

Startling? Yes; but we are quite used to this state of affairs. It is true that we haven't had any major or tragic skyjackings in this country in a fairly long time. But looking back over the graph history of the phenomenon there are even longer stretches of low incidence or complete absence. We predict that we have not seen the last of the matter; that maybe we have yet to face the really horrendous variety experienced in some foreign countries. Or maybe kidnaping has taken its place, at least for a while.

We would like to study the individuals who commit such crimes. But so far, other than the efforts of a relatively small group of people widely scattered over the United States, which I have alluded to, fragmentation has characterized all approaches to the problem. Communication has been poor, agencies have competed and sabotaged, well-wishers have been plentiful, much waste of effort to get access to subjects and financial support for their study has resulted, and time keeps moving on as an ingredient to further evolution of the problem. Under these circumstances it is impossible to develop a comprehensive view.

I have spoken of the study of the individuals who commit such acts as we are considering. We have reason to think that most of them are seriously "crazy"—I use that in its common-sense meaning—though still legally responsible. This, however, is only half the picture. The other half is the victims and the contexts of their acts. How we react and what we do about violence and terrorism, as well as the existing structures in which we try to deal with them, are extremely important.

We know, for example, that it is dangerous for a man to challenge a male skyjacker; a stewardess can handle him with much less risk. We question the wisdom of a mandatory death penalty, and the wisdom of readily acceding to terrorist demands such as paying ransom or releasing prisoners. We are alarmed at the routine use of force—counterviolence—and its predictable consequences. We recognize serious limitations in the criminal justice system, and the rather narrow interests for which it is structured. We are amazed at some of the conduct of the news media, as well as at the naivete of some of the negotiation that goes on with terrorists. We are concerned about the public images and myths that build up about these phenomena—the hero-worship, the "Robin Hood complex." And so forth. Much of what goes on is like using gasoline to put out a fire. We need what might be called a "victimology."

Now we have a concept that draws the two sides of our picture together. It is called the proconscious. Let me briefly explain. The prefix, *pro*, has the sense "instead of." The proconscious is a set of fantasies which guide conduct automatically and continuously. The conduct makes sense and has the superficial appearance of being intelligently directed. It has this appearance, however, only so far as it can be rationalized, in the pejorative sense of that term, by both the individual concerned and the public or audience which witnesses and endures it.

It is this collusion between the individual and context which promotes a proconscious system in perpetuo. The combination of Hitler and the Germany in which he operated is a prime and striking example of such a system. But there are many lesser examples.

The contribution of society and its institutions is of course an enormous problem, but on the face of it more easily understandable than what underlies the individual psychopathology. I have suggested there might be common denominators in abnormalities of the vestibular system, of the inner ear system. If so, they could put the afflicted individual at an enormous disadvantage in his psychological and social development, and ultimately in his attitude toward society and its institutions. He becomes vulnerable. It could be the beginning of a pseudo or surrogate personality with a proclivity for proconscious fantasies or delusions which will be translated into action as soon as opportunity offers.

If we knew much more than we do now about these matters, the knowledge could be used to better inform the public and the news media, thereby reducing some of their dangerous reactivity and tendencies. Such knowledge could be used in formulating policy and legislation, and in creating institutional structures more fitting to the problems. More particularly, it could be used in developing training programs for those persons directly involved in and with violence and terrorism. The reduction in destructive outcomes alone would have a salutary effect.

Before leaving these matters, I would like to call your attention to four areas of concern, which are often confused. They are *prevention*, *control*, *management*, and *disposition*. They were developed from our experience with skyjacking. With suitable modification they can be applied to other phenomena. I will give them in their original form, as they relate to skyjacking:

1. *Prevention* is any one of, or the aggregate group of activities of a society which limits the creation of the impulse to commit the act of skyjacking, insofar as these activities do not occur on airport property. By way of illustration, this would be the diplomatic procedure of a nation in relationship to its neighbors to prevent sanctuary, or the society's unwillingness to contribute to the crime through the payment of ransom and supplying parachutes, or the unwillingness of the society to incite the crime through the feeding of suicidal appetites or urges for notoriety, as well as the creation of the mythical "skyjacker" as an expression of the aggregate public discontent. Thus prevention relates to broad social techniques or strategies.

2. *Control* is the collection of airport-related police techniques which involve efforts to detect the potential offender or to produce fear in him so that he does not go through with a planned act. To date these methods include the "profile," uniformed guards, personal search and magnetometers. These methods are not called into use until prevention has failed as demonstrated by the presence of the individual in the airport. They are in connection with his control prior to the manifest act in which he becomes self-declared in his intent. Thus where prevention is accomplished primarily by social policies, control is accomplished by technical, often police, methodologies.

3. *Management* focuses on the collection of attitudes, chiefly those of the operating air crew after the manifest intent is made clear through the act of self-declaration; that is, after the failure of both prevention and control. In this situation the content is no longer latent; it is overt and immediate and it is played out against the dramatic background of passengers, crew, skyjacker or skyjackers, and aircraft. It is divorced from application of the methods of prevention and control and has become an acute human event. Successful management is directly related to the application of interpersonal relationships between the crew and the skyjacker through the deliberate management of human and environmental factors known to the crew, while at the same moment avoiding those common distortions of interpersonal factors known to be true of mob interaction.

4. *Disposition*, the final area of concern, is that collection of legal and/or medical-psychiatric operations which have to do with the disposition and treatment of the offender after he is apprehended or gives himself up, and is convicted or acquitted. Questions of diagnosis, responsibility, extenuating circumstances, et cetera, apply here. Considerations of the social nature of the event in relation to individual motivation (pathological or not) should figure in the disposition as well as specific therapy that might be applied. Any common physical anomalies that might be discovered to be specifically related to aberrant behavior—such as vestibulo-gravity system disturbances, as we call them—would also fall in this area of concern.

What is interesting is the relationships between the various areas. But particularly important to note is that what is done—or not done—in the areas of control, of management, and of disposition all reflect on *prevention*—the ultimate desideratum.

I now wish to make some recommendations, based on what I have said, for your consideration. I will proceed without any clear idea of what is possible.

I may best divide these recommendations into those for the short term and those for the long term. A good deal of expertise has already been developed, though I hasten to add, not nearly enough. Much of it is still hypothetical, though appealing to commonsense when the rationale and certain facts are displayed. Hence, with adequate funding, appropriate members of our informal consortium and other interested parties could be called together, and could work out, in a relatively short time, an interim set of coherent recommendations for your use. For this we would want the on-hand assistance and advice of an appropriate congressional representative in order to assure practicality in the work.

This should be backed up with a long term and continuing commitment and effort consisting of the following:

1. Adequate funding for the various studies indicated, many of which are already identified, involving various disciplines and interdisciplines.

2. Arrangements for and assurance of access to subjects from the moment of apprehension and through all stages to final disposition. Along with this there must be protection for all investigators and data against bias and partisanship, for example, the prosecution and the defense, in the interests of scientific objectivity.

3. Facilitation of contact and collaboration with appropriate representatives of foreign governments and scholars of foreign countries.

4. Coordination and cooperation between different Federal agencies, and between these and the research consortium.

5. Formation of an emergency multidisciplinary team with a control center, which could respond on short notice to observe and advise, if requested, on major incidents. Much valuable material for further study could be generated by this means.

It is further recommended that the consortium of investigators continue to operate much as it has in the past, with open membership and the usual scholarly commitments. Various recognized authorities in various parts of the country could take charge of specific areas of study. They would operate in a mutually agreed-upon structure of superordinate responsibilities and administrative assistance, and in a framework of definite tasks and goals under reasonable time limitations.

The main thing we want is the opportunity and adequate support to study the problems before us, as a foundation for trying to ameliorate or resolve them. We feel that there has been altogether too much speculation and "thinking" about the matter, too many ad hoc things done that don't work. I am reminded of Wilhelm Roentgen's reply when someone asked him what he thought when he came upon the first evidence of X-rays. He said: "I did not think. I investigated."

I have of course left out enormously more than I have said. But I hope I have given you at least a feel of where I and many of my colleagues stand on the problem this committee—and all of us—face. And I thank you for giving me this opportunity to express myself.

While this statement was being written we have had another major kidnaping, Editor Reg Murphy of the Atlanta Constitution, and another skyjacking involving the death of three persons and the serious injury of a fourth. The kidnaper has all the appearance of being mentally disturbed. Editor Murphy, himself, felt the man was "sick" and also politically naive. The skyjacker [1] shot himself, but beyond this we won't have a chance to know much more about him, except what you are reading in the newspapers today.

Then we have the Vermeer painting which was stolen the other day. Today I learn the person or persons who stole it are asking the curious figure of $1.1 million to feed the poor and hungry in Granada.

I am preparing an addendum which I think is relevant and which I will submit to the committee. [2]

Chairman Ichord. Thank you very much, Doctor, for a very comprehensive statement. I am sure the members of the committee do have several questions. We will proceed under the 5-minute rule. The Chair will avail himself of 5 minutes at this time.

Doctor, to put your testimony in proper prespective, most of your statement deals with the specific subject of skyjacking, and I take it most of your study in the field, as a member of the study team to which you alluded, has dealt with skyjacking?

Dr. Harris. Right.

Chairman Ichord. Have you had the opportunity to study to any great degree terrorist activity outside sykjacking?

Dr. Harris. Not so far. We have a great deal of evidence that indicates there are many common denominators in most terrorist crimes. We don't see any real difference, for instance, except for a few superficial details, between the conduct of skyjackers and kidnapers, particularly the recent varieties.

Chairman Ichord. Now, you commented in your statement that you had made approximately 60 case studies of individuals involved in skyjacking. When you conduct a case study, is that a matter of having the opportunity to personally interview and question them?

[1] Samuel Byck.
[2] See the appendix, pp. 3081–3083.

Dr. Harris. Yes; and by far the vast majority of those studies have been very extensive.

Chairman Ichord. How many skyjackings approximately have we had in the United States? Do you have any idea?

Dr. Harris. I think that it may be in the neighborhood of some 300 worldwide, about half in this country. I don't have the exact figures.

Chairman Ichord. So, you have made a study of 60. You stated in all 60 cases you found evidence of serious mental derangement, abnormal adaptation, but you have never found political motivations to be a basic ingredient in those acts of the 60 individuals.

I understand that some of the skyjackings have been created with real or at least alleged political motivation, but you have never had the opportunity to examine any of those cases?

Dr. Harris. We have had the opportunity to examine some cases which were alleged to be political, and they turn out to be rather naive from any political standpoint.

I think Dave Hubbard cites one case in particular, a woman, whose name I forget offhand, who committed a skyjacking in Chicago a few years ago. That came near to being what we might call a genuinely politically motivated skyjacking. But that would be the only exception. I don't know the details of that case.

Chairman Ichord. A great many of the skyjackings have resulted in planes being flown to the nation of Cuba. I have not had the opportunity of following each and every skyjacking, but I understand, however, that many of the skyjackers have been permitted to remain in Cuba; not all of them have been returned. Is that correct?

Dr. Harris. Yes, that is correct.

Chairman Ichord. But, of course, you have not made any case studies of the individuals who had stayed in Cuba.

Dr. Harris. We have not gotten to Cuba, although we have made many attempts to do so.

Chairman Ichord. You state on page 7 that your group questioned the wisdom of a mandatory death penalty, and personally I think I would agree with your conclusion, questioning the wisdom of a mandatory death penalty. I think we have to consider this conclusion in light of the Supreme Court decision.

Let me ask you this question: Would you at the same time question the wisdom of prohibiting a discretionary death penalty?

Dr. Harris. In general, or as related to this specific problem?

Chairman Ichord. I will restrict it to the specific problem of skyjacking. Do you question the wisdom of prohibiting a discretionary death penalty?

Dr. Harris. I would say offhand, yes; I would question the wisdom of prohibiting the death penalty.

Chairman Ichord. The Supreme Court decision did not outlaw the death penalty as cruel and inhuman punishment. It did hold that the discretionary death penalty, being in the hands of the jury or the judge, does violate the 14th amendment. Personally, as one who has had some experience in the field of law enforcement, in the courts, particularly from the defense side, I must say that we encounter real difficulty when we mandate a death penalty for a specific crime, because this takes away the consideration by the jury of all the facts and circumstances surrounding the commission of the particular crime.

Oftentimes you will end up with a verdict of not guilty merely because the jury or the judge does not feel that this particular murder should carry a death penalty.

Dr. HARRIS. I feel that the whole issue of a death penalty or no death penalty should be left an open question with regard to the problem which we are addressing now.

I think the evidence is overwhelming, in those cases that have been seen, that these people are engaged very often in the equivalent of a suicide or what we call, technically, a "terminal experience." They have come to the end of the line, they don't know where to go next. Many of them will take it as a success to get to Cuba and be thrown in prison. This is not the ordinary man's view of success, but many of the skyjackers view this as successful. They have crossed the hostile political border, which is the main thing they are after. Not so much through political motivation; it is rather a repeat of the crossing of the hostile borders between "mama and papa," that can very often be found.

The personality structure of these people points very strongly in the direction of finding some means of suicide or the equivalent of it. And some of them do kill themselves.

I think the one we had the other day at Friendship, though he was shot, wounded twice, actually took his own life.

Chairman ICHORD. Getting over to the general subject of terrorism, the staff document which has been accepted for discussion by the committee concerns itself primarily with terrorist groups of the revolutionary left, primarily Marxist-Leninist organizations.

Of course, the study does recognize that terrorism is not the exclusive property of leftist radical groups. It has been used by extremists, by oppressive governments. It has been used at times in labor disputes in this country and outside this country. It has also been used in sectarian conflicts.

The staff study goes over the many terrorist groups that exist in Latin America and all over the world.

For example, in Bolivia you have the National Liberation Army; in Brazil, you have a couple of groups, the National Liberation Action group and the Popular Revolutionary Vanguard.

In Chile, the Revolutionary Left Movement; in Colombia, the National Liberation Movement, and the Colombian Revolutionary Armed Forces.

In Guatemala, Rebel Armed Forces. In Mexico, the Revolutionary Action Movement, and the Poor People's Party. In Peru, the National Liberation Army and the Revolutionary Left Movement.

In Uruguay, the National Liberation Movement, commonly known as the Tupamaros.

Also another group in Colombia, the National Liberation Army. And on and on.

Recently in this country this committee first observed the rise of the so-called Symbionese Liberation Army, which appears to be a collection, a very small group, but a collection, of individuals who have been moving in and out of violence-prone, revolutionary organizations for some time. The Revolutionary Union, Venceremos, the Black Guerrillas, the Weathermen, and so forth.

My question is this: In your study do you have any reason to believe that this society has become more vulnerable to terrorist-type activities in recent years?

Dr. HARRIS. I think that the world in general has become more vulnerable to terrorist activities, if for no other reason, because of certain unprecedented conditions we are facing in the world nowadays. If we consider for a moment that never before has the world seen such concentrated large masses of populations, the world has never before seen the kind of instantaneous communication we have nowadays. The shot that was heard around the world is no longer news. This goes on trillions of times in a split second. We have the very rapid modes of transportation. An individual can move from one world to another world, crossing many in between. We know these also to be psychologically disturbing to individuals, because the human organism very probably simply cannot handle these conditions. You think of the high development of technology in this country, and all developed countries, and the relatively easy availability of even major technological devices to the ordinary citizen. You have them suggested on a fictional basis. You have the recent novel, "The Taking of Pelham, One, Two, Three," which deals with the hijacking of a subway in New York. We might call that a "subjacking."

Yes, I think we are certainly more vulnerable in this country as well as in others, because of such conditions.

Chairman ICHORD. I think we have to consider this problem of terrorism in the light of international political conditions and especially terrorism from the violence-prone left. You must take into consideration the fact that we still have two opposing giants in the international arena, in a so-called period of détente at this time. I think both nations pretty well realize that a nuclear military confrontation is unthinkable. I think we could legitimately state that each nation is providing a kind of protective umbrella shield for its allied countries. This protective umbrella shield is clearly evident from the Soviet Union's standpoint in its relationship with Cuba and Algeria.

Perhaps it is because of this umbrella protection that countries such as Cuba do grant sanctuaries to terrorists. In some cases, and this has been going on for many years, they permit terrorist organizations to train and equip their forces in that country.

My questions are these, and I will ask for your comment:

What is the psychological effect of such sanctuaries in promoting more terrorist groups and activities?

What is the psychological effect of such sanctuary protection on the individual terrorist?

Does the sanctuary protection tend to cause ideological terrorism to expand and continue?

And is there a psychiatric syndrome effect on the American public such that this country might have lost its control in various international areas?

Dr. HARRIS. That is quite a batch of questions.

Let me speak to a few things I was reminded of as you were asking them.

One is: We sometimes wonder whether the issue of the ideology of communism, its uses of violence, and so forth, isn't exaggerated.

We do know, however, that the communist countries seem to appreciate much more than we do in this country the tactical and positive uses of violence. In this country we suffer from the disadvantage of thinking that violence is something that ought not to be, something we are going to get rid of, and so forth.

We are hiding our heads in the sand, or maybe worse. An analogy I like is that of a bird called the oyster-catcher. It is about as big as an ostrich egg. If you take this bird and its nest of four or five small eggs and put an ostrich egg two or three feet away from it, the bird will choose to straddle the ostrich egg and try to incubate it rather than its own eggs. We call this a supernormal stimulus. It explains why ostriches and oyster-catchers cannot survive in the same regions.

I was certainly thinking, also, that creating havens, political or otherwise, is very dangerous for anyone trying to control or manage terrorist activities. It was demonstrated beautifully in Cuba. That is where most of the skyjackers went.

Also relevant is what has recently happened in Cuba, itself, indulging, as it did, in what amounted to an extortion against a plane-load of missionaries. I think they asked for $6,860 for the expenses presumably involved in forcing the landing, which I can understand might be substantial. But what kind of precedents is Cuba setting for other governments, and even our own, in doing such things?

We all appreciate tendencies to retaliate, and so forth. We all have the possibilities of violence. We are never going to get rid of them. That is simply a positive side of aggressiveness, one way of doing something about disadvantageous, unsuitable, or frustrating conditions.

We don't know too much about the details of actual, genuine political terrorist groups. We would like to get into that, to study them. So far it has been almost impossible to get into it, other than what we see in the news media.

We need the whole thing opened up, because we need to find out if these are a different type of people, for example, political kidnapers as compared to the type of skyjackers we have seen so far.

I think the lesson in the Murphy kidnaping in Atlanta is very interesting. For a while the public, and even I, were thinking: "What have we got here? Another political terrorist group, the American Liberation Army?" It turned out the only thing to it was a deranged man, utterly naive politically, and his wife. There is no American Liberation Army. I don't know what might be the case in the so-called Symbionese Liberation Army. If we ever get some of those people, we certainly want to take a look at them.

Does that respond to your group of questions?

Chairman ICHORD. You are saying, Doctor, that some light should be shed on the groups. Of course, such groups do fall within the expertise of the members of this committee; and we have, with a very limited staff, attempted to shed some light upon violence-prone groups in this Nation. The individuals who thus far have served in the Symbionese Liberation Army have not been a surprise to this committee. In fact, we have been following most of the individuals as they move in and out of the various organizations I previously mentioned.

I would say that the Symbionese Liberation Army is just one of scores of groups in the country who could, at any time, commit the same crimes recently committed in California.

Dr. HARRIS. We need to look at these individuals as individuals, in depth, to examine their whole history, their psychological and contextual development, to see what their fantasies and ideals are. That has not been done.

Chairman ICHORD. I would agree. And since this committee primarily concerns itself with revolutionary activity outside the democratic processes, we deal primarily with the Marxist-Leninist-type revolutionary; and when we deal with the disciplined revolutionary Marxist-Leninist-type we are dealing with a group that advocates violent revolution at some time in the distant future, when the time is ripe. Most of them, the disciplined revolutionary organizations, do not consider the time is now ripe.

Now, you do have organizations similar to the Symbionese Liberation Army, who think the time is ripe, the time for revolution is now, not at some time in the future. In fact, they are very critical of the more disciplined organizations.

You would state, then, as far as a sanctuary is offered in other countries, this would have a great effect not only on terrorists with political motivation, but also a great effect on the mentally deranged.

Dr. HARRIS. I think so.

Chairman ICHORD. I know I have utilized more than my time. The chair will recognize the gentleman from Indiana.

And the chair would direct the clerk to obtain a clock for purposes of enforcing the 5-minute rule.

Go ahead. The gentleman from Indiana.

Mr. ZION. Is that taken out of my time, Mr. Chairman?

Chairman ICHORD. No.

Mr. ZION. Some 5 years ago, you will recall many of our college campuses were in flames. In your opinion, was part of this a result of young people not wanting to serve in the armed services or being afraid to serve in the armed services?

Dr. HARRIS. Yes.

Mr. ZION. Now that the draft is over and that is no longer a threat to the young people, should that then reduce the amount of violence with which young people are associated?

Dr. HARRIS. Yes; I think anytime we have social tranquility there are going to be less problems and less frustrations. The normal, ordinary person responds the same way to it as a mentally unbalanced individual does.

I think there are messages in what goes on. Psychiatry, itself, has been dealing a long time with the idea that psychopathology is merely something we have to treat; we have to get rid of that idea. I don't think there is anything really basically new in what is going on. This has always been going on. But I am ahead of myself. What I mean is that there are messages in the kinds of actions that the psychopathological individual indulges in. I don't think there is anything really basically new on it. These are possibilities and proclivities for all of us. I think what has happened now, because of some of the unprecedented conditions, some of which I have mentioned, is that they are simply becoming more visible to us. So, I think we are looking at sociopathological behavior, with sociopolitical content.

I think if you have ever been hungry, as some people have been, and still are, that is a psychological burden. What are going to be the responses? As we see the giveaway in the Hearst case, the food giveaway, and all those numbers of people trying to get that food—none of them apparently are starving, but they want it—and they will fight for it, and it is unfortunate the way some of it took place. They were told the food would be delivered at 7 a.m. They were there from 3 or 4 a.m. The food was not delivered until 1 p.m.—and when it did arrive, the people involved started throwing the heavy boxes out into the crowd. Things went amok quickly.

Mr. ZION. Since we have these pockets of violence now and they can't then be associated with the undesirability of serving in the Armed Forces, what general conditions do you think are now present that detract from social tranquility?

You don't have the war. What are the other factors that might cause this type of activity?

Dr. HARRIS. Don't you know?

Mr. ZION. I am not sure. I am not sure they would be of the same magnitude.

Dr. HARRIS. Just look at the gasoline situation, for instance. People are getting more and more furious. They don't trust the system. They don't believe it. They are mad as hell at the oil companies. To what degree it's justified, I don't know. Maybe it's so complex nobody knows to what degree it's justified.

Mr. ZION. Do you think anger—whether justified or not—is of the same magnitude of fear or dislike of serving in the Armed Forces?

Would you put those on the same level?

Dr. HARRIS. Oh, yes. I think people in general, normal or pathologically predisposed, all act in a very primitive way about those things. Some of us are able to restrain ourselves, but it does not bypass anyone's feelings and impulses. They may be controlled, but they are still, nonetheless, there. Some people are less able to control these things. They will get more and more furious, transpose their feelings into action, though it may be ineffective.

Mr. ZION. There is one more question.

I was interested in your comments to the chair on the death penalty.

Dr. HARRIS. You have heard the word "establishment." You have heard also that many people are quite angry and frustrated, et cetera, with the establishment. I think we have to put the legal, political, law enforcement, and so forth, systems in their comparative contexts. I think of it in terms of giving as much consideration to illegality as to legality in order to understand these things so we can better cope with them, so we can reform, restructure, or create new sociopolitical-economic structures. It might ameliorate these situations.

Chairman ICHORD. Thank you, gentleman from Indiana.

The gentleman from Florida has to leave, addressing himself to trying to keep down violence in the gasoline lines here, particularly in Maryland, Virginia, and the District. So the Chair will recognize the gentleman from Florida at this time.

Mr. PEPPER. Dr. Harris, we are grateful for your coming and giving us the benefit of your knowledge and experience in this critical area.

Have you observed what we might call a criminal class in general, or what you would describe as persons who have some aberrations or abnormality in some peculiar combination of the characteristics they

have? For example, we have in the prisons those who have been there a long time. Those in there at least 10 years have been in there at least three times before. So they are there as part of a pattern of conduct.

Do you observe that, generally speaking, people who commit serious crimes have some lack of normalcy that the ordinary individual possesses, that as a class they have some common characteristics?

Dr. HARRIS. We are beginning to suspect there are some common denominators we want to look at. This is highly hypothetical. I have alluded to the inner ear, the vestibular system.

I want to speak, though, to what we do know: that many of the criminals, skyjackers, and so forth, that we have seen and are still seeing, are characterized by lifelong failure, psychological and social, as well as economic. We know that many people in prisons, and the prison system, seem to be running in collusion. These people don't own their own superegos. They have turned them over to the institutions. The institution is their superego. So they can, like immature people or kids, behave any way they want to, because they know the institution will take care of all these things. It will crack down on them. They don't have to have any self-control.

We think many people are in this category because they have failed to develop mechanisms of self-control, for probably a combination of physical and secondary psychological reasons. The secondary psychological factors that have supervened on a physical disadvantage have become overwhelming. But we understand so little yet of what the underlying causes may be.

Mr. PEPPER. Do you consider that these people who become notorious in the area of crime, like the Boston Strangler, the man who killed several ladies in Boston; like the killers who have killed people in certain parts of the country; the kidnapers of the sort involved in Atlanta and in the case continuing in California—would you say those people, the perpetrators of that kind of crime, are different in character, in their abnormality, or different in degree?

Dr. HARRIS. Yes, I think so. Unfortunately, we have seen all too few of them. But these people are engaged in what we call the bloodbath complex. They get their kicks out of bloodshed. The Zodiac killer, whom I referred to, I think, is one of these. We would like very much to see more of them and be able to study them in depth.

Mr. PEPPER. Under your category of prevention, you were suggesting various things to be done to prevent crime. Are there insignia or signs that would permit society to detect this kind of abnormality that later expresses itself in these various dramatic, and normal for that matter, types of crime?

Take the man in Atlanta who kidnaped the editor. Now, that man, did he suddenly become that kind of man?

Under the category of prevention, is there a way to discover these people perhaps in youth and give them treatment which might prevent later expression of abnormality or crime?

Dr. HARRIS. No. I don't think we are going to get to the point of predetecting people. The individual I mentioned in my statement whom I am investigating, studying, and treating now, I think, potentially could do a lot of things. But there is no way to do anything about it. This happens to be a person in voluntary treatment. But how are we going to be able to examine everyone?

Mr. PEPPER. I have been told by schoolteachers or school authorities they can detect there with rather remarkable accuracy the antisocial tendencies which begin to manifest themselves in very young children. It may be, if we devoted more attention to trying to detect the abnormality in children and try to deal with those problems, we might save victims in the future.

Dr. HARRIS. That may be possible to some extent; and we are quite interested in what I referred to as possible vestibular abnormalities and its possible relationship with cross-dominance and so forth.

Chairman ICHORD. The Chair will recognize the gentleman from Florida, Mr. Burke.

Mr. BURKE. You mentioned the need for an in-depth study. Field Marshal Cinque, he calls himself, in the kidnap of the Hearst girl—was he not studied in depth by psychiatrists when he was in prison?

Dr. HARRIS. I am not aware of that. But we don't think the ordinary conventional studies, that we as psychiatrists know about, are suitable. We are now on to many more things. Conventional standard psychiatric studies have not been very helpful.

Mr. BURKE. Some of the suggestions you have made are almost impossible to give assurance that these studies could be made. For instance, you do have the question of freedoms guaranteed under our Constitution, and having practiced, I feel that it is very difficult to direct studies. I think the same applies with foreign hijackers and the difficulty in getting into countries and getting approval by countries to agree to the in-depth studies. But assuming it was possible how long would it take to make those studies of one individual?

Dr. HARRIS. Of one individual, we would like to be able to take a look at him at any time from the moment of his apprehension until his disposition—imprisonment, hospitalization, freedom, whatever. He would not be under continuous observation. That could run into years. But from time to time we would like to call on him; we would like to have access to these people while in prison. As it is now, with the skyjackers, we have gotten together with their defense counsels before trial. The Justice Department has agreed to let us see these people only after their conviction, because it does not want any interference with the prosecution.

We are not interested in prosecution or defense, per se. We don't want to get mixed up in that. That would be devastating. Some way has to be found—if these studies are to be done accurately and reasonably and acceptably—to eliminate bias as far as possible. As to the length of time that we visualize, for the studies, it is a matter of years.

Mr. BURKE. In other words, there would be no studies you could make immediately, let's say, which would bring about a workable solution with regard to present, existing problems?

Dr. HARRIS. We have enough data to offer tentative initial solutions or recommendations all along the way. But what we are really aiming for is a thorough on-going study which will test out these tentative assumptions and hypotheses. That will take time.

Mr. BURKE. With regard to many adverse happenings that come about, do you think overt exposure by the news media generates further crimes by individuals?

Dr. HARRIS. Yes. I think the news media people ought to get together with our group, and various other people, agencies, and so forth, and develop a mutual understanding about what should be done and should not be done under the circumstances. I think I have seen many reasonable news media people who are willing to do that.

Mr. BURKE. As a matter then of the security of the American people, you think there should be a "re-attitude," let's say, or re-examination by some of the news media with regard to the sensationalism attached to the particular exploits, that they should perhaps re-examine their policies in order to refine or, let's say, play down some of the sensationalism that results from some of these crimes?

Dr. HARRIS. Right. I don't think there is anything vicious in what they are doing. I think much of it is inadvertent and due to a lack of understanding of certain points of view. If we could get together with them, a lot of this could be worked out. But that takes time and is expensive.

Chairman ICHORD. Thank you very much.

Mr. Preyer?

Mr. PREYER. I would like to ask you a question on how to deal with terrorists.

With regard to skyjacking, have you come to conclusions respecting how best to deal with such people?

Dr. HARRIS. Yes. We find in skyjackers, and I am sure we would find in others, many aspects in their makeup, their attitudes, that are willing to listen to reasonable solutions and negotiations. Many of these people can be talked into giving up. I think one of the things they face is the uncertain outcome for them, if they do one thing or another or if they don't give up.

Mr. PREYER. In skyjacking you have been able to come up with some solutions that seem to work as to how to deal with skyjackers and, as I understand it, you have trained airline crews and stewardesses in these principles?

Dr. HARRIS. These are sensitive topics that I feel we should not discuss at this time.

Mr. PREYER. I will not go into that. The one thing I wanted to ask is, do you feel that any answers or principles you have been able to come up with, would apply to the terrorist kidnaping cases?

Dr. HARRIS. Definitely.

Mr. PREYER. So there may be some hope then, that we can understand better how to deal with these people?

Dr. HARRIS. Right.

Mr. PREYER. Through law enforcement people?

Dr. HARRIS. And to make it possible for them to deal more effectively with us and bring the thing to a resolution.

Mr. PREYER. So then it might be possible to train law enforcement people and others in better methods of dealing with terrorists?

Dr. HARRIS. Yes.

Mr. PREYER. Would you care to comment on kidnaping cases as to whether we appear to be too readily agreeing with the demands of the kidnapers. I notice in skyjacking you indicate you should not agree too readily to pay ransom.

Dr. HARRIS. The Hearst case, for instance. I think the response was completely passive and with open arms. The initial demands were

so impossible. In the much more modest plan that they have finally gotten going now, there have developed many unforeseen complexities and difficulties, whether it is going to work or not. Whether it is going to satisfy these people, the Symbionese Liberation Army, God only knows.

Mr. PREYER. I might just say, you and your consortium do a great service for the country by developing ideas on how best to deal with these people and getting these ideas into practice.

I shall ask one other question along the line Mr. Burke was pursuing, what is the influence of the press, and what can we do as to that relationship?

Chairman ICHORD. It is a matter of the first amendment.

Mr. PREYER. Yes. That is why I say it is a difficult problem. There was an article in the Washington Star which pointed out that some terrorism group used the press as a means of cueing, as they called their action. It gave an example of the terrorist group that murdered La Porte. There was a group of people driving in a car in New Mexico, members of the Quebec terrorist group. They heard on the radio about the murder of another Canadian figure by the Quebec liberation terrorist group [FLQ]. They turned around in the car, returned to Canada, captured La Porte, and eventually murdered him.

In other words, the group had not communicated with each other, but through the news media they learned what other elements of that group were doing and it provoked them to act.

I don't know how you would deal with that. Do you suggest the media and groups such as yours try to iron out such things? Would the type of thing you would try to iron out concern the details of how demands should be released in the press, or whether negotiations with the terrorists be released in the press? Are there ideas along that line?

Dr. HARRIS. Yes, there are ideas. I think that should be preserved, however, for the time being, until we get our heads together and get some sense into this.

In the Hearst case the utilization of the press and tapes was really just another technological device. This is really the first time it has been done on such an extensive scale.

Chairman ICHORD. Thank you. The gentleman from North Carolina? The gentleman from Ohio.

Mr. GUYER. Doctor, I am heartily gratified that you are here because I am one who, a long time ago, was hoping the committee would address itself to this problem. The chairman has done this and I am very grateful for the staff report which I think is the first in this field.

You made a statement in the middle of your testimony where you said there was no move by any Federal agency to deal with this problem. That is why I think properly the problem does belong with this committee, because we have been advised that the FBI, the CIA, and legislative bodies have not addressed themselves to the problem.

Do you have a degree in psychiatry?

Dr. HARRIS. Yes.

Mr. GUYER. I notice that you spent a great deal of time in law enforcement.

Dr. HARRIS. No. I was trained as a physician and took my residency in psychiatry, and have been in the U.S. Public Health Service about 10 years.

Mr. GUYER. But you have dealt with the criminal problem?

Dr. HARRIS. Yes. From the point of view of the characteristics of individual offenders and victims.

Mr. GUYER. I think we are a little bit bewildered not finding the rationale for things that suddenly become international. You mentioned you had studied about 60 skyjacking cases. We first became interested when the Palestinian group brought terror. We were not sure it was connected with this country. For example, the killing of the athletes in Munich and the killings in Sudan, and the bomb made in Jersey City, aimed at Golda Meir. You made a number of suggestions as to what we should be doing. You talked about no sanctuary, new attitudes between the crews and the skyjackers, the legal-medical psychiatry that relates to disposition.

I am curious about one thing. It appears in trying to understand the human mind we are just at the preliminary stage in finding out what makes people do things. I noticed a few years ago, that as of that date, every FBI agent who had been killed was killed by a paroled convict.

Do you find a frequency of a person who has been incarcerated and studied, then released, coming back and committing a crime?

Dr. HARRIS. I don't know what the state of affairs is with regard to imprisoned convicts. I do know, in the State of California—there was a big to-do recently, still going on to some extent—about closing the State hospitals. There is a big hue and cry on the public's part and uninformed officials because of a few cases where a patient has gone out and killed someone. But statistics show there is very little connection. We can't incarcerate everyone because of the crimes of a few.

Mr. GUYER. The killer of the nurses in Chicago was a former mental patient?

Dr. HARRIS. I don't know.

Mr. GUYER. The Boston Strangler was a former mental patient?

Dr. Harris. I don't know.

Mr. GUYER. Are people who have been treated, triggered by things which cause them to have a messianic complex? Do they catch fire?

Dr. HARRIS. Yes. I think things are contributed by the society and the institutions, the public-at-large, the political structure, economics and so forth. I think that various factors can come together and can become so weighted that at some point it will trip matters into action.

Mr. GUYER. Do these people you studied in skyjacking have a pronounced aberration such as, do they have delusions of grandeur or persecution? Either one.

Dr. HARRIS. Oh, yes; both.

Mr. GUYER. Do they feel when they finally meet that stage, either getting on TV or in the newspaper, that was their objective?

Dr. HARRIS. Yes; that can be one form of success.

Mr. GUYER. We have not come to grips with multihostages as seen in World War II. For example, they would line up 10 people. If one was not returned, they would shoot 10. This is the type of near genocide which is hard to stop in a way. But what do you do to meet that in all the recommendations? For example, take the Palestinians. You have to release some prisoners or you lose some people.

Dr. HARRIS. You have to start negotiation with the kind of persons we are dealing with.

Mr. GUYER. Would you agree with the State Department that they are not to pay ransoms even if it means the loss of the life of the person?

Dr. HARRIS. I am not as sure it should be as rigid and binding as it is.

Mr. GUYER. I think those who are in the Service are told the policy is not to bail them out, but to buy time.

Dr. HARRIS. If we had a fair law then all this activity by terrorists would create——

Mr. GUYER. We have to make recommendations of something that will help to reach the problem. Would that be your inclination?

Dr. HARRIS. Right.

Mr. GUYER. So we don't have to start from scratch? You have experience in back of you.

Dr. HARRIS. Yes; and people to run a multidisciplinary control center are available.

Chairman ICHORD. The time of the gentleman has expired.

The Chair will start over again. The Chair during the time he has been chairman of this committee has had the opportunity to examine thousands of documents and pamphlets advocating guerrilla revolution, terrorist activities, how to make a Molotov cocktail, detailed drawings of how to make a Molotov cocktail, a gun. These have been circulated in pamphlets and I have even seen them in some publications for several years.

Would you care to discuss the impact this has upon possible terrorist activity?

Dr. HARRIS. I think it informs people in general, be they normal or abnormal, of technological devices, and simply makes the whole business more dangerous. But no one has a monopoly on this. Anybody can use it. Many of these devices are not difficult to think up.

Chairman ICHORD. Certainly it is difficult to control such activity because we are in the area of freedom of the press. It is very difficult to draw the line on what is permissible and what is not, particularly in light of Supreme Court decisions.

This committee conducted a very sensitive investigation into subversive activities directed toward the Nation's prison system. I say it is very sensitive because I think most people recognize there is a need for considerable prison reform. But I am particularly addressing myself to the problem that has arisen in the last 2 or 3 years after certain court decisions, making it extremely difficult to censor materials coming into our Nation's prisons. We observed within the last 2 years that our prisons, which are a sore spot that can be exploited, are being avalanched with propaganda materials along the line that you are not a real criminal; you are a victim of society. Certain pamphlets urge the formation of groups. Also, we have even seen come into prisons pamphlets on how to make explosive devices. What impact will this have? Will it make it exceedingly difficult to really move in and solve the problems we have in our prison system?

Dr. HARRIS. I am not certain I understand your question fully. Let me say, first, that I think this kind of thing can be treated, as much as acts of violence and terrorism can be treated. These are

oftentimes the tools by which matters are conducted. If your question infers that it is going to make things more difficult to manage in prisons; yes, I would say so. But I would say the increase in this sort of literature, et cetera, goes right along with the increase in violence and terrorism, or decreases along with their decrease. It may stimulate one way or another.

Chairman ICHORD. Gentlemen, do you have any further questions?

Mr. Counsel, it is now 2 minutes of 12 o'clock. The next witness is Mr. Kelly of the International Police Association. Is he with the Washington office?

Mr. CRANDALL. Yes.

Chairman ICHORD. Would he be available for some other time? I don't know how you want to work him into the hearing, but I think it will be impossible to continue these hearings this afternoon because we do have the energy bill scheduled, and I anticipate a series of rollcalls.

Mr. CRANDALL. We intend to continue with these hearings at a later date.

Chairman ICHORD. I want to hear from Dr. Hubbard, because he is from out of town. Then we have an executive session tomorrow morning.

Does counsel have any questions?

Mr. CRANDALL. No.

Chairman ICHORD. Any questions from minority counsel?

Mr. WHITE. No.

Chairman ICHORD. If not, the Chair will declare this session adjourned until 10 o'clock tomorrow morning.

[Whereupon, at 12 noon, Wednesday, February 27, 1974, the committee recessed, to reconvene at 10 a.m. on the following day, Thursday, February 28, 1974.]

TERRORISM

Part 1

THURSDAY, FEBRUARY 28, 1974

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Internal Security met, pursuant to recess, at 10:15 a.m., in Room 311, Cannon House Office Building, Hon. Richard H. Ichord (chairman) presiding.

Committee members present: Representatives Ichord of Missouri, Claude Pepper of Florida, Richardson Preyer of North Carolina, John M. Ashbrook of Ohio, Roger H. Zion of Indiana, and Tennyson Guyer of Ohio.

Staff members present: Robert M. Horner, staff director; Robert A. Crandall, counsel; Audrey Rollins, associate to counsel; DeWitt White, minority counsel; Herbert Romerstein, minority chief investigator; and William G. Shaw, research director.

Chairman ICHORD. The committee will come to order.

As I announced yesterday at the outset of these hearings, these hearings have been programed for quite some time. In 1973, the committee began an investigation of terroristic activity and at that time published a report entitled "Political Kidnapings."

The purpose of the hearings is first, to develop, more or less, a profile of the person who commits terroristic crimes; and, second, to examine the means of prevention and control of such activities.

Yesterday, the committee voted to go into executive session. At the conclusion of the witness' testimony today, we will hear from both Dr. Hubbard and Dr. Harris, in executive session.

At this time, we are privileged to have with us Dr. David G. Hubbard, who is director of the Aberrant Behavior Center in Dallas, Tex.

Dr. Hubbard is one of the Nation's outstanding authorities on the skyjacker. He has taped hundreds of hours with imprisoned skyjackers and has worked with the airline industry to develop scientific methods for handling air piracy.

He has served as psychiatric consultant to the Medical Center for Federal Prisoners at Springfield, Mo., and to the Federal Aviation Administration in Washington, D.C.

Dr. Hubbard has testified before congressional committees as an expert in his field and has received nationwide exposure on network television and in such magazines as Time, Newsweek, and Life.

The New York Times had this to say:

Dr. Hubbard is an expert, possibly the only one, on the mental state of actual or potential skyjackers.

Dr. Hubbard, it is a pleasure to welcome you to the committee. Do you have a prepared statement?

Dr. HUBBARD. Yes, sir. It is written a little differently than I usually write them. It is brief with accompanying footnotes.

Chairman ICHORD. You may proceed as you wish.

STATEMENT OF DR. DAVID G. HUBBARD

Dr. HUBBARD. The Government knows no more now about terrorism—skyjacking, kidnaping, and assassination, et cetera—than it knew 50 years ago. That same statement may still be valid 50 years from now.

The footnote relative to that is: There is no systematic approach now extant in this Government for collection, storage, retrieval, or analysis of relevant data about such crimes. Even the intellectual insight that such study is possible cannot be discerned in responsible quarters.

Solutions now in use do not differ philosophically from those of 3,000 years ago and technically solutions have not varied in 350 years, nor is there indication that they will.

The footnote there relative to philosophy is: Force against force is the rule. The causative individuals—symptoms—are slain or incarcerated, as if that ends the matter. The root system which will supply new causative agents remains a mystery. Firearms which are applied after the crime has begun remain essentially unchanged.

Research in one of these areas has recently been undertaken. Skyjackers and their victims have been systematically studied for the past 4 years by the Aberrant Behavior Center. Findings have been applied to date in several branches of Government as well as in the aviation industry. A system of collection, storage, retrieval, and analysis of data in this area—as well as others—has begun. These studies, or others like them, could not have been performed inside the existing administrative bureaucracy.

The footnote is: Bureaucratic ignorance and fear have fought these studies every inch of the way. Existing research institutions and their personnel are inadequate to the task.

These findings—or further findings—will not be utilized without stringent demands by the Congress and upon the bureaucrats, to look beyond career needs, public bias or ignorant tradition.

A foothold has been gained in this one previously poorly understood area which strongly suggests broader, more systematic research could be fruitful in other problem areas. These hearings may determine whether Government can permit or aid such studies.

A token approach will later haunt these halls. A valiant approach will be subjected to great pressures.

Many sacred cows in the Department of Justice, public attitudes, media conduct, bureaucratic procedures and even the Congress would, of necessity, have to be studied, measured, and reconsidered.

We in the Aberrant Behavior Center would welcome and accept the opportunity to aid in the development of a valid approach to the problems.

Chairman ICHORD. Thank you, Dr. Hubbard.

Yesterday, as I indicated, Dr. Hubbard, the committee heard from Dr. Harris. You worked on the same study group with Dr. Harris, did you not?

Dr. HUBBARD. Yes, I did.

Chairman ICHORD. Dr. Harris, in his statement, and I will confine this question to the matter of skyjacking—Dr. Harris, in his statement, said that your group questioned the merits of a mandatory death penalty for skyjacking.

Dr. HUBBARD. Yes, sir.

Chairman ICHORD. At the same time, I asked him the question, Do you also question the merits of prohibiting a discretionary death penalty to be imposed by the judge or the jury? He answered that question, as I remember, in the affirmative. I would ask you the same question, sir.

Dr. HUBBARD. If I may, I will qualify a bit. I assume the Government does have the right to pass a death penalty. This seems to go back in history some distance.

Chairman ICHORD. That was the recent Supreme Court decision, I understand.

Dr. HUBBARD. The objection I raise is not on ethical, moral, or theoretical grounds. The death penalty can be simply useless. If it were only useless, I would have no objection to it.

The man in Baltimore the other day certainly was not to be deterred by a death penalty. He, indeed, intended to become dead.

In the skyjacker studies, what we have found to begin with is that a death penalty for skyjackers almost impossibly complicates our capacity to negotiate with Cuba. It is the same situation with almost all the Latin American nations and many others in Europe. That is because they do not believe in the death penalty.

The most important deterrent in skyjacking is the immediate return of the offender from the land to which he has flown. If one makes negotiations with other nations impossible by inclusion of a death penalty, you throw away the most effective tool.

You recall the case of the skyjacker who flew to Rome? The Italians do not believe in the death penalty and they would not return him to the United States.

So while adhering to the death penalty, we left Raphael Minichiello in Rome, thus his asylum protected him but we created the asylum by means of our death penalty.

The moment the death penalty is in issue in a court trial, suddenly the defendant has two attorneys rather than one, which makes the matter of conviction much more difficult.

Any time a death penalty is involved, that particular case becomes an important case as far as the newspapers are concerned. There is all the additional media coverage of that event.

I have cited three problems. The fourth problem introduced is the moment there is a potential death penalty, the psychiatric defense enters the case and 98.5 percent of all psychiatric defense is against conviction. So one creates many problems.

We know with absolute certainty the skyjackers themselves, the offenders, want in the worst way to die. They lack the guts to kill themselves.

Chairman ICHORD. Not all of them.

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Dr. HUBBARD. Very few of them, sir, have ever not wanted to die. They wish to die, but they do not wish ordinarily to kill themselves as such. They manipulate their society into killing them.

If I meant to deter a man from a specific crime, I do not believe I would offer him at law that which he wants. To offer a skyjacker the possibility of a death penalty is like giving a child candy and saying, "You be bad and I will give you more."

Chairman ICHORD. Of course here, Dr. Hubbard, you seem to be talking in terms of flexibility in order to meet the facts of the given situation and not only to deter, but to control the situation. This is one of the difficulties we have in criminal law. The criminal law is always construed very strictly and flexibility is difficult to obtain if we are going to have a government of law and not a government by the discretion of man.

Dr. HUBBARD. I appreciate that problem. When you mentioned the word "control," I would point out that once a skyjacker has done a skyjacking which may have been at a very anxious, uptight moment, once that skyjacking has started, if he begins to slow down and come to his senses, it would be far easier for the captain of that vessel to argue him to the ground, if he were not arguing him to the ground to die.

One of the real complicating factors is, once this crime has begun, the possibility of the death penalty does not stop them, but it may foul them up.

During a skyjacking, a death may obtain. If a death obtains during the skyjacking, then this is one flexibility that makes a kind of logic as opposed to taking a life for a life. I have no objection to a death penalty provided it serves a useful purpose. There is no evidence that it does.

Chairman ICHORD. You would have objection though to a mandatory death penalty, I suppose, because of the difficulty of going through the process of finding one guilty or not guilty. My concern about a mandatory death penalty on any crime is that oftentimes the jury or the judge will find not guilty because they do not think the facts surrounding the commission of the crime warrant the death penalty.

Dr. HUBBARD. There was an occasion on the west coast not too long ago—well, it was quite a while ago, in which two skyjackers were shot to death on a strip out there. It was kind of a tough scene. Interestingly enough, the pronouncement in the media was that an instantaneous death penalty had been assessed; now, the skyjacking will slow down.

Within less than 24 hours and within 50 miles of where these two men were slain, a 15-year-old boy skyjacked. Object—to get himself killed.

Fourteen hours later, in Oklahoma, two men from Philadelphia skyjacked a plane. So in a particular dramatic storm the same night, we had both of these planes circling over the Fort Worth airport. When these men were studied, it developed that they committed the crime of skyjacking to be killed like the two men on the west coast. Hence, the killing of the original two on the west coast motivated the others to be similarly killed.

That has occurred in other locations. We almost always can be sure that an ordinary skyjacker who attempts to transfer between

two aircraft, if death is a thing that dissuades him then it is curious that one finds one who has just been excited to replicate the act.

Chairman ICHORD. Thank you, Doctor. The committee will proceed under the 5-minute rule and the Chair will recognize the gentleman from Ohio.

Mr. ASHBROOK. You started talking about the matter of death and the problem the captain of the vessel has and the fact that the skyjacker recognizes that if he comes down he will probably face death. The question occurred, in relating specific instances, statistically, how many skyjackings have ended up in death, just being killed by police, or whatever?

Dr. HUBBARD. The number of them is small.

Mr. ASHBROOK. You are saying the chance is low?

Dr. HUBBARD. Quite low. It would be higher if standard police forces had their way, but the Airline Pilots Association does not favor being shot at.

Mr. ASHBROOK. We all are aware of the big flack with the FBI and the Airline Pilots Association. Do you recall that instance?

Dr. HUBBARD. Yes.

Mr. ASHBROOK. What was your appraisal of that one?

Dr. HUBBARD. In the violence you are talking about, the plane went to Cuba twice. The evidence is incontrovertible that the gunfire from the aircraft produced the shooting of the copilot. The plane landed with no rubber on the wheels. Engineers say it cannot be done; Chairman Steiger said, "God picked it up and did it." That plane was flown in with a wounded copilot and it landed on steel wheels. That incident produced the wounding of the copilot and the death of many passengers. It was a sudden onslaught for which there was no excuse.

Mr. ASHBROOK. Which is what you are probably referring to when you say standard police action?

Dr. HUBBARD. I am not pointing to the FBI.

Mr. ASHBROOK. Two statements in your footnotes would indicate some need for explanation, I think. In one footnote you are talking about bureaucratic ignorance and fear. Can you be a little more specific?

Dr. HUBBARD. In the 4 years of this study, I have had a lot of contact with Washington and have gotten to know some of the basics. Among the things I have learned is the "Peter Principle," that is, the man is elevated to his level of incompetence.

One of the primary things we have encountered is yet another principle which I call the "Bureaucratic Principle." In theory, no bureaucrat ever needs help from the outside. The bureaucrat feels himself threatened if there is any loophole in what he considers his administration to be. There has been a drastic loophole in the Government's whole program respecting skyjacking.

For complex legal reasons, the Attorney General has not been entirely correct in his attitude. He has not wanted any Federal employee in the FAA to have knowledge bearing on the guilt or innocence of a skyjacker because this man might well be subpenaed and brought into the litigation process. For that reason, the FAA has never had direct information gathered from the skyjacker as to who he was, why he acted in the manner he did, what he had in mind, the whole situation.

This is entirely reasonable, but with the FAA not having such information available, the fact that we did gather such information and readily made it available in an instructive form to them, was quite embarrassing to certain bureaucrats within the FAA. We had to deal with them. By the same token, we had to deal with the Department of Justice, who made every effort possible to prevent us from examining the men in order that the information could be used for the benefit of the industry.

We finally found the perfect loophole. We knew darned well the Justice Department would not support us, therefore if we approached the defense counsel and said, "Look, we want to examine your man," and if we can get the defense to agree, one can really not abridge the right of defense counsel. If he wants his man examined, we can darned well do it. But this is the kind of struggling involved.

Mr. ASHBROOK. I am certainly the last person to defend bureaucracies.

Dr. HUBBARD. There are problems. Basically, there are all of us well-meaning sorts of guys addressing ourselves to the same problems. But we rather see it from somewhat different eyes. The important thing is to bring our functions together in such a way that we do not waste a lot of it on internal strife. The research we have done was not and could not have been done and still cannot be done within Government itself.

Mr. ASHBROOK. In another footnote you said, "Many sacred cows in the Department of Justice"—you have already properly indicated some of them. Would you like to go a little bit further and talk about those sacred cows?

Dr. HUBBARD. Well, I think there has been a struggle between the Department of Justice and the death penalty. Of course, there are two public attitudes. Those words are not really so far apart. Society has two responsibilities in this crime. It either is in complete compliance with offenders, or in a totally retaliatory thing. The public is always ready to give ransom or death. In between, there is middle country, where the man is not paid off with money or death. The public attitude is rather simplistic. They would like to have this. They like to also have large headlines and the 10 o'clock news giving them the view of a man crossing between aircrafts, all of the dramas. We expose ourselves to fads communicated by the media.

Mr. ASHBROOK. You just barely touched on another thing. You write on page 257 of your book,[1] something about automatic media response and automatic notoriety which almost makes it attractive.

Dr. HUBBARD. The man hopes he is going to make headlines. Throughout his hijacking, he is more concerned with the correct spelling and pronouncing of his name, more so than he is concerned with other things.

Mr. ASHBROOK. The way to get an instant press conference. We happen to see it in the Symbionese Liberation Army. They are automatically portrayed in some quarters as good people with high ideals. But they are just using the wrong tactics. It is the instant way to get a press conference in Latin and South American countries, also.

[1] "The Skyjacker," by David G. Hubbard, M.D.

Dr. HUBBARD. We have had the same thing in this country. For example, the man who flew from New Mexico or Arizona to Los Angeles because of the problems of the Mexican in Los Angeles. Then where the man in Seattle had a very extravagant plan for his skyjacking. It was to go on for 7 days. It started in Reno, Nev.; he intended to fly eventually to Canada. Skyjackers of the last 12 incidents viewed this event as a rationalization to protest the continuance of the war.

I would point out to you the decline in skyjacking. We have gone for some 5 years with an average of three and one-half skyjackings per month throughout that whole period. In the month of July 1972, we had seven; in August, one; September, none; October, one; November, none; December, none; January, one; February, none. There were some gate instances, but basically none until this past Friday.

Now, the police appeared in the airport in February 1973, but the crime had disappeared virtually 7 months before. It was not a policeman who was going to appear in February that kept the skyjacker out of the airport in August. But in July, we negotiated with Cuba for the immediate return of skyjackers. This was well played in the media. Also, in July, it was announced we were beginning our negotiations with Vietnam, to terminate that war. The cause that pushed men toward things had been basically removed.

Chairman ICHORD. The time of the gentleman from Ohio has expired.

The gentleman from North Carolina, Judge Preyer.

Mr. PREYER. Dr. Harris yesterday talked about the vestibular phenomenon involved in many skyjackers and bank robbers. I know our Health Subcommittee has been interested in discussing further with you and your group the interesting problem of inner ear problems. As I understand it, you feel it may have a relationship to crib death, autistic children, and some other areas where it has been difficult for us to find answers. Do you care to mention to us what this relationship is which you found in skyjackers, as to the inner ear situation?

Dr. Harris' statement went into that somewhat, but he did not get to amplify it.

Dr. HUBBARD. It took me 257 pages to manage it badly, but I will touch on it briefly.

There seems to be a very distinct relationship. Actually, in this group of skyjackers we kept coming up with conclusions that the men had a peculiar inner ear condition. We are now beginning to wonder if the early development of this plays a part in one's personal balance. It may not be a case where an attorney trying a case may refer to his unbalanced client.

We are of the opinion from these studies that perhaps the physical force of gravity is an important part of man's knowledge of his being. Aristotelian philosophies as to the creation of concept of body and spirit as if they were invisible entities. Medicine has been attacking that ever since. We found repeated instances, both hard and soft.

One skyjacker who spent some 6 months in Cuba and offended them down there and was returned to Canada, came back on a medium size boat. When he stepped ashore on Canadian soil—for a week after he had returned to Canada, in a reflexed uncontrollable way, his eyes jerked laterally. This is called nystagmus. At the end of a week his eyes

had stopped snapping, but he continued to walk with a wide gait because his eyes said the ground was not standing still and the back of his head said it was standing still. This nystagmus is a reflex that comes from the inner ear. For a man to have this kind of involvement from such a minor stimulus is clear evidence of difficulties in an organ.

We have found this in lesser forms repeatedly, which caused us to wonder about the formula that may well occur causing a human to mature less slowly and in a less well organized fashion. We have now found distinct evidence in this and we can now deliberately bring animals to assist us in this study. We feel it is related to the possibility that perhaps in birth, as in certain other organic conditions, we might be able to identify this symptom and modify it. In children, this could be identified as a problem for pediatricians to treat and by doing so there might be hundreds of those hospital beds in this country that would not be filled by life-long occupants of those beds.

Mr. PREYER. That is certainly a very exciting prospect, and I hope that, from the health side of things, we can see if this is something that can be identified and modified at birth, as you say. That might be one way to deter many bank robbers and skyjackers.

Dr. HUBBARD. We have appreciated your help and anticipate more.

Mr. PREYER. Do you think the research you have done in this skyjacking area is relevant to the kidnaping problem?

Dr. HUBBARD. Yes, sir. I distinctly do. To begin with, the studies that have been conducted by the Aberrant Behavior Center are not restricted to skyjackers. This is just one group. We have conducted extensive studies on bank robbers and have completed statistical work on several thousand. In addition to that, we have studied various deviants, many political groups. We have studied the Black Panthers and have a good relationship with them. We have also studied kidnapers and we have found a certain trail of continual—perhaps the most specific evidence would be one skyjacking I mentioned a moment ago. That skyjacking essentially came to a screaming halt between July and August of 1972. Now, it happened there was a man in June of 1972 who was trying to plan a skyjacking. Toward that end, he moved into an apartment near an airport. He got an employee's physical examination done by one of the carriers, all of this trying to determine how to penetrate security. He was still figuring these things out when skyjacking disappeared. Immediately thereafter, there was a rash of bomb threats. That man converted over. He spent some time in determining how to figure that out. He planned to commit a robbery and ride off on a bicycle with the money. Then kidnaping came into the newspapers. He switched over and did kidnaping. It was quite a noisy one.

We have several other such instances in which the man riding with the fad of the moment perpetrates that one crime. It has the same sense of intrigue; it has the same sense of shaft to the Government, the defiant attitude. Quite frequently, these men feel they are individuals defying the President or the FBI and they measure themselves by the size of their antagonism. As such, the same men drift with the fad from corn to crime. They do that which they believe to be the "in" thing for that moment.

Chairman ICHORD. The time of the gentleman has expired. The gentleman from Indiana?

Mr. ZION. This has been very interesting. We were talking about conditions that might predispose one to antisocial behavior. I think both you and Dr. Harris have sort of a picture of the type person that is likely to engage in this type of terroristic activity. I provided you and Dr. Harris with a note handed to me in my office. They tell me back in the committee room this is not unusual. They get this type of thing regularly.

With specific reference to the letter or whatever you want to call it—the document that I received this morning—can we predict that a person who delivers this type of thing or develops this type of thing might be one who would go with the crime of the day? Is he the one who is going to go from skyjacking to bombing?

Dr. HUBBARD. For the moment, with the existing procedures we have, the answer to your question is no, sir. On the other hand, with very slight development of new techniques being worked on, and which we will be talking about this afternoon, it should be possible to analyze threats in a way we can pretty well distinguish the real from the bluff.

The letter that came to you today may be only one very sick man's way of trying to call the attention of society to him. It may be a plea for help. He may be asking for help. On the other hand, he may be a genuinely dangerous person.

Mr. ZION. In the course of a year, many abnormal individuals come into the committee office. If we should apprehend them, is there a possibility we could prevent another kamikaze attack on the White House?

Dr. HUBBARD. Probably not.

Mr. ZION. You know the purpose of this committee is to study actions of individuals who want to take over the Government by force or violence. Now, the groups I am speaking of, Communists as an example, do you think these groups actively recruit psychotic persons for their terrorist activity? Do these subversive groups stimulate their terroristic behavior?

Dr. HUBBARD. We have found skyjackers—you know, originally, all skyjackers would go to Cuba to join Castro. That was the myth. Then we found there were more rightwingers flying there to assassinate Castro, than there were leftwingers going to join him.

When we examine both the right- and left-winger extremists, we cannot tell them apart except for the flag they are running under. So both the right and left equally incite. We said that one of these days we would really have a good leftwinger, someone screaming "Hurray for Chairman Mao." Finally, we have found, with unimpeachable Communists, the connection. It would rather appear that extremism is almost a matter of coincidence in terms of which flag one flies under. We have come to the conclusion that belonging to a political party does not confer sanity on a man or his actions. Similarly, the wearing of a military uniform does not necessarily make a man's thoughts logical and pure.

So if one speaks of the purely political kidnaping or skyjacking, there is no evidence to support this. An understanding of the phenomenon would involve studies of all types, both white and black. It would involve the study of individuals and groups who act together.

Evidence is quite clear that one man can serve as the sparkplug around which other sick ones gather. He supplies the motivation and rationale and the rest of it. Some years ago in Mexico, a skyjacking occurred between Mexico City and Guadalajara. It ended up in Cuba. There was a doctor who had studied the economy of what goes on in a revolution in a hostile situation and how the people deal with each other. He took the skyjacking in a test tube and began to study the skyjackers themselves. He studied the thing all the way to Cuba. You recall some years ago, there was an attempted skyjacking in Russia. Some 11 people were going to try to fly to Sweden. It turns out, in that instance, the sparkplug figure, psychologically, is identical with the single and double skyjackers in this country. They had the same involvement with flight.

The man was a pilot, his wife said she could not stick with him, she could not stay in the air all the time. One of the girls who was a part of the crew loved him completely because of his compassion for flying. But the striking thing was, here was a man who had some knowlege of aviation. He was going to fly to Sweden in a hot airplane. He knew what the prevailing winds were. How crazy have you got to be to take a hot airplane up there into Sweden?

These groups may be different. Studies should be conducted as to these skyjackers and such studies should be done by men who know the local language. To assume that we know what a Mediterranean skyjacker is, could be in total error. Our assumption as to what the American was was in error. So—

Chairman ICHORD. The time of the gentleman from Indiana has expired. The gentleman from Florida?

Mr. PEPPER. Doctor, I think all of us wish that our country had more people like you and Dr. Harris, whom we heard here yesterday, who have studied this matter which is so vital to the security of the country.

Is it abnormal mentality or something that causes these people to do extraordinary acts? You may recall in 1932 a man shot at President Roosevelt and killed some other people. He complained he had a hurting in his stomach. He seemed to feel that that somehow or other motivated him toward killing somebody.

Dr. HUBBARD. Did he think that he had cancer of the stomach? It is a frequent finding among these people that they often have the delusion that they have a cancer in the stomach.

Mr. PEPPER. That was an instance where one thought that another part of the body was somewhat influencing his conduct. Now, here you have a man who just killed himself at the Baltimore airport. You have other people such as this man the other day who stole a plane because he evidently had not been successful in an Air Force examination. He stole a helicopter and came over to the White House grounds. You have the kidnaping in California, Hearst's daughter; the Atlanta kidnaping. You have a case such as that of Hauptmann, who kidnaped the Lindbergh baby, and we have all sorts of other violent crimes. Do you believe that these people are in different categories of abnormality or aberration or just different in degrees and are influenced by something within themselves?

Dr. HUBBARD. Given superficial observations, they would appear to be extremely different, one from the other. If one looks beneath the surface, there are certain continuous threats which tie these seemingly different individuals and crimes together.

Mr. PEPPER. Take a man like Hitler. In addition to all the men killed in the war, he killed 6 million Jews. He was the greatest murderer in world history. I would say he exhibited definite psychotic problems, would you agree?

Dr. HUBBARD. Yes.

Mr. PEPPER. His actions were akin to some of these hijackings.

Dr. HUBBARD. He hijacked a whole nation.

Mr. PEPPER. You take a man like Napoleon and in the same position he did not seem to have the psychotic tendencies that Hitler did.

Dr. HUBBARD. If you will note, I have not used the word "psychotic," referring to a hijacking. In my book, I state the behavior is motivated by certain things. We should not get tangled up with whether or not these men are legally insane. That is a matter of doubt.

Mr. PEPPER. Would you say that in general the criminal population of this country, people who commit major crimes, are aberrated people, abnormal people, in some peculiar constitution they have?

Dr. HUBBARD. In a physical sense, no, sir.

Mr. PEPPER. Well, the habitual criminal?

Dr. HUBBARD. Well, of course, with the habitual criminal you have to start off with the questions: What is his IQ? His brain capacity? What is the family like that he grew up in? There are many factors. I think it would be safe to say that the habitual criminal is certainly not the most intelligent fragment of our population. He has fewer skills; he is less a person.

Mr. PEPPER. Doctor, I only have a limited time. I want to ask you this. What is that peculiar quality, that force that powers a human being, that leads one man or motivates one man to go along a normal course in relationship to his fellow human being and prevents another man from doing that? What is that indefinable quality in a person which determines which way he goes?

Dr. HUBBARD. That indefinable thing, sir, if we are correct in where our researchers are currently leading us, suggests that the basic law of nature, the one which we are all subject to, is the law of gravity. Every part of physical existence is prone or related to gravity. Everything physical in nature is built to accommodate and realize gravity as the basic law.

Mr. PEPPER. Is there any known way we can alter that peculiar constitution of an individual to keep people from getting into the crooked way?

Dr. HUBBARD. Our studies are not based in view of a single criminal, but in terms of reducing the proportion within a population. This may well be a matter of proper maternal care or pediatric care.

Mr. PEPPER. Are you saying that these qualities are discoverable in early life?

Dr. HUBBARD. Yes.

Mr. PEPPER. And if we apply our skill there, we might save a lot of these lives from being wasted?

Dr. HUBBARD. Yes, and it might also lie in the areas of malnutrition. For instance, in mice and mink where we can produce this lack of concept of a law, we can do this with manganese and zinc injected during pregnancy. Also the administration of sulfonamides and corti-

sone at the right point in pregnancy. What you are talking about is that the two sets of incorrect genes tying themselves together may opt for this specific defect; or if economic circumstance is such that the pregnant woman's diet is insufficient, she might produce such a child; or if she is medicated with any of the potent drugs she might bear an atypical child. The first reflex the infant has is the capacity to move his head. This is measurable at the time of delivery and is perhaps correctable.

Mr. PEPPER. In that area, it would be a good investment for society to continue with these studies?

Dr. HUBBARD. It would be a whopping investment.

Chairman ICHORD. I have several questions, but I think most of them should be reserved for the executive session. I do want to avail myself of the 5-minute rule to ask just a few questions.

On the way in this morning, one of the members of the press who was seeking an interview from members of the committee and both you and Dr. Harris, indicated to me that you and Dr. Harris seem to be a little shy about an interview. I think Dr. Harris probably indicated the reason why. In fact, I had a discussion off the record with a news media person as to your possible reasons.

Dr. Harris indicated yesterday that he felt there might be some connection between crimes such as skyjacking and the amount of publicity, the way it is handled by the media. Would you care to comment?

Dr. HUBBARD. The last thing anybody ever accused me of was modesty. I am eternally plagued at the FAA as being a ham who will get on anybody's television program. I will confess, there was a time, in order to bring this problem into focus, I was on the Today Show, et cetera. However, as of Friday last, I wish to add nothing further to the disclosures of Mr. Jack Anderson.[1] I think it most expedient. You said there might be a connection between media coverage and criminal action. We can demonstrate graphically there are certain times in the onset of skyjacking phenomena when we have been able to predict what the rates over a given period of time would be and even characterize the motivations under which they would happen. The skyjacking in Baltimore was anticipated some 7 months ago, that that particular kind as to motivation and modus operandi would be the one which would break the law. We did not pinpoint precisely where, although it was reasonable it would be in the Washington area. As long as one can note the distinct relationships between these, then the newsmen, as I told them a moment ago, if they have access in this space, I, like they, we are your guests and would obey your rules. But I stated I would not step out in the hall and do a special thing for them about something I think we ought to shut up about.

Chairman ICHORD. I appreciate your comment ar he Chair has been concerned about the effect any of these hearings have upon possible future activity. But it is one of those things I think needs to be looked into at some point in time, anyway.

Let me get into a different area because you primarily concerned yourself with crimes and more specifically skyjacking committed by the mentally deranged person.

[1] Columnist.

Now, the gentleman from Indiana has indicated that this committee primarily concerns itself with crimes committed with real or alleged political motivations. I would agree that there could very well be crimes that are politically motivated, real or alleged, that could be committed by a mentally deranged person.

In fact, I refer to some of the revolutionary groups within our society as being kooky revolutionary groups. You have indicated you have studied crimes—well, SLA would be a revolutionary group. You found some similarity there. I think we have to be careful or we are going to come up with the conclusion that all the revolutionary Founding Fathers were mentally deranged. There is quite a bit of difference here.

Dr. HUBBARD. But have we properly studied its anatomy or are we making assumptions? The method of study I propose is not one limited to the diagnostic situation. What I propose to do, sir, is whoever is the cause of certain kinds of behavior might well be studied and this is no invasion of personal right or privilege. I am not talking about some form of gestapo, secret police, or any of this. The Government has the responsibility to point out who these people are. It may not even be possible, but maybe sometimes people are driven by worthwhile causes and motivations and the in's simply do not know what the out's are talking about.

Marie Antoinette did not know what she was talking about when she said, "They don't have bread? Let them eat cake." To simply sit in Washington and assume we know why Watts happened, without detailed study of the people in Watts, how then can we just know how to make certain applications?

For example, one of the major outcomes of the study we did was something. Maybe it took a psychiatrist to gather the information. If I had taken a truckdriver into those interviews with me, he would have heard the prevailing thing which was, "I would not have committed my crime had I known I would be immediately returned."

So the solution is not basically a medical one. When that was applied through diplomatic negotiations such as in negotiations with Cuba, the skyjacking rates went down.

Chairman ICHORD. I certainly agree with you, that we could benefit very much by studying how to bring this under control. We do have a very interesting phenomenon in this country and also in the world at large.

Yesterday I mentioned several Marxist-Leninist revolutionary groups who have been operating for quite some time in Latin America, who have committed kidnapings and other terroristic acts.

In fact, the Symbionese Liberation Army is one of many such groups in the Nation existing today. Undoubtedly, these groups are influenced by the more conservative revolutionary groups who advocate revolution by force and violence only when the time is ripe.

Now, these kooky revolutionary groups share the same objectives. But they are "revolution now" groups. They are very critical of your more conservative revolutionary groups for not joining with them in the revolution.

Dr. HUBBARD. Yes, sir. I would submit that it is an error to categorize. What we have is a continual flow that moves from one area to another and any individual may follow at any point along the way.

There comes a point when that individual or group has acted, they have taken their hostage and made their demands. It is at this point that society must conduct negotiations with this man. The more one could know about such groups, the more narrowly these negotiations could be conducted out of knowledge.

May I give you a precise example? Some year and a half ago, and I have to use case material to do this, there was a skyjacker who came charging across from the west coast to the Tampa, Fla. area. He had made it very clear. He wanted to go to Algeria, not Cuba. The plane he was on was too small. Finally, he volunteered, he said, "Is there someone I can discuss amnesty with?" Here was a man willing to give up provided somebody could negotiate with him. A representative did step up. Then within 5 minutes, the skyjacker told the pilot to start the plane up and go to Cuba, although he had previously been ready to negotiate. As he flew out of the United States to Cuba, he called back to the agent in question and used some pretty common vulgarity. He called him a dumb fool. Here a thing that could have been negotiated was not.

How often is it possible that our lack of understanding of these individuals causes us to handle the thing inappropriately? For example, in Argentina when the Ford Motor Co. had an executive kidnaped, a $2 million ransom was set. Ford paid it. Subsequently, every other major company, corporation, in Argentina was hit. We now have no more than three or four major executives in Argentina and have virtually abandoned our operations there.

The story is told of the Russian peasant who found a frozen wolf cub on his doorstep. He fed it and when the cub had grown up, he was eaten.

It is a fact, when you pay, all you have done is to subsidize their activities. At the same time that American industry was being kidnaped in Argentina, American diplomats were not being kidnaped.

Chairman ICHORD. Would you go so far as to recommend that you forbid the paying of ransom demands?

Dr. HUBBARD. This is not to preclude negotiations. They must be done skillfully and there is no skillful body with the expertise able to do this.

Chairman ICHORD. You are talking about the skilled negotiating teams?

Dr. HUBBARD. Yes.

Chairman ICHORD. Consisting perhaps of law enforcement officials with experience in the field, psychiatrists, and other experts?

Dr. HUBBARD. Yes, sir, and that such information can come only from the study consecutively, to understand what the next offender is like, how to treat him.

Chairman ICHORD. Then at the same time, I suppose you would advocate giving that team decentralized authority, so to speak? You would not want them calling back into Washington?

Dr. HUBBARD. No, sir. The statement was made that I was the only kind of guy around who had a certain kind of smarts. That is unfortunate. There is only one and there ought to be 15. There should be men nationwide who share my expertise. There is only one way to do it. Take the interviews I have done, pay these men for the time required to sit and study the material. Meet in concert, bring their additional experience to bear on this material. The development of this would be about $20,000 per man.

Chairman ICHORD. And we would need a man who is not afraid of making misjudgments on the spot?

Dr. HUBBARD. If we are not talking about bureaucrats, these men exist. I believe you are going to have Dr. Fred Hacker along the way. He is a brilliant man who knows a great deal about the European type. He handled the negotiations in the Mideast on the occasion where they plugged up that one exit from Russia. He did that negotiation most skillfully. As a matter of fact, after the Munich situation, Willy Brandt asked Dr. Hacker to come to Munich and debrief the people involved with this thing, to understand what had happened. This kind of study and the willingness to act and make decisions is the kind of activity which needs to be exerted. It is not a thing done by a bureaucratic figure. To begin with, you could not get the expertise in the structure. The real medical expertise exists outside of Government. It sells itself at the higher price. For example, if I come to work to perform some medical function, I get $100 per day. That is grand. It takes money to build this expertise. You will have to be prepared to pay them what they are worth. They do not have built-in retirement programs and so on. There is tremendous expertise out there. It should be brought together. There should be 15 or 20 different Hubbards.

Dr. David Rothstein is one man you would probably want here. He is one of the outstanding students of Presidential assassination attempts. His work is related to my work and Dr. Hacker's. He too is outside the structure. A device should be created where we can pay the going scale for experts, rather than hacks. That is bluntly put, but that is the way it is.

Chairman ICHORD. Your recommendation has great merit and we will want to examine that more in depth in executive session.

Are there any further questions?

Mr. ZION. Dr. Hubbard, almost 70 years ago Lenin spelled out the concept of using others to carry out the violence advocated by the Marxist-Leninists. I quote:

> * * * Let five or ten people make the round of *hundreds* of workers' and students' study circles in a week, penetrate wherever they can, and everywhere propose a clear, brief, direct, and simple plan: organise combat groups immediately, arm yourselves as best you can, and work with all your might; we will help you in every way we can, but *do not wait for our help;* act for yourselves. [1]

Another quote:

> The propagandists must supply each group with brief and simple recipes for making bombs, give them an elementary explanation of the type of the work, and then leave it all to them. Squads must *at once* begin military training by launching operations immediately, at once. Some may at once undertake to kill a spy or blow up a police station, others to raid a bank to confiscate funds for the insurrection, others again may drill or prepare plans of localities, etc. But the essential thing is to begin at once to learn from actual practice: have no fear of these trial attacks. They may, of course, degenerate into extremes, but that is an evil of the morrow, whereas the evil today is our inertness, our doctrinaire spirit, our learned immobility, and our senile fear of initiative. Let every group learn, if it is only by beating up policemen: a score or so victims will be more than compensated for by the fact that this will train hundreds of experienced fighters, who tomorrow will be leading hundreds of thousands.[2]

[1] V. I. Lenin, "Collected Works," Moscow, 1972 (English Language Edition), Vol. 9, p. 345.
[2] Ibid., p. 346.

These quotes represent the philosophy of a group that wants to take over the country by force or violence, or whatever the method, even by economic barrier. I think you beautifully describe the fact that revolutionary activity seems to draw this type of person or certainly seems to stimulate these people.

But I do not believe that we have gotten to the point that people who want to take over this country by force and violence actually go out and recruit and seek this type of person to help with their cause. I feel very strongly they are searching for, actively seeking and enrolling this type of person.

I wonder if you would agree with that?

Dr. HUBBARD. Yes, and I think you have pointed to the fact there are sparkplug individuals whose job is to incite or explode certain groups. The same line of study I have suggested should be conducted in the area of these sparkplug types, to know who he is, how he thinks. But equally so to study his victim, what is his area of gullibility, how is he had, how does one detoxify this? The finding of remedy is often a little difficult.

Some years ago in Rome there was a terrible plague that eternally bothered the city—called malaria, meaning the bad air, the bad air coming in off the Pontine Marshes. It was felt the plague was caused by this bad air. Then it was found there was a mosquito that produced a certain type of disease but until the microscope was developed, it was malaria, bad air.

I propose to you, sir, that there are thoughts transmitted almost as readily as bacteria or viruses are. They are created in events and travel through the media to new absorptive areas. I refer to this as the desperate mob. This is defined as being a group of like-minded people bent on the same objective who through the media of television and radio were within line of sight of Bombay. Certain ideas in skyjacking is the prime example of this. Ideas jump across whole oceans, they move with great speed.

Until the Hearst kidnaping, there had never been, to my knowledge, any use of audiotapes. Watergate sits over here, hanging on tapes. All of a sudden in the Hearst kidnaping, they are used in that instance. Then in Atlanta, then again out at the airport, where the man makes volumes of tapes. Some little symptom that happens over here is duplicated. For instance, the jumper-jack. We think of the first jumper-jack as being a man named Cooper but the first one was a Canadian who committed the crime 2 weeks before Cooper. It was well publicized. Immediately, Cooper happened, then 17 more just like it. There had never been such a rash. Then here was the instance of what I consider the careless management of news. It can have the same kind of consequence in relationship to civil disobedience. The fires can be fanned.

I would propose to you further that perhaps the drug culture as we know it would never have been as we know it had Life magazine not codified it and sold it.

Chairman ICHORD. The gentleman from Florida has a question.

Mr. PEPPER. Isn't there a distinction between the causes of crime in people like the hijacker over in Baltimore, who apparently wanted publicity and did not anticipate, perhaps, any personal reward from it, and other crimes, such as the man who coolly and calculatedly becomes a part of a revolutionary group, is committed to it and becomes the typical revolutionary?

Dr. HUBBARD. Mr. Pepper, I do not know and I do not think you know or anybody else in the group knows until we study them.

Dr. Harris mentioned the man Roentgen and the matter of X-rays. He was asked what did he think, and he said, "Think? Hell, I did not; I investigated." I think our assumption would be far more accurate if we studied these individuals so we could know more precisely.

Mr. PEPPER. Now, take the matter of the Hauptmann kidnaping of the Lindbergh baby. Maybe it is a subterfuge or maybe it is a cover-up. These people in the Hearst matter are talking about—instead of taking $2 million or $4 million for themselves—they are talking about giving food to the poor.

Dr. HUBBARD. Sir, the difference may be there, but we will never know about Hauptmann because he is dead. As such, evidence is gone. But when the Symbionese crowd is picked up, the question is will we study them? It is your assumption the man in Baltimore was different. His personal reward was death, that was his target.

Mr. PEPPER. Would you describe Lenin as a criminal?

Dr. HUBBARD. I do not know. Lenin too is dead and lies in his tomb. But will we study the Symbionese group? Will we study the folks in Atlanta? Among skyjackings which occurred over a 12-year period of time, only 160 men have been involved. We have spent millions of dollars on this program and that program and for sky marshals. It is no great trick to do clinical studies over a 12-year period of time on only 160 men.

In the same vein, let us say there are 50 significant kidnapings. Why not study those 50 significant kidnapings and see if they categorize? Do they come in together? What do they have in common with an agitator from the street?

In a little town out here, well, it is a bedroom suburb of Washington, a post office clerk spent $1,000 of his money saying he wanted to withdraw his vote from Mr. Nixon. Now, in his own way, this is an exaggerated thing. He has spent himself to register his protest. On the other hand, there is this skyjacker who has the same message. One manages to restrain himself and work within the structure, the other does not. It is as germane to study the postman, to find out why he felt his opinion was not being expressed and if you take both of these, how many Americans are the two trying to speak for, but in different ways, unwilling to let legal process take place?

Chairman ICHORD. The time for the gentleman has expired.

Thank you very, very much, doctor, for your testimony. I want to follow the proposal of the committee. We will declare a recess for a 5-minute period so the committee can go into executive session.

[Whereupon, at 11:50 o'clock a.m., Thursday, February 28, 1974, the committee recessed, to reconvene in executive session.]

TERRORISM

Part 1

THURSDAY, FEBRUARY 28, 1974

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

EXECUTIVE SESSION [1]

The Committee on Internal Security reconvened in executive session at 12 noon, in room 311, Cannon House Office Building, Hon. Richard H. Ichord (chairman) presiding.

Committee members present: Representatives Ichord of Missouri, Claude Pepper of Florida, Richardson Preyer of North Carolina, John M. Ashbrook of Ohio, Roger H. Zion of Indiana, and Tennyson Guyer of Ohio.

Staff members present: Robert A. Crandall, counsel; Audrey Rollins, associate to counsel; DeWitt White, minority counsel; Herbert Romerstein, minority chief investigator; and William G. Shaw, research director.

Chairman ICHORD. I assume you would have teams well versed in skyjacking, for example, and another one well versed in political kidnaping?

STATEMENT OF DR. DAVID G. HUBBARD—Resumed

Dr. HUBBARD. No, sir. These regional teams should have expertise across the board. They are intimately related. These should be men available for call, with a broad enough expertise, enough experience with Government itself, to know how to relate to the FBI.

Chairman ICHORD. Do you visualize a team in St. Louis, in New York——

Dr. HUBBARD. On a regional basis, five teams basically.

Chairman ICHORD. What would happen in Podunk, Iowa?

Dr. HUBBARD. A year and a half ago, a man skyjacked a plane coming out of San Francisco and he ended up in New York. He announced he was going to crash the plane into Kennedy Airport. This was the first man to talk about crashing a plane into the ground.

At that time, TWA and FAA requested that I talk to them and also directly to the skyjacker. I was on land trying to convince him to come to the ground so he could be shot. Alexander Graham Bell devised some hell of a machine. Skyjacking itself is handled by a hot line. The few experts that there are are pulled into a common network and we move along with it on point, dealing with the management of that situation.

[1] At a meeting on July 16, 1974, the full committee approved the release of the executive proceedings.

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There are technical ways that if men are regionally based, they become a resource to that area in the teaching sense, in working out all kinds of problems. But by telephone, they can be several hundred miles away and be in contact instantaneously.

Chairman ICHORD. Of course you would still have the problem that any law enforcement group would have in dealing with a family. Would there need to be any legislation in that area?

Dr. HUBBARD. I believe ransom should be prohibited, by law. I am well aware of the fact we may lose some children that way. But in the founding of this country, our great grandparents were not indemnified against the Indians. When the wagon was going across the plains and the child was taken, they did not give the Indians rifles in return for the child.

The Symbionese Liberation Army members, when they are given cash, are going to use that cash against us. We simply have to take a hard course and I say that, sir, in terms of my own children. If my own children were kidnaped tomorrow, in the interest of the Nation, I would refuse to pay the ransom.

Chairman ICHORD. I would have to agree with you. I never thought the Hearst girl was in too bad a position until recently.

Dr. HUBBARD. This has been caused by mismanagement.

Chairman ICHORD. Dr. Harris?

STATEMENT OF DR. F. GENTRY HARRIS

[The following represents private opinion, and not necessarily that of the U.S. Public Health Service.]

Dr. HARRIS. There have been a number of proposals already made, written up. We have had to do them in piecemeal style and submit them to various agencies, both public and private and with little success. People see this problem as a very vast thing. It is; it has many facets. There is no existing structure in which all the necessary aspects can be brought together. We have wondered if legislation could not help us, to get all these pieces and bits together.

Chairman ICHORD. Legislation could do what?

Dr. HARRIS. Help us. We do need the assistance of the Federal Bureau of Investigation, Law Enforcement Assistance Administration, Department of State, all the appropriate Federal institutions.

Chairman ICHORD. I am sure there is existing authority. I believe there are ample existing statutes to create and operate such teams.

Dr. HUBBARD. When the Federal Bureau of Investigation was created in 1927, there was no sizable body of physical evidence at that time. They were charged with the obligation to obtain knowledge and to communicate it. They have beautifully fulfilled their function. They have developed the basic technique as to physical evidence. So now, wherever you go, there are competent experts in each of these departments able to perform these techniques. I would say the current Federal Bureau of Investigation should be disbanded. It has achieved its goal. We need a new Federal Bureau of Investigation, but it should be entitled "Bureau of Human Factors."

In a sense what one needs is a bureau equivalent. What we sort of propose at this point is that a test period of some years be taken, where a consortium can perform this work to determine whether what

we have already done can be expanded and if so, it can then be brought into Government on a bureau level.

Chairman ICHORD. I am wondering what would be the reaction if the group was established and its first case would be that 1 out of 1,000 cases where everything goes wrong.

Dr. HUBBARD. I would suggest to you that what we need is a new "Federal Bureau of Behavioral Investigation," FBBI. We would ultimately have to do this, as our industries are more vulnerable to attack. We must understand behavior.

Dr. HARRIS. With your permission, I would like to read a few extracts from some things I have collected, a sort of grab bag I dug into just before I left for these hearings. These are the kinds of things we are dealing with. For instance, I do not see any one agency such as the Department of Justice really being able to deal with this situation, because it has essentially a single mission and it has nothing to compare its operations with. I would like for you to listen to these extracts from that point of view. We want criminologists, law enforcement people, and others operating very closely with us, but we have some severe criticisms of our present Federal structure, its agencies, and representatives. They have not been able to deal with the matter as a coherent whole and on a comparative basis. For example, what I have to read really puts the whole issue of legality on a comparative basis with illegality, including violence, terrorism, and so forth.

The first excerpt I take from an article by Herbert W. Titus, a lawyer, in the Center Report for February 1974. He titles his article "The Perils of Decriminalization." He says:

> Whatever the purpose or combination of purposes of the criminal law, punishment, deterrence or rehabilitation, the criminal justice system isolates the individual as the source of the problem. Only the methods of dealing with the individual differ. The traditionalist would admonish the law violator to shape up; the behaviorist would shape him up. Whether or not all judgment is past, the remedy triggered by the state's use of the criminal sanction focuses exclusively upon the individual's failure to cope with a given value system and given economic, political or social conditions. The criminal justice system, then, inevitably is single-purposed.
>
> The treatment programs, proposed as a substitute for the criminal justice system, do not depart from this theme. The solutions of an alcohol treatment or a drug rehabilitation program focus exclusively upon the task of helping the individual to deal with his or her problem so as to achieve reintegration into society. Again the society's value system and its economic, political, and social conditions although questioned are not seriously challenged. Rather, they are accepted as inevitable and thus unreachable.
>
> This common feature, that of isolating the individual to the exclusion of other sources of a social ill, overrides whatever differences there may be between the criminal justice and the treatment models.
>
> Uncontrolled government crime, now that it is becoming more visible, is a greater threat to that credibility [of the criminal justice system] than the enforcement of marginal crimes.
>
> What we have now is a hierarchy of crimes dictated more by what those in power are not tempted to do than by what poses the greater threat to the fabric of our democratic society.
>
> Even in the enforcement of those laws against crimes that those in power are tempted to commit, there is a consistent pattern of more lenient treatment. Even though Spiro Agnew's activities may have cost the taxpayers of Maryland a bundle, he is given only a fine and probation. And that treatment is consistent with the sentence pattern for all income tax evaders. Judges, after all, understand the temptations to evade taxes. They understand the loss of Kiwanis Club esteem. Thus, they rationalize not sending Agnew and others to prison. Result: Our jails are filled with those who have the least to lose, not with those who have

the most to lose. And it is not just a question of sentencing disparity. It is also a problem of law enforcement priorities. Present allocations of money and personnel reflect the importance attached to the FBI crime index, such as tax evasion, antitrust violations and other business property crimes [which are not on that list].

I picked up a book that happened to come to me on Monday, just before I came here. W. L. McBride is the author of "Fundamental Change in Law and Society—Hart and Sartre on Revolution," Mouton, The Hague, 1970. I will read to you at random a few statements I picked out under "violence" in the index.

There may be revolutions in which only the identity of the officials, not that of the constitution or legal system, changes.

I should note that this book points out a lot of the Marxist-Leninist type of concerns; the people quoted are oriented in that direction. But to go on.

There are always law-breakers. There are usually some law-breakers who get away with it. There are sometimes law-breakers who manage to take control of government illegally but then continue to govern otherwise according to the established legal system. There are occasionally large groups of law-breakers who manage to prevent a given legal system from being effective either among a certain segment of a country's population or even in a certain part of a country's territory, et cetera, on up to the case of a complete overthrow of a once effective legal system, either by violence or by mutual consent or by a combination of both.

The author now refers to a continental lawyer named Lukacs,[1] whom I have never heard of, but he says:

His argument [Lukacs'] is that, although the romantic longing found in some new Communist parties to indulge in illegality for its own sake is childish and absurd, law as a phenomena merits no more special respect or attention than does the philosophy of law, of ethics, or of metaphysics. All such distinctions, and even the distinction between law and violence, according to Lukacs, are purely social and historical. In "Legality and Illegality," he [Lukacs] concludes:

'The Proletariat of Central and Western Europe still has a difficult road ahead of it. In order to arrive by struggling at the consciousness of its historical vocation and of the legitimacy of its domination, it must first learn to grasp the purely tactical character of legality and of illegality, in short, to get rid as well of the cretinism of legality as of the romanticism of illegality.'

I stress that last sentence.

The author refers to another social scientist very much interested in legal systems, by the name of Hans Kelsen. "Kelsen and his followers are incorrect if they are taken as asserting that the State is essentially a legal order and nothing more."

To add to this, it has been fully demonstrated in these hearings in the last 2 days that the State is indeed much more than just a legal system. And we should remember that laws can change, and that they can be compared with other things. But what we are doing here is comparing the existing legal system with the whole gamut of illegality, violence, terrorism, and its partisan, positive—by which I mean its effective and tactical—uses. In other words, if someone, or a group, wants to condone them, they do have uses. We tend to treat them negatively: let's get rid of them, or hide them; they should not exist, and so forth. But here we are, knowing full well they *do* exist. Let's face those facts, so that we can put ourselves in a better position to deal with them. Thank you.

Dr. HUBBARD. The moment a man is convicted, prison walls are effective in keeping researchers out as well as keeping prisoners in.

[1] Gyorgy Lukacs, prominent Hungarian Marxist-Leninist writer.

We need that prisoner as research material through which we could understand where we are, where we have been, and where we are going.

Chairman ICHORD. Doctor, both of you in this respect have raised questions that are very, very broad concerning the whole matter of prison reform which is outside the scope of this committee.

I am greatly disturbed when I see what is happening in prisons, how things are handled. I am sure you have different ideas than I as to what we do need to do. Certainly, we all know something needs to be done in handling the whole problem, but let me ask you this: In an investigation we made entitled "Revolutionary Activities Directed Toward the Administration of Penal or Correctional Systems," we were engaged in a hearing where we were subject to the charge that we were trying to blame all prison riots and disturbances on subversive influences.

One of the things we did find in the investigation, which other committees looking into it had just brushed aside and had given no attention whatsoever, is that within the past 3 or 4 years revolutionary groups within the Nation have targeted prisons as a source of agitation.

Now, disciplined revolutionaries are pretty much of the unanimous opinion that now is not the time to pull off a revolution. Instead, they maintain that this is a period for exacerbating the many thorny problems we have in our society; prisons are one of them.

We found an avalanche of revolutionary material directed toward prison inmates. This included pamphlets and instructions on the making of Molotov cocktails, other weapons, psychological propaganda, and so forth.

Dr. HUBBARD. In the practice of medicine, when we want to grow bacteria, we set up what is called an auger plate. In our system, we have both agitators and sparkplugs. The Soledad thing is a good example of that. From the outside, there are tensions that come toward the prisoners designed to influence them. In many instances the way a prison is run, it could be termed an auger plate. You have the combination of a group of vulnerable men who see no reason not to buy the philosophy being pushed.

Chairman ICHORD. I do observe that many of these former inmates who may have been loners before are taking to the streets in groups.

Dr. HUBBARD. The bonds they form between themselves while in prison—when they come out those bonds hold them together and one has forged a gang, where before they were individuals. This happens repeatedly.

Chairman ICHORD. Do you have any material that you could make available to the committee on the Black Panthers and the Symbionese Liberation Army?

Dr. HUBBARD. Some of it would be available within the ethical framework for me to make it available. A representative from this committee would be welcome in our offices at any time and could examine the material that could be made available. I am associated with a group around the Nation, but I practice alone. What I am saying, those offices and materials are available to any member of the committee. As to the physical reproduction, I do not know if I can do that or not. If I can, I will have those made available to you.

Chairman ICHORD. I did not understand how many disciplines you would need. If you consider how small our effort is at this time and logically develop the growth, it might be 3 or 4 years before you could quietly pull together the men. They would be from law, medicine, sociology, linguistics, criminology. There are a large number that would actually be required.

Dr. HUBBARD. Such a team would have to be well trained. I would not want to get a group together where you would have conflicting approaches; then you would have more problems.

Chairman ICHORD. You mean the action team?

Dr. HUBBARD. Yes. The action team could be as few as 20 men who would sit on top of a pile of studies.

Chairman ICHORD. Would you write up this proposal and offer it to the committee? I would like to take it up with various agencies as well as study the feasibility of formulating legislation along that line.[1]

Dr. HARRIS. I have covered the recommendations regarding this sort of thing in my statement yesterday. For the short term we could get together a group of people representing various disciplines. I do not know exactly how long it would take—it would take days, probably a week of concentrated work. We have already done a lot of work on this, have a lot on it in hand. I have listed as an addition to the statement yesterday 33 major principals scattered over the country who are associated with us.

[The list follows:]

LIST OF MAJOR PRINCIPALS INVOLVED SO FAR

Bender, Lauretta, M.D. (N.Y.)
Bittner, Egon, Ph. D. (Mass.)
Buxton, Rex, M.D. (MD)
Coombs, Don H., Ph. D. (Idaho)
Eggertsen, Paul, M.D. (WA)
Erway, Lawrence, Ph. D. (OH)
Essman, Walter, M.D.
Ferguson, Douglas, Mr. (CA)
Fish, Barbara, M.D. (CA)
Gacek, Richard, M.D. (Mass.)
Green, James, M.D. (CA)
Hacker, Frederick, M.D. (CA)
Harris, Boas, M.D. (GA)
Harris, F. Gentry, M.D. (CA)
Hawkins, Joseph E., Jr., Ph. D. (Mich.)
Haynes, Herbert, M.D. (D.C.)
Hobeika, Claude, M.D. (OH)
Holzman, Phillip, Ph. D. (Ill.)
Hubbard, David G., M.D. (TX)
Karson, Samuel, Ph. D. (Mich.)
Kram, Charles, Ph. D. (FL)
Lim, David J., M.D. (OH)
Messinger, Sheldon L., Ph. D. (CA)
Miron, Murray, Ph. D. (N.Y.)
Norman, Haskell, M.D. (CA)
Ornitz, Edward, M.D. (CA)
Percy, Walker, M.D. (LA)
Prescott, James W., Ph. D. (DC)
Riecken, Henry, Ph. D. (PA)
Riopelle, Arthur J., Ph. D. (LA)
Saltzberg, Bernard, Ph. D. (LA)
Stanford, Donald, M.D., (CA)
Wallerstein, Robert, M.D. (CA)

Now, I have roughly calculated the cost of meeting a short-term commitment, of one study team, meeting probably a whole week, to get together a coherent set of recommendations for this committee. This would involve some 20 or 25 people. There would be several disciplines that we would want because of various necessary viewpoints. I have estimated it would cost in the neighborhood of maybe $25,000. I do not know where we are going to get the money.

Chairman ICHORD. We have an existing agency of Government that could establish such an organization immediately, the LEAA.

[1] For the recommendations received by the committee, see the appendix, pp. 3081-3083..

Dr. HARRIS. The LEAA is one of the well-wishers I referred to yesterday. We cannot carry out this work on well-wishing.

Chairman ICHORD. Mr. Pepper, any questions?

Mr. PEPPER. No, but I am intrigued by the proposals you have made and it is the same old thing, bringing a fresh point of view into a system. We have a system of law enforcement in the country and most of the people who make the policies are not trained psychologists. They go along on their experience, their judgments, and follow largely the techniques applied prior. But I think you have presented to this committee a great challenge to see if we cannot help you.

It is very vital to the country.

Dr. HUBBARD. I am 54 and have two new grandbabies. I was getting stale on the whole issue of our country. We have struggled with agencies and butted heads and the rest of it, but I am more confident of our Government now than I was 4 years ago. Consider this in terms of millions of grains of sand—one doctor contributed a small finding to a study conducted by two other doctors. Within 4 years they have brought the study to the attention of the FAA; have conducted intraining programs for various industries; and finally that man is sitting before this congressional committee.

What this suggests to me is that a reasonable form of government, if it is to be a democracy, requires it would first be sensitive and second intelligent. How is it that one man has moved about and in only 4 years has moved through the structure far enough to sit in this chair today and receive the encouragement that has occurred? The very fact we can do this says the structure in which we live is basically good. Some of the problems we have run into are maybe some of the problems that go with democracy. But I would like for you gentlemen to know we are more reassured with the validity of our society than we were a few years ago.

Mr. PEPPER. For 4 years I was chairman of the Crime Committee of the House of Representatives, and we were dealing in this area, trying to determine what can be done to reduce crime in this country. Some people think all you need to do is have more police. Probably you would jam the courts if you did.

Dr. HUBBARD. It is not simplistic. It is complicated and things have to go together.

Mr. PEPPER. These other methods that we have employed have not been so effective and it would seem to me the judges of this country would be interested. The judges, with the means they have in hand, try to take into account what may be discovered about an individual and try to deal within the limited scope of their authority. But they have the compulsion of vindictiveness, of penalizing the individual, which we are not able to get away from entirely. So the whole criminal justice system really needs more of the sort of thing you are talking about.

Dr. HUBBARD. Yes, sir. I would concur that, properly handled, the findings from such studies might well implement the training of parole officers. The individual is willing and eager to be trained, but first you have to evolve theoretical considerations to be taught to him.

Mr. PEPPER. It seems to me the most important is preventing school dropouts. Ordinarily, from the 7th, the 9th, up to the 10th grades, right away you have a potential criminal class. You cannot

get much money from the Congress and the administration to prevent school dropouts. We cut the aid we were giving from $4 million to $2 million. Yet they will give you more money to hire more police or build more big prisons. But to stop dropouts, you do not excite anybody.

Dr. HARRIS. I would like to add something very important on that. I wish Mr. Preyer were here to hear this, but maybe he can read it later.

You have heard of a phenomenon called learning disability or disabilities. They are very poorly misunderstood. There are cases, for instance, of mixed dominance, where you have a right dominant eye, a left dominant leg, and so on, all kinds of twist-ups. We wonder if there are twist-ups of the vestibular with the visual system, et cetera. Learning disabilities are one of the things affected by conditions in the inner ear, which is being studied in the skyjacker.

If you know anything about a child putting up with our primitive educational system and our lack of knowledge as to learning disabilities and how extraordinarily discouraging this is, there is no mystery as to why he may drop out. Then what kind of orientation and behavior does that lead to? I mentioned yesterday there could be a hookup between the vestibular system and all sorts of secondary psychological and behavioral abnormalities.

Chairman ICHORD. Thank you, Doctor. I certainly agree with you, Dr. Hubbard, we do have a free society. If we are to remain a free society, certainly we are going to have to find ways to respond to things that exist in that free society. We are talking about a very isolated field at the present time. History dictates to me that we have no insurance that we will remain a free society.

We can sit here and draft good laws until we are black and blue in the face, but until we have implementation on them, it will be to no avail. In the Law Enforcement Assistance Administration Act, the Congress did provide for the establishment of an agency which should concern itself with what you are proposing. That agency, established within the Department of Justice, which Mr. Nittle has just brought to my attention, is the National Institute of Law Enforcement and Criminal Justice. It is provided that "the Institute shall be under the general authority of the Administration." It is the purpose of the Institute "to encourage research and development to improve and strengthen law enforcement." [1]

Have you contacted the institute?

Dr. HUBBARD. At various times. I would say that enactment is some of the best lip service.

Chairman ICHORD. It has been directed to carry out programs on behavioral research.

Dr. HUBBARD. That agency cannot even afford a psychologist at the Medical Center for Federal Prisoners in Springfield, Mo. This is the only hospital the Federal system has. It does not have enough money to perform standard services much less research. The Director of that institution went into court and was asked if his organization could perform psychotherapy. The director of the hospital admitted under oath that the hospital was incompetent to perform psychotherapy.

[1] 42 U.S.C., Sec. 3742.

So that is beautiful lip service to an ideal, but it does not practically execute and for rather good reasons. Free research could not come up under the Law Enforcement Assistance Administration, because it might fall within the concerns of the appeal section or the Bureau of Prisons, or the careers of prison directors. You might as well ask your slave to criticize you.

Chairman ICHORD. That is one of the problems in a bureaucracy. In fact, it is one of the problems in a free society.

Gentleman from Indiana, I think we have all missed our lunch but you.

Mr. ZION. I will be real brief.

Chairman ICHORD. Mr. Pepper, I wonder if you could take over, because I do have a luncheon appointment. If I may turn it over to Mr. Pepper, then you gentlemen can stay as long as you please.

Mr. ZION. Back in real life, I was in a marketing position with Mead Johnson & Co. Among other things, they did a lot of research on prenatal care and how it might affect an infant in its development. I was somewhat surprised to hear you state trace element deficiencies might have some effect. We did not feel there were such things in humans. We found it difficult to produce them in animals.

Dr. HUBBARD. This trace element thing can be triggered out by a genetic effect in which an animal requires a higher blood concentration to get along on manganese. So if it has a normal input, there is going to be trouble.

Here is a woman, midperiod, right at the point that certain tiny little crystals develop. At that point, or over a large period, she is given a large dose of sulfonamide which chelates the magnesium sulfide.

We are going to jump across from mice and mink, which are not too close to men, over to the rhesus monkey. Such studies are being done now at Louisiana State University.

Mr. ZION. I think the man who is doing that is Art Riopelle.

Dr. HARRIS. He is one of our group, one of the best.

Dr. HUBBARD. The group there is a darned competent bunch. Art is working for nothing. I am working for nothing on that project. Dr. Harris is also working for nothing. The $40,000 we are spending is for Kennel Ration, airplane tickets, computer time, and the rest of it.

We all share a common interest that will get it done. Parts of that project are running piggyback on some other projects. We have recently moved child development monkeys down there because they have run out of money.

The presence of the trace element may be more significant than is known. We did not know that we could mill the brown off wheat until we did it; then President Roosevelt put it back in our bread.

Manganese and zinc are two particularly important things and especially in terms of the uniqueness of the tiny structure we have been looking at. They are like tiny grains of sand that sit upon a pan in the back of the innermost ear area. The organ is nonadapting. The input is almost like a battery. If it is inadequate, the children at birth do not have the proper motor ability. Their development proceeds at a slow failure level during the first year of life.

Mr. ZION. We saw some of that in calcium.

Dr. HUBBARD. The way we blundered into it was working with albino rats. The mink industry had a problem with regard to albino mink. They tended to die easily, sometimes as abortions. When we

examined them, we found the crystals were missing. What we found was that the albino mink had no pigmentation in the epithelium. The pigment in these cells interacting with the trace elements, zinc and manganese in solution, precipitated to form these crystals.

In the albino, in the absence of this pigment, this could not occur. Then we found if we took the pregnant mother who would have these defective indications, if we would give her excessive amounts of manganese we could override the pigmentary defect and still produce the crystals. So at this point we are looking at a specific tiny defect of development which can come from genetic causes. At that point, one is looking at a specific defect caused by many different sorts of things that can have detrimental physical results.

Essentially, life is motion. The animal that does not move as other animals move is going to have a different image of himself than the one who properly can move against the force of gravity.

It would appear that nature's basic law, which is against gravity, is move or die and relative discrepancies can result in those learning defects related to the dropout. To develop the man who cannot conform himself to the needs of his society and who acts out the dramatic daydreams of Robin Hood and the rest of them, it is a beautiful study. But it is not a study which cannot be conducted without the warmth of the protection of Congress. It would have to be cuddled right up against somebody's bosom to work.

Mr. ZION. I have no additional questions. I appreciate your scholarly analysis as to trace elements.

Dr. HARRIS. I might add for all here—the vestibular system, the inner ear—we have been warned about it. Many, many years ago, a notably brilliant psychiatrist, Paul Schilder, kept hammering at this thing. But he was ignored. It is very difficult to get at because it is deeply buried behind the ears, in the petrous bones. It is very difficult to study, especially in the live specimen, because once you puncture the system, you produce deafness. Techniques may eventually be developed to study this. These will not be cheap. But this thing has been neglected for too many years. Nobody has paid much attention to it. I once reviewed a book of some 2,000 pages in which there was every opportunity for the author to mention the vestibular system, sensitive to gravity, as a prime source of ubiquitous stimulation. He was talking of the whole question of de novo activity in the nervous system which has never been satisfactorily explained. It is gravity which runs the vestibular system. It gives us our basic motor which runs our most primitive brain centers, on up the line to the highest ones. The vestibular system runs the idling system that keeps us in readiness emotionally and physically.

Mr. PEPPER. You have been two of the most valuable witnesses who have ever come before the Congress. I wish that everybody who was in a policymaking position could have heard your testimony and would have had an opportunity of learning more of what you could give by way of advice and counsel.

We will try to profit as much as we can by what you have said and see if we can give the country the benefit of it.

On behalf of the committee, I wish to thank you for being here.

The committee is adjourned until further call of the Chair.

Thank you.

[Whereupon, at 1:27 p.m., Thursday, February 28, the committee adjourned, subject to call of the Chair.]

TERRORISM

Part 1

THURSDAY, MARCH 21, 1974

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

PUBLIC HEARINGS

The Committee on Internal Security met, pursuant to recess, at 10:10 a.m., in room 311, Cannon House Office Building, Hon. Richard H. Ichord (chairman) presiding.

Committee members present: Representatives Ichord, of Missouri, Richardson Preyer, of North Carolina, John M. Ashbrook, of Ohio, and Roger H. Zion, of Indiana.

Staff members present: Robert M. Horner, staff director; William H. Stapleton, assistant staff director; Robert A. Crandall, counsel; Audrey Rollins, associate to counsel; DeWitt White, minority counsel; Herbert Romerstein, minority chief investigator; and William G. Shaw, research director.

Chairman ICHORD. The committee will come to order.

The Committee on Internal Security has convened today's hearings to further examine and analyze this vitally important subject, "The Nature and Dimensions of Terrorism." Terrorism has increased in this country to an alarming degree. Also we see numerous instances of it in other parts of the world and many of our public and industrial officials are under constant threat of being kidnaped or killed by terrorists. Because of the importance of the problem and the need for immediate effective action, the committee, through these particular hearings commenced this February, is undertaking an indepth examination of the matter with the view of determining what, if any, legislation or Federal programs are needed to bring the situation under control.

As a result of extensive hearings held by this committee since 1969, I became very concerned about organized terrorism carried out by such groups as the Weatherman faction of the Students for a Democratic Society, elements in the Black Panther Party, and related practices of the Revolutionary Union, and various other Marxist-Leninist groups. As I predicted last year, the revolutionary materials published by these organized groups and their guerrilla warfare teachings have gone far in creating a climate conducive to the terrorism that we are witnessing today.

This committee's present investigation on this subject matter is far from complete. However, from the hearings already conducted, sufficient facts and evidence have been developed to convince the

Chair that the problem needs innovative ideas. In the earlier hearings knowledgeable witnesses gave us very valuable testimony and made some very significant recommendations. As a result, the Chair has become especially interested in the establishment of regional study and action teams consisting of various disciplines, such as FBI officials, criminologists, psychiatrists, and media analysts, which would be located at various points throughout the United States. When a kidnaping occurs or some important act of terrorism is committed, one or more of these teams would immediately move to the site of the crime and take charge of the investigation, conduct negotiations, take steps to protect the victim, and in general participate at the highest level of the operations.

The Chair has already conveyed this proposal to the Department of Justice and in a letter last week strongly urged that the Attorney General give serious and expeditious attention to the establishment of a number of these study and action teams. I am convinced that the authority for a program of this type already exists within the provisions of the Law Enforcement Assistance Administration program. I am hopeful that we can see some results from my recommendations in the near future.

Today, we are extremely privileged to have as a witness Dr. Frederick J. Hacker, a practicing psychiatrist who resides in Beverly Hills, Calif. Dr. Hacker's expertise in the field of terrorism has been gained from extensive research and studies conducted over the years. He is so eminently qualified that he was called upon to act as a consultant and mediator during the terrorist incident in Vienna, Austria, last summer. He also has been consulted by the Hearst family in connection with the kidnaping of their daughter, Patricia Hearst. Only last week we appeared together on a five-part nationally televised program presented by NBC that examined kidnaping and terrorist activities. The program was entitled "Not for Women Only," and was moderated by Barbara Walters.

Dr. Hacker, I am grateful to you for accepting my invitation to appear as a witness before this committee.

Dr. Hacker has not had sufficient time to prepare an opening statement. He does propose to prepare remarks later on for the record. If there be no objection, Dr. Hacker will be given the privilege of preparing such an opening statement for the benefit of the committee.

I will also at this time, if there be no objection, ask permission to put in additional biographical data about Dr. Hacker. There being no objection, that will be done.

[The material referred to follows:]

CURRICULUM VITAE

Name: Frederick J Hacker

Born: January 19, 1914 in Vienna, Austria

Address:
The Hacker Clinic
160 Lasky Drive
Beverly Hills, Ca 90212

The Hacker Clinic
3621 Century Boulevard
Lynwood, Ca. 90262

Phone:
275-1105
272-6850

636-0779
635-8048

Universities: University of Vienna Medical School, 1932 - 1938.
University of Basle, Switzerland Medical School, 1938 - 1939.
M.D. Degree.

Internship & Residencies:
First Vienna Medical Clinic, 1936 - 1937.
Vienna Psychiatric & Neurological Clinic (Wagner-Jauregg) 1937 - 1938; Clinical and research assistant.
Neurological Institute, Basel, Switzerland, 1938 - 1939.
St. Francis Hospital, Jersey City, New Jersey, 1940 - 1941.
Manhattan State Hospital, New York, N. Y., 1942.
New York State Psychiatric Institute & Hospital, 1942 - 1943.
Menninger Foundation, Topeka, Kansas, 1943 - 1944, Resident and Staff Psychiatrist.

Licensures:
New York State License #40328
California State License #G 391
Austrian License

Board Certifications:
Diplomate, National Board of Medical Examiners.
Diplomate of American Board of Neurology & Psychiatry, in Psychiatry, June 1951.

Academic Appointments:
Sloan Professor, Menninger Foundation.
Teaching Faculty of Menninger Foundation, Topeka, Kansas.
Guest Professor of Psychiatry, University of Vienna, 1958 - 1964.
Professor of Psychiatry, University of Kansas (Clinical) 1960 - present.
Professor of Psychiatry, University of Southern California (Clinical), 1964 - present.
Professor of Psychiatry at Law, University of Southern California (Clinical), 1968 - present.

President, Sigmund Freud Society, Vienna, Austria, 1968 to present.

Chief of Staff of The Hacker Clinic in Beverly Hills and Lynwood, California, 1947 to present.

Other significant appointments:

Since 1947 on Panel of Court Appointed Psychiatrists for Superior Court of Los Angeles County.

On Panel of Court Appointed Psychiatrists to Federal Court.

Advisor to the Austrian Government regarding legal and prison reform, officially appointed by the Austrian Minister of Justice, as Chief Psychiatric Advisor for Legal and Prison Reform. On my suggestion and under my leadership, a special classification and treatment center was erected in Vienna.

I have been a Loeb lecturer at the University of Frankfurt and have been guest teacher at the Universities of Frankfurt, Heidelberg, Giessen, Berlin, Munich and at the Psychoanalytic Societies of Hamburg, Berlin, Vienna, Salzburg, etc., and have lectured at many other American and European universities (medical, sociology, criminology, psychology, art and philosophy departments) and have participated in many national and international meetings, (Hacker Foundation, Menninger Foundation, Stone-Brandel Foundation - Chicago, Salzburg Humanism Seminars, etc.).

Society Memberships & Fellowships:

Local:
Los Angeles County Medical Association
Southern California Psychiatric Association
Los Angeles Psychoanalytic Society (Founding Member)
Southern California Psychoanalytic Society and Institute
Etc., etc.

National:
American Medical Association
American Psychiatric Association (Fellow)
American Psychoanalytic Association
Topeka Psychoanalytic Society
World Mental Health
American Orthopsychiatric Association
American Group Psychotherapy
Etc., etc.

International:
International Psychoanalytic Association
International Association for Social Psychiatry
Plus various European professional organizations.

Major Book Publications: (in German):

"Versagt der Mensch oder die Gesellschaft - Probleme der modernen Kriminalpsychologie" Europa Verlag, 1964.

"Aggression", Verlag Fritz Molden, 1971, (6 editions estimated sales up to now 250,000.) Translated into 14 languages.

"Materials to Aggression", Verlag Fritz Molden, 1972.

"Terror & Terrorism", Verlag Fritz Molden, 1973.

Chairman ICHORD. Dr. Hacker, you are recognized to proceed as you wish.

STATEMENT OF DR. FREDERICK J. HACKER

Dr. HACKER. Thank you. I am very grateful for the opportunity. I apologize that due to the shortness of time it was not possible to prepare some written statement, which I will do later on.

[The written statement later supplied by Dr. Hacker follows:]

STATEMENT OF FREDERICK J. HACKER, M.D.

In our days, modern society has become more vulnerable to the danger of terrorism than ever before. Due to the exponential growth of modern society in specialization, differentiation and size, the dependence on and sensitivity of highly placed individuals, crucial institutions and industries, communication centers, etc., has tremendously increased, thus making these individuals and industries attractive and often easily accessible targets for terroristic attack. Rapid advances in technology, psychology, and mass communication have made explosive, highly dangerous weapons generally available; brain-washing and other coarse, or subtle coercive influence techniques can now be used effectively and profusely, and it was "discovered" recently that violent acts can serve as mass entertainment. These factors have multiplied the chances and dangers of terrorism.

The Chairman of this Committee has correctly predicted the rise (and the import) of terrorism years ago, and called for legislative and administrative measures to combat this mounting social danger. Admittedly most terrorism is criminal, but represents a criminal activity of a special sort calling for special and innovative counter-measures that are not confined to conventional law enforcement approaches. Terrorism having yielded maximal results in public attention and effective promotion of terrorist causes on comparatively minor investments of money and life, has proved itself a veritable growth industry, which can be expected to further expand and proliferate, possibly in a mushroom-like fashion.

Terrorists deliberately creating extreme fear and in its wake, indignation or helplessness and even paralysis, forcibly draw attention to themselves and the causes they presumably represent, and in whose name violence is perpetrated. Terrorism mainly serves to signal, to alarm, to frighten and prove the powerlessness of power, to advertise and to propagandize. Victims chosen at random, or for their publicity value, are used and abused ruthlessly to produce the desired effects of intimidation on the objects of terrorism (not to be confused with the victims), which are a small (family) or a large (nation) community or even the whole world, by extortion, blackmail and spectacular cruelty.

The terrorist personality profile roughly falls within three main categories:

1. Criminal; motivation mainly or exclusively personal gain.
2. Mentally deranged; motivation personal, idiosyncratic conflicts, dramatic self-display and self-cure, delusions or hallucinations, often incomprehensible to observers.
3. Political; motivation directed toward a realistic or imagined strategic goal, directly or indirectly, rationally or irrationally, serving either a clear, but often also a vague political, pseudo-political or pseudo-religious ideology.

These three categories, criminal, deranged, political, often overlap, frequently it is difficult to distinguish in a given instance (for instance, Symbionese Army) which of these motivations are present or predominant. Yet it appears clear that for effective counter-measures, the distinction between these categories must not be blurred; what is effective in one category, is totally ineffective for another (for instance, the expected deterrence of death penalty, or the lure of money, to favorably influence the political or mentally deranged offenders).

Violent conflict solution attempts become all the more likely, the more the participants in a conflict on either side are or become fanatically indoctrinated, imbued with feelings of righteousness and convinced of the sacredness of their cause. The evident connection between violence and its justification (in the minds of the perpetrators) deserves particularly careful study; the "rational" terrorists who use more "strategic" than "symptomatic" violence, may be subjectively sincere, intelligent, unselfishly motivated, incorruptible, well trained and well

organized, which makes them no less but more dangerous. Modern political terrorism represents an explosive threat in its inhuman ruthlessness and disregard of innocent life, because the terrorists also consider their own lives as expendable.

Terrorism is attracted by big names, (megacrimes) and big occasions (holiday and anniversary events), very often terroristic acts represent episodes of a series and are followup, copycat, or imitation crimes. Some forms of terrorism (skyjacking, kidnapping, etc.) occur in waves, follow definite fashion patterns, influenced and even produced by spectacular dramatized mass media communication. After the stimulating "sensational" entertainment effect has worn off, righteous indignation sets in on the part of the objects of terrorism (community), that for obvious psychological reasons, then considers the terrorists as "nothing but" common criminals. But righteous indignation is no substitute for genuine understanding on which effective countermeasures can be based.

Terrorism never takes place in a vacuum, but has to be seen against the background of social conditions (or their image) and emotional reactions to these conditions or their images. Terrorism thrives on feelings of remediable injustice; neither actual deprivation nor oppression as such are root causes of terrorism, but the perception and experience of injustice, simultaneously with the belief that such injustice can be remedied by social action (and is *not* considered natural, inevitable, fated, etc.) are basic reasons for terrorism.

In fact it can be argued that the full weight of counter-measures against terrorism is morally justified only if conditions of governmental terror are not tolerated (like in some countries that permit or encourage oppression, deny due process of law, condone torture, etc.). Terrorists are characteristically recruited from the ranks of the disaffected and alienated; the origin of terrorism is in direct relationship to conditions that do not permit meaningful social change, except by violence. Due to modern communication, terrorism is an international problem; terroristic techniques are easily exported and quickly imitated all over the globe. Empirical research has shown beyond any reasonable doubt that imitation and repetition of terroristic acts occur more readily when spectacular violence is used, regardless of whether this violence is performed by the law breakers or by the law enforcers.

The following steps are suggested for more effective counter-measures to be devised and for new preventive and protective insights to be gained:

I. Research and remedial social (legislative, administrative, technical, law enforcement, etc.) action should be initiated immediately and be carried out simultaneously with mutual reference to each other. The formulation of research should take into account that terrorism is not a definite and static, but rather a fast changing, chameleon-like, shifting and ongoing phenomena, characteristically unpredictable in its future manifestations, because terrorism incorporates not only social and political developments all over the globe, but also the reflection of effective or ineffective counter-measures. Therefore, the systematic combination of research and action, of theoretical and practical considerations, of teaching, training, instruction and field work, experience and participation is mandatory to meet terroristic threats and to optimally anticipate and prevent terroristic dangers. The coordination of legislative and administrative, and even of national and international measures (interpol-like international agency for exchange of information and mutual assistance, help in preparation and advice for conclusion of bilateral and multilateral treaties and agreements) should be visualized from the very start.

II. Due to the varied and varying, multifaceted and changing manifestations of terrorism that are differently motivated (criminal, mentally deranged, political), no single magic formula will "explain", or "solve", all or even most terroristic offenses; yet terroristic activities follow essentially the same few models. Hence, general principles and guidelines of counter-strategies can be developed. Therefore:

1. Action teams or task forces, consisting of highly trained, professionalized experts from various fields, including, but not confined to law enforcement officers, should be organized and permitted to participate in action right away. These teams could be under central control or be organized on a local level under the umbrella of a federal institution; their function should be advisory, but their advice should have to be sought by the decision makers (duly elected or appointed officials) in an obligatory fashion; just as there should be an obligation to inform them of all the details of relevant events. In special cases these task forces could be used for actual participation in negotiations, bargaining, etc.

2. The organization of action teams or task forces should have computerized data banks and similar resources at their disposal, which quickly inform about successes or failure of previous similar events and the countermeasures taken.

The data collecting center, or centers could be empowered to conduct ongoing research into:

(*a*) Personality profiles and personality development of various types of terrorists (criminal, mentally deranged, political).

(*b*) Victimology: The reasons for victims to be chosen as victims, behavior of victims, for instance in terms of indignation, endurance, hysteria or hidden and overt sympathy for captors, erotic ties, identification with aggressors, etc., effects of "brain-washing" and other forms of coercion creating conversion or increased resistance.

(*c*) Behavior of terror objects, i.e., families, communities, nations, etc. Studies in group, mass and crowd psychology of behavior under stress (man on the ledge phenomenon, when out of impatience, crowd demands jumping, to terminate intolerable tension), combined with studies about deterrent effect of higher penalties, particularly death penalty specifically in regard to terrorism, possibly the threat of high penalty only increases illusion of security, rather than security). Special attention to psychology of law enforcement officers and their sensitivity to lose face and to ridicule (see scientific findings that saving face, means losing life), habituation to resolving emergent or actual conflict by quick confrontation, rather than by negotiations.

3. Confrontation of various negotiation techniques and strategies in terms of effectiveness and morality:

(*a*) Which means are best suited to bring about certain stated or agreed upon ends. Who should negotiate, when and how, up to what limit, etc.

(*b*) Providing empirical research data for the decision about ultimate ends; for instance, preservation of individual life (considered highest hierarchical aim in peacetime democratic society) vs. prestige or propaganda gains, or gains in status or territory, (considered high goal by authoritarian societies or in times of war). "Hard" empirical data to supplement or to guide emotional intuition.

III. Due to the undeniable fact that the mass media perform willingly or unwittingly the propaganda job for terrorism by providing national or international audiences with sensational mass entertainment; possibilities for reasonable mass media presentation, appropriate controls must be studied and experimented with under strict observation of First Amendment protection and other guarantees for free speech and free expression. Various voluntary and compulsory control schemes, avoiding crude censorship can be suggested by reducing or eliminating spectacular advertisement and excitement effects, to minimize the multiplying contagion effect, leading to imitation and escalation of terroristic violence. All scapegoating of the media, who, after all, only do their job as presently defined and seemingly demanded by the public, should be avoided; media experts (and investigations about media effects) could be used as team members and particular emphasis placed on experimental attempts to employ the media positively and productively through genuine information and education, that nevertheless can be exciting and entertaining.

IV. Modern terrorism is a criminal activity of a novel and special sort, therefore novel methods for its control, reduction and elimination must be developed, which should try to avoid public indifference as much as public hysteria. Since the security measures of conventional law enforcement are clearly not sufficient for effective protection, new cooperation patterns with law enforcement agencies and new information patterns to further the understanding of the public must be worked out:

1. Training of law enforcement officers in the various fields of the experts and vice versa training of experts in strategy and tactics of law enforcement, with particular attention to communicability of their joint activities to the public.

2. Research based suggestions to legislative and administrative bodies regarding availability and manufacture of hand firearms and explosives (gun laws), etc.

3. Terror from above (governmental or police state, totalitarian, vigilante terror) certainly is and is believed to be a possible and potentially quite popular countermeasure against terrorism. Hence even the "benign" beginnings of such terror (emergency measures continued over a long period of time, inroads in the protection of individual freedom, etc.) must be spotted and avoided by weighing the inherent potential effects of measures against their costs in liberty and freedom (see, for instance, search and seizure, free movement, free expression, etc.).

V. Insofar as terrorism must be seen in the general context of its origin and justification (for the terrorists and actual or potential objects) novel action research and research action may serve to single out and point to particularly sensitive areas nationally and internationally, in which the feeling of remediable injustice runs high. Attention can be drawn to these areas and problems without

waiting for the terrorists to do so by their spectacularly violent actions. The task forces or research teams could be social action initiators and fulfill a preventive function (for instance, the explosiveness of the situation in Palestinian refugee camp could have been and was foreseen. Officially tolerated arbitrary arrest and torture of the political prisoners by totalitarian and South American countries possess a high terroristic potential, or the situation in some ghettos and certain jails as breeding ground for terrorism, can easily be spotted).

Legitimate moral authority can be conferred on strong, firm and decisive countermeasures against terrorism only, if at the same time social action is demanded and carried out by the very same authority, that does not just demand loyalty and obedience to law, but endeavors to bring about conditions which justly and legitimately can command loyalty and compel obedience to law. The reality principle of the future to which a free democratic nation is irrevocably committed, demands the development and availability of free and institutionalized alternatives to violence for peaceful and reasonable evolution. To this high purpose, all research and action endeavors should be dedicated.

Dr. HACKER. I want to congratulate whoever was responsible for drafting the set of questions because it shows some expertise and knowledge on the subject and for a moment it made me feel it was not necessary for me to testify because you had this information already.

I think, due to the tremendous technological developments and the accomplishments in perfecting weaponry and such and due to the specialization and differentiation of modern society, there is no doubt about it that modern society has become more vulnerable for this type of focused attack which now goes on under the name of terrorism and has become more vulnerable for both the criminal and political motivated attack.

I would like to make a statement on that, first of all. Even granting that most or all political acts of violence directed against an established government like the United States of America, it should be considered criminal and it is criminal. It is a special type of criminality that I believe cannot be handled with the conventional police methods.

In other words, terrorism is a crime, but a special sort of crime that demands certain special measures and certain special information to meet it successfully.

I am glad the chairman spoke about the suggestion of action teams. All over the country each local police force or law enforcement agency that has the responsibility of solving a case that happens in its jurisdiction, should be privileged to have the advice of such teams either on the spot or by telephone or whatnot, teams which have been properly trained. It should be obligatory that whoever makes the decision about these matters has to consult with that team. It does not necessarily have to take the advice of that team—that would be too much of an interference in the structure—but every police chief or whoever makes that type of decision should be obligated to consult with a team of that sort.

Great care should be taken in collecting and training the team members so they could be a functioning body, having all the material at its disposal. It could be computerized, right now, in order to determine the strategy of the matter and to be able to meet each individual case or incident at the moment.

Again, I want to say something as a matter of principle. I believe it is wrong to think we know nothing about terrorism. It is equally wrong to think we know all about it. There is no simple recipe. Now the motivations for terrorism are different. The first thing we have

to do is take account of the differentiations. I would distinguish between the criminal, the lunatic, and the political. To be sure, they are very frequently intermingled with each other. Maybe later I could give a few ideas on how one could handle that problem. But very clearly, the countermeasures of a society must take into account whether these acts are done by "crazies," inveterate criminals, or politically inspired people. This differentiation just implies that there are different things that ought to be done about a deed according to the suspected motivations of the perpetrator.

I agree with the chairman that at least in the very near future the method of using blackmail and extortion will become more popular because of the contagiousness of these methods, particularly when propagated by the mass media.

That is another area of very serious consideration, being fully aware of the first amendment protections and other necessary safeguards of freedom. But I believe nowadays one cannot afford to overlook the unhappy fact that willingly or unwittingly the mass media do the business of terrorism. They perform the dirty business of terrorism as its propaganda arm by spreading and dramatizing and making more spectacular acts of terrorism, thereby providing terrorist inducements.

In other words, my general idea is, although we cannot hope to devise a blueprint or even two or three blueprints, we can establish general guidelines that may be quite valid and will not miraculously handle every case to everybody's satisfaction, but will improve our batting average very significantly.

I would not be a scientist if I would not advocate a great deal more research. But I feel it should be very strictly focused, should not be a fishing expedition type of research, to just haphazardly go ahead and see what you can pick up. We already know a few areas, for instance, mass media, differentiation of various profiles; also by improvement of negotiation methods, by carefully going over past negotiations, that could improve society's reactions against what promises to be a dire threat, not only to the unfortunate victim but to the whole structure of society. Unfortunately, for better or worse, terrorism has been a very popular growth industry because there was relatively little at stake and spectacular things are accomplished.

The last thing I would like to say is what the representatives of law and order have to guard against is not to answer terrorism with terror. We have to be careful not to go overboard in our enthusiasm of fighting terrorism and not get into the area of terror.

I would feel the strongest and most focused activities are indicated right now. As everybody can see, terrorism is increasing and spreading like the cholera. The time to do something about it is right now.

Thank you, Mr. Chairman.

Chairman ICHORD. Thank you very much. We will proceed under the 5-minute rule. I will recognize the members for questioning. At this time, I will first avail myself of that.

It has been pointed out that probably the only nation in the world which has any set policy toward dealing with terrorism has been the nation of Israel. They work on the principle that terrorism feeds upon publicity and successes.

As I understand their policy, they will not pay ransom. They move in very fast and in a very severe way to detect and apprehend the perpetrator of terrorism. Then there is immediate punishment to serve as a deterrent to others who would commit terrorism.

Of course, Israel is in a state of war. Is Israel the only nation throughout the world that you have observed that has any official policies toward dealing with terrorism? Would you advocate such a policy for a country like the United States of America?

Dr. HACKER. Well, to the first part of your question, I, of course, am not personally and directly informed. It would appear to me, all the totalitarian states have the same policy. One hears very little about terroristic activities in Russia or China, which may be due to the fact they do not occur or if they occur, they are not reported.

I would think that all states, aside from Israel, who have complete governmental control of mass media and have a strict policy system along the totalitarian model of the policy of no negotiations, no ransom, is an expense which may appear to many countries as being too high a price to pay.

As far as Israel is concerned, for many, many years, if not decades, the policy of the Government was very different from now because Israel exchanged prisoners in previous encounters and even in the warlike episodes. Only recently, they have determined not to engage in any negotiations and never to pay any ransom, but to follow a rather tough line.

Certainly, it is not my prerogative to evaluate or criticize such national policies. This policy, admittedly, has worked well in the territory in which it was applied. But it has produced an internationalization of terror. Now, the terroristic activities against Israel and others take place all over the world. From a scientific point of view, this could not be considered a success, quashing it in one part of the world and thereby internationalizing it elsewhere.

These are special conditions, as the Chair has pointed out, because this is a state which has been at war and to the extent that I prefer peace to war, I cannot advocate these measures, at least not for so-called normal peaceful times.

Chairman ICHORD. You pointed out in terrorism, we are dealing basically with three types of individuals: the mentally deranged; the criminal mind, the one who commits the crime for financial reward; and the politically motivated. I take it, each one of these individuals, a case involving each one of these individuals must be handled differently?

Dr. HACKER. Yes.

Chairman ICHORD. My time has expired. The Chair recognizes the gentleman from Indiana.

Mr. ZION. Dr. Hacker, previous testimony indicated that skyjackers, for example, really wanted to be killed.

It was suggested that the threat of execution would not be a deterrent and in fact they might be potential suicides who might want somebody else to do the job for them.

Dr. HACKER. I concur with that, not as to skyjacking, but through my experience with the criminals I have examined. If you take the criminal population, if there is such a thing, then the small part to which the skyjackers belong are often committing the act to be killed. Still, it is a relatively small proportion of our criminal population.

The genuine professional criminal attempts to be a balanced criminal, tries to figure out what the odds are. However, a small part, unfortunately the most dangerous segment of the criminal, is usually quite suicidal. Therefore, the death penalty would not serve as a deterrent. The politically motivated criminal is never deterred by the threat of the death penalty. Much more, this is a raising of the price by which he can prove more of his courage. Just as in gambling, the raising of the ante does not deter the gambler, but attracts him. In that way, most of the politically motivated terrorists are certainly not deterred by any high penalty which might be in effect. They are rather attracted to it.

It happens to be a fact, mostly because these people, in order to show their group how courageous and determined and fanatical they are, do not mind getting killed. One of the reasons they are so dangerous and ruthless against the lives of others is because they are willing to sacrifice their own. Therefore, the simple raising of penalties does not act as a deterrent. In fact, there is a danger it might do just the opposite.

Mr. ZION. We have tried to look into the Symbionese Liberation Army and other militant groups. They are very intelligent people and also very well educated. If these are the type of people we are dealing with in the Hearst kidnaping, for example, would you say they are more criminal, lunatic, or politically motivated?

How would you treat this type of person in order to deter future activities?

Dr. HACKER. That is our main problem. It is extremely difficult to decide to which categories they belong. I think for purposes of negotiations, if the goal is to save the life of the girl, one has to take it at face value, that they are politically motivated. However, it may turn out this assumption has not been a completely correct one.

With all due respect, I would like to suggest maybe, since this is a current case, it might give aid and comfort to the opponent and we should not discuss this matter publicly.

But here are the heartbreaking decisions that have to be made and which are dependent on our evaluations as to which category they do fall in. About the Symbionese Liberation Army we know very little. In many cases, we know much more about the opponents. But everything depends on whether we put them in one or another category, or to what extent these categories melt or blend with each other.

The chairman mentioned my intervention in the Vienna episode, where these were highly educated lawyers who perpetrated that act. It would have been folly to offer them money, which for criminals is a very, very good strategy for negotiation. That is what I mean.

Mr. ZION. No further questions, Mr. Chairman.

Chairman ICHORD. The Chair recognizes the gentleman from North Carolina.

Mr. PREYER. Thank you. I find your testimony very interesting. I was interested in your distinction between the criminal, the lunatic, and the political. Some of our earlier testimony seemed to imply—maybe I am becoming a little unfair to our witnesses on this—that there was a common psychiatric profile for all these terrorists. Therefore, they could all be treated pretty much the same way. Maybe my conclusion is wrong, but it does seem to the layman that there is a difference between the politically motivated and the criminal profes-

sional, as you call it, and the lunatic. It seems they would all have to be treated differently.

In treating them differently, I understand your comment about capital punishment, but I am not sure where you finally came down on balance. You said it does not deter the political criminal or the criminal with suicidal tendencies. It would deter the professional criminal who figures the cost in balance. So how should we work out the balance? Should we have capital punishment or not for terroristic acts?

Dr. HACKER. Mr. Congressman, I do not know whether you want me to give my views on the death penalty altogether, but that has been a long-going debate and I understand a great many constitutional issues have been exposed. I would say, in regard to terrorism specifically, it is inappropriate to raise that question because on balance, as you very well put it, for terrorism, it would not do very much. Therefore, on balance I would say the danger is greater that the potential terrorist might even be attracted and that has been shown over and over again.

Mr. PREYER. I understand you are not commenting about capital punishment.

Dr. HACKER. I do not want to back out of that but I do not know that it is pertinent here.

Mr. PREYER. It has been an ongoing debate for quite some time and perhaps it would be better not to discuss it in these proceedings.

You mentioned you should not answer terrorism with terror. I gather you think Israel's tough policy is not a good one in the sense it transports the problem to others?

Dr. HACKER. It seems to have had that effect. I do not want to be misunderstood. I am not trying to accuse Israel of terror practices, but I do think that some of the Iron Curtain nations have paid for their freedom from terrorism by the introduction of terror. However, I might point out the former terrorists have very often become the practitioners of terror. Stalin has been a bank robber prior to becoming head of state, many National Socialist German leaders have been at one time engaged in the perpetration of terrorism, until they obtained power in the state and became practitioners of terror.

Neither in Nazi Germany nor Russia was there any terrorism except the terror practices perpetrated by the state itself.

Mr. PREYER. I had one question I was leading to. I will just ask that. While you have that feeling that Israel's policy is an international matter, what do you think about the specific policy of no ransom? If it is not appropriate for you to comment on that at this time because of the Hearst case, I would understand. But that is a very troublesome problem because we are all sympathetic with the family who wants to save its relative or child and is willing to do anything to do so. But if we could forget that for a moment and say as a general proposition, would it be desirable to have a law—I understand England has one—that no ransom can be paid under any circumstances? Would that be a humane law and would it be effective?

Dr. HACKER. Before I answer that, permit me to make another statement.

I think a primary requirement for such negotiations is that somebody should be definitely in charge. I think the situation at present nationallly and also particularly internationally is so totally confused,

I would say it is almost psychotic because the different members of the same team simultaneously pull in entirely different directions.

Now, internationally, the policy of the United States has been not to pay ransom but to permit foreign governments and foreign as well as American companies to pay such ransom. So they have a totally conflicting policy. Exactly the same thing reflects itself in such things as the Hearst matter, where the family is encouraged to carry out negotiations and make concessions while the official stand of the FBI is to condone it but not to favor it. This makes for the type of confusion that renders it totally impossible to develop any kind of policy.

I would like to say, some line should be adopted by somebody, whether it be a soft line or hard line, rather than having three tough lines, two soft lines, and nobody knows what is going on. Not only does the Symbionese Liberation Army not know, I do not know, nor does anybody else.

That, I think, is a matter which ought to be corrected somehow or other, immediately. Somebody, the Federal Government, the State government, or whoever—of course in cooperation with the family—but somebody should be in charge of the negotiations and be able to make decisions.

Mr. PREYER. Thank you.

Chairman ICHORD. Thank you, gentleman from North Carolina.

Dr. Hacker, proceeding with this matter of capital punishment, I think the gentleman from North Carolina is correct in suggesting the matter of criminal punishment be left out of this discussion.

Many of us have ethical objections to a policy of capital punishment. Did you not state you had ethical objections to capital punishment?

Dr. HACKER. I have some ethical objections but I have one particularly important one. It seems important to me. It is a scientific objection to it, but I do not know, again, how pertinent it is.

Chairman ICHORD. Certainly we get into all kinds of underlying considerations.

One of the previous witnesses, I believe Dr. Harris, stated that the study team of FAA, of which he is a member, had concluded that there was no merit to mandatory capital punishment in skyjacking cases. I generally agreed with the conclusion but then I put the question another way. I asked if the study team had any objection to discretionary capital punishment in such cases. He answered that to the effect he personally would be in favor of discretionary capital punishment.

There we get back to the same question of whether capital punishment in and of itself is a deterrent. I cannot help but think out there someplace, a person who might have the potentiality of committing a kidnaping or murder would be deterred by the imposition of the death penalty. For that very commonsense reason, I do support the discretionary death penalty as a matter of public policy.

Does the gentleman wish to comment?

Dr. HACKER. If I may, I will probably make myself a very unpopular witness.

Chairman ICHORD. Not necessarily. The House did set a policy in regard to the death penalty the other day, by passing a measure which in effect calls for a discretionary death penalty.

I don't know how the members of this panel voted on that approach, but it was resolved by the House.

Dr. HACKER. As far as mandatory death penalty is concerned, applied without regard to the fate of the victims, that is, to impose the same penalty whether the victim remains alive, is killed, or is injured, that seems to me to be utterly unfair and impractical and frankly, quite stupid.

Certainly, the discretionary death penalty, in order to deter from inflicting damage on any of the victims, would make more sense and it makes commonsense. Now, the question, that I believe ought to be decided more by research rather than by gut feeling, is whether this kind of deterrence actually works. I share your feelings, Mr. Chairman, that you and I would be deterred by the death penalty but then we would not usually commit the type of crime anyway from which we need to be deterred by the threat of death.

Certainly capital punishment was always suggested or imposed with deterring intent. For the people who devise these penalties, the law-abiding citizens, it even would work as a deterrent, but in reality it does not work because the people actually to be deterred, that is, the criminals, are of a very different kind. Whether this type of statement is true or not, I think has to be decided by research. In my opinion, it has been decided on the negative side. That again is not original with me and there has been for many years great debate going on. The rule breakers just don't have the same psychology as the rulemakers; this is what the rulemakers must take into account.

Chairman ICHORD. I do not know whether I would agree with you on whether we need more research. I think we have researched the matter for centuries.

Dr. HACKER. May I suggest the following: Whenever a particularly dastardly crime is committed and public frustration rises because the perpetrator has not been apprehended, then the cry for the death penalty is heard particularly loudly. When you have not got the guilty fellow, then you say that we ought to put him to death. That I submit is no substitute at all. Rather than prevent crime or increase the chances for capture of the guilty, suggestions are made to raise the penalty for a fugitive perpetrator whom you have not captured as yet; the public is satisfied having at least done something by having increased the threat of retribution, but the threat is not effective if and as long as you have not got the culprit.

Chairman ICHORD. I understand you testified you do expect incidents of terrorism to become more prevalent in the months ahead?

Dr. HACKER. I am afraid so. Since the Hearst kidnaping, there has been a whole sequence of all kinds of kidnapings. That is a very important result, this fashion, these copycat crimes, or imitation crimes.

There was for a while the fashion of skyjacking which, thank God, has diminished. Now, there is a whole wave of kidnapings. Spectacularly advertised crimes of that nature call for and almost compel the commission of crimes by all kinds of people.

Therefore, I think we are in for a few years of stepped up terroristic activities.

Chairman ICHORD. I understood you to say success in getting ransom would serve as an incentive for other groups to commit similar crimes. Is that correct?

Dr. HACKER. The main thing that is being imitated is the event itself. In other words, the wide publicity attaching to these spectacular actions, that is, the widely publicized event is being imitated, regardless of the outcome. For instance, take the Hearst case, we do not know how it is going to come out.

Chairman ICHORD. I would agree, we should stay away from discussing that case.

Dr. HACKER. It is already being imitated. So whether negotiations do or do not take place is not as important as the publicity given to the events. In my opinion, which I believe I can strengthen by evidence, whenever there is a violence by anybody, including law enforcement officers in the performance of their duties, then the probability of repetition and imitation is tremendously enhanced.

Chairman ICHORD. One of the witnesses who appeared before this committee did advocate a law prohibiting the payment of ransom. I think the proposal has merit but I cannot see how such a provision could be enforceable.

How could you enforce such a prohibition against payment of ransom by threatening penal punishment against, say, a father who did pay ransom for the return of his child?

Dr. HACKER. I believe this can be pragmatically taken care of by carrying out your own suggestion. If there was a team who would carry on negotiations as a matter of principle and who would have the trust of the public and keep their word and so on and so forth, then there would not be that much incentive for families to handle it themselves or leave it to law enforcement knowing that law enforcement has better means to represent their interests. This task force may be a causal remedy for that kind of problem because otherwise it would be, I would agree, inhumane to prohibit the family from taking actions to protect the lives of their beloved ones. But if they knew their fate was in good hands, it would be more comforting, more effective than now. I think the public interest would be served by that. However, that would anticipate some kind of concession by law enforcement agencies.

Chairman ICHORD. One more question, then I will yield to the gentleman from Ohio. I take it, you did agree with the policy announcement of President Nixon to the effect the United States of America will not pay ransom for the return of its diplomats?

Dr. HACKER. I am committed to the belief that negotiations are better than confrontations; policywise no a priori determination should be made.

Chairman ICHORD. I have received some complaints from members of our own diplomatic community about the high risk they are required to assume. Do you think that is just one of the risks they have to take? This is a free society and, after all, they do not have to be employed by the Government.

Dr. HACKER. That could be called a professional risk a diplomat has to take, sad as it may be. This could not be extended to a child, where under all circumstances there should be negotiations for the life of a totally innocent. I am not saying the diplomats of the United States are not innocent, but they are in a different degree innocent than, say, a child is who is captured for purposes of extortion. The difference between innocence and guilt works in disfavor for the

innocents. Innocents are "better" hostages because they command more sympathy and serve better as blackmailing tools. The more innocent somebody is, the higher the price the captors can get for him or her. It is a very sad thing because that makes potential victims out of totally uninvolved persons who are prominent in one form or another.

Chairman ICHORD. The gentleman from Ohio.

Mr. ASHBROOK. Thank you, Mr. Chairman.

Dr. Hacker, I would appreciate getting your outlook on what seems to be the picture to me, having followed the rhetoric of the militant radical and the sincere militant, the theory seems to be where authority is apparent, say the president of the university, the Attorney General, the mayor of a city, more often that authority backs down.

In industry and in the last 10 years, for example—if the postal workers go on strike, society seems to back down; if you take over Columbia University, the head of the university backs down. Like it or not, it seems the militant theory on confrontation seems rather successful, including the civil rights movement where you attempt to integrate a lunch counter.

Do you think, in general, this tendency for authority, to more or less back down in face of confrontation, in itself is self-perpetrating?

It is seen at every level, even in the courtroom. Many lawyers carry out the doctrine of confrontation in advocacy of their clients in ways never contemplated before, sometimes even verbally assaulting a judge. It seems authority is retreating and backing down. Do you think this has some bearing on what appears to be the militancy of individuals, groups, et cetera?

Dr. HACKER. I think it does. It is one of the predominant trends of society that authority is not accepted but very frequently ridiculed and undermined by showing the powerlessness of power.

However, I would hesitate to equate these actions you mention with terrorism as we have discussed it. There is a great deal of difference between a student uprising of the Berkeley type and people throwing hand grenades or the Symbionese Liberation Army. So I would think there is a difference in quality there. However, the tendency has been to question, confront, and particularly embarrass authority. For that reason I would say this is a very serious problem for which I might say police power alone is not sufficient to deal with the matter. To seek remedy by crude force or simple police measures which are effective for the moment, only make the matters smolder and, like the Israeli matter, it puts the conflict in a different locality without solving anything.

Mr. ASHBROOK. In your answer to the chairman regarding ransom, you indicated that probably notoriety seems to be more the reason, or at least the thrust of the militancy, whether it be skyjacking or whatever.

It seems almost immediately a skyjacker wants at least to be known to the world and so forth. This seems to accelerate and it seems at every level the purpose is to break through, for instance in X-rated movies, you just see how far you can go. It would seem to me in this case, like the old cliche, what do you do for an encore? What is the next radical act and the next? It appears to be escalating. Maybe it is not, but does this in itself pose a threat?

Dr. HACKER. It certainly does.

Mr. ASHBROOK. The type you are talking about, the death penalty does not deter? Do they sit back and figure out what they can do to outstrip the prior act? What is the mentality of people in that situation?

Dr. HACKER. I would like to answer but is the gentleman from North Carolina leaving? I wanted to say something I had not said before.

Mr. PREYER. My other committee needs me for a quorum.

Dr. HACKER. I just wanted to comment on something I did not comment on before. You said, and you probably are right, that some of my colleagues or maybe some other people have talked more about the purely criminal type. Now, if they have done that, I do not know. I disagree with that very strongly.

I believe that although one should argue that political crimes are crimes, they are of a very different nature and the psychology of the people who carry out political terrorism is entirely different from the so-called normal criminal, if there is such a thing. Those people against whom terrorism is directed will always call the terrorist a mere criminal. That precisely is the mistake that makes it so hard to fight them because they are considered as nothing but criminals.

We have seen with the Communists, the National Socialists, the Arabs, the Israelis—let us not forget, the Israelis considered the Arabs as criminals and treated them accordingly and vice versa, the same thing. This labeling and label swindle of name calling is the beginning of the great error that makes us incapable of dealing with the seemingly politically motivated activity.

I just wanted to say that, although I know some of my colleagues do not agree with me.

Mr. PREYER. That makes sense to me.

Dr. HACKER. Interestingly enough, for a long time, as you probably know, the sole purpose of skyjacking was to force the pilot to change to a different landing place, to go to Cuba or wherever.

Then suddenly—and Dr. Hubbard described that in detail—a very inept skyjacker made an insanely high money demand and was immediately overwhelmed and captured. Since, however, this event was widely publicized and dramatically reported in the very next week, there were six people who demanded large sums of money and parachutes and all that kind of thing. This was clear imitation.

Right now, the prisoner release bid and particularly the altruistic type of crime started. First there was a demand for ambulances and food and now the in thing is to make demands of a general social nature. I mean to say, the specific demands are determined by the fashionable trends and can be counteracted by appropriate actions of negotiations and deterrents.

Please do not misunderstand. I am not either for absolute deterrence or for giving in all the time. I believe these two seemingly opposed policies are entirely wrong in regard to handling these matters and they are equally wrong: that is the policy of always yielding or of always stating from the start that we never give in, which for us is a confrontation that we can afford but the victims cannot afford. If you have something like 500 or 600 living, concrete victims as in some skyjackings, then it becomes a morally questionable stance to

fight for the abstract principle that toughness will deter future terrorists and will have a reassuring effect on the community; but in the meantime you sacrifice the lives of many innocent people. Even the avoidable sacrifice of one innocent life is inexcusable.

Mr. ASHBROOK. Thank you, Doctor.

Chairman ICHORD. From what you have said, Doctor, it seems to me that the policy we are reaching for is firm flexibility. It seems to be what you are advocating.

Dr. HACKER. Very good. Whatever the line is, the simultaneous practicing of three or four contradictory lines results in nobody knowing what anybody is talking about or should do. Your own side does not know and the opponents do not know what they should go by.

Chairman ICHORD. Doctor, as you were talking about the three basic types of persons who will commit these crimes, I was wondering if we do not get into a fourth type as in the Israeli conflict? That is, one who considers himself to be a soldier carrying out an act of war.

Dr. HACKER. I would expect them to fall in a category of politically motivated. We see so many acts of criminality, say in street gangs, where you have the same psychology. The members of that gang feel themselves as soldiers and bound by a very strong group code; one gets a position of esteem in one's own group, if he shows his courage by being adamant about everything and not giving in and he feels like a soldier and a representative of the group and not like an individual any longer.

Part of the negotiating technique that we suggest is not just to make conversation but to try to appeal to him and work with him as an individual and not only as the representative of a group of whatever he feels he must represent. It is part of the negotiator's skill not just to obtain concessions, but to suggest to the opponent how to justify and explain the concessions, when he goes back to his group.

Chairman ICHORD. I express concern, Dr. Hacker, in referring to such kidnapings as the Hearst case, as political crimes. I think we get away from the fact that it is a crime and as far as punishment is concerned, should be dealt with as in every other crime.

Take the Robin Hood type, for example. Many people have sympathy and can identify with the Robin Hood type.

Dr. HACKER. I have your permission not to talk about the Hearst case specifically, but another example comes to mind.

There was a cruel murder in California where an ophthalmologist and his family were found dead in the swimming pool. A note was found on the Rolls-Royce of that doctor saying that the war had begun against all people who polluted the environment. At that time, there was a big program as to environmental controls.

In a quasi-judicial action, a "court" found, similar to the Symbionese Liberation Army, that now the third world war has started and everybody who has contaminated the environment or gives aid and comfort to those who do will be forthwith arrested. Within hours, the police found this was the work of a deranged person who fell very much in the category of the mentally disturbed. However, and that is the interesting thing, he used the political justification although this society for the protection of the environment to which he referred never existed except in his sick imagination.

Political rationalizations are grabbed not only by the mentally deranged but by the criminal because it goes over well with the public.

Terrorism has unfortunately become a form of mass entertainment and all the more so if it is politically colored, which increases the drama, the publicity value, and therefore the danger.

Chairman ICHORD. I understand what you are saying. The politically motivated can also be mentally deranged and perhaps motivated by financial considerations?

Dr. HACKER. Right.

Chairman ICHORD. This committee is primarily charged with the responsibility of investigating and legislating in the field of revolutionary activity by force and violence to overthrow the existing government and frustrate existing laws. We get into some very complex situations.

For example, last August, the committee published a report on political kidnaping, going over the various kidnapings that occurred all over the world and primarily in South America, where there are many violence-prone revolutionary groups, primarily of the Marxist-Leninist variety.

In a foreword to that report, I warned that such acts could very well come to the United States and today they have come to the United States. In this whole field of political motivation, the Chair has also pointed out there are scores and perhaps even hundreds of small groups around the country of the complexion of the Symbionese Liberation Army with the potentiality of committing the same acts.

Here we get into some very frustrating problems that are difficult for our country and for a free and democratic society to deal with.

For example, we have the more disciplined revolutionary groups who teach and advocate not an immediate revolution, because that would be a violation of the law and punishable as an unlawful exercise of freedom of speech. Thus, they advocate revolution by force and violence when the time is right, at some distant time in the future.

I think it is almost impossible to really define what effect this has on what I refer to as being the "kooky" revolutionary type. In fact, there is a battle going on between both underground papers and aboveground papers today, whether the time is right.

The "kooky" revolutionary types are very critical of the disciplined revolutionary types for not joining them. On the other hand, the disciplined types are trying to bring these matters under control. I highly suspect, if we keep on acting the way we are now without taking any effective steps, they will have better control, they will be more likely to bring it under better control than government and responsible organized society.

Dr. HACKER. Without trying to be an advocate of Leninist doctrine, Lenin and the classic Marxist were very much opposed to the undisciplined, "kooky" type of spectacular activities that, according to Lenin, played into the hands of the establishment by strengthening the forces of law and order by the general indignation that kind of thing aroused.

I personally believe this is not the present danger. The grave danger is the simmering down, the contagious effect terrorism has on these fringe groups which are disapproved of even by the serious leftists, yet they are extremely dangerous because they have ready access to very highly dangerous weapons and unfortunately to psychological motivations and explanations which, as you say, make a lot of sense to a lot of people.

So in Hearst and a lot of other cases, there is a tremendous amount of sympathy for terrorists who are capable and smart enough to portray themselves as emissaries of the downtrodden and exploited.

Chairman ICHORD. You are definitely correct. In your statement about Lenin, he did advocate terrorism as a legitimate, in his mind, revolutionary tool. There are groups in the United States that are "revolutionary now." These are groups who advocate a revolution now and the time is now. Of course, you and I would consider them as "kooks," so to speak, as I referred to them.

Dr. HACKER. But the serious Marxist in the United States believes that there does not exist a serious revolutionary mood in the United States now and that single terroristic acts do not do anything to bring the revolution nearer. So they advise against it, although this advice is not heeded by the many fringe groups. They are much harder to control because they are undisciplined and unauthorized by any serious doctrine.

There was a similar problem with the Palestinians who went wild by themselves, nobody could control them. Those are very, very small groups that still can present a tremendous danger to organized society altogether.

Chairman ICHORD. You have some interesting anomalies. For example, the leading Marxist newspaper in the United States refers to the Hearst kidnaping matter in this manner, and I quote: "Bourgeois newspapers call the kidnaping insane. It is more accurate to call them victims of capitalism who protest against capitalism by protesting against its own evil method."

We find the disciplined groups coming out more and more with the message to "cool it." These people are "kookies." They are going to harm the ultimate objective and that was why I made the statement that perhaps these articles and propaganda materials to "cool it" will have more impact than anything we are doing.

Let us get into this matter of the study and action team. How do you envisage this team to function? Do you envisage what you might call a law enforcement team as such, with each individual member of the team having law enforcement powers? That is, for example, a team headed up by a skilled and experienced police officer such as the FBI, with members of that team consisting of psychiatrists, criminologists, the media analysts, or do you envisage such a team that would be called in merely to advise either local police officers or federal police officers?

As I understand it, Mr. Stapleton and Mr. Horner, both of you have been members of the FBI. Once a kidnaping occurs wholly within State lines and it is proven there has been no crossing either in the performance of the act or taking the victim across State lines, would there be any FBI jurisdiction?

Mr. STAPLETON. There is a 24-hour rebuttable presumption that the victim has been transported interstate. There would be no FBI jurisdiction in the absence of interstate characteristics.

Chairman ICHORD. I thought the kidnaping act placed all kidnapings under the jurisdiction of the FBI.

Mr. STAPLETON. There must be interstate characteristics present either involving the transportation of the victim or the manner in which the extortion demand is brought to the victim's relatives. After

24 hours a rebuttable presumption exists that the victim was transported across State lines.

Chairman ICHORD. Mr. Nittle?

Mr. NITTLE. I was going to get you a copy of the statute.

Chairman ICHORD. Mr. Nittle was running for the law.

Doctor, how do you envisage this team to work? Will it be a law enforcement team?

Dr. HACKER. As a matter of principle, in a democratic society the ultimate decision has to be made by the duly elected or appointed officials. I do not believe one can delegate that authority to experts.

Chairman ICHORD. There must be legislative authorization and as far as that is concerned, I would say under the LEAA Act, which was passed by Congress, there is a very good grant of authority for the establishment of such a team.

In fact, I think the statute almost envisages the establishment of such a team. The executive branch does have an authority. I do not think there is any doubt about that. Now, if the executive branch does not act, the Congress could specifically pass legislation establishing such teams. But I do not care to get into that matter at this particular time. What I would like from you is specifically how do you envisage this team operating? Will it be a law enforcement team, acting in advisory capacity?

Dr. HACKER. Not being totally familiar with the complexities of the problem, my preference would be that it be an advisory team whose advice must be sought, but not necessarily followed, but it ought to be compulsory and obligatory to consult with that team to get its counsel and advice. In case the advice is ignored or counteracted, there should be public explanations of why that has been done and for what reasons. By using that method, we can establish ongoing research. But certainly, I am against the present policy of treating a case as though it were the first and only case and treating it in a local jurisdiction that by necessity, in terms of information and skill and knowledge is very, very limited. I would advocate also the inclusion of media experts, linguists and cultural anthropologists on that team, people who know the various mores and value systems of the potential terrorist, and would be much better able to negotiate.

Also, experts on international law should be included because, while I know this committee is more concerned with internal security, unfortunately, in the present situation the internal security cannot be divorced from the large international matters because there is a great deal of input of techniques and influx of individuals from abroad who conceive and who could ably carry out terroristic activities.

I admire the Chair for his foresight but I think maybe we have not seen the worst of the prediction yet. If some of the South American methods and individuals are imported here, then everything we have seen up to now will be like child's play.

Chairman ICHORD. Certainly it can be handled either way. With respect to the statue regarding kidnaping, it states that a failure to release a victim within 24 hours after he had been unlawfully seized shall set up a rebuttable presumption such person has been transported in interstate or foreign commerce.

So, definitely in all cases, kidnapings, regardless of whether wholly intrastate or not, we would have the FBI in on most kidnapings,

according to that statute. Of course, violation of State law is another question.

In that regard the recommendation is made to include media analysts. I think that was made in recognition of the fact that the news media play a very important part.

Dr. HACKER. An absolutely decisive part.

Chairman ICHORD. Several of the witnesses who have appeared thus far in these hearings have been critical of the news media, as to the way they have handled individual matters. What would be your comment upon how the news media should conduct itself?

Dr. HACKER. I think under the present circumstances, the news media only do what is their job and I think it would be a neglect of their duty if they did not report as quickly as they could.

But I would think there is an overwhelming public interest in preventing, for instance, the transforming of an ongoing kidnaping into a show that then stresses the dramatic value and makes a solution short of confrontation practically impossible. I realize that this smacks of censorship and jeopardizing our very priceless freedoms that ought to be preserved, but it would seem to me that after much study and thought, constitutional lawyers and others could find their way out in order not to put a premium on the kind of thing that goes on right now, by making kidnaping a drama, thus decreasing the chances for a reasonable settlement of the affair. It can be proved over and over again in all countries where there is an ongoing reporting of the act that takes place, the chances to escape a brutal or aggressive or violent outcome are much lessened. Let me use a crude example.

Let's say if an important person has suddenly become ill, the public has a right to know that, but I would question the right of a television crew to block the access of the ambulance to get the fellow into a hospital and maybe to save his life because the public has the right to know he has had a heart attack. If the predominant interest is as it should be, the preservation of life, the right of information for the public must take second place.

If the scientist can demonstrate that the ongoing reporting and the sensational reporting of such cases actually costs lives, then with all due regard to the freedom of the press and the media and the right of the public to be informed, one should take certain precautions that seem to me to be very easy to take.

Chairman ICHORD. There is another constitutional problem we are concerned with here. Presently, there is a controversy within the journalistic community over a bill that has been proposed to give the news media the same privileges, almost similar privileges that exist between a doctor and his patient and a lawyer and his client. I share your belief. I am a strong advocate of freedom of the press but I cannot accept the measure as proposed. You cannot have your cake and eat it, too. You are going to get into some very knotty situations if such privilege is granted. The next step would be to set up an association much as the doctors and lawyers have established to govern their professions.

Although the ethical standards prescribed, at least in my profession, have not worked too well, as evidenced by the recent article in U.S. News & World Report, nevertheless you are going to have to establish restrictions upon the members of that profession either by law or by

rules of associations. There are no standards of responsibility. I do not think the journalistic community can have its cake and eat it, too. Either they will have to do it or it will have to be done by law. Whether the Government or their association does it, it still would be a restriction on their reporting of the truth as they see it. I do not know whether we can really deal with that problem in a legal way, except perhaps point out, as you have done, that there is a certain amount of responsibility which must be exercised by the press in these matters.

Dr. HACKER. Mr. Chairman, I do realize this is a very serious and knotty problem, but that exceeds my authority as a scientist. As a scientist, I have to say, the dead giveaway is what is happening now. Terrorists more and more make it part of their demands not only to get money or prisoner releases and other concessions but they demand television time and publicity. Since they so often demand it, it is very clear that it benefits their cause. This becomes part of the whole terroristic structure. Unfortunately terrorism is a mass media attraction, as vice versa man media propaganda is a terroristic aim and terroristic motivation. The attraction of demonstrating success in the mass media and acquiring notoriety has become so great today as to almost be irresistible to public figures and would-be public figures, including the terrorists who want to be public figures.

As Mr. Arthur Bremer, the individual who attempted to assassinate Wallace said, "Well, I was on Cronkite's program today." The poor jerk would of course never have gotten there had it not been for the assassination attempt, but since he did, everything seemed worthwhile to him.

It sounds almost ludicrous but it is something you see recurring in some of these terrorist acts, namely, the narcissistic pleasure in displaying one's self and to make an impression on one's group in order to show one has been, so-called, successful.

Chairman ICHORD. Thank you, Dr. Hacker.

Does the staff have any questions?

Mr. CRANDALL. I would like to have this documentary report entered as Exhibit No. 1 in these proceedings. It is entitled "The Events of September 28th and 29th, 1973."

Chairman ICHORD. There being no objection, that will be done.

[Exhibit No. 1 is retained in committee files.]

Chairman ICHORD. Dr. Hacker has written a book. What is the title?

Dr. HACKER. "Terror and Terrorism." It deals specifically with the Munich Olympic tragedy and with the Arab-Israeli conflict.

The report Mr. Crandall referred to is an official report by the Austrian Government regarding the outcome of that specific matter at the Vienna airport.

Chairman ICHORD. If we do not have a copy of that book, I will direct the staff to obtain one. We should have that in our files.

If there be nothing further, Dr. Hacker, may I again thank you for your appearance here today. You are an expert in this area and what you have offered the committee has been very, very valuable. I hope that we are able to come up with something in the way of legislation or bring pressure on the executive branch to move in a more definitive way toward meeting and solving this problem. We are very appreciative of your appearance here today.

I would ask that if you have more thoughts as to the operation of the proposed study team, I would appreciate the same for the record.

Dr. Harris has sent in additional material and this will be very helpful to me, not only in dealing with the Executive, but as to legislation.

Dr. HACKER. I might ask if I might send you a similar communication as Dr. Harris did and incorporate some of these suggestions? [1]

Chairman ICHORD. Very good.

There being nothing further to offer, the Chair will declare the meeting adjourned, subject to call of the Chair.

Thank you.

[Whereupon, at 11:48 a.m., Thursday, March 21, 1974, the committee was adjourned, to reconvene subject to the call of the Chair.]

[1] This information was included in an additional statement given by Dr. Hacker before the committee staff on Friday, Mar. 22, 1974.

TERRORISM

Part 1

FRIDAY, MARCH 22, 1974

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNAL SECURITY,
Washington, D.C.

STAFF INTERVIEW [1]

The staff met, at 9:35 a.m., in room 311, Cannon House Office Building.

Staff members present: Robert A. Crandall, counsel; Audrey Rollins, associate to counsel; William G. Shaw, research director; Albert H. Solomon, investigator; and Stuart Pott, investigator.

Mr. CRANDALL. May the record show that this is a conference called to further expand the valuable testimony that Dr. Frederick J. Hacker gave to the Committee on Internal Security yesterday, March 21, 1974. It is a staff conference and will be conducted much the same as the proceedings that were conducted yesterday.

Dr. Hacker, I want to express our appreciation that you were able to stay over and expand your testimony. It was extremely valuable and I know it will make our record much more extensive and interesting. Thank you.

STATEMENT OF DR. FREDERICK J. HACKER

Dr. HACKER. Thank you.

Mr. CRANDALL. With your permission, I will proceed much the same as yesterday and I will ask you questions. However, feel free to interrupt. We also have here at this staff conference Mr. William Shaw, Mr. Albert Solomon, and Mr. Stuart Pott. They may ask further questions.

You have discussed at some length the need for teams of experts to serve in an advisory capacity in important kidnaping and terroristic incidents. Do you feel there are other areas that have significant relationship to this problem which would warrant this committee's consideration?

Dr. HACKER. Yes, I do. First of all, the chairman asked me yesterday if I would favor a scientific task force in a more advisory or executive type capacity. I would be more in favor of an advisory capacity but compulsory advisory. In other words, it should be made obligatory for them to consult that sort of team. The composition and the responsibility of job training of that team is also of crucial

[1] At a meeting on July 16, 1974, the full committee accepted this interview as part of the official hearing record.

importance. There I need advice, more than I can give it. I think it should minimally contain a law enforcement person, psychologist, sociologist, or criminologist and it probably also should contain a nongovernmental lawyer, possibly a linguist, a media specialist, a cultural anthropologist, and people of that sort. How to continue an integrated functioning of such a team or teams would be a big task.

We had this morning discussed certain policies. This is an area that should be studied very carefully and it seems to me that would be very profitable.

The suggestion came to coordinate that with the existing committee of Ambassador Lewis Hoffacker, who is in the State Department. There should be a central place from where the administration of these teams is conducted. There should be a permanent staff to coordinate, to contact the various people, and to coordinate them and have in the beginning regular monthly conferences of the prospective team members.

Also this team or teams should certainly be in the position of having access to material, to research data that have been collected either nationally or internationally. That should be a very ready access because they will have to rely on that intelligence greatly. I would very much favor a coordinated effort between that kind of service activity and research activity. In other words, what I think has hampered social research a great deal is the isolation of that research from the actual doing. I think this should be one of the places where doing and thinking is combined. There should be no delay between research and action type thinking. I believe, in general, one of the bad things of modern research has been the isolation of the doers who do not think very much and the thinkers who do not do very much and the twain never meet. We do not want to have one group of people who have all the information but cannot do anything about it and the other group who has all the power to act, yet doesn't know aything. It would be better to have information and activity combined.

Mr. SHAW. Doctor, at the hearing yesterday I believe the chairman talked about having regional teams. Do you think there is a need for more than one team? I should think with the convenience of transportation as it exists, one team would suffice.

Dr. HACKER. You have to have three or four substitutes if you have one team. One individual for each job would not be sufficient even assuming he will always be available. So you have to have, as they do in the theater, a few understudies. Maybe there is a lot to be said for it, not to be too diversified, but if you have one well-organized team with several substitutes, that would be preferable.

People you would want on the team are not those individuals who have nothing else to do; you would not want them, the committee would not want them, I would not want them. By necessity, those people you want will have to be busy people. That is where we need your administrative expertise to see how you can, aside from money, make them available. Without considerable, novel effort you might find some criminals, but you will not find the people to help you systematically find, deal with, and reduce the number of the criminals. They will say they are on a case or are busy doing something else. They will not be so ready to interrupt their activities. So you have to have major incentives and a few substitutes.

Mr. CRANDALL. Doctor, from your experience, do you find there is an immediate need for a team of that nature or is this a type of crime or activity in which the team could move in at a slower pace?

I am trying to determine whether or not the availability of the experts is going to present a real problem.

Dr. HACKER. I think it might. I think one should take action pretty soon to establish it because there will be a lot of kinks to straighten out. I would not postpone the establishment of the group too long.

If you mean do they have to get into action right away, I would say yes. Sometimes they may even serve as actual negotiators, under certain circumstances.

With all due respect to Dr. Harris' suggestion, maybe I did not understand him correctly, I must say, I am not very enthusiastic about a 10 year-program right now; nobody can foresee what it is going to be like in 10 years. We have to have a 10-week program. On the basis of how much we follow that up, then we will have to say what we do the next 10 weeks. I do not think at this moment anybody is smart enough to even structure a program for 10 years. I would much prefer to have appropriations right now, rather than to have it on a long-range basis, because the phenomena changes. Terrorism today is not what it was 2 years ago.

I know from my own sad experience, 6 months ago I wrote a book on terrorism. Now it is totally obsolete. I have to write it all over again. Some of the conclusions are already out of date and this is only within 6 months. So I do not think we can structure something for 10 years, not knowing what is going to happen (incidentally also as a result of what we do or don't do about it).

Mr. CRANDALL. How long do you think it would take after you collect a team of various disciplines to actually train them so they could function as a team?

Dr. HACKER. We contemplate on having only experienced people on the team, anyway, so I would say the coordinating should not take more than 2 or 3 months. I would suggest action be started in the fall. I know this sounds starry-eyed, but it would be preferable to fooling around forever.

Mr. CRANDALL. Once the program got underway, could you get a collective team that would possibly have sufficient expertise to function by the fall?

Dr. HACKER. What have you got to lose? The decisionmaking will still be up to the established authorities. If the team does not function satisfactorily in the beginning, the advice can just be ignored. The team will only be given added responsibilities as they show they can produce results. In that respect, you people will have to advise us, my colleagues and myself, as to how to get this thing rolling, get it together, and put it within the governmental structure.

One thing I want to stress once more which I consider to be crucial and that is that in the same agency, service and research be connected. That has proven to be a very fruitful and profitable method in medicine. I think it is crucial not to have a separation between the data collection and the action. There should be coordination of the two.

Mr. SHAW. One thing I was going to ask you as to your television appearance on the Barbara Walters television program, I think I recall you brought up the need for the team. Ambassador Hoffacker,

who was present as a representative of the State Department, as I recall, expressed himself as being in favor of such a team.

Dr. HACKER. He did then and in private conversation with your chairman Mr. Ichord, he also emphasized that he was in favor of that and they have made efforts in that regard. I understand I am to see some members of his staff today and pursue that.

Mr. CRANDALL. Violence in our society seems to be an important part of our lifestyle. This is evidenced by the extent to which it is seen on television, in movies, and in many of our sporting events.

Do you feel the extent of this violence observed by the public on a daily basis has any increased effect upon the terrorist activities in this country?

Dr. HACKER. I do. I have expressed myself on that, very definitely.

In fact, our own group has made some research on that which they will be happy to send to you.

This is a topic which has been investigated by many groups, last but not least, by the committee of the Surgeon General. This was followed by a hearing of, I think, Congressman Pastore's committee, on the fate of the report of the Surgeon General. So I believe at the present moment, there is no doubt that violence displayed on film and other mass media, whether by way of news or entertainment, has a definite stimulating effect on children as well as adults. To say it only has effect on individuals so predisposed is true, but there are so many people so predisposed that it can be said to have a very adverse effect in general. The amount of violence that is shown on prime television time is, I believe, a major factor in producing violence. There has been a great deal of debate on that.

On the other side, I would like to say that violence is not an American invention and not a specific American proclivity. The United States does not have a monopoly on violence. The problem of terrorism is not exclusively or characteristically an American problem only. Therefore, I would like to see it treated through research, on an international scale and not only as a national phenomenon. Of course, it is a problem of national law enforcement, but the phenomenon far exceeds the boundaries of the United States. Some of the more dangerous kinds of terrorism, we have not had too much of as yet; we may not be able to avoid them in the future. Certainly I am not for the strategy of confining the problem to the American variety only.

Mr. CRANDALL. Do you think this is an area which warrants equal concern as the team structure that we have been discussing?

Dr. HACKER. Yes, sir, I do. There is no understanding of terrorism without reference to the so-called Third World, without reference to the overt actions of the Iron Curtain countries; you cannot separate it from that.

Mr. CRANDALL. I would like to press that just a little bit. I think we are maybe touching on a very crucial area here. That is, do you feel our present law enforcement structure is sufficiently informed with regard to the underlying structure of terrorist systems that they can really adequately handle the matter?

Dr. HACKER. I thought I expressed myself on that yesterday. I want to say it more emphatically today. The answer, in my opinion, is an emphatic no. Not only are they not sufficiently informed in their thinking about this, they mostly just do not know what it is all about.

As came out in the conversation yesterday, the pertinent thing to take into account is not whether terrorism is a crime or not but what can be done about it, to prevent and combat it. Clearly under our law structure it is a crime.

I think, as I said yesterday, to consider terrorism merely an exclusive law enforcement problem is to disregard the most important aspects of the problem. It is precisely not that alone. Now, it may also be a crime but in trying to understand it and successfully fight it, you have to stress those aspects which are not specifically criminal but are social, political, environmental, and what not.

Therefore, law enforcement is not adequately prepared at the moment to effectively deal with terrorism, no matter what they might feel or say. They are not prepared to deal with it except in the way of a police action, to crush it and suppress it thereby driving it underground and creating more trouble in the future. Just look at the daily news and the statistics; terrorism is increasing in intensity and frequency everywhere.

Mr. CRANDALL. I would like to also get your views with regard to whether or not this field of terrorism lends itself to special equipment or is it more in the nature of mentality and something in which you have to have expertise with, say, medical assistance, sociological factors, et cetera.

Dr. HACKER. There certainly should be a weapons expert on the action task force. Excessive confidence in technology to solve all present and future problems may not be the best bet but certainly there should be consideration of this possibility. Say if we had a nerve gas that would, in a matter of seconds, paralyze without killing, that would make a tremendous difference. We should have a chemist perhaps who has done work in this field and could lend his expertise to the matter. Certainly the law enforcement agencies have experts of this type. I do not think that would require any particular organizational change. One should take into account all technological improvements that may occur. But at the moment it appears to me that the countertechnology against, say, explosive technologies is not developed far enough to do away with negotiating skills.

Mr. CRANDALL. Within the past several years, our society has observed the emergence of many cults that function in radical and nontraditional patterns. They have attracted many of our so-called alienated youth. In this light, would you comment on these points? Are we in a transition period of dynamic sociological change and, if so, does this have an effect on the terrorist problem?

Dr. HACKER. Yes, it does. That is a very important question. I believe this is the crucial question, almost.

Let me express my opinion here. I believe, and that follows my testimony just before, that we are morally entitled to very strict law enforcement measures if only at the same time we look at the root causes of terrorism. As probably you know, in the United Nations where the United States has gone on for many years, there is the eternal question as to what should be done, what measures should be taken against individual or small group violence. But what about the conditions that produce that violence? As you probably know, the United States is fairly isolated in the United Nations and sometimes

loses votes there because the majority, the smaller countries, definitely feel violence should not be outlawed if it is a means of liberation. This presents a catastrophic situation.

Internationally you say you permit violence if it represents itself as a means of liberation. So naturally all violence will be always described as serving liberation. I want to go on record in criticizing the United Nations for permitting this label swindle.

I disagree with the former Vice President of the United States who made the distinction between fighting criminality by supporting the police no matter what, on the spot, and investigating to get to the root causes of it. As you know, he expressed himself by stating he would be in favor of fighting rather than investigating. But the two have to go together. Therefore, I believe in the time approach we talked about before.

Now, in talking a little bit about the root causes, I think one should use all propaganda means of convincing the responsible people of two things, namely, rebellious or revolutionary violence has little to do with the actual amount of suffering or deprivation of, let's say, a suppressed group. But it has a great, great deal to do with the feeling of injustice and this feeling, justified or irrational, is the most important thing. The feeling of remediable injustice is what counts. As long as people, groups or individuals, only feel that they suffer and are deprived, it makes little difference in terms of their being rebellious. Everybody knows slaves do not rebel. If suffering imposed is believed to serve a purpose it does not disturb the peace. The thing that does matter is if suffering is conceived of, whether rightly or wrongly, as being unjust and if the sufferers feel that this injustice can be remedied. If a condition is unjust but it is thought that nothing can be done about it, for instance, because it is "natural" for women to have their children, stay in the kitchen over the stove, and shut up, then everything seems all right and there is certainly no rebellion. But then women suddenly discovered that it need not be that way, that their condition was not the result of "natural" forces but served the convenience of men so they formed fighting groups, discovered their identity as "women," and wanted to be liberated. What I stated about women, who constitute neither a small nor a violent group, is true for colonial people, black people, Marxist groups, and so on. It is always the same principle. Marxism teaches that a deliberate and unnecessary injustice is being perpetrated by certain classes on other classes that should become smart enough to recognize not just the injustice but the fact that it can be remedied by concerted action. Only this double insight into injustice and available remedy causes the rebellious situation.

Let us face it, maybe not in this country, but maybe in South America and in other countries, there is actual intolerable injustice practiced continuously which could be remedied. Therefore, you have to have a different attitude as to what the whole problem of terrorism is. You cannot just be against terrorism or regard it as an American or German problem because it far exceeds national lines and you have to take into account the objective circumstances (like, for instance, terror from above) that promote and produce it.

I would like to think that the team or the teams can also take into account these large-scale considerations in the actual law enforcement activities. I am not one to believe that research and deeper understanding of these large factors impedes your effective action.

Of course, you have to do something on the police level but you dare not do it on the police level only.

Mr. CRANDALL. In this same connection, doctor, I would like to have you expand on the effect of urbanization and compacting people, let's say, in the city and the like.

Dr. HACKER. Well, as you know, there is a tremendous scientific and popular debate going on as to the effects of urbanization, of loss of living space, of overcrowding, as it has been called. As Lorenz and Calhoun put it, man behaves in some respects like rats which show definite behavior pathologies when forced into overcrowded ghettolike areas. It is interesting to note in the famous rat experiment by Calhoun, that the rats voluntarily and eagerly ran to the crowded areas and left their peaceful living conditions on the outskirts. One speculates why they do it and one hypothesis is that they do it for the same reason people do, because that is where the action is; the novelty, excitement, and entertainment aspect attracts in spite of danger. These are all very strong inducements. So the scientists themselves are not quite sure to what extent the overcrowding and the loss of the territorial space for expansion has an effect on aggressive behavior and crime. I think it has some influence.

Mr. SHAW. Do you not think our society, the democratic society, is going over to terrorism? You do not see these acts in a country such as the Soviet Union. Do you not think the proliferation of terroristic acts are bound to make this country more desirous of wanting to put it down?

Dr. HACKER. Yes. One of the alternatives to terrorism is terror. In other words, sustained governmental terror is a very effective way of wiping out individual and small group terrorism. Historically speaking, terror regimes always offer themselves to be the only remedy against terrorism. Terror, unfortunately, is an option for the combat of terrorism and I say "unfortunately" deliberately because many, many people ask why not? That seems to me to be a great danger because this kind of question justifies and introduces governmental terror as the only remedy against terrorism. The Germans and recently the Spaniards, the Greeks, not to speak now of the Communist nations, say and feel that they can guarantee law and order reliably because there the former terrorists have assumed the power of the state and hence have no reason to instigate individual disturbances anymore. Some of the greatest terrorists—Hitler, Stalin, et cetera—did very well as "legitimate leaders of nations using terrorism to acquire legitimacy. That is not a coincidence. The terrorists of yesterday, once the charge of the regime is accomplished, become respected officials in charge of the government. That is not just a historical joke. It is almost a necessity. You see that development very frequently. For example, in Israel, one of the former generals, at one time the equivalent of head of the CIA, has been a terrorist. One might say: of course; who else would qualify for that sort of job. But they create a confusing situation because that blurs the distinction between the good guys like us on one side and the bad guys on the other side, where the bad guys—terrorists—can become the good guys—legitimate leaders—when they get the power. That, of course, is the great argument of the Palestinians. They say give us a state, then you will not have any more terrorism from us. We will establish such a police state of reliable law and order that you even could have the next Olympic games there. We are inclined to smile about that fantasy but we

should not because, unfortunately, that the police state is an alternative to terrorism I think is a dangerous alternative even for our country.

There is no doubt about it, if you eliminate all freedom you can also effectively wipe out terrorism; but you also wipe out freedom with it. So the trick is to try to fight terrorism and preserve freedom. To fight terrorism without freedom, I could do that in 5 minutes. Just give me the power and the cops and it could be done immediately, but that obviously is not what we are after in this country, hopefully.

Mr. CRANDALL. Much of this, the terrorism, the people who actually take part in the terrorism, particularly those who are politically motivated, have a guiltless feeling. You touched upon this yesterday but what I would like to ask you is, do you feel our democratic system can cope with the type of activity where they actually use disruptive tactics within our judicial system and the like?

Dr. HACKER. It is generally acknowledged that there have to be certain social changes, but I feel we should not wait until those necessary social changes are forced upon us by terrorist activities. I directed a great number of my own scientific efforts to explaining what you very sensibly pointed out as being the guiltlessness of terrorists and what I call the manufacture of the good conscience.

As an example: if you turn on your television tonight you will see all kinds of acts of violence displayed, but we all have learned to experience exactly the same kind of violence in fundamentally different ways. Violence perpetrated by the good guys—our side, the sheriff or law enforcement officer—appears only as legitimate defense not as violence, yet the sheriff is no less violent than the villain. In fact, you can argue he is violent a little earlier and faster, he is quicker on the draw. But you do not call that violence and you don't experience it as violence, or as bad. Why? Because it is done in a good cause, for a good purpose, presumably, mostly for our causes and our purposes.

You see exactly the same situation in all kinds of adventure stories where our hero goes to a Communist country. His violence is not bad but "justified" because he is violent only against Russians, Rumanians, or such people who look peculiar, speak with an accent, and are probably Communists. Thus the mass media justify, sanctify, and legalize a certain kind of violence (usually our own) as inevitably necessary and good, as the only viable problem solution. This method is reversed and copied by groups who are inclined to be disruptive; in that manner terrorism becomes good, justified, and inevitable. I will be glad to write you a research paper on that, how this system of reversing and at the same time copying the value accents and justifications is put into effect. I think I could describe in great detail, step by step, how that is done and what purposes it serves and why it is regularly successful for law enforcement officers—for terrorists alike. I believe that insight into these processes is tremendously important in order to rob the people who perform violence of their good conscience because they would not be that violent after their good conscience and guiltlessness has been taken away. This information would have to be made available to everybody, including our law enforcement officers, who will then cease to use their weapons as guiltlessly as they do at the moment.

Mr. CRANDALL. I would like to have you expand a little. You testified yesterday, many of the terrorists are structured in the military structure.

Dr. HACKER. Yes, military and legalistic. They always talk about courts, sentences, arrests, verdicts.

Mr. CRANDALL. Actually, do you feel that within these advisory teams they might be able to direct activities once a particular terrorist incident took place, to ridicule or be able to put this in the context where these terrorists do not have this symbolic frame of reference? Would that be a very important function of the team?

Dr. HACKER. Not necessarily by ridicule, but by work and action on the symbolic frame of reference. Unfortunately, up to now, in our society, this has been overlooked. We have, as your chairman might say, become too Marxist in our approach. That is, Marxist in the sense of believing that only economic factors motivate people. This is not true. You can do a great, great deal by giving a medal to a person, by honoring them in some other way. The method of giving symbolic reward has been underplayed in the United States. I think this oversight has been costly and increases our peril. Man does not live and is not motivated and rewarded by bread alone. It is quite possible that some of the rehabilitation of these groups and their reintegration into our system of society will take place through symbolic recognition, not money.

We know, through our work with delinquent gangs, that honest recognition in their frame of reference works surprisingly well in bringing about changes and reintegration. I am impressed by the experience of many European countries where civil service employees who have reached the time for retirement are given the choice of getting higher pay or a medal. Many choose the medal and forego the monetary considerations which, to an American, seems slightly insane.

I am not trying to suggest this as a generally applicable governmental technique but the need for a place in the rank of hierarchical order apart from the need for money and affluence should be acknowledged. When a gang leader calls himself field marshal, you should not just ridicule him but see that he and many other disadvantaged individuals hanker for signs of social recognition, titles, and that sort of thing. We have not done too much about that, of exploring the usefulness of this type of reinforcement as a reward. It does not cost too much and it satisfies the type of narcissism which is not satisfied. It is better that you give medals as recognition for socially useful pursuits than open up destructive channels by social frustration and have people shoot and throw bombs at you.

Mr. CRANDALL. I know you have done a lot of research in the prison field. When you speak about rehabilitation, would you inform us what you have found as to rehabilitation and what you have found in the prison structure, what causes the people to be indoctrinated in terrorism?

Dr. HACKER. Karl Menninger, I think, has many times testified and he would be a more expert witness to testify on this aspect than I. He has been, as you know, for decades a leading innovative American psychiatrist, who has written a book, "The Crime of Punishment." I think he testified before some House committee just 3 or 4 weeks ago.

Then, of course, there are many others who have done similar work, the Chicago group, Dr. Norval Morris, and so on. I think there can be no doubt about it, at the present moment penitentiaries are

the grammar schools, high schools, and universities of crime. Whatever effort toward rehabilitation is made is failing at the present time. The American prison structure, which at one time was a model for the world, has become a world scandal. It is counterproductive, breeding recidivism and breeding terrorism, because jails and penitentiaries give highly aggressive and brutalized people who are imbued by a feeling of injustice, the chance to congregate and the opportunity to gather, organize, and have all kinds of plans worked out. I think it is very likely that the Symbionese Liberation Army, the latest addition to the growing number of small, highly effective terroristic groups was initiated and founded in prison. I would not be surprised that other so-called racial, national, and other radical groups have actually formed a nucleus in prisons. They can be dealt with by reforms of the prison system, which is imperative. But there is a tremendous amount of expertise and literature in the study of crime and terrorism which can be helpful in bringing about a reform of the prison system altogether; unfortunately all this incontrovertible evidence is almost completely ignored.

Mr. CRANDALL. We will take a recess.

[Short recess.]

Mr. CRANDALL. We will proceed.

Mr. Pott, one of our investigators, has a question.

Mr. POTT. During the past several years, during our investigations of various revolutionary or Marxist-oriented groups in the United States, some of the witnesses who have appeared before the committee concerning revolutionary groups while assessing the capabilities of the groups have commented upon the fact they did not believe that the groups themselves at this point in time were actually capable of leading or being the vanguard of any revolutionary or terroristic activity that would actually overcome the U.S. Government.

However, they did state that it was their opinion that what these groups are trying to do is to create a climate conducive to revolutionary or terroristic activity.

My question is: What part or how much have the activities of such groups contributed to the proclivity of certain individuals to participate in terroristic activity at this point in time?

Dr. HACKER. I think they have contributed a great deal. International terrorism is as contagious as any other form of well advertised and "justified" violence. As I said yesterday in my testimony, I do not think one should equate all terroristic activities with Marxist terrorism. Some are, but a large number use vaguely leftist slogans or are definitely rightists or originated groups disapproved of by the Marxists themselves. Many of them in our present situation do not aim at the revolutionary overthrow but just to create a climate of destruction, representing the paralysis of society, the nonfunctioning of society in order to bring about the kind of despair and hopelessness which they might think in the future would cause a revolutionary atmosphere. They are more dangerous because they engage not in rational actions but in disruptive efforts that can pop up wherever, in order to demonstrate that society does not function any more. These actions are done for action's sake and are purely disruptive and demonstrative and spectacular, but nonetheless quite dangerous.

For instance, the Munich Olympic episode was perpetrated to point to certain alleged injustices or to disrupt the festivities and organizational arrangements that were significant and even vital for the orderly functioning of society. That is a very important aspect of present terrorism. It is not necessarily ideological and therefore melts into the criminal variety for personal gain and to commit violence for the fun of it and to simply disrupt.

Mr. POTT. Would it be possible to rate the significance of this particular factor as compared to some others that have already been discussed?

Dr. HACKER. I think that factor is a very important one and cannot be seen, in my opinion, divorced from the actual circumstances.

For instance, in this country if somebody proposes to use the kind of violence against the legal process as they did in California, by abducting the judge and trying to extort for the release of certain prisoners, I would say this is not only a criminal but an insane activity, because there are ample legal remedies to protect against unjust imprisonment in our country.

In a state which I will not name, let's say someplace in South America, the population is without protection of due process. There is no remedy from oppression against illegal arrest and torture except by getting a hostage; there are no available protective legal processes. I think one should not overlook that difference in the circumstances in which terroristic acts occur. You cannot compare incomparable situations in which similar acts of terrorism cannot be considered the same, because in one instance there are, in the other there are not, alternatives. The latter at least makes some sense because there are no other remedies feasible. Therefore, our Founding Fathers recognized, almost 200 years ago, that a viable democratic society needs to provide all kinds of nonviolent alternative remedies in order to make violent remedies not only criminal, but unrealistic, unnecessary, and hence, less likely to occur.

Mr. CRANDALL. In this same vein with regard to revolutionary groups, I would like to point out that the United States and the Soviet Union are the two giant countries with regard to their ideological struggle. We have seen in the postwar period these countries affording dissident sanctuaries. Would you please address yourself as to the psychological effect of such sanctuaries in promoting more terrorist groups and activities?

Dr. HACKER. The known psychological and realistic (logical) effect of such polarized situations is immense. The more you have two opposing camps that give support and sanctuary to terroristic disrupters, the more there is going to be a continuation and escalation of disruptive and violent activities. This becomes a semi- or quasi-military operation. They call it commando activities or sometimes spying or fifth column activities, and this is conceived of as part of accepted warfare. As long as that situation prevails in peacetime, there is very little that can be done. This is the trouble with the Arab terrorists. You cannot do anything much about that on the police level but everything on the political level.

From the present treaty between the United States and Cuba, there is a tremendous lesson to be learned. There have been decades of skyjacking going on to and from Cuba and vice versa. Finally the United States and Cuba entered into a treaty which clearly respected the

political and ideological system differences, but nevertheless with one fell swoop stopped all the nonsense of hijacking. Merely the conclusions of the treaty made it superfluous to actually test its provisions.

If it came to a real political reconciliation, let's say, between Israel and the Arab nations, there would not be any Arab terrorism any more. So the real resolution to this type of activities is in bilateral or in multilateral treaties that make for uniformity of apprehension and punishment. The very existence of such agreement will eliminate a very large part of terrorism as we know it to exist nowadays. But that is a political solution we have to leave to our statesmen and not depend on police methods only.

Mr. CRANDALL. In 1971, the late J. Edgar Hoover said, "As our society becomes more complex, industrial, urbane, and interrelated, the greater will become the power of a fanatical minority." He added that "A mere handful of these individuals, if they so desired, could disrupt, inconvenience, destroy, and endanger the rights, lives, and property of others."

Do you agree with that statement, and will you please comment on the magnitude of this problem?

Dr. HACKER. I completely agree with it and I think it has proven to be prophetic, in a sense. However, I could add something to it which I do not know if it would have found the applause of Mr. Hoover. Namely, one cannot confine these types of problems any more either to law enforcement or to national policy. Terrorism has become an international problem. Even a country as mighty as the United States cannot hope to solve it by itself. You cannot say in our country violence against capitalistic institutions is a crime if we do not concede that in some countries violence against Marxist institutions is considered a crime, that is, if fighting terrorism means an examination of the various divergent systems which are not like ours. Otherwise heroism for one country will forever remain criminal villainy for another and vice versa.

In other words, as someone once said, the era of world interior policy has started. The world has become too small to be the playground for conventional national policies alone. There has to be some consideration as to the world as a whole, which means, however, a giving up of a certain measure of national sovereignty which particularly the large nations are not very willing to do.

I do not know to what extent Mr. Hoover would have liked some kind of a supervisory activity by an international body which would have limited his and the national sovereignty to decide, but I think that is necessary because no nation alone can hope to fulfill all requirements for successfully combating terrorism without regard to the international community because terrorism happens to be an international problem, basically.

Mr. CRANDALL. Also, with regard to this being an international problem, it has been speculated that criminal terrorists in the not too distant future may be armed with sophisticated military weapons, evidenced by the threatened use of heat-seeking missiles in London.

Would you express your views with particular regard to the seriousness of the problem to our society and law enforcement?

Dr. HACKER. The seriousness of the problem cannot be overstated. I agree with your chairman, it is extremely serious.

Interestingly, in the United Nations, it was the Soviet Union which pointed out that an airplane equipped with atomic material could wipe out a whole city and could practically put a whole town or country at the mercy of a few individuals. One should foresee this contingency and have by certain international agreement at least attempted to make provisions in that respect, that certain types of conduct are to be outlawed internationally regardless of how they might be rationalized or justified and regardless of who commits them.

I believe the United States-Cuban treaty is a tremendous symbol. If it is possible to come to an agreement between two states whose relationships otherwise are so strained as those between Cuba and the United States, I say it is possible to come to such agreement with anybody.

I do not think it is too starry-eyed to hope for international morality commanding that certain things we will not do or tolerate under any circumstances, no matter for what purpose.

Many of our problems are caused by the mass media who say, well, if your cause is good, then violence in its service is OK; everything is permissible as long as it serves the good cause. That is the kind of luxury we cannot indulge in any longer. There have to be certain acts such as piracy, kidnaping, theft of atomic material, et cetera, that ought to be internationally outlawed. They ought to be forbidden without any question as to motivations. I think if there was an international or even bilateral or multinational agreement on that among the states that count, this type of terrorism will almost completely disappear. What is important for the terrorist is not the actual sanctuary but the fantasy or the delusion of the hero's welcome, of the hero's funeral, even the fantasy that there will be some state that will put the flag at half mast. If one could cut out publicity, I would say you could cut out 75 percent of the national and international terrorism.

The Black Panthers, the Weathermen, they copy a great deal of the techniques used in South America, the Third World, and so on. There are fashions that spread worldwide, due to the mass media, from streaking to terrorism. There have been waves and stereotyped fashions of streaking, skyjacking, and kidnaping, like fads in popular music or clothes fads, some of which are innocent and some not, and it ought to be recognized that this is an international phenomena due to mass-media communication.

Mr. CRANDALL. Inasmuch as this is an international phenomena, I would like to touch upon one other point. Collecting and maintaining intelligence information in a central bank and having this information available to the teams and also maybe to others in the research field, would this be essential?

Dr. HACKER. I think that is absolutely essential and part of ongoing research for this information should instruct and guide future research. That I consider absolutely essential. In reference to terrorism, such phenomena as deprivation, social injustice, and alienation must be investigated and if possible remedied because these things are very, very pertinent. That makes for renouncing the approach of looking at terrorism just as a crime and to fight it with the usual law-enforcement measures. You then have to look at it as a social phenomena in order to understand it. You have to also attempt to

remedy the causes. You may have to say to this or that South American government or Arabian government, look, it is not nice to imprison people arbitrarily, to torture them, and to cut off their hands as punishment. As long as you do that kind of thing without any due process through the legal system, you cannot be surprised if terrorism does occur. Because terrorism calling for counterterrorism is contagious, it is not any more just your business; it becomes ours. It is not enough either to send in the cops and the Marines and get the bums, I am not saying we should not get the bums, but you also have a moral obligation to get to the ones in power, so that they do not create or tolerate the conditions inevitably leading to highly exportable terrorism.

Mr. CRANDALL. Doctor, in this same connection, we have found that the large industrial firms, of course, are one of the subjects under attack with regard to terrorism. Also we find the religious organizations have played a role.

Now, in connection with these proposed teams that would be established, do you think these teams could play an important role by either forming industrial groups or in maybe making studies with them to determine whether or not certain approaches would be called for?

Dr. HACKER. I think that would be very important and I think yesterday it was mentioned there should be a religious representative on the team.

However, I hesitate at this moment to recommend too much, or to expand the functions of these teams too widely. Otherwise, we won't get to first base. I think later on, one certainly should contemplate expanding it to industrial leaders and religious experts, which may be important. However, I think it should be as you stated, definitely under the leadership of an established agency, either the State Department or another, which should do the funding and hiring and exercise overall control.

In a democracy, the duly elected or appointed representatives of the people are and should be the representatives charged with the responsibility of social decisionmaking, not the experts, But the experts' knowledge should be used and used to the fullest, although they ultimately cannot be the decisionmakers.

Mr. SHAW. Do you attach any significauce to the fact that the majority of these acts have occurred in California? You have the situation in Berkeley, you have a lot of these radical groups out there. You also have the largest concentration of Communist members in California, outside of New York. Do you think the climate has anything to do with throwing these people together? You do not have very much cold weather there.

Dr. HACKER. I think it has more to do with urbanization, with large population centers, with the unanimity of cities. Also, it has to do with the fluctuating population of California.

Mr. SHAW. One thinks of Washington as the so-called seat of the establishment. But outside of the bombing of the Capitol in 1972, which was rather minor, there has not been too much terroristic activity taking place here.

Dr. HACKER. The fellow who wanted to crash into the White House a few weeks ago—that was pretty bad; that was not in California. I do not know if you can say in general that terroristic activities

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