STAFF ANALYSIS OF PROBATION AND PAROLE SERVICES AND PAROLE DECISION-MAKING PROCEDURES IN LOUISIANA

GOVERNOR'S PARDON, PAROLE AND
REHABILITATION COMMISSION

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INTRODUCTION

The initial actions taken by the Commission were to determine what broad functions the postconviction, non-judicial criminal justice system should be performing, and to adopt a research design to structure the examination of the services, policies, and procedures utilized in Louisiana which are related to these functions. The following goals were established by the Commission as appropriate functions of the Louisiana correctional system:

1. Restraint of offenders who are likely to repeat criminal activity, using the least restrictive means necessary to protect society;

2. More accurate prediction of which offenders will not repeat criminal activity or will not be best served by incarceration and return of such persons to society and to productive endeavor;

3. Deterrence of future crimes;

4. Rehabilitation of offenders through the use of appropriate services designed to meet the unique needs of each individual and to maximize his potential as a productive member of society;

5. Humane treatment and respect of rights of persons having anti-social behavior characteristics;

6. Fostering equal treatment of all persons who are similarly situated;

7. Efficient operation and maximum utilization of resources;

8. Systematic reintegration of incarcerated offenders into society and family units;

9. Protection of victim rights and restitution of losses.

These goals have been utilized to establish the parameters and orientation of this study. As cited in the research design, the initial topic

to be considered by the Commission is parole decision-making and probation and parole services. The staff has followed the procedures described in the research design and now presents this report which analyzes critical issues associated with this area of the criminal justice system. Within the body of this report public policy and service delivery recommendations have been identified. What is now required is that the Commission review these alternatives in terms of their desirability and feasibility. Furthermore, the staff fully recognizes that there is a wide range of actions which will accomplish the objectives established by the Commission, and that it is the Commission members who must now set priorities for further study.

Although this analysis is presented in rather dichotomous terms, the staff has attempted to account for the highly interrelated nature of these components of the criminal justice system. Therefore, prior to proceeding with the specific analysis of parole decision-making and probation and parole services, an overview of the correctional system in Louisiana is presented.

CHAPTER I

OVERVIEW OF THE LOUISIANA CORRECTIONAL SYSTEM

This report is based on two procedures. The first is a general review of the Louisiana governmental agencies, facilities, programs, procedures, personnel and techniques concerned with the investigation, intake, custody, confinement, supervision, or treatment of adjudicated adult offenders. The second consists of a detailed analysis of probation and parole services, and parole decision-making efforts. This approach was adopted in order to generate specific recommendations relating to the issues of probation and parole which are consistant and relevant to the general Louisiana correctional system.

This overview presents a brief description of the principle components of the system: investigations, sentencing, incarceration, good time, work release, furloughs and passes, and the administrative characteristics of the Louisiana Department of Corrections. Figure 1, Louisiana Correctional System: Offender Flow Alternatives, presents the sequence of the interactions of these principle components.

Investigations

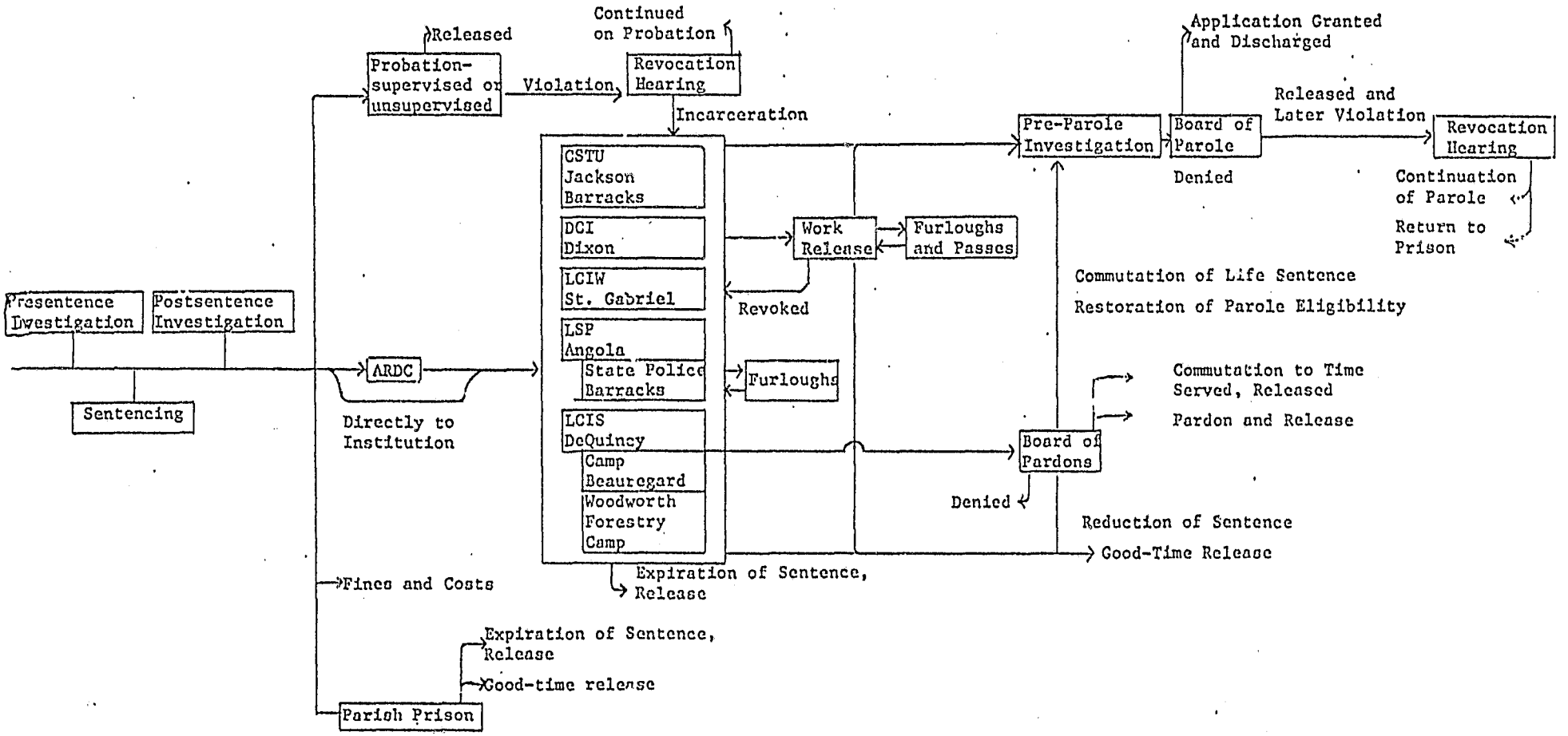
If a defendant is convicted of an offense other than a capital offense, the court may order the Department of Corrections' Division of Probation and Parole to make a presentence investigation. This investigation inquires into the defendant's personal background, history of delinquency, family situation, employment habits and similar areas. If a presentence investigation is not ordered by the court, then the Division of Probation and Parole conducts a postsentence investigation in any felony cases with a sentence of a year or more. This report becomes part of the offender's prison or probation records. Confidentiality is maintained with regard to the contents of both types of reports.

Sentencing

There are basically three types of sentences which may be given out in Louisiana. One is a suspended sentence with some sort of probation attached. Incarceration is another possibility, either in the local parish

Figure 1

Louisiana Correctional System: Offender Flow Alternatives



prison or in a state institution. The third type of sentence is the requirement of payment of fines and/or court costs. A discussion of each of these sentences follows.

Suspended Sentence

The court may suspend the imposition or execution of sentence in first conviction felony cases and in misdemeanor cases, with some exceptions; and the offender will be placed on probation for a specified period. This probation must be supervised in felony convictions, but can be either supervised or unsupervised in certain misdemeanor cases. The Division of Probation and Parole of the Department of Corrections is responsible for maintaining supervision.

If the offender satisfactorily completes his period of probation without any other convictions, the court may set aside the conviction and the effect is the same as an acquittal. However, if another offense is committed, or if the offender violates the conditions of his probation, there are four possible consequences: (1) a reprimand and warning; (2) intensified supervision; (3) imposition of additional conditions to the probation; (4) revocation of the probation. In the event that the court revokes his probation, the offender must serve the original sentence, as well as the sentence(s) for the new offense(s), if any.

Incarceration

If the crime for which an offender is convicted is a felony (i.e., if it is punishable by hard labor), the court may sentence the offender to serve time in prison under the supervision of the Department of Corrections. If the crime is not punishable by hard labor or is a relative felony (i.e., punishable with or without hard labor), the offender may be sentenced to parish jail. In the latter cases, the offender may be able to earn good-time and secure an early release, to be awarded by the sheriff of the parish. Some parishes also offer rehabilitative programs such as work-release.

State Institutions

Offenders sentenced to the Louisiana Department of Corrections may either go first to the Adult Diagnostic and Reception Center (ARDC), currently located at Dixon Correctional Institute; or they may go directly to one of the other institutions. With the opening in 1978 of the Hunt Diagnostic Center at St. Gabriel, all incoming offenders will be processed there before going on to another institution.

The other adult institutions operated by the Department of Corrections are:

1. Louisiana State Penitentiary (LSP) - Commonly referred to as Angola, this is the oldest and largest penitentiary and has all classifications of male prisoners. The State Police Barracks is a satellite facility of Louisiana State Penitentiary.

2. Dixon Correctional Institute (DCI) - Located in Jackson, Louisiana, Dixon opened in 1976 as a medium security prison for men.

3. Louisiana Correctional and Industrial School (LCIS) - This is the institution for first offenders (male) located in DeQuincy. It includes the satellite facilities of Camp Beauregard Work Release and Maintenance Center and Woodworth Forestry Camp.

4. Louisiana Correctional Institute for Women (LCIW) - This prison houses all female inmates committed to the state's care and is located at St. Gabriel.

5. Corrections Special Treatment Unit (CSTU) - Located at Jackson Barracks in New Orleans, it started functioning in 1975 and combined the existing maintenance and work-release center with psychiatric treatment facilities.

Parole

In the state correctional institutions, most inmates secure their release either thrcugh parole or earning good-time. With certain exceptions, an inmate is automatically considered for parole after serving one-third of his sentence. If the parole is granted, the inmate is released under supervision by the Division of Probation and Parole for a period equal to the remainder of his sentence. If the parolee completes his parole period without committing any new offenses or otherwise violating the conditions of his parole, he is discharged. If he violates the conditions of his parole, the parole officer may convene a preliminary hearing at which another officer who is not directly involved with the case determines whether there is probable cause that the parolee violated a condition. If such a finding is made, the parolee is brought before the Parole Board which may take any of the following actions: (1) issue a reprimand and warning; (2) impose additional conditions of parole; (3) revoke parole and return parolee to prison to complete his sentence. Should a person be convicted of a felony while on parole, the parole is automatically revoked, and no hearing is necessary.

Good-Time

An inmate may receive good-time credit on the basis of 15 days reduction of sentence for each month actually served. Thus an inmate who earns maximum good-time will be released after serving a little more than half his sentence. Once released, the inmate is free and clear; he has no conditions to follow and no threat of being returned to prison on a technical violation, as is the case with parole. If an inmate does not earn any good-time, and does not receive a parole release, then he simply serves his full sentence (flat-time) and is released upon the expiration of his sentence.

Work-Release

There are work-release programs for which an inmate becomes eligible to apply six months before his parole eligibility date or good-time release

date. If the inmate is approved for work-release, but then violates the rules of the program, he can be returned to prison. If he successfully handles work-release, he can remain in the program until eligible for his release via parole or good-time.

Board of Pardons

There are several ways in which pardon board actions can aid the inmate in gaining his release from prison. The Board of Pardons is empowered to recommend to the Governor commutation of sentences and pardon of those convicted of offenses against the state. By seeking a full pardon or commutation of sentence to time already served, an inmate may thus secure his outright release. An inmate with a life sentence can seek to have his sentence commuted to a fixed number of years in order to gain eligibility for parole. It should be noted that in the last two instances, the Board of Pardons' actions, if accepted by the Governor, only establish parole eligibility for the inmate; the Board of Parole is under no obligation to grant parole. Inmates can also seek a reduction in their sentences, which allows them earlier release either via good-time or parole. Thus the Board of Pardons can recommend to the Governor actions which can result in the clear release of an inmate, or can aid the inmate's release through the regular parole or good-time channels. A first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the Governor. The Board of Pardons consists of five members appointed by the Governor, subject to confirmation by the Senate.

Furloughs and Passes

The Secretary of the Department of Corrections can approve furloughs and passes for those eligible inmates who have been recommended by the warden of their respective institutions. Those inmates with a work-release or maintenance status may receive one 48-hour pass each month. All other inmates who meet the necessary criteria (non-violent crime, first or second offender, no escapes, etc.) may receive furloughs at Christmas and Easter which can last from one to five days. Also furloughs can be granted for special situations, such as family emergencies or pre-employment interviews, upon recommendation of the appropriate warden.

Fines and Costs

The court can establish a monetary penalty that has to be paid by the offender. Fines and costs can constitute the whole sentence, or can be combined with a period on probation or a period of confinement. If the money is not paid, the offender may be subject to incarceration. The Board of Pardons has the authority to recommend remission of fines and forfeitures to the Governor.

(The remaining narrative portion of this section was excerpted from the draft Fiscal Year 1978 Louisiana Law Enforcement Comprehensive Plan, Crime in Louisiana.)

Louisiana Department of Corrections

Adult correctional services are provided at the state level by the Louisiana Department of Corrections. The Department was legally established under Act 192 of the 1968 State Legislature. This Act merged and consolidated the Louisiana Board of Institutions, the Department of Institutions, and the functions of each into a newly created Department of Corrections. The Department of Corrections was continued by Act 513 of the 1976 State Legislature. (Figure 2 presents the Department's organizational chart.)

Secretary - Department of Corrections

The Secretary for the Department of Corrections is appointed by the Governor and serves at his discretion. He serves as the Chief Executive, administrative, budgetary, and fiscal officer of the Department. The Secretary is responsible for attending all meetings of the Board of Corrections and implementing policies established by that body. The Secretary administers the Department and prescribes rules and regulations for the operation and supervision of all institutions, facilities, and services under the Department's jurisdiction. The Secretary submits an annual report to the Board of Corrections and to the Governor analyzing the status of the Department's facilities, services, and functions. The Secretary delegates, coordinates, and administers these activities through reports, personal visits, and contacts made by staff personnel.

Board of Corrections

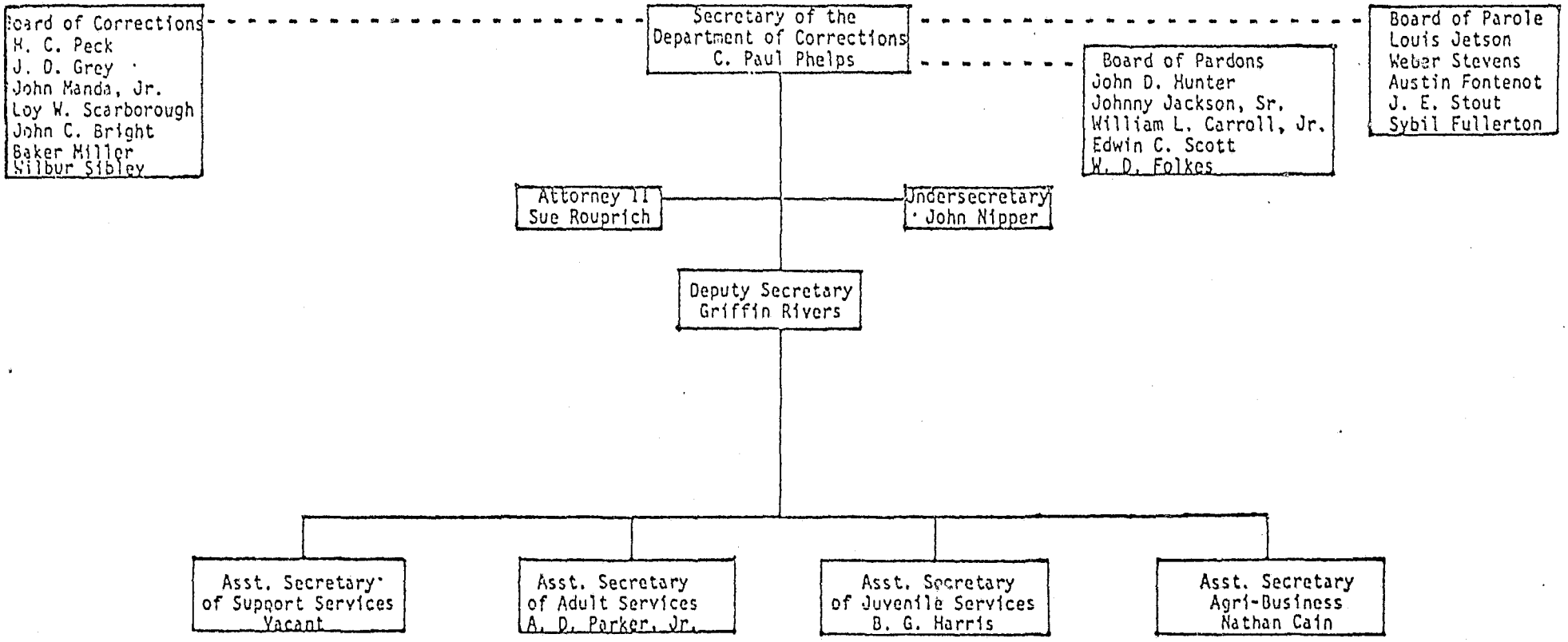
The Board of Corrections is composed of seven members appointed by the Governor, with the advice and approval of the Senate. The Board's primary function is to determine departmental policy. However, neither administrative, executive duties, nor specific procedural matters of departmental policy fall under the auspices of the Board of Corrections. The Board conducts an annual evaluation to determine adequacy and effectiveness of the Department's institutions, services, personnel, and programs. The Board of Corrections denies or grants power and authority to the Secretary of Corrections to lease, purchase, and grant right-of-way to real property belonging to the state and under the Department's jurisdiction.

Board of Parole

The Board of Parole is composed of five members, one appointed by the Governor and serving a term concurrent to his, and four appointed by the Governor with the approval of the Senate and serving six-year staggered terms. Domiciled in Baton Rouge, the Board of Parole meets once a month at each of the Department's adult correctional institutions on a regularly scheduled date determined by the chairman. Other meetings are called at the chairman's discretion. Statutorily defined, the activities and powers of the Board of Parole are as follows: to determine the time and conditions of release for the parole of any person, who has been convicted of a felony, sentenced to imprisonment and confined in any penal or correctional institution in the state; to determine and impose sanctions for violations of the conditions of parole; to keep a record of its acts and to notify each institution of the decisions relating to the persons who are or who have been confined

Figure 2

DEPARTMENT OF CORRECTIONS
Organizational Chart



therein; to transmit annually, on or before the first day of February, a report to the Secretary of Corrections which includes statistical and other data with respect to determinations and work of the Board for the preceding calendar year and research studies which the Board may make of sentencing, parole, or related functions, and recommendations of legislation to further improve the parole system of the state; to apply to district courts to issue subpoenas, compel the attendance of witnesses, the production of books, papers and other documents pertinent to the subject of its inquiries; to take testimony under oath, either at a hearing or by deposition; and to pay all costs in connection with the Board's hearings; to consider all pertinent information with respect to each prisoner within one year after his admission to any penal or correctional institution in this state, and thereafter, at such other intervals as it may determine, which information shall be a part of the inmate's consolidated record, and which shall include the circumstances of his defense, his previous social history and criminal record, his conduct, employment, and attitude in prison and any reports of physical and mental examinations which have been made; and to adopt such rules not inconsistent with laws as it deems necessary and proper, with respect to the eligibility of prisoners for parole, the conduct of parole hearings and conditions imposed upon parolees.

Division of Probation and Parole

The Division of Probation and Parole is responsible for the supervision of all adult offenders on probation, parole, or work-release. The Division provides services for all felony cases and those misdemeanor cases with sentences in excess of 90 days, excluding criminal neglect of family (non-support). The Division is charged by statute to conduct a presentence or postsentence investigation on every felony; a presentence investigation on every misdemeanor with potential sentence in excess of 90 days (if ordered by the court); a preparole on every inmate before eligibility for parole consideration; a clemency investigation on every application to the Board of Pardons; and a clemency investigation on every first offender felon applying directly to the Governor for pardon. The Division of Probation and Parole is divided into four areas and 13 districts.

CHAPTER II

PRELIMINARY DISPOSITIONS

Historical Origins of Parole

The historical foundations of modern parole lie in English penal practices dating back as far as the 17th century.[1] Beginning in 1617, reprieves and stays of execution were granted to persons convicted of certain crimes who were strong enough to be employed in the colonies. From that time on, "transportation" to America of pardoned felons, on condition that they not return to England until their sentences had expired, was an integral feature of the English penal system.

As the practice ultimately developed, the Government gave a contractor or shipmaster "property in service" of the prisoner until expiration of his full term. When the felon arrived in the colonies, his services were sold by the contractor to the highest bidder and the convict became his new master's indentured servant for the remainder of his term.

After America won her independence, the practice of transportation continued, but prisoners were sent to Australia rather than to the American colonies and the Government retained control of them and assumed responsibility for their behavior and welfare. The governor of the penal settlement was given authority to grant "tickets-of-leave," awarding prisoners conditional freedom for good conduct, meritorius service or for purposes of marriage.[2] After 1821, prisoners were required to serve specific portions of their sentences before they were eligible for a ticket-of-leave. The Australians also experimented with a system of granting marks as a form of wages given in exchange for labor and good conduct.

But as more free settlers moved to Australia, criticism of the transportation policy increased. In response, the Government began to select candidates for transportation more carefully, requiring that they undergo a period of training and discipline in English prisons before being transported. This effort failed, resulting in 1867 in the demise of the system of transportation, but this experiment marked the first attempt to use experts to select prisoners for conditional release who had profited from a training program.

The English Penal Servitude Act of 1853 institutionalized the use of the ticket-of-leave for prisoners convicted in England and Ireland, specified the proportion of his sentence a prisoner was required to serve before becoming eligible for a ticket-of-leave, and fixed a range of years within which a person with a particular sentence could be conditionally released.[3] For instance, those who had sentences of seven to ten years were eligible for ticket-of-leave after having served four but not more than six years. This last feature of the scheme was the forerunner of the modern indeterminate sentence.

A fundamental premise of the Servitude Act of 1853 was that the programs conducted in the prisons would be reformative and that prisoners selected for ticket-of-leave would have shown definite proof of having profited by their training. Public concern that this underlying assumption was false prompted the appointment of a Royal Commission in 1862, which recommended that prisoners released on ticket-of-leave be supervised after their return to the community, a measure that had been previously employed in the Irish penal system at the urging of Sir William Crofton. This practice was adopted, and thus, by the middle of the 19th century, the English system incorporated all the essential elements of modern parole.

The classic definition of parole was provided in the Attorney General's Survey of Release Procedures in 1939 as "release of an offender from a penal or correctional institution after he has served a portion of his sentence, under the continued custody of the state and under conditions that permit his reincarceration in the event of misbehavior."[4]

Development of Parole in the United States

The measures out of which parole developed in the United States are the laws modeled on the ticket-of-leave and passed by the various states, beginning with New York in 1816, shortening the term of imprisonment as a reward for good conduct and seeking to mitigate the harshness of criminal sanctions. Such releases were always accompanied by some sort of agreement between the prisoner and the releasing authority specifying certain conditions to be followed by the releasee and providing that he could be returned to the institution if the conditions were violated.[5] Some states appended a program of supervision of released prisoners to their systems, this function at first being accomplished by volunteers and later by specialized officers trained for that purpose.

During the last quarter of the 19th century and the first part of the 20th century, these early forms of conditional release evolved into parole, as part of an integrated system based upon a new penal philosophy first advocated by the Scottish philosopher George Combs, when he visited the United States in 1839. This philosophy has dominated American corrections ever since. In one of his lectures, Combs said:

> ...If the principles which I advocate shall ever be adopted, the sentence of the criminal judge, on conviction of a crime, would simply be one of finding the individual has committed a certain offense and is not fit to live in society, and therefore granting warrant for his transmission to a penitentiary to be there confined, instructed, and employed until liberated in due course of law.

> The process of liberation would then become one of the greatest importance. There should be official inspectors of penitentiaries invested with some of the powers of court, sitting at regular intervals and proceeding according to fixed rules. They should be authorized to receive applications for liberation at all their sessions and to grant the prayer of them on being satisfied that such a thorough change had been effected in the mental condition of the prisoner that he might safely be permitted to resume his place in society.
>
> Until this conviction was produced upon examination of his disposition, of his attainment, in knowledge of his acquired skills, or some useful employment of his habits of industry, and, in short, of his general qualifications to provide for his own support, to restrain his criminal propensities from committing abuses and to act the part of a useful citizen, he should be retained as an inmate of the penitentiary./6/

Zebulon R. Brockway is credited with instigating the passage of the first indeterminate sentencing law in Michigan in 1869, but it was declared unconstitutional in 1899. However, Brockway became Superintendant at the Elmira Reformatory and succeeded in having an indeterminate sentence law adopted in New York as well. It appears that Brockway, like Combs, viewed indeterminancy as a means of isolating the criminal from society;[7] they viewed criminal tendencies as illnesses and believed the convict should stay in prison until his keepers or other officials decided he was "cured" or rehabilitated.[8] Conversely, it was felt that the prisoner should be confined only so long as he was a threat to society.[9]

However, very shortly this early preventive confinement rationale for indeterminate sentencing was subtly replaced by another justification, assigning to penal establishments a much more ambitious purpose. Rather than merely seeking to confine the prisoner until he had reformed, prisons were expected to actually bring about his reformation.[10] This movement gained impetus from the growth of knowledge in the behavioral sciences, which seemed to hold the promise of explaining and controlling human conduct.[11]

An increased understanding of the motivations of criminal conduct also underlay the notion that a trained parole board could judge the optimimum time of release of a prisoner who was benefitting from rehabilitation programs while incarcerated. The thrust of the indeterminate sentence-parole system, then, has been to make the punishment fit the criminal rather than the crime.

In its purest form, the indeterminate sentence is absolutely indefinite: the law authorizes imprisonment of the offender for life regardless of the nature of the crime, and he is released by the parole decision-making authority only when it determines that he has been "rehabilitated."[12] However, legislatures have often limited this extreme discretion and countless variations of the indeterminate sentence were adopted by various jurisdictions. The most common form of indeterminate sentence bearing close resemblance to the classic model is one authorizing the judge, within certain limits, to impose a sentence with a stated minimum and maximum number of years; the parole board is free to release the prisoner at any time after expiration of the minimum term, but it cannot hold him beyond the maximum term.[13] A slightly different arrangement, accomplishing essentially the same result while somewhat limiting judicial discretion, allows the judge, within limits, to set a maximum term but establishes parole release eligibility at a certain proportion of the maximum sentence, typically one-third or one-fourth.[14]

By 1901, parole laws had been enacted in twenty states, and by 1970, every state had incorporated parole into its correctional system.[15]

Parole in Louisiana

Louisiana's first parole law, adopted in 1914, authorized the Governor, upon recommendation of the Board of Control of the state penitentiary,

to parole any first offender at any time after he had served at least one year of his sentence. Ineligible for parole consideration were persons convicted of treason, arson, rape, attempted rape, or crime against nature.[16]

In 1916, the Legislature passed an indeterminate sentence law and created a three-member Board of Parole appointed by the Governor with full power to parole those serving an indeterminate sentence after they had completed their minimum sentence. The indeterminate sentence law as it existed in 1926 authorized the judge to impose a sentence with a minimum term not less than the minimum term set by the Legislature for the crime or more than two-thirds of the maximum set by law and a maximum term not greater than the maximum set by law.

The Board of Parole was abolished in 1940 and its functions transferred to the Department of Public Welfare. The Commissioner of Public Welfare was given final authority to grant or revoke parole, and he appointed a parole committee within the Department to recommend to him action on all parole applications.[17]

In 1942, a new Board of Parole was created, consisting of the Commissioner of Public Welfare or his representative, the Attorney General or his representative and the trial judge or his successor. The sentencing law allowing the trial judge to set the minimum and maximum sentence was replaced by one automatically setting the minimum sentence (and parole eligibility) at one-third of the maximum sentence imposed in most cases. This provision is still in force in Louisiana.

The size of the parole board was increased in 1952 to five members, three of whom were appointed by the Governor. The Commissioner of Public Welfare or his representative and the Attorney General or his representative continued to occupy the remaining positions. In 1956, an independent Board

of Parole was created, consisting of five members appointed by the Governor to terms concurrent with that of the Governor.

Finally, in 1968, a new parole law patterned after an American Correctional Association model was passed as part of a correctional package. It established a full-time Board of Parole consisting of five members appointed by the Governor, four of whom were to serve six-year staggered terms while the fifth member, the Director of Corrections and ex-officio chairman, was to serve a four-year term concurrent with that of the appointing Governor. This provision still governs the structure of the Board of Parole except that a 1972 amendment removed the Director of Corrections from the Board and provided that the Governor appoint a Board chairman. The law establishes no qualification criteria for parole board membership.

Nearly a majority of the states (23) by 1976 had concurred in Louisiana's decision to have a five-member parole board and the increase in the number of jurisdictions having boards of this size from 16 in 1966 indicates a trend in this direction.[18] Also, the vast majority of the states (40) provide for appointment of paroling authorities by the Governor. More states (17) have chosen six-year terms of office for parole board members than any other term, although nearly as many (16) assign members four-year terms.[19]

Traditionally, parole decision-making has been structured in three distinct models. The first is the institutional model, which places authority to release inmates in the hands of the staff of correctional institutions. The advantage of this arrangement is that it entrusts decision-making to those individuals most familiar with the inmate and permits the development of a consistent decision-making policy regarding the individual offender. However, the disadvantages of the model in the

reduced visibility of decision-making and the tendency to allow institutional concerns such as overcrowding and discipline to overshadow concern for the welfare of inmates and society have led all of the states to abandon the institutional model.[20]

The second structure, employed in half of the states in 1976, is the autonomous parole board which exists as an independent agency. It was created to avoid the dangers of the institutional model and to increase the objectivity of the parole decision. However, the autonomous parole board has been criticized as being too far from the institution to appreciate the subtleties of the cases or the needs of the institution, too sensitive to the public sector, and as leading to the appointment of unknowledgeable, inexperienced and incompetent board members.[21]

The response to these deficiencies in the institutional and autonomous boards has been the establishment of the consolidation model in 25 states, including Louisiana. This structure, seeking to combine the best features of the two predecessors, places an independent parole board within the larger corrections department where it may at least theoretically be independent of the control of the institution while being sensitive to its needs.[22]

At this point, it may be helpful to briefly review the operations of the Louisiana Board of Parole before going into a more detailed analysis of specific features of the system. The Board is required by law to meet once a month at each of the adult correctional institutions in the state and at such other times as the chairman may determine.[23] Hearings are held before the entire board and approximately 20 hearings are held on a typical day.[24] The members are authorized to determine, within the eligibility limits established by law, the time and conditions of release

on parole of any person convicted of a felony and sentenced to imprisonment in any correctional institution in Louisiana.[25] Certain persons are ineligible for parole because of the nature of their crime.[26] Persons who are eligible for parole must serve one-third of their sentences before they may be considered for release.[27] An exception to this requirement applies to first offenders who have never previously been convicted of a felony and who have been sentenced to less than five years in prison. Such persons may be paroled at any time during their terms, but only after the Board has notified the sentencing judge at least ten days before the release hearing.[28]

Louisiana law requires the Board of Parole to "consider all pertinent information with respect to each prisoner who is incarcerated in any penal or correctional institution in the state, at least one month prior to the parole eligible date and thereafter at such intervals as it may determine...."[29] By Board of Parole rule, inmates are automatically docketed for a parole hearing shortly before the expiration of one-third of their sentences, although as a general rule, a formal hearing will be held only after a parole plan has been established and verified by field investigations.[30]

After reviewing the information contained in the inmate's parole file, the Board of Parole conducts the parole release hearing during which the inmate is interviewed, he is allowed to present witnesses on his behalf and to have the assistance of counsel. Although the law requires only that the decision to grant or deny release be made within 30 days of the hearing,[31] that determination is made immediately and the inmate is informed of the Board's decision. If parole is denied, the Board votes whether to rehear the case, and very seldom is a rehearing granted. The case is not

thereafter brought before the Board for another hearing unless the inmate applies and such a hearing is granted by the Board.[32]

If the Board grants parole, it issues an order of parole reciting the conditions under which the parole is granted. It also fixes a release date for the prisoner, which cannot be later than six months after the parole hearing or the most recent reconsideration of the prisoner's case.[33] If the inmate's parole officer charges that he has violated any of the conditions of his parole during his parole term--which is the remainder of his sentence without any diminution for good behavior--the Board may issue a reprimand and warning to the parolee, add additional conditions to his parole, or order that the parolee be arrested and be given a pre-revocation hearing. If the hearing officer at the pre-revocation hearing concludes that there is probable cause that the parolee has violated a condition of his parole, the Board may order the parolee returned to the institution from which he was paroled to await the final hearing by the Parole Board to determine whether his parole should be finally revoked.[34] The final revocation hearing must be held within 30 days of the parolee's return to prison.[35] If the Board of Parole finds that the parolee has failed without satisfactory excuse to comply with a condition of his parole or that there has been a violation of a condition involving the commission of another felony or misconduct indicating a substantial risk that the parolee will commit another felony or is unwilling to comply with his parole condition, it may order revocation of parole.[36]

Parole revocation is by majority vote of a quorum of the Board.[37] When a person on parole is arrested, the Board of Parole has authority to place a detainer against him, which will prevent him from making bail

pending disposition of any new charges against him.[38] Moreover, if he is convicted in this state of a felony, his parole is revoked automatically as of the date of his conviction.[39] Regardless of the cause for revocation, a parolee whose parole is revoked is thereafter returned to the institution and must serve the balance of his sentence without credit for time served on parole. He also forfeits all good-time earned prior to parole up to a maximum of 180 days.[40]

The Nature of Parole Release Decision-Making

The foregoing narrations are intended to place the parole system in the United States and particularly in Louisiana in some sort of historical perspective, to describe its theoretical undertones, and to chart out in a general way the functions performed by the Board of Parole in Louisiana. These certainly are essential steps to understanding the nature of parole decision-making, but unless the process is seen in the full context of the correctional system within which it operates, the narrowed view obscures much of parole's significance.

Parole is sometimes described, particularly by its detractors,[41] as leniency or an act of grace by the State in releasing an offender before the expiration of his full term of imprisonment.[42] Perhaps this characterization was true of the early forms of conditional release out of which parole developed, but a realistic appraisal of modern parole requires discarding such outmoded theories and myths.[43] At lease since the time when parole was merged with the indeterminate sentence in any one of its myriad forms by virtually every American jurisdiction, it has served as "an additional mechanism in a unified correction system to promote /the legislatures'/ penological and rehabilitative purposes."[44]

Today, parole has become "an integral component of the corrections process,"[45] and was responsible in 1974 for release of 64 percent of the persons leaving adult prisons and reformatories in the United States.[46] In Louisiana, over 64 percent of the adults released from correctional institutions in fiscal year 1975-1976 were paroled.[47] Of the 36 percent who were released by expiration of their sentences less any good-time they earned, the vast majority was eligible for parole but was expressly denied release by the Board of Parole after a hearing. Moreover, since 97 percent of all inmates will eventually be released,[48] parole release and subsequent supervision serve to a great extent as a means of public protection.[49]

Judges are acutely aware of parole laws and consider parole eligibility when imposing sentences on offenders.[50] Because American prison sentences are quite long, and because of the great costs of building and staffing penal institutions compared to the costs of supervising an offender who is on parole,[51] pre-expiration release has become institutionalized.[52] In fact, "/r/elease on parole has come to be essential to the administration of post-conviction justice."[53] In short, no one who understands the post-conviction criminal justice system expects most offenders to serve the full sentence assigned to them by the judge; nor could the state governments afford to hold persons in prison for the lengthy terms for which they have been sentenced. As noted by the Task Force on Corrections of the President's Commission on Law Enforcement and the Administration of Justice (hereinafter referred to as Task Force), today judges and parole boards are expected to exercise discretion to determine the proper sentence based upon the characteristics of the individual. The legal maximum is not the norm. Parole should not be considered any more a matter

of grace than any sentence which is less than the maximum provided for by statute.[54]

The United States Supreme Court stated in Morrissey v. Brewer:[55]

> During the past 60 years, the practice of releasing prisoners on parole before the end of their sentences has become an integral part of the penological system. Rather than being an ad hoc exercise of clemency, parole is an established variation on imprisonment of convicted criminals. Its purpose is to help individuals reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed. It also serves to alleviate the costs to society of keeping an individual in prison./56/

Thus, as the system has developed, the parole board, using one standard or another, has been assigned the duty of deciding within certain limits how much time an offender will serve in prison. The parole function can therefore only realistically be considered as part of the sentencing process, in that the decision as to how long a person will serve in prison is divided between the judge and the parole board.[57]

To underscore the importance of this realization, we quote from several authorities on this point:

> For the defendant before a sentencing or a prisoner before the Parole Board, the stakes are exactly the same; on the one hand, freedom to remain in or return to society and on the other, incarceration in prison....If the functions of judge and parole board under these arrangements are viewed objectively, the parole release proceeding in New York, as elsewhere, does seem in practical effect to be an extension of the sentencing process..../58/

> Correctional administrators...often determine, to a greater extent than the court, the actual sentence to be served. When a court imposes a sentence of confinement, the parole board will decide the length of time actually served in confinement./59/

> Determining when during the offender's term he shall be released approximates the judicial setting of a term of imprisonment. The only difference is the time of the determination..../60/

> Decisions by parole boards have many similarities with judicial decisions in sentencing. However, it must be noted that parole decisions can apply only to persons who have been sentenced to prison, whereas the courts decide whether prison is, in their view, necessary in each case./61/

> As a noted author in the field of corrections has observed, "to limit an analysis of sentencing to what goes on in courtrooms would be to play games with words." /62/

> Parole is sentencing./63/

> Because of its integral connection with indeterminate sentencing, parole is the focus of modern penology. /64/

The immediate significance for the purposes of this study in locating parole's place in the correctional puzzle is that it highlights parole's importance and seriousness and makes clear that it is a type of deferred sentencing and also, therefore, an element of the sanctioning system established to enforce the criminal law. Both of these themes will be developed in the upcoming chapters.

CHAPTER III

DUE PROCESS, THE COURTS AND PROCEDURAL SAFEGUARDS IN PAROLE DECISION-MAKING

The Anglo-American legal tradition demands that when the government deals with its citizens, it must adhere to certain prescribed forms to insure that the individual receives fair treatment. This principle is incorporated in the Fifth Amendment (applying to the federal government) and the Fourteenth Amendment (applying to state government) to the United States Constitution, prohibiting deprivation of life, liberty or property without "due process of law."

Due process is an amorphous concept and, as it has been defined by the United States Supreme Court, requires that government refrain from penalizing any individual by using a procedure that denies "fundamental fairness, shocking to the universal sense of justice."[1] Clearly, government cannot, consistent with due process, arrest a person and incarcerate him indefinitely without conducting some sort of trial to determine his guilt. However, the answers to the more subtle questions which have been addressed through the years to the Supreme Court, like whether due process requires that a criminal defendant be provided with counsel at trial, or whether he has the right to cross-examine witnesses against him, are essentially policy questions of what is "fair" under the circumstances; and not infrequently a court will decide that the legal system has evolved since an earlier case was decided and that a particular safeguard that had been held not to be required by fundamental fairness has since become one of the procedures required to comply with due process.[2]

For many years the paroling process was considered to be beyond the pale of judicial scrutiny and not subject to the requirements of due process. As stated by one source, "One of the most striking aspects of the traditional

parole release process has been the virtual unreviewability of parole board decisions affecting the substantial personal rights of prisoners."[3]

To begin with, despite its functional similarity to the sentencing process, the Supreme Court has failed to analogize parole to sentencing. This is so even though the Court has held that, when a person is placed on probation and his sentencing deferred, he has a right to the same procedural protections afforded to those being sentenced when his probation is revoked.[4] However, even if parole decisions were clothed with the formalities of sentencing, due process would require that counsel be afforded the parolee and that no other procedural forms be followed.[5] As will be discussed later, this arrangement may not constitute the most beneficial form of procedure at parole decisions.

When the courts have refused to mandate that due process be applied to parole decisions, they have relied on several theories. The first was the "grace" theory. It assumes that the prisoner has been deprived of his liberty by due process of law and that the decision to deny him early release is merely an act of grace, which the state need not surround by any procedural safeguards assuring fairness.[6] Thus, the Supreme Court distinguished between rights and privileges, applying due process only where rights were at stake, reasoning that a benefit that the state was not required to grant could be withheld in any manner the state might direct.[7]

As was noted earlier, this theory as it applies to parole no longer has any practical validity; parole is too firmly entrenched a facet of the criminal justice system to be regarded as a mere privilege.[8]

More importantly, the United States Supreme Court has abandoned the right/privilege dichotomy and replaced with a more flexible due

process standard. As enunciated in Goldberg v. Kelly,[9] which involved welfare benefits, and Board of Regents v. Roth,[10] involving public employees, the test is as follows: It must first be determined that an individual possesses a liberty or property interest within the meaning of the Fourteenth Amendment. If he does, the process that is due him (i.e., what procedures are required to deprive him of the interest) is determined by weighing the potential loss to the individual by an adverse decision against the Government's need for expeditious adjudication.

It did not take long for the Court to apply this new standard to the parole process. In Morrissey v. Brewer,[11] after stating that parole revocation is not part of a criminal prosecution and therefore does not require provision of all of the procedural rights available to a defendant at trial, Chief Justice Burger, writing for the Court, nonetheless concluded that the liberty of the parolee, although conditional, "includes many of the core values of unqualified liberty and its termination inflicts 'grievous loss' on the parolee and often on others."[12] The Court then concluded that the liberty involved was protected by the Fourteenth Amendment.

The next step in the Court's analysis was to weigh the state's interest in a summary proceeding against that of the inmate. It concluded that what was needed was "an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior."[13] The procedures specified as necessary for parole revocation are the following:

(1) A pre-revocation hearing near the place of the alleged parole violation as promptly as convenient after arrest of the parolee, held by a neutral hearing officer (not the parole officer involved in the case) to determine whether there is probable cause that the parolee committed acts constituting a violation of his parole conditions. The parolee must be given notice of the time, place and purpose of the hearing and the charges against him. He may bring letters, documents, or individuals to give relevant information to the hearing officer. On request of the parolee, a person who has given adverse information on which the revocation is based must be made available for questioning in his presence, unless the hearing officer determines that he is an informant and would be subjected to risk of harm if his identify were disclosed. The hearing officer is required to make a summary of what occurs at the hearing and to determine whether there is probable cause to hold the parolee for the final decision of the parole board on revocation.

(2) A final revocation hearing at which the parole board determines whether parole is to be revoked. The parolee must have an opportunity to be heard and to show that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest that the violation does not warrant revocation. The hearing must occur reasonably soon after the parolee is taken into custody. The following procedures must be followed at the final revocation hearing:

(a) written notice of claimed violations of parole;

(b) disclosure to the parolee of the evidence against him;

(c) opportunity to be heard in person and to present witnesses and documentary evidence;

(d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);

(e) a "neutral and detached" hearing body such as a traditional parole board;

(f) a written statement by the factfinders as to the evidence relied on and the reasons for revoking parole./14/

The Morrissey court also shattered a second traditional justification for exempting parole authorities from following regular procedures. This parens patriae or "rehabilitative expertise" theory rested on the notion that the parole board's interests in the inmate's rehabilitation were identical to those of the inmate and that the absence of any adversary interests eliminated the need for due process safeguards. Moreover, the reasoning continued, parole boards possess administrative expertise in evaluating "nonlegal" factors indicating whether the inmate has been rehabilitated.[15]

Putting aside for the moment any arguments that could be made attacking the underlying validity of the premises of this theory, the Supreme Court has concluded that any differences in the nature of parole decisions do not excuse parole boards from following regular procedures. The first decision to this effect was In re Gault, injecting due process into juvenile proceedings, whose workings had previously been protected by the parens patriae theory. In Morrissey, while recognizing that part of the determination at parole revocation is predictive and discretionary, the Court stated that such prediction and discretion is, of necessity, based on certain factual findings. Thus, due process was applicable despite the expertise of the parole board and the discretionary nature of their ultimate decision.[16]

The next year the Supreme Court handed down its decision in Gagnon v. Scarpelli,[17] holding that the same procedural requisites required in parole revocation were applicable in probation revocation. The Court also considered the issue of whether a parolee had the right to the presence of counsel at revocation proceedings. It concluded that under certain circumstances, when a parolee has a colorable claim that

he has not committed the alleged violation of his parole or probation or if he admits his violation but there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and the reasons are complex or otherwise difficult to develop, he may have a right to counsel particularly if the parolee or probationer has difficulty speaking effectively for himself.

The Rules and Regulations of the Louisiana Board of Parole incorporate the requirements of Morrissey and Gagnon into the revocation procedures[18] and the Board appears to be following the prescribed rules.

So, for the last several years, due process has been operating at that point of the parole process where the determination is made whether an inmate who has been granted parole will be returned to prison because of misconduct while on supervision. The Supreme Court has not, however, considered yet what procedures are required at the more crucial parole release decision. It would seem that since Morrissey destroyed the theoretical foundations upon which the policy of judicial non-intervention in parole affairs rested, it would seem obvious that some process is due in parole release decision-making.

One distinction has sometimes been made between parole revocation and the parole release decision. Parole revocation involves the loss of conditional freedom that has already been enjoyed by the parolee; an adverse parole release decision deprives the inmate of the prospect of future conditional freedom.[19] But, once again, this seems to be a distinction without substance because the same interest, conditional liberty, is at stake at release and at revocation, and the loss occasioned by denial of release is no more "grievous" than loss resulting from revocation.[20] Moreover, other cases have recognized the need for due process safeguards

even when the interest under consideration is not presently enjoyed.[21] In the recent case of Wolff v. McDonnell,[22] the United States Supreme Court recognized the right of a prisoner to some due process safeguards before prison authorities may deprive him of good-time or otherwise punish him. This decision underscores the Court's new policy of not allowing an "iron curtain /to be/ drawn between the Constitution and the prisons of the country."[23]

Most courts considering the issue (including two United States circuit courts of appeal) have held that due process extends to release hearings,[24] although a substantial number (including two United States circuit courts of appeal) have determined that due process is not applicable.[25] The Fifth Circuit Court of Appeals, which has jurisdiction over federal appeals from Louisiana, appears to have concluded that denial of parole does not constitute a "grievous loss" within the legal meaning of that term and has therefore not mandated infusion of due process into parole release hearings.[26] The Louisiana Supreme Court has never considered the issue of due process protections at parole release hearings. However, it did deny a writ application seeking review of a judgment refusing to order the Board of Parole to furnish an inmate with reasons he was denied parole.[27] A writ denial does not constitute an expression of opinion on the merits of a case.

What the courts decide is required by due process is, of course, not dispositive of the issues before the Commission. These matters have been explored only to facilitate a fuller understanding of the question: "As a matter of policy, what procedures should be followed at the parole release hearing?" It is helpful to know what procedures courts have felt are necessary to constitute minimal fairness and these decisions will be

discussed below, and the Commission should be aware that a Supreme Court decision in the foreseeable future mandating certain procedural safeguards is a likely eventuality. But the Commission's ultimate position on the issue of release procedures should be based upon which policies will promote optimal functioning of the decision-making process.

Regardless of the good intentions and solid character of the members of the parole board, it is alien to our legal processes to have decisions of the magnitude of those involved here shrouded in enigmatic secrecy. Moreover, because 97 percent of those persons who are imprisoned eventually are released and the vast majority of these come into contact with parole authorities at least once, it is of great importance that parole procedures be inherently fair and that they are surrounded by the appearance of fairness as well.[28] It is essential that an inmate see his parole hearing as a fair, open, unhurried procedure at which he is given the opportunity to understand the factors determining the board's decision, to confront the evidence relied on, and to discuss with the members of the board what actions he must take to secure their favorable action in the future.

> The parole system is an enlightened effort on the part of society to rehabilitate convicted criminals. Certainly no circumstances could further that purpose to a greater extent than a firm belief on the part of such offenders in the impartial, unhurried, objective and thorough processes of the machinery of law, and hardly any circumstances could with greater effect impede progress toward the desired end than a belief on their part that the machinery of the law is arbitrary, technical, too busy, or impervious to the facts,/29/

And a person who receives what he considers unfair treatment from correctional authorities is likely to become a difficult subject for rehabilitation.[30]

At the same time, of course, the nature of the parole release proceeding is quite different from that of a public trial and the nature of the decision-making calls for limits on the procedural form that is imposed at such hearings.

1. Parole Release Hearing

Every inmate should be afforded a parole release hearing within one year of his admission to the penal institution or at least 30 days before his parole eligibility date, whichever is first, and a presumptive release date should be set by the Board of Parole, assuming good conduct by the parolee. If the inmate is not released at his first hearing, another hearing should be held once a year to determine whether the parolee's conduct meets the Board's expectations so that the presumptive date is still valid.

One of the most frequently heard criticisms of the parole process is the uncertainty surrounding the time the inmate will be released and as to what is expected of him while he is incarcerated in order to receive favorable parole consideration. The frustration and anxiety caused the inmate is felt by many observers to be counter-productive in terms of institutional management and the correctional process and to discourage rather than foster rehabilitation, as well as creating hardship in making it impossible for inmates and their families to plan their lives.[31]

The National Advisory Commission on Criminal Justice Standards and Goals (hereinafter referred to as the National Advisory Commission) states:

> The longer an offender is subjected to absolute discretion, the more frustrated and dependant he becomes, making his reintegration into society more difficult./32/

A parole release hearing, considered to be "the most basic due process right,"[33] constitutes an excellent opportunity for the parole board to obtain information not contained in the files and verify information that is in the file, for the prisoner to dispute the reliability of information, to enhance the treatment process through education and encouragement, and, if release is not to be immediate, to discuss a likely date of release and the type of behavior expected of the inmate.

The National Advisory Commission recommended that hearings should be scheduled within one year after the inmate is received at the institution.[34] If participation in particular programs or other achievements are expected by the parole board to set a presumptive parole date, the National Advisory Commission indicated that this information should be imparted to the inmate at the hearing.

Likewise, the Louisiana Commission on Law Enforcement's Criminal Justice Standards and Goals on Adult Corrections (hereinafter referred to as the Louisiana Commission on Law Enforcement) has recommended that hearings be scheduled with inmates within one year after they are received at the institution.[35] The Standards for Adult Parole Authorities of the Commission on Accreditation for Corrections (hereinafter referred to as the Commission on Accreditation) state that offenders should be scheduled automatically for hearing and review by the parole authority when they are first legally eligible for parole consideration or within one year after being received, at which time the authority should explain its parole criteria to the inmate. The standards also suggest that a tentative release date be set at this first hearing, or if it is impossible to set such a date that a subsequent hearing be held within one year for that purpose.[36]

The United States Parole Commission in June, 1977, adopted a policy of conducting the initial parole hearing within 120 days of the prisoner's reception at a federal institution in the case of every sentence under seven years, and of setting a presumptive release date following the hearing.[37] Dorothy Parker, United States Parole Commissioner, has even more recently suggested that presumptive release dates be set within 60 days. The advantages cited by the Commission for their new procedure are: "(1) The reduction of unnecessary uncertainty on the part of the prisoner, (2) More efficient and equitable decision-making and (3) More certain punishment for the purpose of deterring potential offenders."[38] In sum, the proposal would bring the advantages of certainty in the setting of actual prison terms, without abandoning the ability to refine and control the appropriate outcome of each case in the interests of consistency and fairness.

From its observations of the hearing practice in Louisiana, the staff has been impressed by the present parole board's effort in most cases to put the inmate at ease, to discuss his case with him, and to express an interest in the inmate personally. At the same time, there seems to be a need to give some more specific indication at an earlier date of the likelihood of parole and of what conduct and participation in what programs, if any, the inmate is expected to undertake if he is to be released. Incorporation of these additional procedures into the parole process would harmonize with the board's policy of using the parole hearing as a therapeutic device to further the inmate's rehabilitation.[39]

One problem with implementing this recommendation is that the Board of Parole is already quite busy conducting hearings as they presently are held. Requiring that every inmate be interviewed during his

first year of incarceration and again annually to review conduct would impose an even heavier caseload burden on the Board of Parole. A solution to this problem would be to create a corps of three hearing examiners who could individually conduct hearings in place of the Board of Parole. These examiners would be fully responsible to the Board of Parole and would be members of its staff. The full Board of Parole should conduct an inmate's first hearing, and subsequent hearings should be the responsibility of the hearing examiners, with a right of appeal of an adverse decision to the full Board of Parole. The United States Parole Commission and several states have adopted a hearing examiner system in which the board itself serves only in a policy-making and appellate role, and the National Advisory Commission has recommended use of hearing examiners where the volume of cases warrants it.[40]

The parole hearing should be unhurried and should last long enough to foster a meaningful dialogue between the board and the inmate. The National Advisory Commission recommends that no more than 20 cases be heard in one day,[41] while the Commission on Accreditation suggests a maximum of 15.[42] At present, Louisiana's board conducts about 20 cases on an average day.

It is impossible to legislate concerning a matter like the length of hearings or the number of hearings per day because each individual will require a different amount of time, and it is likely that all hearings will be meaningful and there will be sufficient time allocated to each individual if the above recommendations regarding early hearings, presumptive release dates and hearing examiners are adopted. However, the Commission should make an administrative recommendation to the Board of Parole that no more than 20 hearings be held in any one day.

2. Reasons for Denial

When the Board of Parole denies parole, it should immediately inform the inmate of the fact of the denial and, using a short printed form, give the reasons for denial. Within 30 days, the Board of Parole should send a detailed, individualized explanation of the grounds for the denial and the facts upon which the denial is based. The detailed explanation should also include the presumptive date of parole release.

The purpose for a statement of reasons is to protect against actual or apparent arbitrary parole denials and to promote careful consideration by the Board of Parole of factors relevant in determining whether to grant parole. A statement also aids in establishing a body of precedents which would promote consistency in future board decisions and promotes rehabilitation by indicating how the inmate can improve his behavior and thereby increase his chances for release.[43] Virtually all of the cases holding that due process applies at parole release hearings find that one of the elements of the process that is due is informing the prisoner of the reasons for denial.[44] The Board of Directors of the National Council on Crime and Delinquency (NCCD) has also urged adoption of such a rule,[45] as has the dean of administrative law in America, Kenneth Culp Davis. Professor Davis stated:

> How could a board member have less incentive to avoid prejudice or undue haste than by a system in which no one, not even his colleagues, can ever know why he voted as he did? Even complete irrationality of a vote can never be discovered. Should any man, even a good man, be unnecessarily trusted with such uncontrolled discretionary power?/46/

A recent Report to the House of Delegates of the American Bar Association by the American Bar Association Commission on Correctional Facilities and Services (hereinafter referred to as ABA Commission)

recommends that the parole board furnish written reasons for denial,[47] as do the standards of the Commission on Accreditation.[48]

The Louisiana Board of Parole presently informs inmates of its decisions immediately after their hearings. This is a commendable practice because delay in receiving notice can lower morale, appear unfair and beget disrespect for the system.[49] However, the reasons for denial presently given, while certainly preferable to silence, are conclusory and not very helpful in informing the inmate of the true basis of the decision or what he must do to improve his chances in the future. This is the purpose served by the recommended longer statement to be sent to the inmate within 30 days of the hearing. The National Advisory Commission recommends that the reasons for the decision should be specified "in detail and in writing."[50] The reasons should be more than pro forma and relate to the individual's peculiar circumstances. An example of an explanation endorsed by one court and typical of the sort that should be used and the form presently used by the Board of Parole are found in Appendix A and B.

3. Presence of Witnesses

It is presently Board of Parole policy to allow the inmate to have present a limited number of witnesses at his parole release hearing. This is a salutary practice in that it enables the Board to discuss the inmate's past conduct and future prospects with his family and close friends. The practice comports with the standards of the Commission on Accreditation.[51] Because of the importance of this aspect of the hearing, the Commission should recommend the statutory codification of the inmate's right to call five witnesses, with Board of Parole discretion to allow more to be present upon request.

4. File Review

One of the principal arguments for requiring parole boards to comply with certain formalities in their decision-making is to assure the accuracy of information upon which the decision is based. This was one of the strongest rationales to surface in Morrissey. The parole file contains all of the written information considered by the board in determining whether to place a prisoner on parole, including the pre-parole report, psychiatric reports, and the prison disciplinary report.

There is a great potential for errors, including filing mistakes and omissions, confusion stemming from mistaken identity, reliance upon outdated or superceded information, unsubstantiated assertions, and unclear or unreliable psychiatric testing data.[52] As pointed out by the ABA Commission, of the means available to remedy this very real danger, "granting the inmate access to his file appears to have the greatest propensity for improving the decision-making process...Given the keen interest of the inmate in his case, on the other hand, it seems certain that he will read his entire file and be prepared to call the attention of the paroling authorities to the relevant considerations."[53]

There is, of course, the legitimate argument that certain information in the file should not be revealed to the inmate. For instance, when disclosure of the identity of those persons providing negative reports might lead to retaliation, or when psychological data in the file might be misinterpreted by the prisoner and hinder his rehabilitation, these items should be removed from the record before it is handed over for inspection. Weighing the administrative burden of deletion against the benefits to the prisoner and the whole system of disclosure, it is submitted that the scales tip in favor of disclosure.

This conclusion has been reached not only by the ABA Commission cited earlier, but by several courts incorporating file disclosure into due process requirements, the National Advisory Commission,[54] the Commission on Accreditation,[55] and the Administrative Conference of the United States.[56] The National Advisory Commission also suggests, quite reasonably, that information withheld should be noted in the record so that subsequent reviewers will know what information was not available to the offender.

At present, the Louisiana Board of Parole grants the inmate no access to his file. The inmate is told in a general way the content of objections to his being paroled. Parts of his prior arrest and conviction records and his disciplinary reports are reviewed with him briefly, and he has an opportunity to dispute their accuracy, but fairly often inmates dispute what is contained in the file, and there is no time to resolve the matter before the decision is made. It seems to make much more sense to allow the inmate to review the file at his leisure before the parole hearing and to correct false or colored information before he is heard by the Board.

Thus, the Commission should recommend that the inmate's file be disclosed to him, withholding information that could result in retaliation by the inmate against persons giving information adverse to his interests and psychiatric data whose disclosure may hamper the inmate's rehabilitation, and that the file should be at the inmate's disposal for a reasonable period of time at least 14 days before his release hearing. Any information withheld from the inmate should be noted in the record.

5. Assistance of Counsel

Because of the low formal academic attainment of most prison inmates, many of the foregoing procedural safeguards will have little meaning if they are not allowed to have the assistance of some other party to meaningfully assist in parole release proceedings.[57] The role of counsel is in information-gathering and verification, in analyzing and rebutting evidence, and in speaking on behalf of the prisoner. He should be allowed to participate in the review of the prisoner's file and to be present at the release hearing. The inmate's representative may be a lawyer, if he can afford to hire one, a caseworker, or a member of the institutional staff, a friend or relative or another inmate. The National Advisory Commission has this to say about representation at parole release hearings:

> The offender's representative has the freedom to pursue information, develop resources, and raise questions that are difficult for an inmate in a helpless position. To the extent that the information base can be enlarged by representatives and issues sharpened and tested more directly, there is likely to be improvement in the whole process of parole board decisionmaking. Equally important, however, is the impression of fairness given to the inmate who is represented. Indeed in many cases it is more than simply a feeling of fairness. It is clear that, in too many situations, the lack of ability to communicate well, to participate fully in the hearing, and to have a sense of full and careful consideration, is extremely detrimental./58/

A 1972 study conducted of United States Parole Board cases on the effect on outcome of having a representative at parole hearings attests to the practical validity of these observations. The study found that the presence of a representative did improve the likelihood of a favorable parole decision.[59] The National Advisory Commission, the ABA Commission, the Louisiana Commission on Law Enforcement and the Commission on Accreditation all favor allowing representatives to be used in the parole hearing process.

All of these study groups also recognize that under certain circumstances the existence of a complicated set of legal issues may require the presence of a lawyer at the parole release proceeding.[60] In this case, if the inmate cannot afford legal counsel, he should have an attorney appointed to represent him in the proceeding. This should occur infrequently as the issues in question usually are not of a complex legal nature. The standard governing the right to appointed counsel should be very similar to the one established in Gagnon v. Scarpelli for parole revocation.

The Louisiana Board of Parole presently allows, as a matter of practice, the presence of counsel at parole release hearings. The Commission should recommend that the law be amended to give the inmate a statutory right to retained or voluntary representation by another person and a right to have a lawyer appointed if complex legal issues are involved which require expert legal advice. The law should make clear that the representative has a right to examine the inmate's parole file with him and to confer with the inmate sufficiently to prepare for the hearing.

However, there appears to be one situation in which every inmate being considered for parole should have a lawyer appointed to represent him if he has not retained counsel on his own behalf. It is the custom of some district attorneys in Louisiana to appear, as a matter of practice, before the Board of Parole at parole release hearings to oppose the parole of any inmates being considered from their judicial districts. Because the staff was unable to locate any case law or literature directly considering the appropriateness of this practice, a survey was taken of all parole boards in the United States as to their policies regarding appearance and argument by the district attorney at parole release hearings.

The results of the survey indicated that in none of the seventeen states thusfar responding does any district attorney appear before the parole board on any kind of regular basis to argue cases. Three of the states responding indicated that there was a specific parole board policy against appearance by the prosecutor. Seven of the states have a policy against the presence of either the district attorney or of counsel for the defendant, except that in Michigan and Massachusetts the prosecutor is allowed by law to appear in cases of life sentence. In the remaining states, there is no policy toward district attorney appearances at parole board hearings, but the responses indicated that in three states the prosecutor had never asked to appear and in the other four such appearances are very infrequent. The Director of the South Carolina Probation, Parole and Pardon Board answered: "It is not a practice of the state's Solicitors (District Attorneys) to appear in any capacity at a parole hearing...." The Oklahoma response stated that "occasionally a District Attorney may appear...," and the Administrative Assistant of the Maine board indicated that there had been two instances of the prosecutor appearing at a hearing during the past year. He went on to state, "We would be very cautious, however, as to the consequences involved with prosecutors using the Board for political purposes." A summary of the contents of the letters the staff received from parole boards in response to its survey questionnaire is included in Appendix C.

Thus, Louisiana appears to be peculiar in its policy of regularly allowing the prosecutor to appear at parole hearings to argue against release of individual inmates. It is submitted that this policy is not only ill-advised but is an affront to minimal due process.

As discussed earlier, it has not yet been clearly established that

due process protections are applicable at parole release hearings, but the majority of the courts considering the issue have held that due process does apply. This seems to be the most realistic holding since there is no meaningful difference between parole revocation and parole release. Assuming that the state does owe the prospective parolee the duty of treating him fairly when it decides whether to parole him, the conclusion seems unavoidable that it must afford him the assistance of an attorney at his release hearing if it allows its own prosecutor to appear and argue against his release.[61]

In the first place, the principal argument against requiring the appointment of attorneys for indigents in every parole release case is that parole is not an adversary process but involves an essentially clinical determination by the parole board.[62] The same argument has been used in other contexts to justify not applying due process,[63] and the presence of an adversary proceeding has been held to require application of due process.[64] The United States Supreme Court in Morrissey and Gagnon made clear that the revocation hearing is not an adversary proceeding and wanted to avoid surrounding it with formalities that would turn it into a trial. But, if the district attorney appears to argue that parole should not be granted--usually by recounting the details of the prisoner's crime and delving into his past record--the proceeding has indeed become adversary. The prisoner-suddenly-turned-defendant standing alone and without legal or rhetorical training or experience, is ill-equipped to match the wits of a trained prosecutor. To call such a procedure unfair is an understatement.

The following excerpt from the Supreme Court's opinion in Gagnon is particularly compelling:

> In a criminal trial, the State is represented by a prosecutor; formal rules of evidence are in force; a defendant enjoys a number of procedural rights which may be lost if not timely raised; and, in a jury trial, a defendant must make a presentation understandable to untrained jurors. In short, a criminal trial under our system is an adversary proceeding with its own unique characteristics. In a revocation hearing, on the other hand, the State is represented not by a prosecutor but by a parole officer with the orientation described above; formal procedures and rules of evidence are not employed; and the members of the hearing body are familiar with the problems and practice of probation or parole. The need for counsel at revocation hearings derives, not from the invariable attributes of those hearings, but rather from the peculiarities of particular cases./65/ /emphasis added/

It seems clear that when the State is represented by a prosecutor the case is one of those demanding the presence of counsel for the parolee.

In addition to the unfairness of the procedure in question to the parolee, society has a strong interest in the Board not improperly denying parole. As will be discussed in Chapter V, it is bad policy to retain an inmate in prison for longer than necessary, both in terms of the greater likelihood that such an improperly retained inmate will commit additional crimes when he is finally released and in terms of the greater costs of continued incarceration. An observer would have to be blind or naive to ignore the additional pressure to deny parole felt by the Board when it returns its decision in the presence of a representative of a politically powerful district attorney who has just argued against release. They can anticipate public denunciation in the press[66] and angry responses from the public and political officials responsive to public sentiment.

An alternative to appointing counsel when the district attorney wishes to appear before the Board is merely to bar such appearances, as some other states have done. This would also serve the purpose of

preventing the parole hearing from becoming an adversary process. Once again, Justice Powell's observations in Gagnon are relevant:

> The introduction of counsel into a revocation proceeding will alter significantly the nature of the proceeding. If counsel is provided for the probationer or parolee, the State in turn will normally provide its own counsel; lawyers, by training and disposition, are advocates and bound by professional duty to present all available evidence and arguments in support of their clients' positions and to contest with vigor all adverse evidence and views. The role of the hearing body itself, aptly described in Morrissey as being "predictive and discretionary" as well as factfinding, may become more akin to that of a judge at a trial, and less attuned to the rehabilitative needs of the individual probationer or parolee. In the greater self-consciousness of its quasi-judicial role, the hearing body may be less tolerant of marginal deviant behavior and feel more pressure to reincarcerate than to continue nonpunitive rehabilitation. Certainly, the decisionmaking process will be prolonged, and the financial cost to the State--for appointed counsel, counsel for the State, a longer record, and the possibility of judicial review--will not be insubstantial./67/

There is no doubt, however, that the district attorney who prosecuted the inmate or his successor and the sentencing judge or his successor should be informed and given an opportunity to express their opinions in writing on the inmate's parolability. In this capacity, the district attorney acts as a witness--a source of information--rather than as a prosecutor. This aspect of his present role is beneficial and should be continued; but the unfairly prejudicial aspects of that role should be eliminated. Present practice is to include these opinions in the pre-parole report prepared by the Department of Corrections, but the Commission should recommend incorporating this procedure into statute.

Thus, to avoid unfairness and inaccurate decision-making, and to insure that Louisiana's release hearing conforms to what is apparently the universal practice in other states, the Commission should recommend either (a) that whenever a district attorney appears at the parole-release

hearing to argue against the release of an inmate and the inmate has not retained counsel, the Board of Parole must appoint an attorney to represent him or (b) that the district attorney be barred from parole release hearings.

CHAPTER IV

ANATOMY OF THE PAROLE RELEASE DECISION

The preceding chapter was concerned with the procedures employed by the Board of Parole in reaching its decision to release or not to release a prospective parolee. The more difficult matter upon which we now focus our attention is the substance of parole decision-making.

Purposes of Sanctions

As discussed in detail earlier, paroling decisions are an integral part of the larger criminal sanctioning system. Whenever a defendant pleads guilty to or is convicted of a criminal act, the judge imposes a sentence upon him, within the limits set by the legislature. In view of the fact that 90 percent of criminal cases are disposed of by plea bargaining, it may be more accurate to say that the agreement between the prosecution and defense counsel controls this phase of sentencing.[1] But because this agreement must be judicially sanctioned, we may for present purposes credit the judge with this sentencing discretion. If the legislature has specified that a person convicted of the crime in question cannot be placed on probation but must be imprisoned, or if the judge decides not to exercise his option to place the defendant on probation, he will be sentenced to serve a set number of years in an institution. Unless the legislature has excluded an offender of the particular class to which the inmate belongs from parole consideration, from the time of his minimum eligibility date[2] the Board of Parole has discretion to release the inmate. Thus, there are typically three components in the determination of the sanction that is the proper response to any particular criminal conduct: the legislative (which is by its nature, more general), and the judicial, and parole (which are more individualized). Each

component is influenced and limited by the other.

Assuming rationality on the part of the decision-makers involved, some policy or purpose underlies the sanctioning determination of each point in this process. The various purposes that criminal sanctions have been theorized to perform are the following: (1) "General deterrence" or "general prevention," which involves imposing a sanction for criminal behavior in order to discourage criminal behavior either by fear of the sanction or by serving to express society's disapproval of a certain act;[3] (2) "Special deterrence" which concentrates on convincing the individual who has been subjected to the sanction not to commit another criminal act; (3) "Rehabilitation" or "treatment," based on the concept of subjecting the offender to treatment until he has been reoriented toward society's values and will no longer commit crimes;[4] (4) "Incapacitation" or "preventive restraint," which seeks to prevent the likelihood of future crime by restraining the person so he will not commit another offense during the period of restraint;[5] and (5) "retribution," which refers to the principle that an offender must be given his "just deserts"for his crime or that a violation of the law merits a punishment commensurate with the seriousness of the crime.[6]

Legislative Directive

The Louisiana legislature, in charging the Board of Parole with part of the responsibility and authority to determine the proper sanction, has furnished only a general indication of which policies of the sanctioning system are to guide the Board's decision-making. La.R.S. 15:574.4(E) provides in pertinent part:

> A parole shall be ordered only for the best interest of society, not as an award of clemency, and upon determination by the board that there is reasonable probability that

> the prisoner is able and willing to fulfill the obligations of a law-abiding citizen so that he can be released without detriment to the community or to himself.

This vague statutory directive is typical of the formula used in the law of virtually every state with a paroling authority.[7] Such statutes have been vigorously criticized for their failure to provide specific direction to guide parole boards in their release determination and because they have delegated "virtually unlimited discretion in the decision to grant or deny parole...."[8]

This type of provision is only slightly more instructive as to the general penal philosophy the legislature seeks the parole board to implement. Although the Louisiana legislature nowhere articulates any such philosophy, an imaginative reading of the statute allows inference of the intended policy. The emphasis placed on releasing only upon the probability of non-recidivism indicates that the overriding concern of the parole board should be on determining which prospective parolees are "good risks." Thus, the indeterminate sentence-parole system's underlying historical rationales of rehabilitation and preventive confinement as formulated by Combs and Brockway--based on not releasing the offender until he has been "cured" by "treatment" in prison[9]--still ground the meager legislative instructions to modern parole boards, supplemented by the related concern of "special deterrence."

Administrative Policy Articulation

Compounding the absence of legislative decision-making criteria, parole boards have been notoriously derelict in failing to articulate the criteria they use in reaching decisions.[10] The National Advisory Commission had the following to say about this problem:

> Articulation of criteria for making decisions and development of basic policies is one of the chief tasks that parole decisionmakers need to undertake. While discretion is a necessary feature of parole board operations, the central issue is how to contain and control it appropriately. Few parole boards have articulated their decision criteria in much detail or in writing, even though research has shown that criteria exist. Parole board members tend to display, with slight variations, a consistent response to case situations of which they may be only marginally aware.
>
> Articulating the basis of decision systems is crucial to improving parole decisions, because criteria must be specified before they can be validated. For example, 75 percent of 150 board members queried in 1965 by the National Probation and Parole Institute asserted that rapists generally were poor parole risks. Research data have shown such an assumption to be wrong.
>
> Articulation of criteria is crucial to staff and inmates alike. The notion of an inmate's participation in a program of change depends on an open information system. His sense of just treatment is inextricably bound with it. As one parole board member put it:
>
> "It is an essential element of justice that the rules and procedures for measuring parole readiness be made known to the inmate. This knowledge can greatly facilitate the earnest inmate toward his own rehabilitation. It is just as important for an inmate to know the rules and basis of the judgment upon which he will be granted or denied parole as it was important for him to know the basis of the charge against him and the evidence upon which he was convicted. One can imagine nothing more cruel, inhuman, and frustrating than serving a prison term without knowledge of what will be measured and the rules determining whether one is ready for release....Justice can never be a product of unreasoned judgment."/11/

Frequently, the absence of a set of criteria for determining parolability will result in each individual member of the parole board applying his own set of standards that he feels are relevant to post-release success or to some other value he thinks the parole process should be supporting.[12] This sort of random decision-making leads to inconsistent treatment of similarly situated persons and even of the same inmate from one hearing to the next, and adds to parole's reputation as an unstructured, arbitrary

process.[13] The unstructured discretion vested in parole boards further argues for the adoption of the procedural safeguards advocated in the last chapter.

"Factors" Influencing Parole Decisions

As mentioned in the quotation from the report of the National Advisory Commission, studies have been undertaken to determine what criteria are used by parole boards in making release decisions, and such research has lifted the veil somewhat to reveal the factors considered by parole boards in reaching their decisions.

When one discusses "factors influencing parole authorities in decision-making," two broad categories of "factors" are involved. The first set of decision-making factors are purposive in nature--the goals the parole boards seek to further in their individual decisions. The second kind of "factors" are those traits of the individual inmates that the parole boards view favorably in making release decisions because they perceive such traits as being characteristic of prospective parolees whose release will further the goals comprising the first set of factors. If this distinction is not slippery enough, matters are even further complicated by the fact that it is often difficult or impossible to determine, at least from the research thusfar completed, which larger goal a parole board is seeking to further by using a particular characteristic as a decision-making criterion. Hopefully, these rather hazy conceptualizations will become clearer when matched with concrete examples.

In 1965 the National Parole Institutes conducted a study of the decision-making criteria used by parole boards. A questionnaire was completed by nearly half of the parole board members in the United States, who were asked to indicate what they considered the five most important

factors to be weighed in deciding on parole. The "factors" listed were of the purposive or goal-oriented type. The three items selected most often were related to the factors of the risk of violation; "1. My estimate of the chances that a prisoner would or would not commit a serious crime if paroled; 2. My judgment that the prisoner would benefit from further experience in the institution program or, at any rate, would become a better risk if confined longer; 3. My judgment that the prisoner would become a worse risk if confined longer."

However, the next three factors ennunciated, in order of importance, related to (2) assuring equitable punishment (that the offender had served long enough or had not served too long); (3) the impact of the decision upon other components of the criminal justice system ("system regulation"); and (4) the reactions of persons outside the correctional system, such as the general public.[14]

Another study of the parole decision process in three states, conducted by the American Bar Foundation, also found that the parole boards in those states concentrated primarily on the probability that the inmate would violate the criminal law if released.[15] Dawson likewise found that another criterion that often influenced parole board decisions in the states under study, but which parole board members tended to mute, is the desire to avoid criticism of the parole system. He found that the boards sometimes kept an inmate in prison even if chances of parole success were favorable because he was not welcome in the community or because repetition of his crime, however unlikely, would hurt the board's reputation. This corresponds to the fourth factor of the American Parole Institutes' study and numerous other observers have documented this aspect of decision-making.[16] When a board cites such factors as "community response" and

"law enforcement attitude," or the severity of the crime or prior performance in periods of community supervision, it may be responding to public pressure or to anticipated public pressure or it may be considering return to a hostile environment as a negative consideration in assessing risk of new criminal activity.

The National Advisory Commission[17] and others[18] have also pointed to "system regulation" (American Parole Institutes' Goal No. 3) as a factor that at least sometimes plays a role in parole judgments. The clearest example of this practice is the parole board releasing fewer or larger numbers of inmates because of institutional underpopulation or overcrowding. In this circumstance, system regulation is clearly a goal unto itself, as individual inmate characteristics are unrelated to the goal motivating the decision. On the other hand, another factor traditionally used to make release decisions--prison discipline record, and participation in institutional programs--might constitute a part of the parole board's concern with supporting institutional control[19] or it might be a factor used by the parole board to assess risk of subsequent criminal conduct, in harmony with the theory of rehabilitation. Or its use in decision-making may function to further both of those goals.

The American Parole Institutes' second factor or goal was the parole board's concern with equitable punishment. Individual case characteristics, such as the severity of the crime and circumstances surrounding the crime, the previous criminal record, and the type of crime committed (e.g., personal vs. property) are certainly factors weighed by the board in deciding whether the inmate has served enough time in prison or whether his sentence is "disparate" in comparison with others who are similarly situated. But they may likewise be used to determine the likelihood of recidivism.[20]

Thus, it can be seen that many factors that might be useful in predicting a return to crime, which is the sole consideration parole boards are legislatively authorized to consider in release decisions, also are used to further goals that are separate and independent of the element of risk: these goals are equitable punishment, system regulation, and political and public pacification. Further, it becomes obvious that parole boards, by seeking to promote equitable punishment, now may play a role in administering the "general deterrence" and "retribution" purposes of the sanctioning system. To the extent that the decision-makers seek the "proper" sentence in terms of making punishment fit the crime and of imposing the sanctions required to discourage the general public from criminal behavior, the original conception of a parole board to judge rehabilitative progress has been enlarged.

Those individual characteristics that parole boards consider in predicting recidivism that also have relevance to other goals were listed above. The remaining factors which clearly have relevance only for their supposed predictive ability include psychological change in inmates discerned by professional opinion,[21] adequacy of the various aspects of the parole plan, and judgment by parole board members of rehabilitation on the basis of the release hearing.[22]

To reiterate the complexity of the process sought to be dissected and the numerous combinations and weightings of factors that may operate in actual cases, the following is taken from a study by Professor Gottfredson, speaking of parole boards in general.

> In practice, of course, it is very difficult to trace out what precise elements actually make up the parole board's release decision. In a jurisdiction with no minimum terms, an inmate may be refused parole at an early date because he has not "done enough time" in view of the gravity of the crime

> he committed. On the other hand, a parole board may retain the inmate in prison long beyond the time required by a minimum term if it feels that he presents a very high risk of committing another crime if released. Here, the board is concerned with "keeping him off the street," that is, keeping him away from his potential victim population. From another viewpoint, the same decision might be made on the basis of the inmate's lack of response to institutional programs; the board may caution him to apply himself to these programs in order to convince the board at his next hearing that he has improved his chances of "keeping straight" if released. Thus, at any given parole hearing, a host of considerations may be operating on the board, very much depending upon the sentencing system under which it is operating: has the inmate "paid for" his crime by the service of the minimum term? Is he likely to commit another crime if released? Will he benefit from further incarceration or from participation in another program? Other, more subtle, considerations may also be at work. The inmate may have caused a great deal of trouble in the institution, and the board may feel a need to support prison disciplinary officials by refusing to parole him. Or the inmate may be close to his maximum release date and, though the board feels he should not perhaps be released yet, it will parole him because it wishes him to be under parole supervision when he is released rather than to be discharged with no assistance or control, however short termed, after release from prison.
>
> Thus, the amount of time an offender serves in prison is determined by a large number of system constraints. They may operate upon the decision-making patterns of the parole board in such a way as to counteract what would otherwise have been a more consistent, unencumbered series of decisions. Any study of time served in prison and its effects on other subsequent behaviors must take into account the possibility that estimations of unlikely postprison adjustment by the offender are not freely or primarily considered./23/

Furthermore, as we have seen, not only have parole boards gone beyond their legislatively delegated function of determining risk, they no longer merely look to rehabilitative progress wrought by correctional treatment in the institution, but weigh many other factors in reaching a judgment on the likelihood that the offender will "go straight." There is a good reason for this latter development, which is the subject of the following section.

Empirical Assessment of the Rehabilitative Model

A relatively new phenomenon is beginning to make an impact upon the corrections system as well as other areas of public administration. Increased sophistication in research methods has blossomed into a growing body of data regarding correctional matters that permits, for the first time in history, the testing of the theories underlying penal policies. In an area so important to public safety and individual liberty, it is vital that policy be governed by reality, as much as possible, rather than by assumption. The National Advisory Commission has stated:

> Since World War II, a massive empirical attack has been launched on problems inherent in controlling offenders and reducing criminal behavior. Some problems have been solved, others better formulated, because of a succession of studies. Much remains to be learned, but the record of achievement insures that corrections never again can be the same. The impact of research has drastically modified assumptions and changed practice. This record of accomplishment will be used as a foundation for new approaches to the use of information in the disposition of offenders./24/

One focus of a significant amount of research has been the effectiveness of rehabilitative and treatment programs conducted in correctional institutions in reducing the likelihood that inmates will return to crime when they are released. The findings of these studies has been so devastating to the rehabilitative-treatment theory that it today has very few remaining apologists.

In 1964 Daniel Glaser conducted a survey of matched pairs of "successes" and "returned violators" in the federal prison and parole system to determine if prison education or prison work experience had any impact on recidivism. He found that neither academic training nor vocational education while in prison resulted in fewer subsequent crimes. In fact, those prisoners who had enrolled in prison school had higher failure rates

than those who did not.[25] A number of additional studies of vocational training in California made the same finding,[26] as did a lengthy study of vocational rehabilitative programs in federal prisons.[27]

Kassebaum, Ward and Wilner found that "post-release outcome was not significantly different irrespective of exposure to any type of group counseling program or stability of leadership."[28] This same conclusion was reached by Geis[29] and by Harrison and Mueller.[30]

Wirt and Jacobson compared post-release success of adult felons subjected to group psychotherapy in a Minnesota prison to a control group from the same prison that did not receive such treatment. They concluded that there were no statistically significant differences between the samples in terms of personality ratings or number of disciplinary offenses. No parole follow-up has been reported to date.[31]

One study by Jew, Clanon and Mattocks did find some positive response outcome associated with individual psychotherapy, but this was an exceptional result. Moreover, this form of treatment is rarely, if ever, used in a correctional setting because it is so expensive.

Walter Bailey evaluated 100 reports on correctional programs and outcome and found no solid indication of treatment efficacy.[32] Certainly the most influential compilation of treatment studies to appear thus far is one initiated in 1966, formally completed in 1970 and published in 1975. The Effectiveness of Correctional Treatment[33] was the result of a study headed by Robert Martinson for the Governor's Special Committee on Criminal Offenders. The methodology was to search the literature for any available reports on attempts at rehabilitation published in the English language from 1945 through 1967, pick those studies whose design and execution met conventional standards of social science research, and to draw conclusions

therefrom. Of the 231 acceptable studies the following summarizes: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."[34]

No serious exception has been taken to this conclusion by the research community. Such writers as Glaser and Adams make the point that it is too early to write off the benefit some types of treatment may offer some offenders,[35] but they do not dispute the basic proposition that institutional programs generally are ineffective in reducing recidivism. Indeed, their own studies have contributed to this realization.[36]

The National Advisory Commission noted:

> Thus, a considerable amount of evaluative research has accumulated. Most of it has examined the usefulness of specific treatment methods in achieving offender rehabilitation. The influence of these studies has played a critical role in development of correctional policy. Few studies have culminated in unquestionable findings, but the absence of significant conclusions has itself been significant. It is especially noteworthy that treatment program tests have been conducted in a wide variety of incarcerative settings without establishing the rehabilitative value of any. The consistence of this record strongly indicates that incarcerative treatment is incompatible with rehabilitative objectives./37/

Recognition of what has come to be labeled as the "rehabilitative myth" is now widespread among students of and professionals within the penal system. James V. Bennett, former Director of the United States Bureau of Prisons says: "Broadly speaking, our so-called correctional system does not correct."[38] The report of a survey of prisons sponsored by the American Federation of Prisons concluded, "The prison is not a satisfactory setting in which to rehabilitate and what is worse it seems to degenerate."[39] The Chairman of the United States Parole Commission recently commented:

> .../R/esearch so far has shown that prison "treatment" programs are singularly unsuccessful in bringing

> about the rehabilitation of anyone. Most prison administrators today would agree that the prison is well equipped to punish offenders, or to incapacitate them from the further commission of crimes while they are doing time--but they are not equipped to do much of anything else./40/

The Warden of Louisiana State Penitentiary recently acknowledged that most prisoners do not benefit from rehabilitative programs[41] and the Louisiana Secretary of Corrections has expressed the view that rehabilitation is a personal decision by the individual inmate and cannot be imposed by mandatory programming.[42] The correctional literature published in the last several years exposing the rehabilitative myth is voluminous and need not be reviewed in detail.[43]

The reasons for the failure of institutional rehabilitation are problematic. Some observers claim that the ugly and distorted "milieu of personal failure" that permeates every aspect of the "total institution" neutralize any beneficial effects treatment might otherwise effect.[44] Others believe that for treatment programs to have a rehabilitative effect, they must be entirely voluntary and not tied to a hope of early release as is the practice under the rehabilitative model.[45] Whatever relevance this question has for the Commission's further study of rehabilitation, it is not the principal concern at this point.

Likewise, the implications of discovering the rehabilitative myth are important--to "corrections," to the sanctioning system, and to parole. But these larger consequences will be left for later. At present, the concern is the impact of discarding traditional notions about rehabilitation on parole boards' attempts to predict future criminal behavior of prospective parolees.

As noted in the prior section, parole boards have been relying on other factors in addition to rehabilitative progress through treatment

in reaching predictive decisions. It is not entirely clear how often these factors are used predictively and how often they are used to further other policy purposes, but it seems safe to assume that they have been resorted to in assessing risk because parole board members recognize the ineffectiveness of treatment. The research cited earlier argues strongly for parole boards' entirely abandoning consideration of an inmate's participation in institutional programs as a criterion for predicting recidivism. What criteria then should the boards use in making their predictive evaluations? Once again, empirical research into the area of recidivism is helpful.

Factors Related to Parole Success--
A Primer in Statistical Prediction

For more than 50 years, criminologists have been studying prediction of criminal behavior by actuarial or statistical methods, and much of the work in this area has concerned parole predictions.[46] In its simplest form, statistical prediction involves isolation of a particular characteristic in a set of predictor candidates and observation of whether there is any relationship between candidates possessing the characteristic and the occurrence of the phenomenon sought to be predicted.

Of course, this process can become very complicated because in order to truly "isolate" a particular characteristic or variable, all other relevant variables must be controlled. For example, suppose a researcher wants to find out whether left-handed truck drivers are more likely to violate parole than are right-handed truck drivers. He might select a set of right-handed truck drivers and a set of left-handed truck drivers and after a particular period of time, test to see how many in each category had violated parole. If a greater percentage of the

left-handed group had violated, it might seem that he has discovered that left-handedness is a characteristic indicating a likelihood of failure on parole for truck drivers. However, it could be that being left-handed has nothing to do with parole performance, but that it just so happened that more of the truck drivers in our researcher's left-handed sample had blue eyes than did the truck drivers in his right-handed sample, and that blue eyes is related to parole success in truck drivers. So our researcher would have to go back and take all the blue-eyed people out of his sample and test only the remainder to get a true picture of the importance of left-handedness and he'd have to continue this process until he had controlled all the variables that were relevant to parole success.

Needless to say, this description of statistical methodology is simplistic, but it does give some inkling of its nature and of the rigor necessary to be truly predictive. A full description of all of the research conducted in the past half-century on parole outcome and of the various refinements that have been built into prediction devices is far beyond the scope of this report and would probably not serve much purpose. However, a summary of which factors have been found to be most predictive is relevant at this point.

A few preliminary comments on what is being predicted are in order. "Recidivism" or "parole failure" are often the terms used to designate the unfavorable turnout researchers seek to predict. But there are differences in how long the subjects of the study are followed and in the type of postrelease conduct (arrest, conviction, technical parole violation) researchers use as their standards of failure. The National Advisory Commission and many others [47] have recommended that

a uniform measure of recidivism be adopted to allow meaningful comparison of parole outcomes. Others have pointed to different parole revocation policies in different jurisdications as skewing parole outcome studies.[48] However, for present purposes--gross indicators of recidivism--any of the various definitions of favorable and unfavorable outcome used by legitimate researchers will suffice. Moreover, recent research indicates that instruments that are outcome predictive for short follow-up periods also have long-term validity.[49]

Factors that have been shown by empirical evidence to be strongly related to postprison success are: (1) age at first commitment (the younger a person is at first commitment, the less likely his success);[50] (2) age at release (the younger a person is at release the less likely his success);[51] (3) prior record (the larger the number of prior convictions, prison commitments, and the greater the duration of prior criminality of a person, the less likely his success);[52] (4) history of drug and alcohol abuse (either one makes success less likely);[53] (5) prior probation and parole performance (prior revocation of probation and parole makes success less likely);[54] (6) employment history (absence of record of steady employment decreases probability of success)[55] and the type of crime committed.[56]

The nature of the offense for which the inmate was convicted is a strong indicator of the likelihood he will succeed on parole: a property offender is much more likely to be a parole violator than is a person offender other than a robber, and person offenders who do have their parole revoked are more likely than property offenders to have committed a technical violation of parole rather than a new offense.[57] Those who commit crimes like auto theft, forgery, burglary and robbery (both armed and unarmed) are less likely to succeed on parole while those who commit

willful homicide, aggravated assault, forcible rape and narcotic offenders have the highest success rates.[58]

Factors that have been found to be relatively unrelated to parole outcome, in addition to institutional treatment discussed in the previous section, are intelligence as measured by I.Q. tests[59] and prison disciplinary performance.[60]

An important practical development in statistical prediction of parole outcome is the formulation of experience tables incorporating a number of variables that have been highly related to success in the past. This device, which may take different approaches to weighing and correlating the various factors, is similar to the actuarial tables used in computing life expectancy for insurance purposes. Glaser describes three types of experience tables used in parole prediction:

> These scores were devised as a means of combining information from several different types of predictors into a single predictive statement. One system of scoring is to assign an offender one point for each trait that he has in a list of traits found to be above average in their association with the behavior to be predicted (the Burgess System). Another system assigns points for each trait equal to the percentage of cases with that trait which previously had the behavior to be predicted (the Glueck system). Another mathematically more sophisticated system assigns points that are a function both of prior statistical relationship between the predictors and their relationship to the behavior to be predicted (the descriminant function method of multiple linear regression analysis)./61/

Experience tables were developed and used by parole boards in the United States beginning in 1958 in California, which has conducted the "most extensive and sophisticated criminological prediction research of all time,"[62] and in Wisconsin in the 1960's. These tables have been labeled "Base Expectancies" because, as explained by Gottfredson, they are used not only to aid parole decision-makers in selecting the best risks

for parole, but in evaluative research of correctional programs.[63] For example, the studies discussed in the last section analyzing the effect of treatment programs on the frequency of subsequent criminal conduct could not have been conducted without a device like a Base Expectancy table. It would not mean very much to know that the same percentage of inmates who participated in institutional programs subsequently committed a major crime within three years of their release from prison as did inmates who did not participate in such programs unless we also know that the two groups were alike in every other way that is relevant to the likelihood of future criminality other than having received treatment. In other words, if the inmates who participated in institutional programs were worse parole risks to start out with than those who did not participate in programs, a finding that they performed as well on parole (if "statistically significant" as determined by certain technical procedures) would indicate that the programs had improved their post-release prospects, even though in terms of percentages they had not performed any better than the non-treatment group. To return to the earlier example, Base Expectancies insure that researchers examining program effectiveness are measuring the effect of being left-handed and not of having blue eyes.

The sophisication of parole experience tables has increased as the years have passed and it has been discovered that their predictive powers are just as great when only a few factors are used as when many are included in the equation. The reason for this is that although numerous features of a case may be related to postrelease outcome, most of them are interrelated with each other, and once a high or low risk group is distinguished by one of these features, the other related features

may not further establish the group in a category of highly divergent risk rates.[64]

After being assured that this is the last time he will have to do so, the reader might return again to the earlier example of left-handed truck drivers. If all left-handed truck drivers also have blue eyes (although some truck drivers with blue eyes are not left-handed) and having blue eyes is predictive of poor parole performance, there is no reason to even consider left-handedness in making predictions. This characteristic of experience tables makes them easier for parole boards to use.

An experience table must be periodically validated to make certain that its component factors are still predictive[65] and even a table that is valid in one jurisdiction may not be valid in another.[66] One weakness of experience tables is that they cannot inform the decision-maker of the gravity of the risk any particular inmate might pose if released; the likely seriousness of a subsequent crime cannot yet be foretold.

Nonetheless, experience tables are meant only to be used by decision-makers to help them in their determinations of risk, and they have been proven to be more accurate in performing this function than parole board members.[67] The President's Commission has stated:

> Psychiatrists, psychologists, sociologists, and prison officials have been asked to classify large numbers of cases on the basis of probable success on parole. When statistical prediction methods have been applied to the same group of cases, they have proved better able to determine the probabilities of parole violation for groups of inmates./68/

One reason the actuarial mathod is usually more accurate than the clinical method is that it uses only relevant criteria and standardizes more precisely the weight given to each factor.

Glaser says:

> The major argument for actuarial rather than case study is that systematic comparisons for large numbers of cases, in a variety of situations, have almost always found the actuarial predictions most accurate and relatively uniform./69/

But he adds:

> I know of no instance where an established academic criminologist, judge, or correctional administrator has advocated complete replacement of case studies and subjective evaluation by statistical tables for sentencing, parole, or other major decisions affecting the fate of an offender. The many reasons for insisting upon case data may be grouped into two major categories. First of all, these officials must make moral decisions for the state as a whole in determining what risks justify withholding freedom from a man or granting it to him. For these moral decisions they must try to know each man as a person and know his relationships to other persons who love or fear him. Second, there is always some information on a case too special to be readily taken into account by any conceivable table in estimating the risks involved in a specific official action. Third, besides the prospect of violation, judges and parole boards must consider the type of violation and the consequences of certain types of violation for community treatment of other parolees./70/

The United States Parole Commission now uses an experience table it calls the Salient Factor Score, which is probably as accurate and efficient an instrument as exists. The scoring sheet and the most recent parole outcome data validating the Salient Factor table are presented on the following two pages.

The Parole Decision in Louisiana

Thusfar, discussion of the elements of the parole release decision has been general and it is time to focus attention on the process in Louisiana. The task is simplified greatly because of a study funded by the Law Enforcement Assistance Administration and conducted by Professors Wilkins and Gottfredson of the Criminal Justice Research Center. This project is part of an effort to promote making parole policy

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SALIENT FACTOR SCORE

Register Number _____ Name_____

Item A---------- ☐

No prior convictions (adult or juvenile) = 3
One prior conviction = 2
Two or three prior convictions = 1
Four or more prior convictions = 0

Item B---------- ☐

No prior incarcerations (adult or juvenile) = 2
One or two prior incarcerations = 1
Three or more prior incarcerations = 0

Item C---------- ☐

Age at first commitment (adult or juvenile):
26 or older = 2
18 - 25 = 1
17 or younger = 0

*Item D---------- ☐ ____

Commitment offense did not involve auto theft or check(s)(forgery/larceny) = 1

Commitment offense involved auto theft [X], or check(s)[Y], or both [Z] = 0

*Item E---------- ☐ ____

Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1

Has had parole revoked or been committed for a new offense while on parole [X], or is a probation violator this time [Y], or both [Z] = 0

Item F---------- ☐

No history of heroin or opiate dependence = 1
Otherwise = 0

Item G---------- ☐

Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community = 1
Otherwise = 0

TOTAL SCORE---------- ☐

* NOTE TO EXAMINERS:
If item D or E is scored 0, place the appropriate letter (X, Y, or Z) on the line to the right of the box.

TABLE XII RELEASE FOLLOW-UP DATA

The following data were obtained from random samples of cases released for the first time on their sentences during the year indicated. This information is presented by salient factor score. The follow-up period was two years from date of release for each individual. Favorable outcome is here defined as: 1) No new commitment of sixty days or more; 2) No absconder warrant outstanding; 3) No return to prison for parole/mandatory release violation; and 4) No death during commission of a criminal act.

A. ADULT RELEASEES (PAROLE, MANDATORY RELEASE, AND EXPIRATION CASES)

Percent Favorable Outcome (Numer of Cases)

Salient Factor Score

	0-3	4-5	6-8	9-11	TOTAL
1970	54.9(375)	68.7(485)	80.2(526)	93.3(285)	73.4(1,671)
1971	60.1(168)	70.0(223)	84.1(233)	96.5(142)	77.0(766)
1972	57.1(175)	71.0(210)	89.2(203)	97.6(126)	77.5(714)

In addition, this follow-up information is available by type of release for the 1970 and 1972 follow-up samples.

C. PAROLEES (ADULT)

Percent Favorable Outcome (Number of Cases)

Salient Factor Score

	0-3	4-5	6-8	9-11	TOTAL
1970	63.0(54)	64.5(138)	79.5(283)	94.5(217)	79.9(692)
1972	65.1(43)	74.7(79)	91.8(122)	97.8(93)	86.1(337)

F. MANDATORY RELEASE AND EXPIRATION CASES (ADULT)

Percent Favorable Outcome (Number of Cases)

Salient Factor Score

	0-3	4-5	6-8	9-11	TOTAL
1970	53.6(321)	70.3(347)	81.1(243)	89.7(68)	68.8(979)
1972	54.5(132)	68.7(131)	85.2(81)	97.0(33)	69.8(377)

SOURCE:

Barbara Meierholfer, "Workload and Decision Trends, Statistical Highlights 10/74 - 9/76," U.S. Parole Commission Research Unit Report 13, FY 1977.

explicit by articulation of standards used in decision-making.

The methodology used in the study was to have each member of the Board of Parole over a period of 20 months fill out a form on each inmate considered for parole by the Board. The project was completed in October, 1976, and on the basis of the Board members' representation of the factors that caused them to grant or deny parole, a proposed policy statement and guidelines were written and forwarded to the Board of Parole, and they were adopted in the same month.

The study found that the Board of Parole uses the following six major criteria in determining whether to grant or deny parole and these are indicated in the policy statement.[71]

1. Nature and Circumstances of the Crime--The study indicates that this is the most important factor used by the Board and it is given weight both in terms of determining whether the inmate "has served enough time for purposes of retribution and general deterrence" and in terms of predicting whether he is likely to commit the offense again. However, the predictive value of the offense is apparently not in looking to the offense category to determine whether persons who commit crimes of that type are usually recidivists, but to ascertain whether the crime was a situational one such that the particular circumstances are likely to recur. The Board is particularly concerned with offenses involving a weapon and injury to the victim, with whether the inmate instigated the crime and whether the crime involved a great deal of sophistication. Presumably, the Board considers these factors both in evaluating the likelihood of recidivism and fair punishment. Generally, parole will not be denied solely on the basis of the nature of the crime, but occasionally it will.

2. Prior Criminal Record--The Board considers both the adult and juvenile records and is concerned principally with the number and seriousness of the inmate's convictions. The arrest record is used only if it indicates extensive involvement with authorities. The Board also considers whether the inmate was successful during any prior periods of supervision and whether the instant offense was committed on probation or parole. The Board apparently uses this criterion as a predictor of likely success on parole.

The Policy Statement includes a set of guidelines for rating the seriousness of the prior record, but the Board does not use the table to formally quantify prior record in each case; these guidelines merely make explicit what is apparently the consensus of the Board regarding the gravity of prior criminality.[72]

3. Institutional Adjustment--In assessing this factor, the Board considers whether the inmate has participated in programs available to him and his overall compliance with institutional regulations. The Board views favorably completion of six months on work-release and failure on work-release will be taken as an indication that the inmate is not ready for parole. The Board views negatively an institutional disciplinary record with a number of major and minor infractions. The Policy Statement says that although satisfactory institutional adjustment does not guarantee a favorable parole decision, it "greatly increases the inmate's chances because obedience to institutional rules is taken as an indication that the inmate will comply with parole conditions." A decidedly poor record "will weigh heavily against the inmate." Again, the stated rationale for considering institutional adjustment is its efficacy in predicting parole success.

4. Factors Related to the Character and Personality of the Inmate--Relevant here are the inmate's work record, level of education, occupational skills, emotional stability as indicated in recent psychological reports, whether the inmate has a history of mental hospitalization or alcohol or drug abuse.

5. Police, Judicial, and Community Attitudes Toward the Inmate--It is Board practice to solicit information about the inmate from community and public officials who are well acquainted with him and his case. The Board finds this factor to be of great importance because the probability that an inmate will succeed on parole is greatly diminished if he will return to a community which has expressed hostility toward him. The Board will seldom deny parole solely on the basis of opposition from official or community representatives. On the other hand, evidence that the community and public officials are supportive will increase the inmate's chances of being granted parole.

6. Parole Plan--The Board places a great emphasis on the appropriateness of the parole plan. In evaluating the parole plan, the Board will consider the strength of the inmate's social ties, including whether he has a supportive family, resources available to him in the community, and a job opportunity. The Policy Statement indicates that it is important for the inmate to have secure job plans and stable living arrangements upon his return to the community, since these factors are strongly related to the inmate's successful completion of parole. The Board is extremely reluctant to grant parole to an inmate who is a drifter, or to an inmate who will return to an environment and circumstances which are likely to contribute to further criminal activity.

The LEAA study also formulated a set of guidelines in the form of

a rating sheet which quantifies factors such as institutional discipline, prior record, police objections and the like, and indicates, on the basis of the study's findings, when parole should be granted and when it should be denied. However, once again, the Board does not use this rating sheet in individual cases. For a sample of this form, see Appendix D.

The study concluded that the factor most strongly related to the decision to grant or deny was prior criminal record. The Board was reluctant to grant parole to an inmate with a serious or extensive record. In fact, the only time the Board considered other factors extensively was if the inmate's record was moderate. The study indicates that one of the factors that then came into play was institutional disciplinary rating. This factor is the only one that was analyzed statistically in the study by controlling for the most important variable, the prior record. This analysis is represented in the following chart:

Percentage of Parole Applications marked Granted, according to Inmate's Prior Criminal Record and Institutional Disciplinary Rating

		Inmate's Prior Criminal Record				
		Extensive	Serious	Moderate	Minor	None
Inmate's Institutional Disciplinary Rating	Very Good	17% (12)	27% (11)	77% (13)	80% (5)	100% (4)
	Good	6% (16)	21% (24)	77% (48)	92% (25)	91% (33)
	Adequate	10% (52)	23% (128)	62% (147)	79% (72)	81% (42)
	Poor	12.5% (64)	7% (135)	16% (99)	42% (33)	54% (13)
	Very Poor	8% (12)	.0% (26)	18% (11)	.0% (1)	66% (3)

This seems to indicate that the factor indicated to be third in importance by the Board's policy statement is not very important at all, except

perhaps in very limited circumstances of a moderate record and poor disciplinary behavior. It seems likely that the three criteria ranked lower are even less outcome determinative.

This conclusion--that prior criminal record and the severity of the offense are by far the two most influential determinants of decision outcome--comports with statements made by the Chairman of the Board of Parole[73] and impressions the staff gathered from observing parole hearings.

These findings lead to the welcome conclusion that the Louisiana Board of Parole has discarded the rehabilitative myth and that the predictive component of its decisions relies most heavily upon a valid indicator of parole success, prior record. The Chairman of the Board has indicated that participation in institutional programs is not considered a criterion of later success and therefore should not be tied to release.[74] To the extent that institutional behavior is relied on as a predictor of future behavior, the evidence seems to indicate that such reliance is misplaced. As a parole board member in another state said;

> ...some of the greatest parole risks are the best behaved inmates in the institution. And some of those persons who aggressively reject the artificial life of the institution and others who amass misbehavior records do the best on parole./75/

If this factor is used to maintain institutional control, it would seem that since good-time is the administrative device intended to achieve this purpose, there is no need to resort to parole decisions to accomplish it. In addition, there is no evidence that opposition from the police, judge or "community" (often a euphemism for the district attorney and sheriff) will likely result in parole violation. Although the Policy Statement indicates that this is the rationale for considering these

opinions, it seems more likely that the policy goal being furthered if parole is granted or denied on this basis is the Board avoiding criticism or responding to pressure. It is probably impossible to avoid such influences on any agency operating in a democracy, and certainly the judiciary is subject to the same pressures. However, their existence should be recognized.

Even the complex analysis applied to the Board of Parole's decision-making process does not reveal a great deal about the overall validity of the criteria used in reaching judgments. There has never been any validation of the Board's decision-making. In some states where such validation has occurred, it has produced findings that parolees did not do any better upon release than did mandatory releasees,[76] although the opposite result generally appears to be true.[77]

Although it seems that the most important factor used in reaching decisions (prior record) is a valid predictor of parole outcome, it is impossible to tell whether the accuracy of the Board's predictions could be improved by altering the emphasis on some of the other factors used or by adding additional criteria. This would require follow-up research on Board decisions to see how well the persons released performed on parole and how well those who were not released performed when they eventually were released. The effect of changes on Board policy could be monitored to determine whether they improved performance and adjustments could be made to add precision to the Board's predictions. Professor Gottfredson has explained this process:

> Correctional administrators, paroling authorities, and clinicians daily face the task of making decisions on the basis of inadequate information. They realize these decisions are based more on correctional folklore or their own individual, selective experiences than any systematic

> unbiased study. But decisions must nevertheless be made--and made on the basis of the information they have available.
>
> The word "statistics" means, to many, simple enumeration. The number of persons confined in an institution or the number of escapes or the number released is only a small part of statistics. The main part is a set of methods for analyzing numerical data. They provide ways to determine the nature and magnitude of relationships among sets of information.
>
> And they guide our attempts to generalize from observed events to new events. With this to offer, statistical methods are among the most powerful tools available to correctional workers, but, perhaps surprisingly, they are among the least used. Nearly every correctional agency keeps track of the number of persons in this or that category. But studies of any relationships to be found are rare.
>
> What the decision-maker needs is a systematic, continuous program for evaluation of the effects of his decisions. Then he needs procedures to continuously inform him of the relevance (or non-relevance) of available information to decision outcome. The goals of the decision must be specified not by the research worker but by the decision-maker. The role of the research worker is provision of tools which can aid in attaining these goals. This is immediately apparent from the fact that the relationships between information used (in arriving at decisions) and the outcomes of decisions are largely unknown. That is, in current correctional practice, information with presumed (rather than demonstrated) relevance to the decision provides the basis for action. We need, then, to test (by appropriate statistical methods) whether the information is in fact relevant to the decision./78/

Increasing accuracy in parole decision-making can have enormous practical significance. Paroling more inmates who are parole successes will result in fewer violations. Parole boards that are not as precise and accurate in their predictions may parole fewer persons so there will be fewer violations for which they can be blamed. They are conservative and err in the direction of keeping more inmates in jail rather than increasing the likelihood of releasing those who would violate parole. More precise prediction could increase the number paroled without increasing the

likelihood of parole violation. This would mean great savings in incarceration costs to the public and important human savings to inmates who are released.

The overall parole rate during the period of the Criminal Justice Research Center's study was 39%, which the researchers found to be low.[79] It seems likely therefore that any refinement in method leading to greater predictive accuracy could result in higher paroling rates without any increase in failure rate.

The Chief of the Research Division of the California Department of Corrections stated in 1962:

> Any correctional agency not using a prediction procedure to study the effectiveness of its decisions and operations is perpetrating a crime against the taxpayer./80/

The National Advisory Commission strongly advocated immediate development of a capacity to evaluate correctional performance[81] as did the report of the President's Commission.

Louisiana badly needs a coordinated program of correctional research conducting ongoing evaluation of Board of Parole performance in predicting postrelease success and failure. From this research, a valid experience table could be constructed to aid the Board in making its decisions.

At present, no such research is conducted on a regular basis. Indeed, the staff attempted to obtain some very basic data on postrelease success rates of parolees and good-time releasees in order to get some gross indicators of the Board's success in predicting favorable outcome and to compare its accuracy on that factor to success in other states. The Division of Research and Statistics of the Department of Corrections, working through the Louisiana Criminal Justice Information System, returned a set of data that was inaccurate. The Division then agreed to locate the

problem and re-process the data, but it has not been received as of this writing.

Creating a correctional research and evaluative capacity of the kind advocated here will require expenditure of money, but it is submitted that long-range value will far outweigh its costs.

Another way the quality of future Board decisions might be improved is by establishing statutory qualifications that are pre requisites to Board appointment and by increasing Board salaries to attract the most competent personnel. The President's Commission made the following observations about parole authority members' qualifications:

> The nature of the decisions to be made in parole requires persons who have broad academic backgrounds, especially in the behavioral sciences, and who are aware of how parole operates within the context of a total correctional process. It is vital that board members know the kinds of individuals with whom they are dealing and the many institutional and community variables relating to their decisions. The rise of statistical aids to decision-making and increased responsibilities to meet due process requirements make it even more essential that board members be sufficiently well trained to make discriminating judgments about such matters./82/

The National Advisory Commission states that:

> /Parole board/ /m/embers should possess academic training in fields such as criminology, education, psychology, psychiatry, law, social work, or sociology.
>
> Members should have a high degree of skill in comprehending legal issues and statistical information and an ability to develop and promulgate policy.
>
> Members should be appointed by the governor for six-year terms from a panel of nominees selected by an advisory group broadly representative of the community. Besides being representative of relevant professional organizations, the advisory group should include all important ethnic and socio-economic groups.
>
> Parole boards in the small States should consist of no less than three full-time members. In most States, they should not exceed five members.

> Parole board members should be compensated at a rate equal to that of a judge of a court of general jurisdiction.
>
> Hearing examiners should have backgrounds similar to that of members but need not be as specialized. Their education and experiential qualifications should allow them to understand programs, to relate to people, and to make sound and reasonable decisions./83/

The Standards of the Louisiana Commission on Law Enforcement agree substantially with those of the National Advisory Commission, except that they suggest that members of the Board of Parole should possess a degree in a field such as criminology, education, psychology, psychiatry, law, social work or sociology and add "and/or equivalent experience in the field of criminal justice." The rate of compensation recommended by the Louisiana Commission on Law Enforcement is one commensurate with top-level administrators in the Department of Corrections. The Louisiana Commission also does not advocate nominations by an advisory group.[84]

The following Standards of the Commission on Accreditation and the discussion of their rationales are relevant to the issue of parole-board-member qualification.

> 1033 Members of the parole authority are chosen through a statutorily or administratively defined system, with explicitly defined criteria, which results in the merit appointment of parole authority members.
>
> DISCUSSION: Partisan political considerations have too frequently entered into the selection of parole authority members. Though from time to time, qualified persons are appointed under a system dominated by political considerations, often the result has been the appointment of unqualified persons as parole authority members. Almost always, there has been a loss of public respect and confidence in the parole system when patronage considerations enter into the choice of parole authority members. It is imperative that a statutorily or administratively defined system, with explicitly established criteria, be employed in the merit appointment of parole authority members. (Essential)

1034 At least two-thirds of the members of the parole authority have at least a B.A. or B.S. degree in one of the social or behavioral sciences or related fields.

DISCUSSION: A variety of educational backgrounds may qualify a person to sit on a parole authority, and selected individuals who do not have bachelor's degrees may be uniquely qualified by other training or experience to serve on a parole authority. However, a parole authority must have a capacity for policy formation and articulation, and an awareness of contemporary research findings and correctional techniques. It also requires skills in system planning and management. These tasks require that an authority include in its membership a substantial proportion of persons from a variety of disciplines, and it would be desirable for some to have been educated at the graduate level in the law and the behavioral and social sciences. (Essential)

1035 At least two-thirds of the members of the parole authority have at least three (3) years experience in a responsible criminal justice or juvenile justice position, or equivalent experience in a relevant profession, such as law or clinical practice.

DISCUSSION: Though academic preparation is important, appropriate experiences which prepare parole authority members for decision-making in a correctional context are equally vital. While a variety of experiences can be appropriate, it is expected that a parole authority member will have had substantial experience in occupations and professions which are directly relevant to parole decision-making and policy development. (Essential)

1041 Salaries of parole authority members are comparable to those paid judges of courts of general jurisdiction.

DISCUSSION: Persons with the required skills and experience to serve on parole authorities will not be recruited or retained unless adequate compensation is available. The character of persons and responsibility involved require a compensation level equivalent to that of a judge of a court of general jurisdiction or highest trial court. (Important)

Many authorities have noted the tendency for appointments to parole authorities to be politically motivated, a feature attributable to the sometimes unbridled discretion of governors to select board members, and the resultant absence of expertise in the membership.[85] As stated in an influential publication by O'Leary and Hanrahan:

> Many appointments have stemmed from political patronage, an especially dangerous criterion for positions which involved great discretion, human freedom in its most basic forms and difficult moral, legal and scientific issues./86/

The salary of a member of the Board of Parole is $12,000 annually; the Chairman's salary is $15,000. None of the present Board members has a college degree. One member of the Board is a former police chief and another is a former parole officer.

The staff feels that the Commission should recommend a salary increase to at least $25,000 for the Chairman and $22,000 for Board members and qualifications of the type recommended by the National Advisory Commission for board membership should be enacted into law. However, qualification requirements should be applied only as the terms of present Board members expire because parole board experience is the most valuable qualification of all. If the Commission recommends using hearing examiners to implement an early parole hearing policy, qualifications, like those suggested for hearing examiners by the National Advisory Commission, should be established by legislation.

The Board of Parole's Policy Statement goes a long way toward articulating decision-making criteria. However, it gives little guidance as to how important various factors are and, as we have seen, includes criteria that apparently are very seldom used. The Policy Statement claims that the Board still uses participation in prison programs as an indication of an inmate's readiness for parole. At virtually every hearing, the inmate's disciplinary record is discussed with him and it is the staff's feeling that many prisoners leave the hearing with the feeling that their institutional record is an important factor in the decision reached. This belief must surely be communicated to other inmates. Yet, it appears that this

factor operates decisively in very few if any cases. Considering the fact that many observers feel that just the belief by inmates that treatment participation is linked to parole release destroys whatever effectiveness the few available programs might otherwise have had,[87] the Board should not represent program participation as being among its goals. Then any treatment will be administered to voluntary subjects and may have some effect.

One way to foster understanding of the parole process by inmates is legislation requiring distribution to persons upon admission to the institution of an accurate statement of parole decision-making criteria, stressing the primacy of past record and the seriousness of the crime for which the sentence is being served and indicating in which situations other factors may be considered, what these factors are, and how important each is in which circumstances. This would give prisoners some idea of their chances for release on parole and, tied with an early release hearing and setting of the presumptive release date, inject some measure of certainty into the correctional system. The need for honesty and explicitness in parole board dealings with inmates is brought home by the following quote:

> Profound psychological pressures are created for inmates in trying to conform in behavior, attitude, and program participation to what will be viewed with favor by the parole board while having little direct knowledge of paroling policies or criteria. These pressures are substantially increased for the scores of inmates who try to conform to what is desired and nonetheless find that they are denied parole. Manipulation of inmate behavior by implicit or explicit promises of release, when the factors on which release decisions are made seldom have much connection to what an inmate has done in prison, is a dangerous game that harms not only the inmate, but also the public, which eventually must bear the brunt of the hostility engendered./88/

The United States Parole Commission whose criteria for releasing parolees is very much like what the Louisiana Board's seem to be--offense

severity and likely parole performance--has adopted a set of Guidelines that also might be an appropriate model to consider in Louisiana. The Criminal Justice Research Center, the same organization involved with the Louisiana project discussed earlier in this section, was also involved with formulating the federal guidelines.

The Salient Factor Score discussed earlier is the measure used in the Guidelines to embody the parole prognosis (risk) element of decision-making. A severity scale, based on Commission members ratings of offense seriousness is the other component of the Guidelines.[89] These two elements are almost independent of each other; as we learned earlier, some of the most serious crimes are associated with a lower probability to commit further crimes.[90] Nevertheless, a chart with one axis reflecting the concern of offense severity and another the concern of parole prediction was developed. At the intersection of these axes, the expected time to be served is shown. This expected time at any particular intersection is based upon past experience regarding how long inmates scoring at that level on the salient factor index and convicted of a crime of the same severity have served on the average. Decisions may be made outside the Guidelines, either in the direction of longer or shorter imprisonment, but they must be justified. In actual practice, the great majority of Comission decisions have been within the Guidelines.[91] A sample of the Guidelines is included in Appendix E.

The Guidelines represent an attempt to achieve a balance between completely unstructured discretion and a totally fixed and mechanical approach.[92] They insure as accurate prediction as possible, consistent policy and certainty, while leaving room for consideration of individual cases. The Commission should consider recommending legislation formulating

Guidelines for the Louisiana Board of Parole. Such an endeavor could be accomplished with minimal outside consulting if the research capability recommended earlier existed.

One criticism of the Guidelines is that they fail to take into account the sentence imposed by the judge.[93] The Parole Commission makes its own judgment of the severity of the crime, incorporated in the severity scale of the Guidelines, and this is one of the two key determinates as to how long the offender will serve. The reason for this policy is the great disparity that is typical of sentencing practices. Commissioner Parker of the United States Parole Commission stated recently:

> Rightly or wrongly, plea bargaining is a part of our criminal justice system and is used to dispose of a vast majority of cases. Unfortunately, not all US attorneys or judges think alike. There are differences in plea terms accepted in different areas, by different District Court judges within a particular area and even by different US Attorneys.
>
> The Parole Commission is a great leveler in time served because it can and does independently determine how long a prisoner who entered a guilty plea is to serve and this decision is based on the offense behavior and not solely on the count of the offense to which the guilty plea was taken. /94/

Although there is a great deal of value in the practice of parole boards evening out sentences so that "similarly situated" offenders serve the same periods in prison, one response to the suggestions that parole boards should correct sentencing inequities is that the problem should be remedied at its source.

> It has been suggested that parole boards could expand their role as de facto sentencing review boards. The role of such boards could be to reduce sentencing disparity and to mitigate the harshness of current sentences. While there is considerable evidence that the criminal justice system should pay more attention to unwarranted disparities in sentencing and to mitigating

> the harshness of many sanctions, allowing parole boards to continue to perform administrative correction of a systemic problem is inappropriate, even if it could be accomplished effectively. "Current sentencing theory, by maximizing everyone's discretion, causes the disparities in the first instance. If sentencing criteria were developed as they should be, and the discretion of the sentencing authority structured and limited as it should be, the disparities would not arise." For parole boards to try to fill these gaps after the fact would simply perpetuate the problem that the various sectors of the criminal justice system can evade responsibility for their actions./95/

A more basic objection to parole boards playing this role questions the propriety of an administrative agency undertaking to weigh the values and policies involved in determining which offenders actually are "similarly situated" in terms of meriting equal punishment. One particularly articulate statement of this objection is the following:

> The Board's approach to the goals represented by the offense severity factor may well be "better" than the congressional approach. But both the choice of goals and their relevance to particular forms of criminal behavior are decisions more appropriately made by legislative rather than administrative bodies. Congress has access to the mechanisms for considering the relative importance of such goals as rehabilitation, incapacitation, and general deterrence. It is the forum best suited to balance the complex costs and benefits inherent in particular goals of punishment: It pays for the prisons, for the supervisory personnel, for the rehabilitative program, and it is in closest touch with the constituencies that "pay for" criminal acts, that is, the general public. Congress also "pays for" the services of other institutions in the criminal justice process, from police to courts, and it could thus best determine which institutional actor should implement particular goals. In addition, the legislature is the only political body with a colorable claim to represent societal moral values relevant to the amount of punishment appropriate for certain classes of crime.
>
> The Parole Board's effort may well represent an understandable response to congressional indifference toward the complex decisions inherent in the post-conviction process. It is illustrative of what occurs in many areas of the law when the legislature simultaneously

> abdicates responsibility and delegates authority. However, the Board's action involves fundamental choices concerning societal values and policies that are more properly within the province of Congress.
>
> . . .
>
> With respect to offense severity, the Board's attempt to fill the void left by judicial abdication of responsibility is a poor method for achieving the goals of society or preserving the individual rights of inmates. Society's goals, be they instrumental goals of general deterrence or moral goals of denunciation or condemnation, can better be served in the more visible judicial forum. No matter how well publicized Board procedures become, no matter how much light and air come into the parole process, the courtroom is the focal point for the resolution of conflicts in the criminal law. The efficacy of "deterrent" measures depends primarily upon their being known to the relevant audience, and sentencing policy and practices are always more easily accessible to the general public than are parole practices. So little is known about general deterrence, much less about the "justice" of imposing particular penalties in the name of retribution or condemnation, that parole boards have no legitimate claim to expertise. Finally, if there is one decision on which judges feel they do not need the Board's assistance, it is the determination and assessment of the severity of the offense; this evaluation is a peculiarly legal and judicial one, calling upon skills of comparison and differentiation in the light of statutory definitions./96/

The arguments apply with even greater force to present practice in Louisiana. To the extent that the Board of Parole bases its release decision on whether the offender has served "enough" time for purposes of retribution and general deterrence--a practice that the Criminal Justice Institute study indicated occurs rather frequently--it may not only be acting beyond its technical and moral competence, but perhaps beyond its legal competence as well. As indicated earlier, at present, the only legislative mandate the Board has is to release inmates who are safe risks.[97] It could be argued quite persuasively that, once an inmate reaches his parole eligibility date, he has served what the legislature considers

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to be "enough" time for purposes of retribution and general deterrence, since it has authorized release at that point for inmates who the Board of Parole determines are likely to succeed in the community. Thus, any further consideration of offense severity, except as it might affect the determination of risk, is inappropriate. Under the present system, this argument is more theoretical than practical because it is impossible to judge what goal the decision-maker is furthering when his conduct is unstructured; but under a Guideline system, this would be a relevant consideration.

The Commission may disagree with the notion that the Board of Parole is not equipped to judge sentencing equity and may feel that the Board's role in lessening sentencing disparities is a salutary one. If so, it may want to recommend legislation specifically authorizing the Board to equalize sentences or to determine whether the inmate has served enough time or both, so that the law will reflect the current practice. It may also want to recommend standards to guide the Board in exercising this authority similar to the sentencing standards adopted during the last legislative session; and if ending sentencing disparity is truly a goal, only adoption of Guidelines like those of the United States Parole Commission will assure its achievement.[98]

However, to the extent that such a recommendation would tend to increase the time individual inmates serve in prison as compared to the amount they would spend under operation of the law as it is presently written, the Commission should consider the next chapter of this report.

CHAPTER V

THE FUTURE OF PAROLE

Much was said in the preceding chapter about the impact upon parole-release decision-making of research findings revealing that the rehabilitative ideal is, at least for the present, an unworkable theory. The importance of this recognition extends further. Parole boards' traditional reliance on their "rehabilitative expertise" in judging the readiness of an offender to return to society to justify their unstructured discretion and to resist efforts to impose procedural safeguards is no longer supportable. Moreover, because it is now acknowledged that the factors most predictive of parole outcome do not relate to what occurs in the institution but to the offenders' prior conduct in the community and certain personal characteristics such as age, there is no reason certainty cannot be infused into the system by making an early judgment as to when the offender can be released and setting a presumptive parole date, as suggested in Chapter III.

But there are more profound consequences yet for parole and for the entire sanctioning system flowing from the new confrontation with reality: the very premises upon which the indeterminate sentence-parole system are based have been undermined. Prisons generally do not rehabilitate and parole boards cannot ascertain accurately an inmate's "changed attitudes" that make him ready for release.

The factors used by parole boards in deciding whether to release are equally available to the judge at the time of sentencing and today it is increasingly asked what purpose parole boards serve. Senate Bill 1437, the proposed federal Criminal Code Reform Act, would abolish parole release and replace indeterminate sentences with shorter determinate

sentences.[1] The bill is backed by the administration and appears to have the support of many members of Congress representing a broad political spectrum.[2] Testifying at hearings held June 7-9 of this year by a Senate subcommittee considering the bill, the co-authors of a new three-year Yale Law School study backed immediate elimination of parole and stated that the demise of rehabilitation as the main goal of sentencing means that the Parole Commission "largely duplicates the initial sentencing function performed by the trial judge."[3]

That study opined:

> It is difficult to see any purpose in having two independent decisions with respect to the same individual based on the same data aimed at achieving the same purpose unless one is explicitly and intelligently assigned as a review or check on the other./4/

Rather than reform the parole system by adopting measures like those suggested in this report, California and Maine have jettisoned parole and indeterminate sentences from their sanctioning schemes while retaining the supervision function of parole, as the federal bill would do. One observer stated:

> /I/f parole boards are not acting or functioning on any basis other than that available to the judiciary, it seems rather redundant, expensive, and ridiculous simply to append one more agency decision with real consequences for individual lives./5/

In the words of the American Correctional Association:

> /U/nless it could be illustrated that parole is the best known method of release there would be little justification for its continued use./6/

Other groups calling for the abolition of parole include the American Friends Service Committee,[7] the New York Citizens' Inquiry on Parole,[8] and the Committee on the Study of Incarceration.[9]

At the Senate hearings Professor Gottfredson testified against

Senate Bill 1437, arguing that the United States Parole Commission Guidelines were effective in reducing unwarranted sentencing disparity. Professor Andrew von Hersch of Rutgers University, author of the Committee on Incarceration's critique of the indeterminate sentence and subsequently involved in an LEAA-funded study of parole abolition and its possible consequences, advised caution:

> The one thing that study convinced me /of/ is that we should approach this subject with caution. Parole is now so integral to the whole sentencing system that its elimination or downgrading could have all kinds of repercussions: unless care is taken, the unintended effects could largely vitiate the usefulness of that reform./10/

Others have made similar statements indicating that they foresee the eventual decline of parole, but recognize this will be a gradual development. In the Final Report of the Annual Chief Justice Earl Warren Conference on Advocacy, a group of trial lawyers recommended that:

> /U/ntil 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 on good conduct time./11/

Despite the importance of the issue of parole's continued viability, it is important not to permit the emotion and controversy that surround the debate on that question to divert attention from the even larger implications of acknowledging the invalidity of the rehabilitative-treatment theory of penology. When empirical evidence destroyed the foundations of parole, it likewise removed the cornerstone of the system of sanctioning that has governed American penology for over a century. It will not do merely to weigh the remaining practical usefulness of one element of the system, parole, to see if it can fulfill functions other than the one for which it was intended and move on to business as usual. A search must begin for alternative but valid theoretical bases to replace the discredited treatment philosophy.

In fact, such a search has begun,[12] and it comes at a time when widespread dissatisfaction has been expressed in many and varied quarters with the practical operation of the sanctioning system. It is an auspicious moment to re-examine the justifications for sanctions, what they should be accomplishing, what they can achieve and their actual effects.

Historical Development of Sanctioning Theories

As discussed in Chapter IIII rehabilitation or treatment of offenders has not been the sole purpose sanctions have been supposed to accomplish. Other justifications advanced for disposing as the state does now of those who commit acts it has designated as criminal are general prevention, special deterrence, retribution, and preventive confinement.

Throughout most of human history, the response to anti-social behavior was brutal and extreme retaliation, involving devices like death by mutilation, burning, dismemberment and boiling in oil. The motive was pure revenge and the Judiac principle "an eye for an eye, a tooth for a tooth" was an injunction against inflicting punishment out of proportion to the original offense.[13] This was retribution in its rawest, most primitive form. The Freudians argue that our other rationalizations for punishment merely conceal deep needs for vengeance and for reinforcement of the group superego by the suffering inflicted on the criminal taboo-breaker.[14]

Capital and corporal punishment remained as Western man's predominant sanctioning devices until the advent of the Classical School of Criminology. Even in England, with its vaunted tradition of fairness in dealing with persons charged with crime, once guilt was pronounced, capital punishment was the usual method of dealing with even minor offenders until well into the 18th century. However, the Classicists introduced the concept of using incarceration as a means of sanctioning criminal behavior and developed

the innovative notion that sanctions were useful to further the social goals of discouraging crime (general prevention) and teaching those who committed crime in the past not to do so again (special deterrence). The premise of these beliefs is that man is a rational creature, operating on a pleasure-pain principle; and that he would do that which gives him pleasure and avoid that which gives him pain. There is social value in non-interference with individual human freedom, so the punishment should not be any greater than necessary to achieve the desired result and it should be commensurate with the gravity of the crime.

The basic hypothesis of the utilitarians--that criminal sanctions should be used to achieve social goals--formed the basis for the ideas of Combs and others, discussed in Chapter II, that imprisonment be used to protect society from criminals by locking them away until they could safely be released (incapacitation or preventive confinement). As we have seen, this notion was merged with the treatment model and the two coalesced into the indeterminate sentence-parole system.

Contemporary Sanctioning Theory

The bases underpinning America's current sanctioning system has been described as a "philosophical mix."[15] It has been dominated by the rehabilitative theory, but the other justifications for sanctions have never disappeared. Legislatures have seldom ennunciated the assumptions underlying sanctioning practices, and when they have, the result was merely a listing of all the sanctioning theories without any indication of which are most important or under what circumstances each is to be given particular emphasis.[16] This phenomenon as it relates to parole boards was discussed in the last chapter,[17] but the observations made there are equally true with respect to instructions to the judiciary. The most realistic assessment of

the "integrative" or "inclusive" approach to philosophies of sanctions--purporting to include all bases as justification for punishment--is that it reflects not a decision to be all-inclusive but an absence of any consistent, ordered consideration of the purposes sanctions should serve.

As Judge Marvin Frankel notes:

> A Supreme Court opinion in 1958 made the obvious point that the "apportionment of punishment," its "severity," "its efficacy or its futility," are all peculiarly questions of legislative policy. Fully agreeing that this ought to be so, I have been saying at some length that the legislature has for too long abdicated this basic function. To begin at the elementary beginning, we have an almost entire absence in the United States of legislative determinations--of "law"--governing the basic questions as to the purposes and justifications of criminal sanctions./18/

Kay Harris, Assistant Director of the Resource Center for Correctional Law and Legal Services, an activity of the American Bar Association Commission on Correctional Facilities and Services has said:

> Of primary importance in any effort to bring rationality and effectiveness to American sentencing is the development of a model for a criminal sanctioning system that rests on a sound and consistent philosophical base.
>
> . . .
>
> Most fundamentally, the legislative branch has failed to develop and declare a coherent public policy to govern the criminal sanctioning process. This failure has resulted in the present state of affairs in which the implementation of society's official responses to convicted law violators is almost totally discretionary in nature. Where there is no clear purpose, and discretion reigns, there can be little accountability, standards for acceptability or procedural safeguards cannot be meaningfully enforced, and "equity" and "justice" remain unapplied concepts. A new model for criminal sanctioning systems is needed./19/

Says the National Advisory Commission:

> The effectiveness of sentences is thus irrevocably tied to the purposes established for the criminal law.... Basic assumptions about the role of the criminal law and of criminal sentencing will only be proved or found wanting if the system articulates in open fashion what it thinks it is doing and for what purpose./20/

But the National Advisory Commission goes further to indicate that there is a duty on the part of the state to show that the objective the sanction is designed to accomplish is proper and to validate the effectiveness of sanctions in achieving the purposes they purport to accomplish. This is the standard test of rationality courts have traditionally held is required of government if it is to deal fairly with its citizens:

> Whether any particular sentence is effective depends on the purpose for which it is imposed. Throughout the history of criminal law, there have been competing purposes for applying the criminal sanction. Imposition of punishment has been defended on the basis of retribution, deterrence, incapacitation, rehabilitation, and reintegration. Surprisingly, little information is available to show that punishment or confinement achieves any of these purposes except incapacitation and retribution.
>
> The Commission believes that restrictions on liberty should be justified by some legitimate purpose and that the state in imposing sanctions should bear some burden of proving that the means employed have some reasonable relationship to the purpose selected. This requires not only an articulation of what those purposes are but also a measured application of sanctions in general./21/ /emphasis added/

Validation must be, of course, by empirical evidence, and this is precisely the process that has called into question the propriety of confining for treatment. Factual data indicate that we can no longer justify imprisonment upon the belief that treatment therein rehabilitates. In addition to the importance of reality testing to justify deprivation of individual liberty stressed by the Commission, the public has an important stake in a sanctioning system that accomplishes its goals and does so with efficiency. Moreover, even if a particular sanction is effective in achieving a legitimate public policy, there may be philosophical or practical objections to its use.

With these considerations in mind, we now undertake an analysis of the justifications of the present sanctioning system that remain after

we discard rehabilitation, which has been determined to be invalid. In the following discussion, the focus is upon the empirical research that has thusfar been completed into the effectiveness of existing sanctions in achieving their purported goals and upon policy problems in their imposition. This analysis is designed to furnish the Commission with factual findings regarding the efficacy of the present system in achieving its goals and, within practical constraints, represents an effort to embody the present state of learning on this subject. This information will foster a more enlightened approach to the difficult problem of the future of parole in Louisiana and also is highly relevant to the other areas of study the Commission will undertake in the future. Indeed, the Commission's first Position Statement foreshadowed this approach:

> Because scholars have only recently begun to apply the scientific method to such areas of human behavior as crime, the responses to criminal activity in the past, and therefore the goals of society's system of punishment, have been based essentially on superstition or abstract theories. It is expected that part of the work of this Commission will be to compile empirical data to test the validity of such theories, many of which are still with us, to determine which ones are, in fact, sound and which are not.

The core of the present sanctioning system is, of course, incarceration in a penal institution. Diversion and probation are also components in the system, but they are not within the scope of the Commission's study mandate, and their effectiveness will not be considered except as they cast light on more relevant questions. Moreover, parole is an important means of shortening sentences. Thus, in studying only the postsentence segment of the sanctioning system, the Commission is concerned with the effectiveness of varying lengths of sentences in promoting sanctioning goals.

Special Deterrence

The special deterrence purpose of sanctions hypothesizes that

imposition of a particular punishment will deter the offender who is subjected to it from committing more crime. Considerable research has been done on the question whether those who serve longer terms of incarceration tend to be more successful when they are released than those who serve shorter terms. The methodology of this research is essentially the same as that used to study various forms of treatment within the institution: factors associated with likely postrelease success are controlled so that those under study who are released early are equally likely as a group to refrain from further criminal activity as those released later except for the difference in time served. This is especially necessary when studying time served because those with shorter sentences or released early on parole would presumably be those less likely to recidivate. A number of studies that did not control for other factors were excluded from this analysis as being irrelevant.

One further refinement should be drawn before examining the research on this matter. There may be more than one factor operating in the equation "time served: postrelease outcome." The pure special deterrent effect longer prison terms might have may be offset by the influence of "prisonization."[22] Prisonization, a concept coined by Donald Clemmer, refers to the assimilation by inmates in varying degrees of the folkways, mores, and general culture of the prison, which he hypothesized as increasing the probability of future criminality.[23] For our purposes, the overall effect of the sanction of imprisonment as it exists today is the only relevant consideration, so we need not be concerned with such a technical distinction, except to note that it may be helpful in understanding some of the following data.

Beck and Hoffman[24] divided a sample of releasees into three categories,

according to the time served in prison and used the federal Salient Factor Score to control for risk. They found that, in general, the percentage of cases with favorable release outcome tends to decrease as one moves within the risk category from the group serving the least amount of time to the group serving the most time. However, these results were not uniform or consistent, a frequent occurrence in "time served" studies. As we shall see, this is probably accounted for by the varying magnitude of the effects of prisonization on different types of inmates.

A different approach was employed by Jamon and Dickover,[25] who compared groups of parolees released in California in 1965 from commitments for first-degree robbery and second-degree burglary who had served less than the median time for that offense to a matched group of first-degree robbers and second-degree burglars who had served more than the median time for that offense. The "match" was on six variables related to risk. The finding after a two-year follow-up of the experimental groups was that for both crimes, those who served less time in prison did significantly better on parole.

The authors caution, however, that based on other factors that might be relevant to parole outcome, the two groups of robbers were not comparable and that these differences may account for the difference in parole outcome. However, no such differences existed between the groups of burglars.

The California Department of Corrections study of Advanced Release to Parole for 1954-57 found that, when controlled by Base Expectancies, early releases and those who were kept in prison longer performed equally well on parole.[26]

Jaman[27] compared parole performances of California first releases of persons originally committed for first- and second-degree robbery who

had served less than the median time to another cohort who had served more than the median time. Once again, the percent of favorable outcome among the men who served less than the median time was greater than among those who served more than the median time.

An important study was conducted for the National Council on Crime and Delinquency by Gottfredson, Neithercutt, Nuffield, and O'Leary.[28] In assessing research conducted prior to their own study, the authors state:

> In general, the studies which have been conducted have not tended to show that increase in the duration of imprisonment brings a corresponding increase in special deterrence of those so punished; neither do they demonstrate a "worsening" effect. If, however, any significant relation does exist between the amount of time served and recidivism, it is more likely to be that an increase in time served will be associated with a decrease in success rates on parole./29/

The subjects of the NCCD were over 100,000 male felons paroled for the first time on their prison sentences between the years 1965 and 1970 in all 50 states and the District of Columbia. The behavior of the parolees was followed for one year. Parolees were categorized in terms of offense type, age, and prior record. This constituted the first time that national data involving a very large number of cases and collected under rigorously controlled conditions were subjected to an analysis of this type.[30] The proportion of persons returned to prison as technical parole violators or for commission of a new crime was calculated for each offense category according to each time-served category or "pentile." Thus the researchers were able to see if offenders convicted of a particular crime who represent the shortest time (first pentile) subsequently returned as parole violators at a greater rate than the 20% serving the most time for that crime (fifth pentile).

The conclusion of the study is that, with infrequent exceptions, those offenders who serve the longest terms in prison tend to do less favorably on parole than those who serve the shortest terms before their release. Often, there were no statistically significant differences between the first and second, the second and third, third and fourth, or fourth and fifth pentiles, but there was such a difference between the first and fifth. An exception to this finding was narcotics violators who had no prior non-prison sentences. The likelihood of parole success for persons in this category increased with each increase in the time served.

Kolodney[31] performed an analysis on 1,268 individuals returned to prison with new felony convictions following first release in 1964 and 1966, and found that recidivism rates for offenders who served comparatively long terms, compared to others of the same offense class, were higher than those with comparatively short terms.

Another study by Gottfredson, Gottfredson and Garofalo once again examined the relationship of time served in prison and parole outcome while holding constant risk attributes by classifying the sample into nine risk categories. In four of the categories there is no relation between time served and parole outcome, although in three of these four categories those serving shorter times have a higher success rate than those serving the longest time. In the other five risk categories, there is a negative relationship between time served and parole success. The researchers' conclusion:

> There is no simple association or single pattern to be found, and no simple explanation for the patterns observed is apparent. <u>What is clear, however, is that there is no major and consistent pattern for parole success to increase as time served increases</u>. Indications are for the total

> sample as well as most risk categories that the percent of parolees with favorable outcomes either decreases or remains fairly constant across time-served categories./32/

In another NCCD-sponsored study, Babst, Koval and Neithercutt[33] found that for all the burglars paroled in the United States in 1968 and 1969, in general, length of stay showed no consistent relationship to parole outcome when drug use, alcohol use, prior record and age at release were held constant. The same finding was made as to addict-parolees in two states (New York and California) by Inciardi, Babst and Koval.[34]

A study by Neithercutt[35] indicated that like individuals serving longer terms performed more poorly on parole than their counterparts serving less time. The author noted that this overall observation obscures interactions within smaller subgroups of the population. Thus, there is a miniscule relationship between time served and success on parole for person offenders, but for property offenders, especially those with no prior record, there is a sharp decline in success rate as time served increases.

Berecochea, Jaman and Jones[36] conducted an analysis of the parole outcome of inmates released at random six months before their sentences expired and compared their performance to another group of inmates, also chosen at random who served their full terms. The average term for both groups was three years. The members of the two groups had substantially identical Base Expectancies. The result of the study: there was no appreciable difference in parole outcome of the two groups.

In an extensive review of the data available on time served and recidivism, the California Assembly Committee on Criminal Procedure in 1968 concluded that "no evidence can be found to support extended

incarceration as a determinate element in the deterrence of crime."[37] In 1977, that statement is still true, and the newer evidence indicates that, if anything, longer terms in prison seem to increase the probability that the individual inmate will return to crime. Not a single empirical research effort has concluded that longer terms in prison deter crime except in rare instances of a particular type of crime or offender. This conclusion comports with the consistent findings that persons placed on probation have better subsequent success than persons sent to prison, even when risk factors are controlled.[38] Since over 97 percent of offenders eventually are released, these findings seem to indicate that the sanctioning system may retard rather than further achievement of one of its goals.

It is difficult to escape the conclusion that, according to the best information available, incarceration does not serve the purpose of marginal special deterrence. That is, longer prison terms do not deter most individuals subjected to them any better than do shorter terms. And incarceration itself may not serve the purpose of special deterrence either.

General Prevention or General Deterrence

The phenomenon of general prevention is much more difficult to isolate and subject to the scientific method than is special deterrence because it emphasizes the influence of the sanctioning system upon society as a whole. Proponents of adopting this theory of criminal sanctions as the new primary foundation of the system prefer to label it general prevention because the term deterrence is generally associated with the idea that individuals will abstain from criminal conduct because of fear. They point out that there is another component of the concept that is equally important. Apart from creating fear, the criminal law serves to discourage anti-social behavior by expression of social condemnation of the forbidden

act. "Various labels have been used to characterize these effects--the moral influence, the educative, the socializing, the attitude shaping, the norm strengthening or norm reinforcing and so on."[39]

In a nutshell, empirical studies seem to indicate that sanctions and, more specifically, imprisonment for illegal conduct tend to discourage such conduct, although not under all circumstances. These studies, for the most part, have shown that the certainty of sanctions discourages crime but that severity of sanctions has no such deterrent effect.

Tittle[40] constructed indices of certainty and severity of imprisonment for seven major offense categories--homicide, assault, sex offenses, robbery, burglary, larceny, and auto theft--and for a total category of felonies. Certainty was measured by dividing the number of persons sent to prison in each state for a given crime in a given year by the number of those crimes reported in that state in the preceding year. Severity was the median length of prison sentence imposed in a given state for a given crime.[41] Comparing these indexes and crime rates for the states of the United States, he concluded that a high probability of imprisonment was associated with lower crime rates but that the efficacy of severity of punishment was limited to the offense of homicide. Zimring and Hawkins built on Tittle's study, adjusted it for regions and found severity of the sanction unrelated to the crime rate for homicide as well. This contradicted Gibbs's[42] earlier study on homicide, which found a negative association between severity and certainty of imprisonment combined and homicide rate by state.

The Tittle and Gibbs conclusions as to the irrelevance of severity of the crime provoked a great deal of scholarly response and prompted research in an area that had previously been ignored for the most part.[43]

Logan[44] confirmed Tittle and Gibbs in their findings and the present feeling seems to be that they were justified in their conclusions.[45] Salem and Bowers[46] reached the same conclusion, although a subsequent study by Erlich[47] concluded that both certainty and length of sentence reduced the rate of crime.

Tittle and Rowe[48] have shown that certainty of arrest insures a lower crime rate and it may be that the greater likelihood of apprehension rather than of imprisonment is the factor that deters. There have been at least nine studies of the efficacy of capital punishment in deterring the crime for which it is imposed. All have discounted its deterrent effect and have been interpreted by Morris and Hawkins[49] as being remarkably consistent in their findings. Indeed, it now "seems established and accepted that the existence of capital punishment as a sanction alternative to protracted imprisonment for convicted murderers makes no difference to the homicide rate...."[50] However, this conclusion does not necessarily translate into absolute proof that marginal general deterrence does not operate for certain crimes. However, it does tend to support the hypothesis that the severity of sanctions bears little relation to how much crime is committed in a particular jurisdiction.

Another perspective on general prevention is offered by Bailey and Smith.[51] Their findings were that greater severity of punishment results in less certainty that it will be used. In light of the fact that certainty has been found consistently to be the surest guarantee of deterrence, this conclusion seems to argue that severity of imprisonment may be a negative factor in deterrence rather than merely a neutral one.

An example of this phenomenon might be revealed by the experience under New York's extremely stringent narcotics penalty, which was enacted

in 1973. Two studies have concluded that it is ineffective in deterring the conduct it sought to discourage. A recently released LEAA-funded inquiry conducted by the New York Bar Association's Joint Committee on Drug Law Evaluation during the three years following passage of the statute showed that addiction and crime remained at levels comparable to those in neighboring cities and states with less stringent laws. Previously convicted narcotics violators who faced automatic prison sentences if found guilty again were not deterred from committing other crimes, and although offenders who were convicted were more likely to go to jail and stay there for a longer time, it was less likely that an accused person would be convicted.

An earlier study carried out by a team of researchers at the School of Criminal Justice of the State University of New York found that the law "does not offer the protection it was intended to provide...fails to deter...and is a source of radical dysfunction in the administration of justice."[52]

A different kind of study was conducted by Schwartz.[53] Pennsylvania enacted substantially stiffer penalties for rape after a series of particularly heinous crimes of that nature. An analysis of the frequency in incidence of rape before and after the imposition of the increased penalty revealed no basis for concluding that the increased severity of the sanction significantly affected the crime rate.

A critique of this study noted that it had only examined the short-term effects of the new sanction, that no attempt was made to see if the legislation actually changed the sentencing pattern and hypothesized that the publicity surrounding the rapes that precipitated enactment of the legislation may have encouraged more victims to report rapes and that

there may actually have been fewer rapes after the penalty was increased.[54] The same writer points to weaknesses in the other studies discussed earlier whose methodology involves comparing incarceration rates and average sentences imposed to crime rates. He notes that the extent of crime may influence the punishment imposed as well as the punishment influencing the crime and the former occurrence may appear in research statistics to be the latter. For instance, high crime rates may lead to increased use of probation and fines to reduce prison overcrowding. Without close analysis, this may appear to the researcher as increased leniency causing high crime rates. Or high crime rates may lead to increased severity in sentencing, but it may appear that the increased severity leads to high crime rates. Finally, a strong community condemnation of a particular crime may cause a decline in crime and also induce the legislature to increase the severity of the sanction; once again, the sanction may be given credit for the decline in crime.

It is apparent that more research under controlled conditions is needed in this area, but if some tentative conclusions must be reached, they are best summarized as follows:

> Thus, the case material compiled in recent years is generally consistent with other research in suggesting that sanctions /imprisonment/ may have some deterrent effect when the certainty of imposition is reasonably high, but that severity of sanctions in the absence of certainty has little bearing on deviance./55/

Some writers have voiced a philosophical objection to the general prevention theory. They reason that it is unfair to impose punishment on individual offenders for the purpose of discouraging <u>others</u> from committing crime.[56] The general preventionists repsond that this characterization is unfair in that it concentrates upon actual punishment rather than upon

the threat of the law. Punishment, the argument goes, merely makes the threat of the law credible.

Retribution

Retribution can mean many things. It may be synonymous with vengeance or revenge--man's primal instinct to extract suffering from one who has caused injury. It may have moral overtones; justice requires that a law violator who thereby gains an unfair advantage over the law-abiding members of society and is unjustly enriched must be punished to restore "equilibrium."[57] The offender must receive his "just deserts."[58] The state must punish criminal offenders to protect society from private revenge--in other words, against the "law abiding."[59]

During these times of increasing dissatisfaction with the criminal sanctioning system, a predominant response has been to advocate a return to retribution as the single or predominant foundation of sanctions. This course is urged not by those advocating harsher and more stringent penalties, but by others whose sensibilities are offended by what they see as the unjust imposition of suffering on individuals that has accompanied implementation of the utilitarian purposes of incarceration. When sanctions are imposed upon an individual offender, they argue, the only consideration should be the just punishment for what the offender has done and not the furthering of any social goals.[60] The retributionists are concerned with creating a fairer sanctioning system, not necessarily one effective in reducing crime.

Some of those advocating sole reliance on retribution in dealing with the individual offender do not object to the state considering utilitarian matters in designing its sanctioning system. But once the system is put in motion, the individual should be assigned only his just deserts.[61]

If punishment is the only goal of retribution, it need not be tested for validity; incarceration certainly punishes and more incarceration punishes more. But this observation leads immediately to the objection that it is very difficult to assign a practical value to what is "deserved" for any particular crime. What "mere mortal" can determine how much punishment is required, not to serve any social purpose, but to restore a moral equilibrium, and is this a proper role of the State? While those presently arguing for a return to the retributive model suggest short sentences of three- or five-year maximum are appropriate, others would certainly take exception. Others point out that insofar as retribution seeks to avoid private vengeance, it also is utilitarian in nature, and the sanctioning system under a system of general prevention would serve the same purpose equally well. The only remaining aspect of retribution is pure revenge, which should not be used by a civilized society as the basis for its sanctioning system. Justice Oliver Wendall Holmes stated that while the law cannot ignore the public's insistence on revenge, neither should the law encourage it.[62]

Preventive Confinement or Incapacitation

The utilitarian desire to prevent or reduce the likelihood of crime by restraining those exhibiting a proclivity toward criminal behavior is the underlying premise of the preventive confinement justification for the present sanctioning system. The popularity of incapacitation as a justification for sanctions appears to increase as the rate of crime, or fear of it, increases.[63]

At first blush, it may appear obvious that the present sanction of imprisonment accomplishes the objective of incapacitation. There is no doubt that incarceration prevents inmates from committing crimes, at least

against those who are not incarcerated with him; and longer periods of incarceration certainly incapacitate him for longer. But, if we look beyond the mere fact of incapacitation to the primary aim of decreasing crime, there is at least some indication that incapacitation may not be as effective as it may seem to be.

First of all, in light of the empirical findings on special deterrence discussed earlier, it seems clear that, at least for many offenders, longer terms of incarceration presage a greater likelihood of future criminal activity. Unless the penal system limits application of preventive confinement to those it intends to retain until old age, the decrease in special deterrence from longer confinement is likely to counterbalance, at least to some extent, any decrease in crime induced by isolating offenders.

Furthermore, as has been noted, research and experience shows that the general preventive effect of certainty of punishment is often lost when the severity of punishment increases. New York's experience with increasing severity of sanctions for narcotics offenders demonstrates that long sentences often discourage application of the sanction at all. Therefore, there may be a second counterveiling influence on the efficacy of preventive confinement.

Very little research has been done on the magnitude of the effect on the incidence of crime of isolating prisoners, and such research is generally considered to be unreliable. Greenberg[64] estimated that even if half of the inmates in federal and state prisons were released, the increase in index crimes would be only between .6 and 4 percent. Although these specific results may be questioned, an analysis of the Uniform Parole Reports has shown that only 12 percent of the parolees released in the United States had been convicted of a major crime or had been returned to

jail in lieu of prosecution for a major offense during three years after their release from prison.[65] Thus, within the time of greatest risk after conviction, nine out of ten parolees are not reconvicted. A new study by Martinson and Wilks,[66] whose prior survey of rehabilitative programs has prompted much of current penological thought, was released less than a year ago. It showed that general recidivism rates are lower than had previously been hypothesized and that something on the order of 25 percent of prisoners return to crime upon release.

On the other hand, Skinner[67] has estimated that, if every offender convicted of a serious crime in New York State were imprisoned for three years, the rate of crime would be only one-third of what it is today. However, these results were reached by making assumptions about how many crimes each offender commits per year, and Wilson, who generally supports the notion of preventive confinement, admits that the estimates are based on "uncertain data and involve assumptions that can be challenged."[68]

However tentative the estimates of the efficacy of preventive confinement in reducing the level of crime, its detractors' strongest objections to its use focus not on its effectiveness but on its propriety as a rationale for imprisonment. The first level of criticism is moral and philosophical. Those who feel that punishment should not be used for utilitarian goals question whether incarceration should be imposed upon one individual because of what he might do in the future rather than for what he has done in the past.[69] A flaw more commonly stressed is the inability of presently existing prediction devices to accurately pinpoint which offenders should be subjected to preventive confinement.[70]

The argument advanced by the latter group bears further attention. Its proponents remind us that when legislators and courts impose increased

penalties on habitual or "dangerous" offenders or when parole boards refuse to release inmates because they are not good parole risks, they are imposing preventive confinement on those persons.[71] Research into the phenomenon of "false positives" has shown that even using the best prediction devices available, an alarming number of persons who are retained in the institution because they fall into a high-risk category do not recidivate once they are finally released.[72] Even the relatively precise Salient Factor Score relegates about two-thirds of parolees who ultimately succeed on parole to the lowest category on the scale. And, as discussed earlier, when decisions are made without statistical aids, the accuracy of the decision is likely to be even lower.

Some observers discern the ambiguity in extending incarceration for convicted persons because of their predicted dangerousness while the very notion of incarcerating a person who has not yet been convicted because he possessed characteristics indicating, for instance, a 60 percent probability that he would commit a crime would be shocking.[73] Still another even more insidious defect in the operation of incapacitation is that it conceals the erroneous confinements while revealing erroneous releases. The only time error is revealed to the public or politicians is when a prediction error has been made in releasing an inmate--a false negative. This prompts decision-makers to expand the categories of persons who are preventively confined and to lengthen the periods of confinement, and causes those responsible for the improper release to be more conservative in releasing offenders.[74]

> In short, a system of preventive confinement creates a self-fulfilling prophecy for the need for more preventive confinement./75

And there are practical diffculties with preventive confinement that may

counsel against its use, even assuming its marginal effectiveness in decreasing crime. Incarceration is a very expensive proposition.[76] It now costs well over $7,000 per year in Louisiana just to maintain an inmate in an institution. This does not account for the massive costs of constructing the edifices that house convicted offenders, in which Louisiana has invested nearly $90 million in the past year. It certainly seems to make very little sense to use preventive confinement to reduce the rate of property crime; it would be far cheaper for the state to reimburse the victims than to bear the prohibitive expenses of incapacitation.

The difficulty, of course, is that prediction of future dangerousness is even shakier than foreseeing general recidivism. Efforts so far have failed to yield a practical prediction instrument that could be employed in preventive practice.[77] The present state of knowledge would require incarceration of 100 persons to include ten who would actually be dangerous if released.[78] The best indicator of dangerousness has been found to be previous incidence of violence.[79]

Length of Sentences in the United States and Louisiana

In the historical review of the development of the indeterminate sentence-parole system discussed in Chapter II, it was established that the original rationale for that system was preventive confinement. Sentences up to life imprisonment were to be imposed on all offenders and only upon a finding that the individual was ready to return to society would he be released. Soon, the preventive confinement rationale was supplemented by that of the rehabilitative, embodying the notion that the offender should be treated and released when he was cured. As time passed, legislators became disenchanted with entrusting so much discretion to parole boards and

probably with the cost of keeping prisoners confined for so long, and began enacting minimum and maximum terms within which the boards could act. Louisiana did so in 1926. With the contemporary decline of the rehabilitative ideal, the indeterminate sentence-parole system is left with preventive confinement as the sole theoretical justification for its existence.

During the past century, sentences have been formulated by the legislature and imposed by courts with the knowledge that the parole board could release the offender typically after a third of his term and that only the worst inmates would be kept longer. But "the sentence" for a particular crime or imposed on a particular criminal has come to be associated with the statutory maximum or the term imposed by the judge--thus, the public outcry whenever a person released "before the end of his sentence" commits a crime. As discussed in the previous section, the tendency of preventive confinement to beget more preventive confinement has resulted in American sentences--both imposed and actually served--being substantially longer than those in other developed Western nations.[80] This phenomenon was recognized by the National Advisory Commission:

> It is well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the Western world. This results from a number of factors including the high maximum sentences authorized by statutory provisions. To be assured that the very dangerous offender is incapacitated, legislatures in effect have increased the possible maximum sentence for all offenders. This dragnet approach often results in imposition of a high maximum sentence on persons for whom it is patently excessive. The wide flexibility exacerbates the disparities in sentences that seriously handicap correctional programs./81/

Christie has hypothesized that when daily existence is characterized by greater security against need, more leisure and fewer limitations on self-development, then a lesser deprivation of those benefits would

compensate for the same crime.[82] He concludes that this is why sentences are comparatively shorter in more advanced cultures and why they become shorter in a particular society as it becomes more developed. This clearly is not true in the United States, which has one of the highest standards of living in the world. Another apparent incongruity is that it would be expected that in societies placing a high value on individual liberty and personal freedom, sentences are shorter than in other cultures.[83] Once again, the theory fails when applied to the United States which has a strong tradition for respect of such values. The rate of incarceration in America is twice that prevailing in England, four times that of Norway and eight times the incarceration rate in Holland.[84] By rough estimate, a prisoner who spends seven years in prison in the United States would spend four years in prison in England or Australia and less than two years in prison in Denmark for a comparable crime.[85] It would be too simplistic to blame this incongruity entirely on the indeterminate sentence, but it seems likely that it has been one cause of the situation.

In 1973 Louisiana ranked ninth among the states in the United States in terms of the number of prisoners in its institutions per 100,000 civilian population.[86] In that same year, only 13 states imposed a longer median sentence and in only 19 states did prisoners serve longer terms.[87] Because these latter two statistics only include sentences to imprisonment, some states making greater use of probation and diversion than Louisiana may appear to have longer median sentences and time served because only the most serious offenders are imprisoned. So the rate of incarceration probably furnishes a more accurate indicator of the overall use of the sanction of incarceration. Thus, the statistics lead to the unavoidable conclusion that Louisiana makes significantly greater use of incarceration

as a sanction than do comparable jurisdictions in the rest of the world.

Yet, the facts that scientific inquiry have thusfar been able to accumulate all seem to prove that longer incarceration does not accomplish most of its goals and may even have a counterproductive effect on achieving some of those goals. Shorter periods of incarceration are at least as effective and probably more effective than longer periods in preventing recidivism and seem to be equally effective in discouraging the general populous from criminal activity. Theorists in general prevention have made the point that social condemnation can probably be expressed just as well by a system of short sentences as by a system of long sentences, just as marks in school can be graded as efficiently on a scale from 1 to 10 as on a scale from 1 to 100.[88]

It is as yet unclear how much of an effect preventive confinement has on general crime rates, but there is at least as much evidence that the impact is minimal as there is evidence in the other direction. Moreover, considering the primitive state of scientific knowledge in the area of human behavior prediction, incarceration for the purpose of preventive confinement is extremely expensive, both in human and economic terms. If incapacitation makes any sense at all, it is in incarcerating persons who will be violent if released. But to do that--if we abandon our present random solution procedure and employ the most advanced prediction methods yet devised--we must be willing to deprive ten persons of their freedom for an extended period of time and pay a figure that will soon approach $10,000 per year to isolate each of them ($100,000) in order to isolate <u>one person</u> who will commit a violent crime if released. Moreover, this will only locate <u>half</u> of those in the group who eventually will commit a violent crime. If the writer is excused for leaping from the facts

to make a policy judgment, it is recommended that if preventive confinement is used at all, it be used very sparingly and only in the most extreme circumstances.

As to the effectiveness of a longer period of incarceration to accomplish the purposes of retribution, this is such a subjective judgment that it is virtually impossible to make. In accomplishing the utilitarian aspects of retribution (to prevent victims from taking revenge), it does not seem likely that shorter sentences on the order of those currently being adopted by other states will prompt victims or their families to "take the law into their own hands." That result has not occurred in those states or the other countries where sentences are considerably shorter. But it is submitted that to set a period of years in prison that accomplish the more elusive purpose of restoring the moral balance sought by the pure anti-utilitarian retributionists is impossible. The humanitarians presently advocating retribution as the justification for sanctions propose relatively short sentences--like three to five years--for most crimes, but many others of a different philosophical disposition would argue that the "just deserts" for such crimes is much longer incarceration.

Use of long sentences to accomplish sanctioning goals appears increasingly to be falling into disfavor. In general, states are enacting shorter sentences to incarceration.[89] Those states disposing of the indeterminate sentence and proposals to do so replace it with relatively short periods comparable to the median time actually served by inmates under the indeterminate system. For instance, the Illinois proposal replaces the 14 years to life sentence for murder with a flat sentence of 25 years; the first-degree felony sentence of four years to life imprisonment with a sentence of eight years; a second-degree felony sentence of 1 to 20 years imprisonment

with five years, the 1 to 10 year indeterminate period for third-degree felonies with a three-year sentence and 1 to 3 years for a fourth-degree felony with a two-year determinate sentence.[90]

The National Council on Crime and Delinquency's Model Sentencing Act has suggested that all "non-dangerous" offenders be placed on probation or that a fine be imposed upon them unless it appears that such a disposition would pose a threat of serious harm to the public. For those offenders who are not within the definition of "dangerous," but would pose a threat of serious harm, it recommended sentences of incarceration not exceeding five years, except for heinous crimes.[91]

The National Advisory Commission likewise advocated the use of alternatives to incarceration whenever possible and would require that justification for using incarceration appears on the record. For those persons who are incarcerated who are not found to represent a substantial danger to others, the Commission suggested maximum sentences not to exceed five years for felonies other than murder.[92] Standard 5.3 authorizes extended terms of confinement of not more than 25 years when the court finds that a term longer than five years is required to protect the public and the defendant fits into one of three categories.

The first designation which the Commission concluded would merit preventive confinement was the "persistent offender," defined as a person over 21 years of age who stands convicted of a felony for the third time. At least one of the prior felonies must have been committed within the five years preceding the commission of the offense for which the offender is being sentenced and at least two of the three felonies must be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another.

The second offender who is subject to extended terms is the professional criminal. He must be over 21 and be "convicted of a felony that was committed as part of a

> ...continuing illegal business in which he acted in concert with other persons and occupied a position of management, or was an executor of violence. An offender should not be found to be a professional criminal unless the circumstances of the offense for which he stands convicted show that he has knowingly devoted himself to criminal activity as a major source of his livelihood or unless it appears that he has substantial income or resources that do not appear to be from a source other than criminal activity./93/

A final definition of "dangerous offender" is:

> ...a person over 21 years of age whose criminal conduct is found by the court to be characterized by: (a) a pattern of repetitive behavior which poses a serious threat to the safety of others, (b) a pattern of persistent aggressive behavior with heedless indifference to the consequences, or (c) a particularly heinous offense involving the threat or infliction of serious bodily injury./94/

In explaining its sentencing standards, the Commission stated:

> There are, obviously, offenders who must be isolated from society; there are those for whom present knowledge does not provide effective treatment. The standard designates three categories of offenders for whom such incapacitation is appropriate, and it would not prevent long confinement in those cases. But the wholesale use of incapacitation as a goal in sentencing is counterproductive. Ninety-nine percent of those confined will eventually be released, and their attitude toward society at that point may well determine whether they continue to endanger the public safety. Long periods of isolation from society as an answer to increased crime may be self-defeating./95/

It should be noticed that offenders sentenced to the five year maximum term suggested by both the NCCD and the National Advisory Commission would be immediately eligible under those proposals for parole without serving any minimum term. As the preceding quote reveals, the Commission, whose report was published in 1973, still endorsed the treatment model. Both of these study groups made their recommendations before the strongest evidence on

the failure of institutional rehabilitation had emerged. However, the relevance of this fact to our discussion of sentence length is that even the relatively short five-year sentence would be subject to reduction under these plans. Indeed, the Commission's recommendation would allow immediate parole of offenders sentenced to extended terms and would authorize the judge to impose a minimum term up to one-third of the sentence only if he found that the community required reassurance of the offender's continued confinement.

The Commission produced a chart[96] comparing the percentage of 1-5-year, 5-10-year and over 10-year sentences imposed to the percentage of terms actually served in each of those ranges by first releasees in all the states in 1970. From the chart, the Commission was able to conclude that in many states a substantial proportion of offenders released in 1970 had been sentenced to five years or more but that a relatively small percentage had actually served more than five years. Moreover, a very small percentage had served ten years or more.

The Commission's report concluded that implementing its proposed sentencing standards would not substantially alter present sentencing practices. However, it noted that Commission standards requiring articulation of the purposes of sanctions and that courts state specifically the purpose of sentencing each individual would help make sentencing provisions more consistent with actual practice and help to alleviate disparity in sentencing.[97] The chart used by the Commission showed that for first releasees in 1970, 57 percent of Louisiana sentences were for periods of one to five years while 88.8 percent of inmates served that period in prison; 27 percent of the sentences imposed were for a term of five to ten years, while 9.5 percent of inmates released for the first

time served a term of that length; and of the 16 percent upon whom sentences of ten years or more were imposed, only 1.3 percent actually served that long in prison.

Sentence Length and Parole

Parole is, of course, along with good-time, one of the two chief ways an offender can be released from prison before the expiration of "his sentence." Its operation is therefore a major target of policy-makers seeking to lengthen terms of imprisonment. Though the years, parole's availability as a release mechanism has been narrowed by eliminating its application to offenders in certain crime categories. The following offenders are ineligible for parole:

1. Those serving life sentences unless the Governor commutes the sentence to a set number of years upon recommendation of the Board of Pardons.[98]

2. Inmates who have pending against them an indictment or information for a crime committed while in prison.[99]

3. Persons convicted of armed robbery or attempted armed robbery.[100]

4. Those convicted of burglary of a pharmacy.[101]

5. Persons convicted of a third or subsequent offense of illegal carrying of a weapon.[102]

6. Inmates convicted of carrying a concealed weapon who have previously been convicted of first- or second-degree murder, manslaughter, aggravated battery, aggravated or simple rape, aggravated kidnapping, aggravated arson, aggravated or simple burglary, armed or simple robbery, any violation of the uniform controlled dangerous substances law which is a felony, or any attempt to commit any of the above crimes.[103]

7. Those sentenced to life imprisonment for first-degree murder.[104]

8. Persons imprisoned for life for second-degree murder may not be paroled until they have served 40 years.[105]

9. Prisoners convicted of taking contraband to or from state correctional institutions or to state-owned hospitals.[106]

10. Anyone convicted of the crime of theft of cattle, horses, mules, sheep, hogs or goats.[107]

There is no pattern to be discerned in the list of crimes commission of which the legislature has designated renders an offender ineligible for parole consideration. Some of them are very serious crimes, but others are of relatively minor severity. This rather random selection of offenses that have been singled out as subjects for incapacitation or general deterrence is typical of the unstructured, uncoordinated nature of much of the state's sentencing legislation.

During the past legislative session, several bills were passed further limiting parole eligibility in the following manner:

11. Those convicted of manslaughter, simple or forcible rape, simple or aggravated battery, aggravated assault, simple and aggravated kidnapping, or false imprisonment or any attempt to commit any of these crimes against persons 65 years of age or older must serve at least five years without being eligible for parole.[108]

12. Persons convicted of attempt to distribute or possess with intent to distribute a narcotic drug in Schedule I.[109]

13. Persons convicted of perpetration or attempted perpetration of second-degree murder, manslaughter, aggravated battery, or simple kidnapping while using any firearm or explosive device must serve, in addition to their sentences, two years for the first offense and five years for each second and subsequent offense without benefit of parole.[110]

According to Department of Corrections estimates, the last provision will cost the state over $2,000,000 per year beginning in fiscal year 1981-1982.

The legislature also passed two laws designed to lengthen sentences by decreasing good-time. Although this is not our immediate subject, reference is made to one of the new laws to illustrate how costly lengthy sentences are. As finally passed, Act 633 decreases by 40 percent the time an inmate may have counted off of his sentence for good behavior. As first introduced, it would have cut good-time by 60 percent. Department of Corrections estimates of the long-range cost of implementing the bill as first introduced was $12,350,000 per year in addition to a $43,700,000 initial capital outlay.

Some of the other legislation that was introduced but not passed during the 1977 regular session included bills that would have disqualified from parole release any person sentenced as a habitual felony offender.[111] Another would have required a life sentence without any possibility of parole to any person convicted of a third felony offense when the crime for which he was convicted was among a list of "very serious felonies." That list included such offenses as simple arson, where the damage amounts to $500. or more, arson with intent to defraud, simple burglary, aggravated criminal damage to property, aggravated obstruction of a highway of commerce, issuing worthless checks valued at over $500. and theft of cattle, horses, mules, sheep, hogs or goats. The list goes on, but the above examples suffice.[112] The obvious purpose of legislation limiting parole and good-time is to lengthen sentences for purposes of deterrence and preventive confinement.

The National Advisory Commission[113] and the Special Committee on

Correctional Standards appointed by the staff of the President's Commission and the Model Penal Code[114] recommend that all offenders be eligible for parole, regardless of the nature of their crimes. It would seem that denial of parole eligibility to all persons serving a sentence whose length was originally formulated on the premise that parole release would be available after one-third of it had expired constitutes an unnecessarily broad use of preventive confinement, considering the foregoing discussions.

Should Parole Be Abolished?

With the preceding background, we can return to the question posed at the beginnning of this chapter: Considering what is now known about the rehabilitative theory, what point is there is retaining the parole release mechanism. In one sense, we can say that parole release serves no purpose in Louisiana today other than to preventively confine the 61 percent of offenders who are denied parole.

However, this judgment may require further scrutiny. It ignores the fact that legislators and the public have come to equate the extended terms enacted as part of the rehabilitative-model indeterminate sentence-parole system as "the sentence" which a particular crime merits. It is true the facts show that such long sentences are out of line with the practice in every other civilized country, are of no utility in achieving most of the goals they purport to seek, are probably counter-productive to some of them, and that the one goal they do achieve marginally at best is arrived at only at great human and economic cost. Despite these facts, the issue of crime is an emotional one that involves fear, morality and some basic human instincts. It may be unreasonable to expect a rational response to the problem. And it makes no sense at all to do away with

parole if sentences remain at their present length.

This seems to have been the concern of the National Commission when it stated in its report:

> The Commission accepts the concept of indeterminacy, notwithstanding the validity of many criticisms of current practice. The major reason for this position is that the alternative--a pure determinate sentence that could not be altered--would leave little room for correctional administrators or parole boards to release the offender when it appears to them that he is capable of returning to society. As a result, offenders would serve longer sentences than necessary--a situation to be avoided wherever possible./115/

This also seems to be the concern of Professor von Hirsch whose testimony before the Senate committee was discussed earlier in this chapter. No one knows exactly what effect instituting determinate sentencing will have on the length of sentences, and this is no small consideration.

From this point on, there are very few more facts to divulge. Using the foregoing information, the Commission can draw its own conclusions in light of political realities. The future of parole in Louisiana could take any number of forms. The writer will propose four models as points of departure for Commission deliberations. The features incorporated in each are not intended to be tied only to the other features included in the same model, but are lumped together on the basis of their supposed likelihood of being adopted.

Before reviewing these suggestions, a very important point should be made. This part of the report is in no way concerned with the parole supervision function. The reader should refer to an analysis of that system in the rest of this report. It need only be said that supervision of prison releasees can be conducted regardless of what sort of sanctioning system is operating. The efficacy of supervision is an entirely separate issue.

Model 1-The Present System Modified: This proposal presupposes strong objection to any basic change in the present operation of the parole system. Considering everything that has come since, the reader might understand better now some of the changes recommended or hinted at earlier in this report: the need to adopt procedural safeguards at the parole release hearing; to hold early release hearings at which presumptive release dates are set; to improve prediction techniques to the greatest degree possible; to enact qualifications for Board members and raise their salaries; to conduct research to improve the accuracy of decision-making; to explicitly remove Board of Parole discretion to extend sentences for purposes of general deterrence and retribution or to equalize sentences; and to require meaningful articulation of decision-making criteria and sharing of those criteria with inmates. At the very least, no new restrictions on parole eligibility should be enacted. It would seem that these measures are the least that is demanded to make the present system acceptable.

Model 2-Hybrid National Advisory Commission/Model Penal Code Modified: This alternative to the present system would incorporate all the innovations of Model 1, but it would prevent the Board of Parole from imposing preventive incarceration on any inmates except those considered dangerous. It involves a modified hybrid of the National Advisory Commission's standard on sentencing to extended terms, discussed earlier,[116] and the Model Penal Code's Section 305.9. The Model Penal Code suggests reversal of the basic assumption against paroling the inmate at his first eligibility and instructs the parole board to grant parole unless certain conditions exist.

The reader will recall that the National Advisory Commission

advocates preventive incarceration only for persons whose isolation is required for public safety. Its report's definition of persistent offender could be adopted as the Board of Parole's standard for selecting proper candidates for preventive confinement. It is submitted that it would be inappropriate for the Board of Parole to try to place candidates in the other two categories, "professional criminal" and "dangerous offender," because the criteria defining these terms are much more subjective and are more suited to judicial determination (as envisioned by the Commission) if they are appropriate at all.

Thus, unless an inmate was a "persistent felony offender" as defined by National Advisory Commission Standard 5.3, he would be released at his first parole eligibility. Those first offenders who are sentenced to less than five years should be paroled at their first hearing, which it will be recalled is one year after admission to the institution. For obvious reasons, release at these stated times should be conditioned upon good behavior in the institution.

Because much less time would be required in decision-making under this Model because of the explicitness of release criteria, the Board could spend more of its time in preparing the offender for release and reintegration into the community. This is a matter that will be examined by the Commission at a later time, but upon the optimistic presumption that programs of gradual reintegration will be incorporated into the sanctioning system in the future, the following prediction of the National Advisory Commission is relevant:

> As correctional administrators obtain through legislation more discretion in utilizing community resources--particularly the authority to house offenders within the community--the parole board will take on different functions. It will, under these circumstances, act more as a reviewing agency to determine which

> offenders ought to be participating in community-based programs but are not because of correctional administrators' refusal to assign them to such programs. It would seem proper and advisable to view the parole board in this role. It would require some modification in present statutes establishing the board.
>
> 1. The concept of parole eligibility, if it restricts the jurisdiction of the board in all cases, should be restructured to allow the board to act prior to eligibility dates for purposes of approving participation in community-based programs other than parole supervision.
>
> 2. The parole board should be given authority to assign offenders to community-based programs other than those historically designated as "parole" programs. Thus, halfway houses, work release, and educational release programs should become available resources for the parole boards as well as the director of corrections.
>
> 3. A procedure should be authorized allowing an offender not assigned to a community-based program to initiate a review by the parole board. This can be accomplished either by allowing an offender to initiate a hearing before the board for the specific purpose of testing the administrator's refusal to assign him to a community-based program or by requiring the board periodically to review the record and history of each offender. The latter would allow a review of not only community-based participation but also parole eligibility.
>
> 4. The fourth issue--fairness in revocation of community-based privileges--lies at the heart of the growing tension between legal requirements and correctional expediency. Probation and parole revocation now require procedural safeguards, including the right to a hearing, notice of the charges, and an opportunity to present the offender's side of the case./117/

Under this Model, present restrictions on eligibility for parole could be repealed so that all offenders could be released at their first eligibility unless they were dangerous. This is, of course, an ambitious goal; but then the entire Model is ambitious.

Model 3-The Oregon Plan: The Oregon legislature adopted a law this year establishing an Advisory Commission on Prison Terms and Parole Standards, consisting of the state Board of Parole, five circuit court judges and the legal counsel to the Governor. The Commission is directed to propose rules to the Board of Parole establishing ranges of duration of imprisonment for felony offenses and variations from such ranges due to aggravating or mitigating circumstances. The Commission is instructed by the legislation as to the sanctioning goals it should consider in setting sentences, and these are all of the goals we have been discussing: primarily retribution, but also general prevention, special deterrence, and preventive confinement.

The Oregon law also requires an early parole hearing (within six months of the inmate's admission) at which time a release date will be set by the Board within the range established by the Commission, subject to the prisoner's good conduct. The Board may choose not to set a parole date for those offenders whose crime involved particularly violent conduct or whose records reveal a series of violent convictions or a psychological diagnosis of severe emotional disturbance. There are other details of the plan that need not be elaborated here.

Were Louisiana to adopt such a plan, it is submitted that the legislature should instruct the parole term commission to construct a purely utilitarian model without reliance on the sentencing goal of retribution. As discussed earlier, the critics of the rehabilitation and preventive confinement theories have become so disenchanted with the operation of those systems that they have entirely abandoned the notion that utilitarian goals should be sought in the design and operation of the sanctioning system and have resorted to the elusive concept of retribution to design

their alternative system. However, what is one man's retribution is another man's leniency and yet another man's cruelty. Whatever difficulty may be encountered in setting a certain term on the basis of utilitarian values, at least there is a guidepost to look to, the greatest good for the greatest number. The utilitarian goals are also theoretically capable of validation and can be tested experimentally.

Certainly, the utilitarian aspect of retribution preventing revenge--should be considered. But, it is doubtful that any sentence that accomplishes the other utilitarian goals would not accomplish that one as well. The utilitarian need to express social condemnation of anti-social behavior commensurate with society's perception of the behavior's reprehensiveness is best viewed in terms of general deterrence. Then that need can be weighed and balanced with the other goals of sanctions to determine the proper disposition for classes of offenders and for individual offenders.

What the retributionists who are alarmed by the consideration of social goals in sentencing an individual offender fail to realize is that the values of individual freedom, self-determination, and fairness are all social goals and must be considered of great weight--indeed, of controlling weight--in formulating and executing sanctions. The fact that no rational, orderly consideration of the goals of sanctions, applying the latest scientific knowledge available, has been undertaken in the past to formulate sentences is where the utilitarian system has gone wrong, not in its basic premises. We can take an example of the kind of weighing process a commission would undertake in arriving at decisions about sanctions by returning to the familiar question we have already asked about the propriety of using preventive confinement. The commission should be armed with all

the data included in this chapter and any more that can be located. As time goes on, more of this kind of information will be available since research will certainly be motivated by a policy of using information that is generated by researchers. The State should also sponsor research to validate its justifications for limiting individual freedom to develop the most efficient system.

From the available data, the commission could weigh the human and economic costs of preventive confinement, its effectiveness, and the consequences of long sentences on the other goals of the system. From this evidence, it may well conclude that preventive confinement involves more unuseful aspects than useful. Or it may decide that despite the costliness of the device, the affront to individual dignity involved in confining a person for what he may do in the future, and the likely criminogenic effect extended incarceration will have on the offender, offenders who have committed a serious crime deserving of strong social censure in terms of general deterrence may be subjected to incapacitation. However, it is hard to envision reaching this conclusion by a rational weighing of the facts presently available. Or even if the commission finds that preventive incarceration is inappropriate at the present time, it may change its judgment when prediction devices have increased in their predictive ability.

One more thing requires mention. Because of the abject failure of the parole-indeterminate sentence system, which was based on institutional rehabilitation, everyone seems to have striken rehabilitation from the list of goals the sanctioning system should seek. Once again, this overreaction should be checked. Certainly, rehabilitation should not be used as an excuse for preventive confinement; nor should its achievement judged

by invalid criteria be a pre-requisite to release from incarceration. This is patently unfair. But there is no reason why new programs cannot be developed that will be effective in achieving rehabilitation. The concept of reintegration and community corrections offers a great deal of promise in this direction and there is no reason that rehabilitative efficacy cannot be considered in developing and imposing alternative sanctions. Some "treatment" programs, particularly those involving behavior modification, have been accused of interfering too deeply with the individual's integrity as a human being. Such a program surely would not stand the test of social utility. In applying the terms set by the commission to individual offenders, the Board would weigh similar factors in deciding the particular term within the narrow limits established by the commission, considering only the inmate and not his membership in a larger group. Another endeavor that might be pursued under Model 3 would be repeal of both the minimum sentences of one-third of the sentence imposed and the restrictions on parole eligibility. An effort might also be made to repeal Louisiana's multiple offender statute, which constitutes an ineffective effort at deterrence and an overbroad preventive confinement provision. As in Model 2, the procedural safeguards of Model 1 should be incorporated to assure accuracy of information and the Board of Parole would be freed up to aid the offender in reintegration.

Model 4-Judicial Model: The likelihood that this model will be adopted in Louisiana is so small that it is included here only for the sake of logical consistency. Its scope also technically lies outside the boundaries of the Commission's inquiry.

This model would retain the concept of a commission setting and periodically revising a set of sanctions, but would move the operation of that commission's recommendations from parole release to the point of sentencing. If it were practically feasible, this would be a preferable arrangement, since there would no longer be any need for a parole board. The sentences imposed by the judge would be appealable and, in this way, a "common law of sentencing" similar to that developed in European countries would develop, insuring uniformity of the sanctions being imposed on offenders similarly situated with respect to the goals of the sanctions.

Under either of the last two models, the increased rationality, not only of the substance of the sanctions imposed but of the procedures for imposing them, may in itself have a great impact upon the way the criminal justice system is perceived by offenders and the general public. Sentences would undoubtedly be shorter than they presently are and if it were feasible, at least some of the savings could be reinvested in the system: (1) To further goals that are proven to be effective. For instance, it seems clear that certainty of sanction has a strong deterrent effect. Spending money that otherwise would have been spent on incarceration to eliminate plea bargaining would make a great deal of sense; (2) To support research for acquiring greater knowledge about the operation of the sanctioning system; and (3) To experiment with new approaches for sanctioning that seek to optimize resources in constructing the system that is most effective in achieving utilitarian goals.

One supporter of a system of this kind states:

> It may be that a more lenient system, which is accepted as fair and consistent, has a stronger impact than a more severe system which creates the impression of inconsistency and arbitrariness. The disparities in sentencing, together with the vagaries of plea bargaining and the impossible task of the parole boards in a system of indeterminate sentences may be the most serious weakness of criminal justice in the United States today./118/

Conclusion

Rather than attempting to recapitulate all the theoretical discussions that have come before, it is probably best to end this part of the report on a practical note. The following quote is from an article written by Leslie Wilkins, a pre-eminent correctional scholar. His counsel to those, like the members of this Commission, who are considering the proper directions the sanctioning system should take in the future is as ominous as it is compelling. The course is not a matter of choice but of necessity.

> I think, nonetheless, that we shall move rapidly towards a new approach to crime. My grounds for this are that expenditures on criminal justice have more than doubled in the last four years. (The National Advisory Commission suggests that the annual cost of an effective criminal justice system will reach between $20 and $30 billion in 1983. Even this estimate presumes that the rate of increase in expenditure which has characterized in the last few years will diminish. In fact the expenditure doubled in four years from 1968 to 1972; there certainly was not any doubling in the efficiency nor a comparable reduction in recorded crime or the fear of crime.) Anybody can see that, by following a policy of more-of-the-same (a linear trend projection will suffice), we shall soon be bankrupt; not because of crime, but because of what we are doing about it.
>
> A projection of bankruptcy, it may be thought, is a great incentive to change the order of business. My fear, however, is that in criminal justice, the data are so bad, the philosophies so muddled, the symbolism so powerful, the language so dishonest, and slogans so useful and easy, that rational projection does not apply.

Perhaps the public will not buy a new model for criminal justice until they crash the present one. Unfortunatley there are not many alternative models on the drawing boards. But even if there were, no simulation methods for testing them have been developed. Research has been directed towards patching up those holes in the system which have disturbed administrators, and in the course of this has often made still further holes. Radical analysis and propositions of alternatives, together with fundamental research, have not attracted supporting funds.

Only those who have made a serious study of the problem of crime acknowledge that they do not have sufficient information. Everybody else, and especially politicians, knows exactly what should be done. In criminal-justice matters, the degree of confidence with which views are expressed tends to be inversely proportional to the quality of knowledge./119/

CHAPTER VI

PROBATION-PAROLE SERVICES IN LOUISIANA: AN OVERVIEW

Introduction

Any complete discussion of probation and parole acknowledges the existence and the interaction of three separate units of the criminal justice system--the courts, the parole board, and probation-parole services. The boundaries of this interaction are established by legislative decree.

In Louisiana, within boundaries defined by the legislature, the courts determine who shall be placed on probation; the Board of Parole, who shall be paroled. The Division of Probation and Parole of the Department of Corrections exists primarily to provide services to the district courts and to the Board of Parole. Much of the Division's effort is directed toward supervision of the individuals placed on probation or parole, and before that, toward providing investigative reports that include data on which a decision-making body can soundly base its disposition of the offender before it.

The portion of this report to follow addresses the responsibilities and the activities of the Division of Probation and Parole. In preparing this analysis, the staff has not conducted a formal management study; it has instead addressed the issues of who should be accomplishing which tasks and whether those tasks are being completed adequately as judged by available research and relevant standards.

Organizational-Administrative Structure

Description: All probation-parole agents are classified civil servants; within these ranks there are nine different levels of probation-parole work, each defined according to length of service and requisite job skills and responsibilities.

The administrative head of the Division of Probation and Parole is the Probation and Parole Chief. Housed in Baton Rouge beside Department of Corrections headquarters staff, he reports directly to the Assistant Secretary of Adult Services, Department of Corrections. According to the Probation and Parole Officers Operating Manual and the civil service job description, the Probation and Parole Chief has final responsibility for the formulation and application of policy and procedure within the Division, as well as oversight responsibility for all work carried on at lower levels. He is responsible for "recommending the needs of staffing, training, and equipment."[1]

The Probation and Parole Deputy Chief, also assigned to the Division's headquarters office, supervises other subordinate members of the professional staff and the clerical staff. The Operating Manual states that he assists in training personnel and formulating policies and procedures under the direction of the Division head. He ascertains that the Division's actions are consistent with legal technicalities specified by legislation and handles all matters involving extradition. Another responsibility is to represent the Division at revocation hearings held by the Board of Parole.

On the next level and also assigned to the headquarters office is the Probation and Parole Staff Officer. He is responsible for planning, organizing and implementing the first-offender pardon program created by La.R.S. 15:572 and serves as staff liaison to the work-release program. He is answerable to the Deputy Chief and provides guidance and advice to his subordinates with regard to first-offender pardon and work-release.

Officers not assigned to headquarters are identified according to area and district. The state has been subdivided into four geographical

areas, each administered by a Probation and Parole Administrator. These four men, designated as members of headquarters staff, are located in field offices, from where they supervise and facilitate operations in the districts under their jurisdiction and serve as liaison between headquarters and the field staff assigned to the 13 probation-parole districts. Each district consists of one or more judicial districts and provides services to those districts.

The district offices are headed by District Supervisors. Currently, eight supervisors are District Supervisor I's (their offices manage an average supervisory caseload between 300 and 1,500), and five supervisors are District Supervisor II's (their offices have an average supervisory caseload over 1,500). Reporting directly to an Area Administrator, the District Supervisor is responsible for the proper functioning of the district. This requires that he assist in establishing and interpreting departmental policy, prepare and maintain administrative records, and accumulate statistical data that reflect the district's functioning. He reviews the work of subordinates, counseling with them when necessary; he sees that the appropriate sheriff or chief of police is notified about persons in their districts being considered for or having been granted parole. He often serves as the hearing officer at a probable cause hearing. Though the job description does not so indicate, occasionally, especially in a small district, a District Supervisor will supervise a limited caseload.

The proper interaction among middle administrative levels is summarized in a memo issued December 9, 1976, by the Assistant Secretary of Adult Services: "Just as the Administrator is considered to be a member of the headquarters staff, the Supervisor is considered to be the assistant

to the Administrator. The Supervisor in turn should consider the Probation and Parole Administrator III attached to his office to be his assistant. This sequence of authority should also constitute the channel for all communication, verbal or written, except those that are routine in nature and pertain to case preparation or updating."

The Probation and Parole Agent III, as assistant to a District Supervisor, fulfills duties similar to those of his immediate supervisor in that he too is involved with counseling subordinates and making and interpreting policy. He too may serve as hearing examiner. It would not be unlikely that an Agent III carry a specialized caseload.

Individuals at the last two levels of the Division's hierarchy--the Probation and Parole Agent II and the Probation and Parole Agent I--are the individuals who carry regular caseloads, conduct investigations, keep case records, transport violators, etc.--i.e., perform those tasks that one probably thinks of when he hears the title probation-parole officer.

The Probation and Parole Agent I is a new officer who, in effect, participates in on-the-job training for a year. If his performance is satisfactory, he automatically becomes a Probation and Parole Agent II. (If it is unsatisfactory, he may be terminated after six months.)

A Probation and Parole Agent II, like his newer counterpart, provides investigative reports and supervises probationers and parolees, but he does so much more independently.*

Summary-Analysis: Probation and Parole Agent II's supervise Probation and Parole Agent I's and are in turn supervised by Probation and

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*Unless otherwise indicated, the above descriptions were based on information included in the Probation and Parole Officer's Operating Manual, civil service job descriptions, and conversations with personnel from the Division of Probation and Parole.

Parole Agent III's. The latter do some casework, but they function primarily as administrative assistants and as supervisors to the agents below them. District Supervisors, always responsible for the proper functioning of their districts, now are authorized to hire their own field agents. Area Administrators, situated in field offices but functioning also as part of the headquarters staff, are key administrative links: work from the district moves across their desks to the headquarters office, and administrative policy--which they are involved in making at headquarters--is channeled through their offices to the districts. The headquarters office is in turn linked to the whole Department of Corrections network: the Probation and Parole Chief reports to the Assistant Secretary for Adult Services, who reports to the Secretary of Corrections. These interactions are formalized via formal job descriptions and administrative policy statements.

This system basically satisfies the standards released in June, 1977, by the Commission on Accreditation for Corrections calling for "the authority, responsibility and function" of the agency's administrator "specified by statute or administratively by the parent governmental organization,"[2] an agency and program managed by a single administrator,[3] a written plan indicating institutional organization and administrative subunits, their functions, services and activities,[4] and written policy delineating channels of communication.[5] In keeping too with standards recommended by the American Correctional Association (ACA) and the National Advisory Commission on Criminal Justice Standards and Goals is the division's policy of selection of personnel by civil service exam rather than by less objective measures.[6]

Too little direction seems to come from those assigned to establish

direction. "Our policy makers don't act," one administrator observed; "they react." Rather than make policy to cover problems that one can anticipate will occur (e.g., an agent accepting bribes in exchange for favors, another falsifying contact entries in the supervision record, the accidental discharge of a gun in the office), the pattern has often been to formulate such policy after the fact.

Nor, apparently, have there been written statements from the headquarters office explaining what probation-parole supervision is to achieve; the Division's priorities do not exist in writing.

The report of the Louisiana Commission on Law Enforcement on Criminal Justice Standards and Goals in Adult Corrections notes the present lack of "clear operational goals,"[7] a lack which has "hindered the effectiveness of the system" in that it makes possible "conflicting philosophies and inconsistencies in policy."[8]

According to the National Advisory Commission, "the administrator is expected to formulate goals and basic policies that give direction and meaning to the agency. If these goals are not formulated specifically, they are made by default, for staff will create their own framework."[9]

The difficulty created by staff's assuming the initiative is obvious: staff members within the agency often have different perceptions according to their positions in the management hierarchy, and their backgrounds and beliefs. With many such individuals establishing agency policy for their own areas, the result can only be disorder.

That the Probation-Parole Division must create clearly defined and communicated written goals and objectives is a reiterated standard.[10] Goals so presented exist as a reference point for making policy in all other areas: they should, for example, be incorporated into the agency's

training program;[11] they should provide a reference point in the agency's hiring practices;[12] they are essential to program planning.[13] And because they are central to so much, they must be periodically re-examined and updated.[14]

John Dewey wrote that "a problem well-defined is half solved." The same can be said of a task. Immediate and clear definition of the task that the Division faces is essential. This statement must originate in the headquarters office and be dispersed downward through the administrative subdivisions below. It must be included in the Operating Manual and dispersed and implemented at all levels.

In view of the circumstances described above and with regard to reiterated recommendations by nationally recognized agencies that establish standards for varying aspects of the criminal justice system, the staff recommends several actions. A comprehensive Management-by-Objective (MBO) system should be implemented within the Division. The MBO system would include all levels of employees and would specify both organizational objectives and criteria for establishing the attainment of those objectives for each subdivision of the organization. This effort should fully involve all Division employees and outside management consultants should be utilized only in assisting the operationalization of MBO design procedures.

There are other, intermediate steps to consider as vehicles for increasing the efficiency and effectiveness of administration and operations within the Division. The Operating Manual, compiled in 1960 and last revised in 1975, is again in process of revision. Certainly as part of that process, the Division should explain the rationale of its existence, delineate its priorities, and define its service objectives. Having established these in writing, the Division should include them in the

revised manual, where they would become centrally available.

Another area of dysfunction is that described by authorities in California as one frequently discovered in probation-parole organizations:

> .../M/any correctional agencies have supervisory positions, theoretically to provide casework supervision to line probation and parole officers. More often than not, the supervisor becomes an assistant administrator, assigned to special functions in the agency such as "court officer" or "intake officer." Although such usage of supervisors may ease administrative burdens within the agency, the abandonment of case supervision for management affects caseloads and their effectiveness. /15/

This observation seems to apply specifically to Louisiana.

One of the duties of a District Supervisor is to counsel with his subordinates "when necessary." Primarily though his duties are administrative, and if his district is large enough, he is assigned one or more Probation and Parole Agent III's to assist him. The Probation and Parole Agent III has, in turn, a dual function: administrative assistant-trouble shooter and counselor to his subordinates--i.e., Probation and Parole Agent I's and II's. Based on this system, described by the Operating Manual, job descriptions and administrative dictum, it appears that there is no position in the organization hierarchy dedicated specifically to providing regular casework supervision to field agents. Crisis intervention is clearly allowed for; regular and frequent supervision appears not to be.

The Division itself may discover other intermediate means of establishing clarity of purpose and efficiency of function. The divisional reorganization that occurred in conjunction with the addition of 35 new field agents and that created the position of Probation and Parole Agent III as administrative assistant and counselor of Agent I's and II's is not yet a year old. Doubtless changes in that area will be suggested from within

the Division. The staff recommends caseload supervision conferences to be conducted by district supervisory staff on a regular basis (at a minimum, bi-weekly) to probation-parole field agents. Such supervision would be in addition to crisis intervention and directly related to problem-solving in counseling and informational referral activities central to efficient caseload management procedures.

Training

Description: Entry-level requirements for the probation and parole officer are a degree from a four-year college or university (or equivalent experience) and inclusion on the civil service roles as a result of taking an exam. Specific training begins after one is on the job. The most intensive training occurs at the district level.

One view of the training process comes from conversations with individuals assigned to headquarters and supervisors from other offices in the vicinity of Baton Rouge. There are a few days of verbal orientation during which the new agent is introduced to the routine, presented an overview of the corrections system in the state and helped to understand the Division's role within that frame, and given the Probation and Parole Officer's Operating Manual to read. After a few days, the new agent is sent into the field with two or three experienced field officers to begin formulating an idea of how field supervision is carried out. Within two or three weeks, the new officer begins to carry a partial caseload, under close supervision. By the end of 90 days he is carrying a full caseload of about 100. He continues to work under close supervision his first year.

Another version of the specialized training given the new agent is several days spent reading the Probation and Parole Officer's Operating Manual and a day spent with one or more experienced field officer. The Louisiana Commission on Law Enforcement judges that "on the state

corrections level, no basic orientation is required /of new officers/...."[16] A member of headquarters staff says something only slightly different: "We don't have a uniform training program."

Training for individuals newly appointed to supervisory positions is less formal still. Management conferences are available for district and area supervisors and senior officers as are various multi-state conferences like those sponsored by the American Correctional Association (ACA), the National Institute of Crime and Delinquency (NICD), and the Southern States Correctional Association. More immediate training for those newly promoted to supervisory roles (i.e., a new District Supervisor) comes via one-to-one counseling between the area supervisor and his new district officer or from the interaction at district staff meetings. Also, according to headquarters personnel, one who seems to be of supervisory caliber is often sent to management workshops before he earns promotion to a supervisory level. Perhaps not surprisingly, none of the administrators who commented on this area of training found that the lack of more formal instruction had been a problem for them.

Beyond the formal training given new agents and supervisors, which exists in varying degrees and descriptions, the Operating Manual reports thrice-yearly firearms instruction by F.B.I. firearms experts. Additionally, an agent must demonstrate his efficiency on the firing range, and the District Supervisor must certify this performance in the officer's personnel record before the agent is authorized to carry a gun in connection with his official duties.

Grants have made possible other training programs. In FY 1976-1977 the Department of Corrections received an LEAA grant ($21,694.) to improve their videotaped training material. As a result of that project,

there now exist video cassettes that explore problems and areas of concern to officers in the Division of Probation and Parole, and there is video equipment available to each area of the state.

Also, the Division of Probation and Parole was awarded a three-year in-service training grant ($45,000 from LEAA) This grant, which expires February 28, 1978, is being used primarily to fund statewide training conferences which address general probation-parole skills and management skills and issues. During 1977, for example, general conferences were held in April and in May in Baton Rouge. During these conferences, experts discussed topics and procedures such as current legal issues, departmental reorganization, recognition of drug users, interviewing and counseling, collection of restitution, arrest techniques, and handling of prisoners in the parish jails. Management conferences are scheduled for September and November of this year. Through another grant funds are available to cover the expenses of the Department of Corrections personnel who attend national training courses.

Improved training is an area widely acknowledged as an immediate goal of the Division. Plans exist, at least on paper, for expanding the ongoing training academy for correctional officers at Angola to include correctional officers from other state prisons and probation-parole officers. The Assistant Secretary of Adult Services cited as both need and goal a more sophisticated training program at entry level. As projected, this would involve a two-week academy for agents, emphasizing the skills unique to probation-parole field work--e.g., conducting intake interviews and contracting with offenders for goals to be achieved during their supervision.

Another training goal involves the use of firearms. Although all probation-parole officers are required to participate in firearms training,

there is not a uniform standard for all Department of Corrections employees. The Department envisions a program that will train personnel uniformly and will result in the issuance of a departmental certificate of competency. This too will be a skill eventually taught at the training academy.

National standards cite uniform training and orientation as a primary need. The American Correctional Association, e.g., states that "trainees /i.e., Probation and Parole Agent I's/ should be hired only if the department has for such employees a special program of appropriate training under the supervision and direction of qualified staff."[17] The Commission on Accreditation states more broadly that agency employees should be "provided instruction/training covering those goals and objectives which are appropriate to their work"[18] and supports continued in-service training.[19] The National Advisory Commission and the Louisiana Commission on Law Enforcement concur: "Each State immediately should develop a comprehensive manpower development and training program... /that/ should range from entry level to top level positions...."[20] The National Advisory Commission adds, "After recrutiment, there must be relevant training and educational opportunities for the staff."[21] The Louisiana Commission on Law Enforcement writes that "correctional agencies should plan and implement a staff development program that prepares and sustains all staff members,"[22] then elaborates: "Training should be the responsibility of management and should provide staff with skills and knowledge to fulfill organizational goals and objectives."[23] The particular meaning of this observation is clarified in the enumeration that follows:

> a. All top and middle managers should have at least 40 hours a year of executive development training, including training in the operations of police, courts, prosecution, and defense attorneys.

b. All new staff members should have at least 40 hours of orientation training during their first week on the job and at least 60 hours additional training during their first year.

c. All staff members, after their first year, should have at least 40 hours of additional training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections./24/

Summary-Analysis: The standards and probation-parole staff on all levels agree that more and better training is essential. In spite of that concurrence the Division confronts several problems.

Firearms training does exist, even though standards of competency are not uniform throughout the Department of Corrections.

Further, arms training is a subject that has been introduced without fail into all discussions between the Commission staff and probation-parole personnel regarding training. It obviously is a subject of weight to the Division. Perhaps this is a result of the seriousness of the implications of carrying a weapon (guns can destroy life). Perhaps the frequency of its mention is a way of calling attention to a basically sound unit of the Division's training program, and perhaps too the only standard uniformly defined and applied throughout the Division.

In view of one estimation that only 5-15 percent of the agents employ their option to arrest supervisees, the attention accorded this item would appear to be excess.

The three-year in-service training grant expires in February, 1978, and legislators reportedly have been reluctant to budget money for travel expenses such as are associated with short duration, Division-wide training programs. Future annual or semi-annual training conferences are likely to be less well attended if agents must cover their own mileage and lodging expenses. As a consequence, what is currently one of the few uniform

training instruments used within the Division will thus be rendered less effective than in the past.

The training academy presently exists only as a dream.

Effective personnel training at any level is based on clearly defined goals and carefully articulated statements of policies and values. At present neither has been provided. Consequently, even the training programs that are implemented within the districts are inevitably without uniform focus or accomplishment. Because training is currently identified as a primary function of the district offices, variety of approach to that duty is neither surprising nor problematic. That there is no centrally stated and implemented theory underlying training is significant. It makes movement toward a particular end impossible and movement from one district to another formidable.

Staff recommendations regarding training address simultaneously the two opposite ends of the Division's organizational hierarchy. An intensive training program must be implemented to enable the entry-level agent to develop the skills and sensitivity that are required for his effective performance of the duties assigned him; the rationale behind this training--and thus behind the Division's existence, priorities and activities--must be provided from the headquarters office. These two considerations lead us to address again the revised operations manual. Because the Operating Manual is one of the few concrete vehicles used in training throughout the state, it should be an effective one. As well as explaining how to fill out a particular form and where to mail its multiple copies and what information to include in a psi report, the Operating Manual must provide the theory underlying the practices. Why make and distribute five copies of a psi report? What must one consider in determining under the press of

time whether to check records at the courthouse again or to try again to locate one evasive probationer?

But reading about being a probation-parole agent, even watching someone else be a probation-parole agent, does not automatically or even effectively turn one into an effective agent, or even into a competent agent. Specialized training by experts is essential because most new agents do not arrive in the Division knowing how to establish rapport while conducting an intake interview with a frightened or hostile or withdrawn probationer or parolee, or how to accept the anger or hatred directed at an agent by an offender and to understand its meaning rather than to react in kind.

Establishing a separate, on-going training academy is not the most effective or most efficient way of providing such training: new agent intake is not normally large or concentrated enough to justify such an academy. Rather the Division should consider contracting for services. Individuals and groups locally available through the state's colleges and universities are one such source. Some professional staff attached to the state's crisis intervention centers also are sensitive to and proficient at teaching the skills and facilitating the awareness required of probation-parole agents.

The Duties of Probation-Parole Agents

Introduction: Nearly all other issues to be examined in this portion of the report are related somehow to the duties assigned probation-parole agents, especially field agents. Before examining the research and standards that address those issues, even before noting the issues, it is useful to understand the services and functions fulfilled by field agents in Louisiana.

The major tasks of the Division of Probation and Parole are to provide investigative reports to the courts and the Board of Parole and to supervise probationers and parolees; yet according to materials provided by headquarters personnel, the Division serves many other functions as well. Its staff handles extradition of escapees and returns escapees from other jurisdictions. La.R.S. 15:574.14 establishes the statutory basis for this state participating in the interstate compact by which one state allows probationers and parolees residence in a second state, which agrees to admit the offender on the condition that he abide by the stipulations imposed on the receiving state's offenders. Headquarters staff administers the compact; field agents investigate the offender's proposed place of residence and his job plan for the parole board of the sending state. Field agents also assist agents from a sending state to compile a pre-sentence investigation report or a pre-parole report by forwarding information available in this state about an offender's criminal record.

Field staff in addition provide reports on all applicants to the Board of Pardons, conduct clemency investigations for the Governor's Office, and verify and issue certificates of verification on the first offender status of offenders eligible for automatic pardon. They verify credit for time served by offenders awaiting the Board of Parole's decisions to hold a revocation hearing or to revoke parole. They conduct pre-release studies on applicants for work-release, assist the candidates for work-release in finding jobs, and supervise the activities of work-releasees outside their places of residence. They transport parole eligibles from parish prisons to regional parole hearings when other transportation is unavailable and receive and process state prisoners being released from local jails.

In short, because the Division offers the only field services within the Department of Corrections, newly created jobs that must be performed in the field (e.g., reception, transfer and release of state prison inmates housed in parish jails) tend to be assigned to the Division. Though the tasks increase, personnel does not.

Investigative Reports: There are several major reports that the Division of Probation and Parole is called upon to make. Probably the most intensive is the presentence investigation (psi) report. This report is prepared for a judge--normally a district judge, though according to La.R.S. 15:826.A., any court with criminal jurisdiction may order one.

After an individual has been found guilty or has pleaded guilty but before sentence is passed, Article 875 of the Code of Criminal Procedure authorizes the court to direct the Division of Probation and Parole to conduct a presentence investigation. The report based on this investigation must be returned to the court within 60 days (or within 90 if the defendent bonds).

The Operating Manual explains that the psi is based on the belief that "the offender needs to be understood in relation to his particular needs, capacities and limitations, rather than on the sole basis of his offense. The defendant's personal history, education, earlier life, family, and neighborhood conditions, employment history, recreation, habits, associates, and training are all of significance." [25]

A full psi report is not always useful or desirable. Normally, the court informs the probation-parole officer how thorough an investigation it wishes; otherwise the officer determines how thorough an investigation the case warrants. In spite of variation in depth, the purpose of the report remains to make available as much information as seems

necessary about the individual's characteristics, circumstances, and needs so that the court has a sound basis for determining whether probation or incarceration is the proper disposition.

Two other investigative reports which field agents prepare are the postsentence report and the pre-parole report. Because both exist principally to describe and document the offender's current and past criminal activities and the attitudes of others with whom the offender has recently interacted, both reports have a narrower scope than the psi report has. Both the postsentence report and the pre-parole report address pertinent details of the offense(s) as reflected in the arresting officer's report and the district attorney's statement of facts. If the crime was against a person, the report must detail any injuries to the victim as well as the victim's age, sex, race, and present condition. Both reports note any prior adult or juvenile criminal record, current detainers, and prior convictions under appeal. Both include a description of prior mental treatment and of physical conditions or infirmities that might affect the offender's adjustment to incarceration or to parole.

The postsentence report, according to statute, includes any observations that the sentencing judge or the district attorney wishes to make. A pre-parole report includes the agent's judgment regarding the acceptability of the residence and job plans and a statement about the attitudes of the family, local officials, and the community at large toward the offender. In this section, apparently as a matter of practice though not of statute, attitudes of the sentencing judge and the district attorney are included. This report also includes a definite recommendation to parole or not to parole.

The primary difference that should exist between the postsentence

and pre-parole reports is the point in time at which the report is compiled. According to Article 876 of the Code of Criminal Procedure, the Division shall prepare a postsentence report on convicted felons within 60 days of the beginning of the sentence, if a psi report was not prepared and if the sentence is one year or longer. Once completed, the report is forwarded to the place of incarceration or to the district in which the offender is on probation. The pre-parole report (La.R.S. 15:574.3) is prepared at a later point in an offender's interaction with the corrections system. The staff of the Board of Parole automatically places an eligible inmate on the docket for a parole hearing and simultaneously requests a pre-parole report from the district where the prospective parolee has residence and employment intentions. One of the field staff is assigned to prepare the report and return it to the Board of Parole within 30 days.

Though both the postsentence and the pre-parole report exist as separate statutory entities, the situation that in fact exists is different. The Manual speaks of the postsentence/pre-parole report and includes a form so-labeled. On an outline prepared by the Division in early 1977, full implementation of Article 876 is listed as a goal. What apparently happens most often is that the postsentence investigation and report are not made. This happens, one member of the headquarters staff suggested, because there generally is no pressure to get the report done--as there is in the case of the presentence and pre-parole reports. At the point that Angola was not receiving new inmates, he said, classification officers wanted the postsentence reports made, and the Division responded by supplying the demand.

Supervision: Supervision of individuals assigned to its jurisdiction is the second major function of the Division of Probation and Parole (La.R.S. 15:826, Articles 893 and 894 of the Code of Criminal Procedure). As characterized in conversations with probation-parole personnel and in the Manual, supervision requires that a probation-parole officer fulfill a number of functions--surveillance, police action, counseling, referral to other agencies. As part of his surveillance function, the probation-parole agent verifies an offender's parole plan by field investigation; he receives from the probationers and parolees in his charge the required Monthly Supervision Reports, which restate the individual's residence and conditions of employment as well as allow for a formal request for a conference. From these reports and periodic contacts with the offender or with others who interact with or observe the offender, the field agent must see that an individual abides by the conditions the court set for his probation or that the Board of Parole set for his parole.

As surveillance agent, the officer has the statutorily defined responsibility to report to the appropriate authority his knowledge or concern that a probationer (Art. 899 of the Code of Criminal Procedure) or parolee (La.R.S. 15:574.8.B) has violated or is about to violate some condition of his probation or parole. At this point the officer may act primarily as police agent: he has the power of arrest (La.R.S. 15:574.8.A.). If a violation is serious enough or if there is unnecessary risk in waiting for the court or the Board of Parole to issue a warrant, the probation-parole officer has the statutory authority even without a warrant to have arrested or to himself arrest such a violator and have him detained locally and then apply for a warrant from the court (Art. 899) or the

Board of Parole (La.R.S. 15:574.8). At the preliminary hearing before a judge (in the case of a probation violation) or before a district probation-parole officer (in the case of a parole violation), the agent becomes adversary as he explains his belief that a condition of probation or parole has been violated.

In this same complex relationship he must also see that the offender under his supervision is referred to the proper community facility or service to get the assistance he needs (e.g., treatment at a mental health clinic or vocational training); he is called on too to be personal counselor and confidant (one with whom the supervisee can discuss personal problems and concerns).

CHAPTER VII

INVESTIGATIVE DUTIES OF THE PROBATION-PAROLE AGENT

Chapter VI has discussed briefly the major characteristics of the Division of Probation and Parole. It has examined the Division's needs with regard to administration and training and has surveyed the tasks assigned field agents. From that perspective it becomes appropriate to give full attention to that area which is the subject of the remainder of this portion of the staff's report--the duties assigned to and performed by probation-parole agents. As above, these duties and their implications will be described, examined, and analyzed according to the needs of the Division of Probation and Parole and of those to whom it provides services, the research and experiences of other agencies and groups, and the standards recommended by organizations whose task it is to study and analyze elements of the criminal justice system.

Introduction: To examine the investigative function performed by a probation-parole agent is to consider first and primarily the presentence investigation (psi) report. Examination of that report introduces in turn three other issues: the educational backgrounds of those who prepare it, the question of which staff shall prepare it, and the issue regarding who shall be allowed access to its contents. Impacting most of these matters is the press of time. Before addressing these specific concerns, however, it is useful to understand the rationale behind the psi report's preparation as well as what such a report contains.

At that point at which a judge orders a psi, he often has detailed knowledge of the defendant's current criminal act whether the defendant has had a trial or has agreed to a plea bargain. The role of offender is, however, only one of the defendant's roles. A major function of the psi

report is to illustrate whether this role is a major or minor one and to bring to the awareness of the court the other behaviors and interactions that characterize the defendant and perhaps suggest reasons for the defendant's current circumstances.

The content of a full psi is widely agreed upon;[1] that described in the Probation and Parole Officer's Operating Manual of the Louisiana Division of Probation and Parole offers a good illustration. A full psi report covers in detail two major areas--criminal record and social data. The section regarding criminal record examines the current offense and notes any past juvenile or adult record. In describing the current offense, the report notes the nature, date and place of the violation, the date and place of arrest, the arresting officer, pleas, the place of detention, bond, and the number of days spent in custody. It includes the statement of any co-defendants and notes their current status; it includes the defendant's own statement and notes his attitude toward the offense as well as whether he was under the influence of alcohol or drugs during commission of the offense. Records of any other social agencies re the defendant are also included in this section.

The second major area of a full psi report records and analyzes social data. According to the Operating Manual, this portion of the report is intended basically to "help explain why he committed the offense and any other offenses in his history" (p. 35). Its special importance is in presenting data not obtainable by the courts elsewhere. More specifically, along with information such as date and place of birth, sex, race, marital status, and number of dependents, the study notes the offender's marital history, factual information about other family members (e.g., name, age, occupation and attitude toward the defendant), the offender's

attitude toward other family members, and characteristics of his home, his neighborhood and any other families living in the same building as he. Noted too is the offender's standing in the community.

In reporting physical and mental health--which likely influence the offender's earning capacity and his interactions within the home and community--the agent notes the usual physical characteristics as well as "posture, gait, expressions, scars, defects, disabilities and deformities" (p. 37) and present physical health. Included at this point also are a history of diseases and other medical information and findings of any psychological or psychiatric reports, as well as notations about any observed "symptoms, such as fears, obsessions, compulsions, anxieties, conflicts, depressions, frustrations, peculiar ideas and habits" (p. 37) of which the agent can give concrete examples. Further, the report describes the offender's attitudes about himself and toward authority; it includes information regarding past schooling (grade completed, adjustment to schooling, ability to get along with peers at school, reason(s) for withdrawal, and special training other than formal education). It notes the defendant's church affiliation, church attendance and his general attitude toward church, all of which "may be of significance in planning with and for him" (p. 37).

Another portion of the report focuses on the defendant's employment record and financial circumstances. This portion includes both verifiable facts (i.e,, name and address of employer, kind of work performed, salary, reason for leaving) and judgments (e.g., adjustment to the job). It notes the offender's means of subsistence during periods of unemployment; it describes the offender's financial resources (e.g., property holdings, investments and other such sources of income,and liabilities) as well as any

such resources available to him via family and friends.

Finally, the psi report cites the defendant's interests and activities because they are "potential resources in treatment planning for the offender, and his attitude toward them is of importance. They may also reveal special skills and abilities he possesses as well as qualities of leadership or handicaps in social relations, arouse ambitions and be an incentive toward achievement" (p. 38).

In the report provided the court, the probation-parole agent compares and evaluates the material described above. He identifies the sources of his information. If any are highly confidential, he attaches them on a separate sheet at the report's end and simply notes in the body that such sources exist. He includes conjecture and impressions as well, taking care he identifies them as such. At the request of the court, he also includes his own specific recommendations.

Discussion and Analysis of Issues

Issue: While what is to go into a full psi report is not at issue, other closely related matters are. Are those who prepare the psi report qualified to make the kinds of judgments the Operating Manual encourages? The model for the psi report was taken from social work: it is, except for the sections dealing with current offense and prior record, basically a life history of the defendant. The report is not, however, prepared by social workers. The prior training required to become a probation-parole field agent in Louisiana is graduation from an accredited four-year college. Some agents come with backgrounds in psychology or social welfare; many do not.[2] And while it is debatable whether an undergraduate degree in psychology or social welfare trains one to predict accurately human behavior or to analyze it with proper caution, it is even more unlikely that those

who come to probation-parole work from backgrounds such as law enforcement or liberal arts have had practical training in the matter. Add to this the lack of highly specialized training at entry level, and it seems at best unrealistic to encourage probation-parole agents to project the possible social implications of an offender's "weight, height, posture, gait, expressions, scars, defects, disabilities, and deformities" or to take note of "symptoms" such as "fears, obsessions, compulsions, anxieties, conflicts, depressions, frustrations, /and/ peculiar ideas and habits." Even the Operating Manual's closing instruction re the psi report presents under the circumstances an inappropriate task: The report should, in essence, make clear "the cause and contributing factors and their implications for the conduct of the offender and his adjustment in the future" (p. 40).

While those making the psi report are usually not trained to make the kinds of judgments that the Operating Manual instructs them to, there is one item that all agents must be able to note if their assistance to the probationer or parolee is to have a sound base; yet it's an item apparently not included in the psi reports currently prepared. This item is a list of resources available in the community to assist the released offender to meet his special needs--e.g., a drug problem, inadequate vocational skills, or marital problems. Part of the rationale for releasing a convicted offender into the community under supervision is that he can best be helped to readjust in his interactions with the community by being guided to use the resources available in that community.

Standard 5.14, Section 5.h., of the National Advisory Commission on Criminal Justice Standards and Goals calls for the inclusion of such a list. This is an addition that must be made. The reason for this will

be explained fully in a later section of the report. At that point the issue of adding a section to the current psi report will be returned to.

Issue: Another question involving the psi report is who is in a position to use its detailed presentation. As one expert observes, often the material included in a full psi report makes possible more sophisticated distinctions in treatment needs than can be met by the facilities and other resources available:

> In general, and in view of the narrow range of alternatives available to judicial and correctional decision makers, current data collection efforts greatly exceed available opportunities to utilize the data... courts normally have three sentencing alternatives (or decisions) available--probation, jail, or imprisonment ...the selection of available alternatives can be made with far less information than is currently collected and made available to the decision makers.
>
> ....Large, undifferentiated caseloads and few treatment alternatives render detailed data on offenders almost irrelevant /to probation-parole officers/. A paroling authority with but two basic alternatives-- to grant or deny parole (or to postpone this decision) --hardly benefits from sophisticated data, particularly when even that one choice is complicated, and may even be determined, by "bed-space" considerations. /3/

Acknowledging that there are variations in the need for and the usefulness of information collected, the National Advisory Commission suggests that agencies "should first ask the judges to identify that information needed by the court."[4] With this in mind the staff of the Governor's Pardon, Parole and Rehabilitation Commission sent a questionnaire about the relative usefulness of items included in the psi report to a small random sample of district judges from 33 of Louisiana's 34 judicial districts. Sixty-five questionnaires were sent, 22 responses, received. Nineteen of the state's 34 districts were represented in this response. The judges were mailed a chart that named all the items included in a full psi. They

were asked to indicate whether they considered each item essential, generally useful or irrelevant.

One judge made this notation:

> Every scrap of material and information about a defendant may be relevant, useful or even essential to a sentencing judgment. The more I can know about a person, the more objective I can be.

Generally, based on responses to the questionnaire, most of the information included within the presentence report is considered either essential or generally useful. Clearly in those categories are details about the present offense, his prior criminal record, and his physical and emotional health, educational background, present employment, financial resources, military service, religious background, and interests and activities. Judicial opinion is much more diverse regarding many of the details concerning an offender's family, home and neighborhood. Items regarding the offender's family (e.g. their names, ages and addresses, educational and occupational status; and citizenship, health and general reputation) and some particulars about the offender's residence (whether owned or rented, what facilities it includes, whether others are in the same building and their reputations) were frequently labeled irrelevant.

Recognizing that the need for data varies according to individual preference and specific case, the Division of Probation and Parole has adopted two psi report forms--a long form and a shorter form which eliminates just such things as those that a large percentage of the judges identified as irrelevant. Not only does this procedure satisfy different judicial preferences; it also is essentially within the boundaries defined by the National Advisory Commission and accepted by the American Correctional Association.[5] The difference is that the National Advisory Commission's

standard, rather than leaving the choice just to the court's preference, states that a full psi should be prepared in all instances where incarceration for more than five years is a possible sentencing disposition. This standard, the National Advisory Commission notes, "is consistent with the provisions of the Model Sentencing Act and the Model Penal Code."[6] The Model Penal Code, for example, which does not explicitly require two different intensities of a psi report, states the categories that should be included in the report[7] and then notes that such a report should always be prepared when the defendant has been convicted of a felony or is less than 22 years of age and has been convicted of a crime, or will be placed on probation or incarcerated for an extended term.[8]

The Division's impression that the judges are basically satisfied with the reports prepared for them has been confirmed by two judges who appended that observation to the questionnaire. Several also noted that some information which they would find useful is not usually included. Two remarked the absence of psychological workups or psychiatric reports, though they also characterized this item as essential. Another said that it would be helpful to know what disposition has been made in the case of any others also charged in the crime. The Operating Manual's discussion of the psi indicates that the latter information should be included. And according to Article 875 of the Code of Criminal Procedure, the court may order a mental and physical examination of a defendant. Thus, presently the framework already exists for fulfilling these additional requirements.

Issue: Time becomes a major factor when considering the other issues revolving around the presentence investigation and report. As suggested above, a major duty of the probation-parole agent is to prepare

investigative reports, and the most comprehensive and detailed report--and thus is the most time-consuming report to prepare--is the psi report.

Convention currently defines the amount of time required to prepare a psi report as five times that required to supervise one probationer or parolee for a month. Many authorities agree that a more realistic ratio is twelve or thirteen to one.[9] In other words, from five to twelve times as much of an agent's time in a month goes to describe and analyze an offender's crime, family background, emotional health, educational and employment record, and interests, as goes into helping any one supervisee accept his new status as probationer, encouraging him to participate in AA, or suggesting where he might go for further vocational training.

All involved also agree that however much time preparation of the psi report requires, it will be completed. The obvious reason is the deadline--a particular point in time when a clearly defined task must be completed and a tangible product produced. The impact of having a deadline--and thus probably the deadline's impact on supervision time--is intensified by judges' requesting on occasion the completion of a psi report in less than the 60-90 days allowed by statute.

Because preparation of the psi report demands and gets a significant portion of an agent's available time, possible ways to reduce that expenditure or increase its return must be considered. In this context, two considerations can be raised: should a single agent have to fulfill both tasks, investigation and supervision; and given that preparation of a full and competent psi report requires a significant amount of time, might it not be used more widely and thus more efficiently than it presently is. Consider the first issue: Shall an agent fulfill both roles?

The American Correctional Association recommends that "a coordinated

statewide program should provide probation service to all criminal courts..."; all adult probation services should be "a function of an integrated state-administered correctional program /which/ can result in greater coordination of total services to the offender, the court, and society."[10] In contrast, the National Advisory Commission's long-range recommendation is that probation departments should be within a unified state correctional system but that "the current duality of roles for probation staff"[11] should be done away with by having those performing services to the court under the administrative control of the courts and those providing services to probationers answerable, as now, to the Department of Corrections. Until such an arrangement is possible, however, the National Advisory Commission recommends that individuals hired by a unified state corrections system, at least in urban areas, be assigned either to perform court services or to supervise offenders.[12] The Louisiana Commission on Law Enforcement echoes this position in their 1975 report.[13] Colorado's new corrections master plan also recommends specialization of investigation in order to "eliminate the competition between duties and improve supervision of parolees."[14]

The Division of Probation and Parole implemented that approach several years ago on a trial basis in the Baton Rouge District. For two years that district maintained a three-man investigative staff, which was to conduct 75 percent of the investigations required within the district. All other agents were assigned to concentrate on probation-parole supervision. The procedure was producing very high-quality investigative work, but toward the end of the two years the demand for investigations increased markedly, and the three-man unit found it could handle only 50 percent of the reports ordered. More personnel were not available to the unit

because of the supervisory caseload carried by the district. The procedure was discontinued. In analyzing its results, district personnel discovered that the separation of staff created officers with an incomplete understanding of the Division's functions and consequently created inadequacies in the pool from which effective administrators could be drawn.

In view of the Division's stated inability to establish separation of investigative and supervisory duties based on current staffing levels and organizational patterns, an intermediate solution would be the use of other personnel for straight data collection and verification. Much of an agent's investigative function involves time and effort spent checking records--court records, police records, records available in the district attorney's office, records available via social agencies, mental facilities, or the military. Without dispute, the careful collection of factual information on which the psi report is based is essential. Its collection does not, however, require a four-year college degree, such as the entry-level probation-parole officer has. Nor does it involve the skills that, at least theoretically, specialized training provides him with.

In order to free the agent to spend more time for interaction with probationers and parolees, other personnel should be used to collect and verify data. As well as being practical and efficient, this suggestion is consistent with the recommendation of the President's Commission and the National Advisory Commission, which recommend using non-professionals to collect data in order to free more of an officer's time for direct service to the offender.[15]

One obvious source of such assistance is the Division's present full-time personnel. The problem with this solution lies in the report from all quarters that present non-professional staff (i.e. clerical staff)

are already overworked. One reason for this situation is that when 35 new agents were added to the Division in FY 1976-1977, there were no additional funds made available for support staff. On the other hand, the Division reports that the recommended ratio of field agents to clerical staff is about 2:1; it also reported in June a total of 172 agents and 84 clerical staff within the Division, which is very close to the recommended ratio. The possibility of involving clerical staff in the collection of recorded data deserves consideration.

As noted above, the time expended on the preparation of a psi report leads one to ask whether it can be more widely used once it has been prepared.

Relevant to this issue is the fact that to a significant extent, the reports prepared by the Division of Probation and Parole for different decision-making bodies are duplicative. For example, the pre-parole report, like both the short form and the long form of the psi report, describes the current criminal offense and any prior criminal record, and notes prior mental treatment and general physical condition. Special-purpose reports, such as the pre-parole report or a clemency investigation report, of course demand other information than that included within the psi report. The decision-makers who request later reports need to know about an inmate's adjustment to incarceration and his performance while imprisoned. Information about current family and community attitudes is also essential, as is information about any outstanding warrants or criminal dispositions made after the period reflected in the psi report. This material could as well be added to the psi report as compiled in a separate, partially repetitive report, such as occurs now. Updating the psi report is more direct and more efficient. In fact, this is the

procedure the Monroe District employs in response to requests for pre-parole reports. Though the resultant report is perhaps more detailed than the Board of Parole requires, Board members reportedly have not complained. Presumably, they ignore what is unnecessary and regard what they need.

Because the psi report occupies so great an expenditure of time and effort, the staff recommends that an initial investigative report become the basic informational document regarding an offender who interacts with the corrections system. Later reports required by decision-makers should be appended to the original document and should move with the offender through the system.

Full implementation of the recommended procedure requires that statutes now in existence be implemented. In Louisiana, a psi report is not made preceding all sentences to incarceration. However, within 60 days of a felony sentence to one year or more, if a psi has not been made, a postsentence investigation report on the offender is to be made and completed (Art. 876, Code of Criminal Procedure). Although the social data included are many fewer in the postsentence report, both reports contain base data required in later reports--i.e., criminal history, employment record, mental and physical health, etc. While Article 876 has not been widely implemented, the Division of Probation-Parole indicates their intention to do so. General descriptive information received from the Probation and Parole Deputy Chief cites as a long-range goal

> Full implementation of Article 875 which requires a presentence or /Article 876, which requires a/ post-sentence investigation on every felony. The post-sentence being made within sixty days after sentence. A standardized format contained certain basic information that can be used as part of classification admission summary, pre-release report, work release, pre-parole and clemency report.

Implementation of Article 876 or of ACA-National Advisory Commission standards, which call for the preparation of a psi report in all felony cases and in every case where there is a potential sentence disposition involving confinement,[16] would provide, early in the defendant's interaction with the corrections system, a basic document that could be used in the early decision-making processes and could serve as the basic informational document re the offender as he progresses through the system.

Issue: When new data are simply appended to an existing document as this report recommends be done, it becomes multiply important that the originally compiled information be correct. The Operating Manual stresses the need for an agent to verify his data in every instance possible. A further check of information included is to allow the defendant access to the report. The latter policy is a subject of some controversy.

Originally, the purpose of confidentiality was "to assure offenders and others that information given to probation staff would not be released indiscriminately and, accordingly, that probation staff might be trusted."[17] Keeping this in mind and considering also that the court's decision to incarcerate or not is, to the offender, "the decision next in importance to the determination of guilt,"[18] it is the opinion of the National Advisory Commission that "the entire sentencing decision becomes suspect and indefensible" unless the defendant "is given the opportunity to contest information in the presentence report."[19] One basis for this opinion is their observation that an erroneous psi report too often has led to a harsher sentence than otherwise would have been handed down.[20] These issues, the National Advisory Commission suggests, make essential verification via disclosure to the individual and/or his attorney. (They allow disclosure to the district attorney as well.)

Voices speaking from the other side of the debate caution that disclosure of the psi report will eliminate previously available sources who will fear retaliation for providing information.

One measure suggested to ameliorate the possible reluctance of persons to speak openly if disclosure is permitted is to allow for a separate listing of confidential sources and information. The National Advisory Commission labels this an unnecessary precaution. In their judgment, the feared disappearance of sources of information generally has not occurred.[21]

Against that background one can more easily assess Louisiana's situation. The Operating Manual indicates that "the names of those sources who for serious reasons remain unquestionably confidential should be typed on a final and separate page of the report."[22] Article 877 of the Code of Criminal Procedure allows disclosure to the traditionally allowed sources: the courts, the Board of Parole, the Board of Pardon, the Governor or his representative, prison officers, probation-parole officers, and medical authorities. It also allows the judge to approve disclosure of "the factual content and conclusions of any pre-sentence investigation report" to the defendant or his attorney. La.R.S. 15:574.12 allows wider access; it permits disclosure without special authorization to "a district attorney or law enforcement agency" /Subsection B/. Thus, Article 877 denies to the district attorney access to the psi report but allows the defendant conditional access; La.R.S. 15:574.12 specifically names the district attorney as one to whom the psi can be disclosed but, by omitting mention of the defendent, denies him that right.

The standards are varied in their address of this issue.

Standards issued by both ACA[23] and the National Advisory Commission[24] recommend disclosure of the contents of the psi report to the district attorney and to the defendant and his counsel. The latter procedure seems the area of greatest concern, and both the American Bar Association and the American Law Institute address it. The ABA standard allows withholding elements of the psi report from a defendant only when they are irrelevant to a proper sentence, reveal diagnostic opinion that could be seriously disruptive to rehabilitation, and name sources of information revealed in confidence.[25] Like Louisiana's law, the American Law Institute's Model Penal Code addresses disclosure of the factual contents and conclusion /Art. 7.07(5)/, but the American Law Institute requires disclosure while Louisiana allows it at the judge's discretion. A 1969 ruling by the New Jersey Supreme Court "ordered all New Jersey courts to grant disclosure as a matter of 'rudimentary fairness.'"[26]

The latter attitude reflects the National Advisory Commission's stand. That Commission cautions that the officer responsible for making the report must be able to answer any challenge to its verity. If he cannot do so, the National Advisory Commission recommends, the material should not be considered in sentencing.[27] "The need for verification cannot be denied,"[28] they assert.

A member of the headquarters staff supports the latter view, explaining that--if an investigation has been thorough--an officer should be willing to hear the resultant report read in open court. The current cloak of confidentiality, he observed, makes possible carelessly researched reports.

The staff recommends that the Commission address the issue of

confidentiality of investigative reports. Which authorities within the criminal justice system have access to the investigative reports--especially the psi report--should be clarified. The right of the offender to know and to challenge data and judgments included within the psi and later reports should be addressed. These documents influence the actions of decision-making bodies regarding the future of an offender. He would therefore seem to have a right as a matter of policy to data and judgments included therein.

CHAPTER VIII

PROBATION AND PAROLE SUPERVISION: THE CASE FOR PROBATION

History of Supervised Parole

Parole is the release of an offender from a correctional institution after he has served a portion of his prison sentence. Parole allows the offender to complete his sentence in the community though still in the custody of the state and accountable to conditions imposed at his release from prison. Violation of these conditions can result in reincarceration.

Parole, with its simultaneous supervisory provision, claims two primary functions: the protection of society by monitoring the re-entry of the criminal offender as he assumes a gradually greater portion of freedom than he was permitted to handle in prison, and assistance to the parolee by providing aid in his adjustment to the society and the social interactions from which he has been removed for some period of time.

Supervision has not been an element of all processes from which modern parole practice has evolved. Releasing prisoners without supervision was a characteristic of both the Australian and, initially, the English ticket-of-leave systems. In Australia transported offenders from England were allowed by the provincial governors to support themselves by work in another specified district rather than to continue to work for the government. In England prisoners were also granted tickets-of-leave on the condition that they observe certain rules of good behavior. In neither case were the released offenders monitored in order to ensure compliance with the prescribed standards.[1]

In England in 1862, after the second serious crime wave in hardly more than five years, a Royal Commission appointed by Queen Victoria instituted supervision for prisoners released on ticket-of-leave. The

police, then later members of prisoners' aide societies, were used to supervise such offenders.[2] In contrast, the Irish ticket-of-leave system, operative in 1954, provided for supervision by a civilian employee who cooperated with the police but who also helped the ticket-of-leave men to find employment. Additionally, the supervisor required that the releasees report at stated intervals; he visited them in their homes every two weeks; he verified their employment.[3]

In the United States, the first legislation authorizing parole was enacted in Massachusetts in 1837.[4] During the middle of the century, most supportive services to parolees were provided by volunteers from prison societies. Though there also were parole officers, these men were not supervisors in the modern sense; rather they helped parolees obtain material support (employment, tools, clothes, transportation).[5] In 1876 the Elmira Reformatory opened in New York State. Its program required six months of supervision for released prisoners. The supervisers, volunteers called "guardians," required that the parolee report in writing at the first of each month. Parole could be revoked at any time during the six months for a violation of conditions attached to release.[6]

In Louisiana supervised parole began in the early 1900's. Appointed parole officers, assisted by volunteer "parole advisors," monitored the activities of parolees, assisting them to remain gainfully employed, to fill out parole reports, and to remain within the boundaries set by the conditions of their parole.[7]

The supervision system was modified a number of times: in 1926 the policy of appointing one parole officer from each congressional district was replaced by a law providing only one parole officer for the state; in 1940 the state was again subdivided so that parole offices were established

in five cities around the state; in 1952 parole and probation services were combined, and volunteer parole advisors were dropped. By 1960 all probation-parole service personnel were classified under civil service.[8]

History of Probation

> The National Commission on Law Observance and Enforcement defines probation as "a process of treatment which is prescribed by the court for persons convicted of offenses against the law when the protection of society does not require imprisonment of the offender and during which time the individual on probation lives in the community regulating his own life under conditions imposed by the court (or other constituted authority) and is subject to supervision by a probation officer." /9/

Though the precedents for probation are found in the features of English common law that allow suspension of punishment on the condition of good behavior, probation, as it now exists, is "a distinctly American correctional innovation."[10] It evolved as "an integral part of the more general movement away from the traditional punitive and repressive approach, and towards the substitution of humanitarian and utilitarian consideration from considerations of general deterrance and retribution.[11]

Probation's immediate model is the one created on the often-recounted occasion in 1841, when John Augustus, a Boston shoemaker involved in the temperence movement, attended a police court in Boston and posted bail for a man charged with public drunkenness. When the man and Mr. Augustus appeared in court three weeks later, the judge agreed that the defendant evidenced signs of genuine reform and, rather than ordering the usual penalty of imprisonment, ordered payment of a one-cent fine. Encouraged by this experience, and convinced that reformation was, in many cases, more likely to occur outside an institution than in one, Augustus continued to attend the police court hearings, posting bail for men charged with drunkenness, men whom he believed would benefit from his assistance.[12]

In time Augustus extended his services to women and children and then to plaintiffs in the municipal court. For each individual so bailed, he offered supervision and guidance during the time preceding pronouncement of judgment. By the time of his death in 1859, Augustus had "bailed on probation" almost 2,000 offenders.[13] By this time the probation process that Augustus created included most of the elements that still characterize it today: "investigation and screening, interviewing, supervision of those released, and services such as employment, relief, and education."[14]

One result of Augustus' efforts was the first probation law. In 1878 Massachusetts enacted a law formally establishing probation and enabling the city of Boston to appoint a paid probation officer. By 1891 probation was mandatory in the state's police and municipal courts; in 1898 it was extended to the superior courts. By the early 1900's five states had enacted probation legislation; in 1914 federal probation was established; by 1956 some scheme of adult probation was authorized throughout the United States.[15]

Probation began in Louisiana in 1914. That year the legislature enacted a measure enabling but not binding a court to suspend the imposition of sentence, if the jury so recommended. Not until 1942 did the legislature pass an act providing for the supervision of an adult placed on probation. Gradually rules were modified and laws enacted which made probation to misdemeanants an option, instituted the presentence investigation, made a presentence or a postsentence report mandatory in a felony case, and established mandatory probation conditions. One of the most recent amendments of probation law was the 1974 law which allows the court to impose, in felony cases, a sentence without hard labor, not to

exceed one year.[16]

Results of the Prison Experience

Philosophically, probation reflects the transition from the purely punitive treatment of offenders toward the attitude that criminal offenders are not beyond redemption and can sometimes be more successfully "rehabilitated" outside of prison than in. Practically, probation offers a way of keeping the criminal offender out of the prison environment and thus sparing him--and society--all that that experience entails or provokes. Indeed, quite a lot has been written about the impact of the prison experience on an individual and consequently upon society.

The President's Commission on Law Enforcement and Administration of Criminal Justice describes life in many prisons as "at best barren and futile, at worse unspeakably brutal and degrading"[17] and observes that prison life offers "the poorest feasible preparation"[18] for successful adjustment to society's demands. The National Council on Crime and Delinquency (NCCD) suggests an answer with the following question: "If you were required to live in a cell with few facilities, little privacy, limited contact with other persons significant to you, limited access to employment, and a high degree of authoritarian regimentation, how might you fare upon re-entry into the broader, more competitive society, there to be greeted by the stigma of having been 'away'?"[19]

The incarcerated individual lives in a highly regimented environment in which many of even the most routine decisions are made for him. He has been isolated as well from intimate interaction with opposite sex individuals and from normal family interactions; he has learned to cope with an almost complete lack of privacy. These and whatever individual experiences he has had tend to isolate him from most other people: he feels different, set

apart from most people; most people view the ex-inmate as different. The impact of the prison experience is amplified by the fact that not only the ex-inmate has changed; everything else has changed too. Whatever the situation he left, the relationships he participated in, the job he held--none is the same. According to a report based on personal interviews with over 300 parolees, the renewed interaction wth society creates for him "a period of confusion, filled with anxiety, missed cues, embarrassment, over-intense impulses, and excitement followed by depression."[20]

So it is that the adaptive task confronting the returning inmate is monumental: behavior patterns appropriate to the prison setting are incffective outside; his new role of parolee touches all aspects of his social interactions, leaving no social role unmodified.[21] In addition, he often receives little, if any, social support and frequently has few resources, and he moves among free men, many of whom refuse to interact with him or react with suspicion. Finally, permeating all interactions is the awareness of possible return to prison for actions that would be without serious consequence for a free man.[22]

One possible consequence of this set of circumstances is the escalation of frustration to the point of crisis; in turn, one very normal response to a crisis situation is to resort first to behavior that seems to have worked in the past--in this instance, perhaps to criminal behavior.[23]

It seems further that the longer the period of confinement, the more difficult the adjustment.[24] Logically, this would seem so: if isolating an individual from people and events makes difficult renewed interaction with them and if a period of strict regimentation and authoritarian direction dulls one's capacity to decide and to act for himself, then certainly the longer the individual is so contained, the greater his estrangement,

the greater the maladjustment upon re-entry. Logical, however, is not necessarily true. Data from a California research project add credence to the logical conjecture. Jaman compared the parole performances of two groups of inmates released in 1965. All subjects were first prison releases, imprisoned for first- or second-degree robbery. The basis of comparison was whether they had served more or less than the median time served in prison for that group of inmates released in 1965. Further, she matched the contrast groups according to age, ethnic group, base-expectancy level, parole region of release and type of supervision received. She compared their performance at six-, twelve-, and twenty-four-month periods.

> For all offense categories and in all follow-up periods, the percent of favorable outcome among men who served less than the median time was greater than among those who served more than the median months....In fact in the matched samples of men who had been committed for Robbery 1st, those who served for less than the median months had a much higher percent of favorable outcome on all three follow-up periods./25/

In summary then, incarceration--whatever else it accomplishes--isolates the offender from the very society to which he will almost certainly return and, in doing so, forces upon him behavior that is inimical to his successful interaction in that free society. In addition, longer confinements occasion more difficult adjustments,

Very often, the handicaps created by incarceration are compounded by the likelihood that the offender enters prison with disadvantages that he will later take back with him into society. Then he has two sets of handicaps rather than one. More specifically--the individual who enters prison is usually young (18-30) and frequently is severely educationally handicapped. (The latter is especially significant when one considers

that education is a fairly accurate indicator of probable success in modern society).[26]

According to data provided in the report of the President's Commission (1967), 45.3 percent of the general population had at least completed high school; 82.3 percent of the combined state and federal felon population had had three years of high school or less. Only 17.7 percent had had 12 years or more of schooling. Yet 14.4 percent had attended school for four years or less (in comparison to six percent or the general population in that category), and 40.3 percent had completed eight years of school or less (in contrast to 28 percent of the general population).[27]

More recent data from Louisiana describe a similar situation. According to the United States Department of Justice's Census of Prisoners, 97 percent of Louisiana's prison population in 1973 was male;[28] 60 percent, between 18 and 29 years old.[29] Eighty-one percent had completed three years of high school or less.[30] Of the same tenor is the report that in 1974-1975 fifty-one percent of the inmates received for incarceration at Angola tested at the fourth-grade level or less; and 76 percent tested at less than sixth-grade level.[31]

Positive Features of Probation

Cost: If it is true, as many authorities insist that it is, that incarceration inflicts heavy costs in human potential, certainly it's more observably true that it costs a lot financially. In Louisiana in FY 1976-1977 it cost the Department of Corrections an estimated 72 cents per day to keep an inmate on probation or parole supervision. The average weighted cost of maintaining an inmate in a state prison was $16.81 per day; particular cost figures ranged from $8.83 per day at

Louisiana Correctional and Industrial School (LCIS) at DeQuincy to $19.96 per day at Louisiana State Penitentiary at Angola. Budget requests for the Department of Corrections for FY 1977-1978 were based on the projection that probation-parole supervision would cost the department $1.06 per day and incarceration, on the average of $19.42 per day, with the range again established by LCIS and LSP at $10.01 and $21.73 per day.[32] These figures do not reflect other indirect costs--i.e., loss of tax revenues via removal of a wage-earner from society, possible welfare costs incurred when an inmate's family loses a major wage earner. Though such projections are unavailable for this state, calculations offered for other locales reflect the large sums involved. A publication of North Carolina's Department of Corrections states that probationers earned $155,430,504.72 in taxable income between January 1 and August 22, 1974. Not only are the dollars earned taxable; they represent a savings to the state as well in welfare costs.[33] In Ohio, where the family of one out of every twelve inmates was on welfare in 1976, incarceration costs state government another $2,500 a year for every twelfth family.[34] The Correctional Economics Center estimates that the loss to United States economy as the result of the adult inmate manpower confined in prisons is between $1-1.5 billion. "The cost to society of incarceration far exceeds the $1.4 billion dollars in direct expenditures reported by state governments, 312 large counties and 384 large city governments."[35]

Probation is Effective: There are various studies that indicate that probation is a workable alternative. The President's Commission (1967) notes "one summary analysis of 15 different studies of probation outcomes /which/ indicates that from 60 to 90 percent of the probationers studied completed terms without revocation.../and a study in California/

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of 11,638 adult probationers who were granted probation during 1956 to 1958 /and/ were followed up after 7 years...almost 72 percent completed their probation terms without revocation."[36] In its 1967 report the Task Force of the President's Commission cites the same data, then refers to a study which indicates similar results after surveying probation effectiveness in Massachusetts, New York and various foreign countries.[37]

Louisiana data are sketchy. Of 1,377 probationers released from probation during calendar year 1976, 299 were removed as the result of an unfavorable outcome. This category includes those whose termination was described simply as "unsatisfactory," those revoked to a parish prison or city jail (and thus no longer under Department of Corrections jurisdiction), and those terminated because of technical or new felony revocation. These terminations represent a little more than 21.5 percent of all releases from probation for that year. By extension, they indicate that about 77 percent were favorably terminated. (The other one and one-half percent were terminated by death.) /The foregoing is based on material prepared by Research and Statistics, Department of Corrections, July 11, 1977./

Additionally, indicators from other jurisdictions suggest that greater use of probation does not increase recidivism rates--i.e., the rate at which individuals on probation violate conditions of their probation and thus are incarcerated.* The judgment included in a policy statement issued by the NCCD (1973) is that probation "can be used in as many

*What exactly violation rates indicate has no single answer. This is an issue to be discussed fully in a later section. Above, our concern is with that intangible most often measured according to recidivism rate--i.e., relative success and, consequently, safety of a program.

as 90 percent of all convictions without resulting in a poorer recidivism rate compared with imprisonment."[38] More recently the ACA has estimated that only 25 percent of the individuals in prison need to be incarcerated for the safety of society. The NCCD cites a California research project which suggests that probation can be more widely used without increasing violation rates. Researchers in California studied probation usage and violation data for 88 United States district courts and for courts in eight California counties. According to the NCCD source, "an examination of changes in probation usage in the eight counties showed no pattern of relationship between the granting of probation and removal from probation for violation. In the federal district courts, probation usage ranged from 37 percent to 66 percent, with no significant variation in violation rates."[39] A project sponsored by the NCCD in Michigan (1957-1960) succeeded in reducing the percentage of felony convictions from 36.6 percent to 19.3 percent without increasing the recidivism rate.[40] According to a statement by the NCCD, confinement is necessary only for those types of offenders identified by the Model Sentencing Act as dangerous: "(1) the offender who has committed a serious crime against a person and shows a behavior pattern of persistent assaultiveness based on serious mental disturbances and (2) the offender deeply involved in organized crime."[41] In the same source, the authors cite a resolution adopted in 1972 by the Congress of Corrections, referring to imprisonment as a "sentencing alternative" to be reserved for "dangerous and persistent offenders."[42] The American Law Institute's Model Penal Code also recommends sparing use of incarceration, though the identification of those who should be incarcerated is wider. Article 7 of the Code directs that the court shall not impose a sentence of imprisonment unless "it is of the opinion that

his imprisonment is necessary for protection of the public because: (a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or (b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or (c) a lesser sentence will depreciate the seriousness of the defendant's crime."[43]

Summary-Analysis: Clearly, probation is a significantly cheaper method of correction than incarceration. In Louisiana a comparison of only direct costs of each indicates that probation is 18 to 23 times cheaper than incarceration. Also there is tangible evidence that probation "works"--i.e., that individuals can be placed on probation and allowed to remain in the community under supervision without returning to criminal behavior. If, in addition, some of the many incarcerated offenders who reportedly could safely be placed on probation were, the savings would be vast. NCCD speculates that 90 percent of those incarcerated could be placed on probation. Consider a much smaller figure--20 percent, for example. On May 4, 1977, there was a total of 5,036 inmates incarcerated within the various state institutions (1,017 inmates under custody of the state were still in parish prisons).[44] If, as some researchers suggest, even 20% of the number incarcerated were instead on probation, the state would save $16,202.63 per day.

Based on these considerations and the awareness that prison often creates problems as well as solves them, serious consideration must be given to the widest use of probation possible.

Yet currently in Louisiana a verdict of guilty when charged with a number of crimes carried with it an automatic denial of eligibility for probation and, consequently, an inevitable sentence to incarceration.

In the words of the President's Commission (1967), "The goal of reintegration is likely to be furthered much more readily by working with offenders in the community than by incarceration."[45] That is, of course, one of the assumptions underlying probation. It is also the conviction behind recommendations of the ACA[46] and the National Advisory Commission[47] that probation be left to the discretionary authority of the judge "when it is in the best interest of the offender and not in conflict with the interest of society,"[48] not automatically denied for the commission of particular crimes or after any but a first offense. The President's Commission also advocates this approach: "Probation legislation cannot take into account all possible extenuating circumstances surrounding the commission of an offense or the circumstances of particular offenders."[49]

At the same time, just as incarceration does not of itself rehabilitate an offender, neither does probation, unless it is employed in concert with programs that address the needs of the convicted offender. The practice of leaving probation to the discretion of the court must not be implemented alone. Simultaneously, it must be required that a new section be added to the psi report; this section will cite the resources available in the community that would assist the probationer to meet his own needs and yet remain within society's legislated boundaries. (See recommendation regarding content of psi, page VII-5.)

In view of the situation and attitudes described above, the staff recommends that the Commission consider the possibility that probation be made more widely available rather than less so. Automatically excluding certain groups prevents a judge from acting on insight gained from the psi report he has ordered. To repeat, however, it is essential that

the psi report be expanded to include a list of facilities and services available in the community to meet the offender's specific needs.

Having considered the effects that frequently follow the experience of imprisonment and the consequent advantages that probation has over incarceration, the staff wishes to discuss briefly a subject mentioned earlier in the chapter--shock probation.

Article 895 of the Code of Criminal Procedure enables a judge to include as an additional condition of probation a requirement that the defendant serve "a term of imprisonment without hard labor for a period not to exceed one year." The National Advisory Commission instructs that the practice "should be discontinued," explaining that "this type of sentence defeats the purpose of probation, which is the earliest possible reintegration of the offender into the community.[50] Though this is, at its closest, a matter peripheral to this Commission's area, it is a controversial subject, one that should be at least within the Commission's range of awareness.

CHAPTER IX

PROBATION-PAROLE SUPERVISION AS LAW ENFORCEMENT

Introduction: Why Supervision and Toward What End?

Probation spares the criminal offender the prison experience.* Adding supervision insures that he will be monitored and assisted in his efforts to remain within boundaries that he has previously violated. Parole, with its corollary of supervision, provides a gradual reintegrative mechanism to assist the ex-inmate, who has been isolated from the community; supervision allows that reintegrative process also to be monitored. Both processes--probation and parole--are based on the recognition that the isolation of individuals from society does not facilitate their integration into the society to which they almost certainly will return.

And, though many never stop to consider the fact, that offenders will return is a virtual certainty in nearly all instances and a point worth documenting. "Virtually all prisoners are ultimately released, most of them within a few years,"[1] writes a National Council on Crime and Delinquency (NCCD) source, and the observation is easily documented. In Colorado, for example, "approximately 98 percent of all incarcerated offenders eventually return to the community with only 2 percent expiring while incarcerated."[2] In Louisiana in 1975, 4.5 percent of the prison population had life sentences. Unless their sentences are commuted (and some will be), these individuals will remain incarcerated for that long--life. On the other hand, 59 percent of the population had sentences of

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*This generalization is inaccurate when consideration is broadened to include "shock" probation, a procedure by which an offender who is placed on probation is required, as a condition of his probation, to serve a brief period of incarceration. That matter was discussed in Chapter VIII.

five years or less.[3] Even discounting the possibility of parole (which is a possibility for those not denied it by law when one-third of their sentence has been served--e.g., 20 months on a five-year sentence), good-time credits in 1974 (25 days off sentence for each 30 days of "good" time served) cut time served by nearly half. (The 1977 good-time law--which reduces the number of days off sentence to 15--will cut sentences by about a third.)

The point at this juncture is not that sentences are too long or too short, effective or ineffective. Rather the focus is on the offender who noramlly will return and who, at least according to tradition, can benefit from supervised re-entry.

All of which leads us to focus again on supervised reintegration, to consider again probation and parole, and now to examine the particular duties and responsibilities assigned to those who supervise probationers and parolees--those whose duty it is to help protect society at the same time they are to assist the offender with his adjustment to the new role of probationer or parolee and with his effort to remain within society's boundaries.

As indicated in an earlier portion of this report, the duties normally included under the heading of probation-parole supervision are many. And this appears to be a phenomenon solidly based in tradition. The first probation law, for example, passed in Massachusetts in 1878, created a position for a paid probation officer and prescribed duties, many of which would seem familiar to a modern officer in his supervision of both probationers and parolees: attend court, investigate the cases of persons charged with or convicted of crimes, make recommendations regarding the use of probation (parole) in a particular case, submit

periodic reports to an administrative head, visit the supervisees, render "'such assistance and encouragement...as will tend to prevent their again offending,'" and, if need be, arrest without warrant but with the approval of the chief of police. [4]

At this point it is useful to create an artificial subdivision among the duties included in the supervisory function fulfilled by probation-parole agents. This and the following chapters will speak of law enforcement duties, that primarily help protect society, and other duties that exist primarily to aid the ex-offender. In somewhat more concrete terms the distinction is between the parole agent as policeman, who prevents or punishes an offender's violation of release conditions or his criminal behavior, and the parole agent as social worker, one who must assist the offender to adjust to society's demands and restrictions by helping him get the counseling, training or other assistance he needs. Thouqh so sharp a subdivision is artificial, it also provides a means by which an immensely complex process can be described, comprehended and analyzed. Once this has been accomplished, the whole system can then be addressed.

The Probation-Parole Agent as Policeman

One of the more controversial elements of the law enforcement aspect of the supervisory role involves the probation-parole officer's arrest function and his carrying firearms. While there are standards re this issue, there are apparently no standard rules followed nationwide. The National Advisory Commission reported a 1963 survey of parole authorities in the United States. The survey revealed that "only 27 percent believed that parole officers should be asked to arrest parole violators /and that/ only 13 percent believed that parole officers should be allowed to carry weapons.[5]

A questionnaire sent in 1975 to adult parole agencies in the United States revealed that in 24 states agents are not authorized to carry firearms. In 21 of those states parole agents make arrests "occasionally," "infrequently," or "never."[6] The chart indicates that in Louisiana, where probation-parole agents are permitted to carry guns, agents are encouraged to do so "only when arrest is anticipated or when working in high crime areas" and notes agents personally arrest violators "infrequently."[7]

Those who support the policy of allowing agents to carry firearms argue that the neighborhoods agents frequent and the arrest duties they carry out sometimes require guns.[8] And in spite of claims to the contrary, many insist that the officer's arrest function does not interfere with other elements of the relationship. A veteran parole officer from New York insists that the arrest function per se does not interfere with the therapeutic relationship because the parolee knows that the officer initiated the warrant, whoever ultimately makes the arrest. Also, he continues, because New York parole officers are also social caseworkers, they are able to minimize tensions and hostility that often accompany arrests made by police officers.[9]

This is the opinion shared by all in the Louisiana Division of Probation and Parole who spoke to the issue. La.R.S. 15:574.8 designates parole agents as peace officers, thus legislating their right to be armed. The statute also legislates their right to arrest without warrant. Article 899 of the Code of Criminal Procedure provides the same right to the probation officer. A number of agents on different occasions cited the advantage of the agent himself taking a probationer or parolee in or, at least, of his accompanying an arresting officer. The officers

spoke of violence diverted and also spoke jealously of the right to carry guns, though none recounted an episode in which he used a gun. In fact, what most frequently seems to happen, according to local agents as well as other sources,[10] is that the probationer or parolee knows what he has done, knows why his officer is there, knows the officer has the full power of the law behind him, and submits quietly.

When an officer instead meets resistance, how he is allowed to proceed is rather carefully described in the Operating Manual. "Force is permissible only when all non-forceful alternatives have failed" (p. 97), the Operating Manual cautions. Apparently because he is deemed a peace officer, he is allowed to break and enter if he "reasonably" believes the suspected violator is present. Again the Operating Manual cautions, "There may be cases where the law permits officers to break and enter, but sound judgment and common sense may dictate the use of less stringent means" (p. 98).

The firearms policy is also carefully delineated in the Operating Manual. An officer, whether on or off duty, may carry a .38 or .357 caliber Colt or Smith and Wesson revolver with a two- to four-inch barrel, or another weapon approved by the district supervisor. Whenever an officer either draws or discharges his weapon anywhere but on a firing range, he must notify his district supervisor, who shall make a personal investigation and then submit to the Probation and Parole Chief a detailed report of the results of the investigation as well as his own observations and conclusions about the incident. The regulations also state that an officer shall not fire warning shots for any reason, shall not fire at a probation or parole violator "when lesser force can be used" (p. 100), and shall not fire at a prisoner he is transporting who tries to escape "unless it

is to protect himself or other persons from great bodily harm" (p. 100).

Most standards take exception to a supervising officer taking overt police action. The President's Commission on Law Enforcement and Administration of Justice states that probation-parole officers who supervise should not act as police officer.[11] The National Advisory Commission insists that "guns are antithetical to the character of a parole officer's job,"[12] and recommends in the fourth subsection of Standard 12.7 that "parole officers should develop close liaison with police agencies, so that any formal arrests necessary can be made by police. Parole officers, therefore, would not need to be armed." In the comment that follows its recommendation, the Commission adds this judgment: "To the extent that a parole agency can reduce emphasis on surveillance and control and stress its concern for assisting the parolee, it probably will be more successful in crime reduction."[13] The ACA accepts the whole of the National Advisory Commission's Standard 12.7 ("Measures of Control"). The Louisiana Commission on Law Enforcement repeats the first three items of National Advisory Commission Standard 12.7 almost verbatim (LCLE Objective 9.7 - "Measures of Control"); it simply omits altogether the fourth item, which questions the validity of the agent's police function.

More in keeping with the attitude suggested by the Louisiana Commission on Law Enforcement's omission are allowances made by the American Law Institute's older policies. In Articles 301.3 and 305.16 of the Model Penal Code, probation officers and parole officers respectively are given the power to arrest without a warrant.

Conclusions are difficult to suggest at this point. Whatever the particular question, if its subject is firearms, its answer will inevitably be volatile. While Louisiana is one of only seven parole jurisdictions

which were reported in the 1975 study to encourage agents to carry firearms, under certain circumstances, Louisiana is also one of 16 which provide their agents firearms training.

The use of weapons also appears to be carefully monitored by the Division. Consequently, whatever the drawbacks of allowing agents to carry firearms, the responsibleness with which the practice is implemented in not an issue.

The primary concern should be the effect that this police function has on the relationship between the officer and his supervisee and on the effectiveness with which the officer is able to fulfill his multiple duties. Does the officer's police function preclude the trust necessary to an effective relationship? Does the arrest function siphon energy that is more effectively expended on other elements in the supervisory relationship? Does efficiency require that policemen carry out the arrest function, using as the situation dictates the skills they have been taught, and thus free a portion of the Division's training effort for other skills unique to the probation-parole officer/offender relationship.

The dichotomous attitude suggested in the fact that the Louisiana Commission on Law Enforcement follows so closely National Advisory Commission standards in most instances but omits altogether their reference to agents, arrests and guns permeates the literature and helps to identify the subject as one deserving deliberate attention. In this instance, the staff recommends only that current policy be assessed in light of its possible impact on the supervisory relationship and with regard to current national standards.

Parole Conditions

Conditions Imposed by Louisiana Board of Parole: Obviously, the law enforcement aspect of probation-parole supervision need not be equivalent to police action. One author describes the discipline that the agent enforces in his custodial role as "discriminating oversight calculated to achieve the safety of the community without unduly restricting or harassing the offender."[14]

The primary instrument by which the probation-parole officer's "discriminating oversight" is defined and through which his authority is exerted is the imposition of conditions of probation and parole. These conditions, which either the court or the Board of Parole impose on the criminal offender, define the behavior required of the offender if he is to remain outside of prison. Simultaneously, they define the standard of behavior that the probation-parole officer will require of his supervisee.

Because decisions that precede sentencing are not appropriately a part of this report, this section will focus hereafter only on conditions that are imposed as a result of a decision to grant parole.

In Louisiana, R.S. 15:574.4 grants the Board of Parole authority to impose conditions of parole. Subsection H states that the Board "shall require as a condition of /an inmate's/ parole that he refrain from engaging in criminal conduct," then enumerates other conditions that the Board may impose, either at the grant hearing or at a later point in time:

> (1) Meet his specified family responsibilities;
>
> (2) Devote himself to an approved employment or occupation;
>
> (3) Remain within the limits fixed in his Certificate of Parole, unless granted written permission to leave such limits by his parole officer;

(4) Report, as directed, in person and within forty-eight hours of his release, to his parole officer;

(5) Report in person to his parole officer at such regular intervals as may be required;

(6) Reside at the place fixed in his Certificate of Parole and obtain permission from his parole officer prior to any change in his address or employment;

(7) Neither have in his possession nor under his control any firearm or other dangerous weapon.

(8) Submit himself to available medical or psychiatric examination or treatment or both when ordered to do so by his parole officer;

(9) Refrain from associating with persons known to him to be engaged in criminal activities or, without written permission of his parole officer, with persons known to him to have been convicted of a felony;

(10) Such other specific conditions as are appropriate;

(11) Reside at a community rehabilitation center established by the Department of Corrections; provided that no person paroled on the condition that he reside at a community rehabilitation center be authorized or allowed to work on a project or job involved in a labor dispute.

Rather than select only some of the legislatively allowed conditions, the Board of Parole has compiled a form that designates the statute's one mandatory condition and its first nine allowed prescriptions as particular conditions of parole, then on the authority of the statute's tenth condition, which allows the Board to add "such other specific conditions as are appropriate," adds five more items plus a numbered blank for the addition of "special conditions" that address a parolee's particular circumstances. Of the five added items, two do not actually state conditions but rather fulfill a responsibility assigned the Board by Subsection I of the authorizing statute. That section requires that a parolee be informed at some point of two legislated results that attend revocation of parole for a violation

of one or more conditions. Thus, Condition 13 states the parolee's awareness that parole revocation results in the loss of all good-time earned before parole, up to but not to exceed six months; Condition 14 informs the parolee that the Board has the authority, in the event of his arrest, to place a detainer on him and thus prevent him from making bail.

In summary, the form which an offender granted parole in Louisiana must sign includes 12 specifically or generally designated conditions of parole, two conditions that actually are statements regarding the parolee's awareness of some consequences of violation or revocation, and one condition which in fact exists only if the Board adds it. This they have the authority to do at any time so long as the offender remains on parole.

Conditions of Parole--Survey and Description: There is marked variation in the number and kind of conditions imposed by different parole jurisdictions. In 1969 nine particular conditions were imposed by 75 percent or more of 52 parole jurisdictions reporting.[15] By 1975 only five particular conditions were imposed by 75 percent or more of 54 jurisdictions.[16] These conditions, all among the most frequently imposed conditions in 1969, addressed change of employment or living quarters, compliance with the law, weapons, filing written reports, and out-of-state travel. All five of these items appear in conditions currently imposed in Louisiana, as do two other conditions that were imposed by 75 percent of the parole jurisdictions in 1969. One addresses undesirable associations, and the other restricts liquor usage.

To survey the situation from a different perspective, consider that in 1972 the average number of conditions imposed by 54 parole

jurisdictions surveyed was 12.4. By 1975 the average was down to 11.1.[17] Discounting the two informational conditions and the blank condition that Louisiana adds, Louisiana's total becomes 12, barely above average. Averages aside, though, the variations from jurisdiction to jurisdiction are marked, and numbers are not the whole problem.

Parole conditions in general enjoin a parolee from participating in two kinds of behavior--criminal behavior, and other behavior, which is lawful but forbidden to him because of his status as parolee, which is not required of one not on parole. These latter conditions are called technical conditions, and depending on the way they are stated, impose varying degrees of restraint. Some state absolute prohibitions. Their advantage is their lack of ambiguity; they are, however, often difficult to enforce. Other conditions prohibit only excesses of a particular behavior. Though such restrictions allow the parolee greater freedom to control his own life, their imposition introduces ambiguity and sometimes frustrations. How much is too much? How does one person know where another will establish that limit? A third class of technical conditions does not prohibit but rather regulates by instructing what a parolee shall do (e.g., mail a written report to his parole officer at the first of each month) or what he must have permission to do (e.g., change residences or leave the state).[18] Whether such conditions facilitate the parolee's re-entry is an issue; normally the clarity of their meaning is not.

Like the supervision process, of which they are a part, the conditions of parole are required to serve a dual function: they are to protect society from potentially criminal behavior, and they are to assist the offender in readjusting to life in the community. Also, as is the case with supervision generally, the dual purposes behind imposing

conditions of parole can be complementary; potentially, their implementation leads to contradictory results: enforcement of strict rules, for example, perhaps provides society greater safety for a while, but it does little to assist the parolee in learning to make his own decisions and monitor his own behavior, as he will ultimately be expected to do once released from supervision.

The imposition of conditions of parole shares with supervision a second similarity: it is a practice soundly based in history. In fact, the conditions imposed on Irish prisoners granted tickets-of-leave in the mid-1850's resemble current conditions not only in practice but in content. The released prisoner was to abstain from violating any law and from associating with "notoriously bad characters," to work to support himself, to report upon arrival at his destination and periodically thereafter, and to notify the proper authority of any change in his address. Commission of a new crime or violation of any of the above conditions would result in revocation of leave and return to prison to finish the term that was interrupted by his release.[19]

Particular Conditions--A Critique: That the parole system seeks in the 1970's to monitor and to assist the parolee in his re-entry into the community by rules formulated in the 1850's is worth examination. One of the most frequently voiced criticisms about modern parole conditions is that articulated by William Parker, author of Parole (Origins, Development, Current Practices and Statutes): "Most aspects of daily living are covered in parole conditions. However, most free citizens would find it difficult to avoid violations of parole regulations if all were rigorously enforced."[20] Parker's observation highlights an issue that many authors address:

parole conditions are frequently needlessly prohibitive and often require a higher standard of behavior from the parolee than from the rest of society.[21]

Consider, by way of illustration, several widely imposed conditions that have been questioned by very different agencies.

The ABA notes and then questions the constitutionality of the prohibition[22] that exists in 32 of 52 United States parole jurisdictions forbidding association with "undesirables."[23] New York parolees have addressed the similarly stated condition current in New York in 1975 which forbade, as does the condition in Louisiana, association with people who have a criminal record. The parolees objected that the condition is unnecessarily restrictive.[24] The American Friends Committee takes exception with the same prohibition, noting that "for a person who lives among other working and lower-class persons, which is the case of most parolees, not associating with ex-convicts or persons with 'bad reputations' is clearly unrealistic."[25]

Policy-makers in Louisiana have avoided the ambiguity introduced by a term like "undesirable" and have created greater clarity still by forbidding association with persons known "to be engaged in criminal activities" or known "to have been convicted of a felony." Nonetheless, the hardship noted by the American Friends Committee stands. Such a ruling also precludes the cntinuation of positively supportive relationships which can be formed in prison as they are in all isolated societies.

Others criticize conditions that are not in themselves objectional but become objectionable because they are unrelated to a parolee's past conduct or present needs and are therefore inappropriately restrictive. One such prohibition, enforced in Louisiana as well as in 29 other United

States parole jurisdictions,[26] involves possession of firearms. Routinely forbidding possession of a gun to a parolee whose offense was unrelated to violence and whose background demonstrates no tendency toward aggressive behavior is to create a condition that is irrelevant to the reason for his incarceration and subsequent disposition. Routinely to forbid a parolee to drink (as nine jurisdictions do) or even to get drunk (as Louisiana and 17 other jurisdictions do)[27]--when alcohol is not for him a problem or violence a part of his behavior when he is drinking--is to impose on that parolee an irrelevant restriction, which demands of him a standard of behavior not legally required of others in the community.

In 1975, 26 of 52 United States parole jurisdictions imposed prohibitions against leaving the area of the state to which the parolee has been released; 17 out of 52 required that a parolee allow his officer to visit him at home or on the job without prior notice.[28] Both of these requirements are among other conditions singled out by New York parolees as conditions which "unnecessarily inhibited their reintegration into society"[29] and by the ABA as "constitutionally suspect."[30] The latter of these conditions does not appear in writing in Louisiana either in La.R.S. 15:574.4 or on the list of conditions which a parolee signs. Nevertheless, the privilege granted an officer by a condition such as this is claimed regularly in Louisiana though the condition is not in writing. One responsibility that a parole officer in the state has is at least to attempt to make personal contact each month with the parolees under his supervision; these contacts occur both at home and on the job, usually without prior notification. Parolees surveyed nationally describe these visits as embarrassing and a source of tension;[31] others perceive

them as simply policing.[32] Nevertheless, parolees are mandated to permit the visits.

The objectionable travel restriction is included in Louisiana among the signed conditions of parole by the words "I will remain within the limits fixed by the Certificate of Parole." That is a reference to the signed agreement on the face of the certificate that upon release from the institution of incarceration "said prisoner /will/ remain within the limits of (District Office) (State)" until discharged from parole.

A Problem--Selective Oversight, Revocation Rates and What They Tell: Equally a problem and probably more damaging than the imposition of many universalized conditions on a parolee is the dilemma described by William Parker's phrase, quoted earlier, "if all were vigorously enforced." A common judgment is that the parole officer who fulfilled the condition the phrase states would have to revoke the majority of his caseload. Consequently, in order not to do so and in order to increase the parolee's chance to adjust in his interactions with the community, the parole officer "enforces a much more lenient set of informal rules. The problem with this is that the formal rules still exist and are invoked when some outside attention is directed toward a particular parolee."[33] The effects of such a practice are predictable and inevitable. The parolee is never sure where his boundaries are because technical conditions which his officer ignores are still binding conditions and would stand should the officer decide to invoke them; consequently, even if they are not in fact applied to restrict his behavior, their very existence remains as a source of uncertainty and tension. Such selective enforcement also "fosters a sense of distrust" in that selective disregard of conditions fosters an atmosphere of games-playing.[34]

The other effect of selective enforcement impacts more broadly: "To establish a rule then allow it to be violated with impunity makes the regulation meaningless and invites contempt of all regulations."[35] Discovering no negative sanctions for noncompliance, the parolee will perhaps feel safe to expand his negative behavior to other forbidden areas.[36] Even if the parolee does not try to push his boundaries further, ignored noncompliance has the effect of diluting the meaning and importance of law generally; thus it is, in effect, "an attack on the validity of legal processes and statuses."[37]

Violation rates and, consequently, revocation rates can be reduced by selective enforcement. The motivations that prompt an agent to employ this method of monitoring his parolees vary. Suggested above are an agent's concern with increasing a parolee's chances of successful reentry into a community, and the at least hypothetical concern that an agent would hardly have parolees to supervise if he challenged every technical violation he observed. Many authorities suggest that rates associated with revocation for technical violations tell more about administrative policy and agents' coping behavior than about parole behavior.

The essential arbitrariness of the decision to revoke parole for technical violations provokes comment from many quarters. One researcher emphatically dismisses revocation rates as a measure of the efficacy of parole supervision on the basis that "parole staffs can arbitrarily raise or lower the number of violations reported."[38] Two California researchers note, "Recidivism rates and public cost can be reduced (or increased) merely through changing parole agent behavior (decision criteria) without any expectation that it would mediate change in parolee behavior...."[39] Another source observes, "Violations are subject to multiple interpretations

and the seriousness of a given offense can be readily defined away. The decision to revoke a parolee reflects the agent's personal orientations and his perception of self-accountability to the goals and personnel of the system in which he works. Revocation is not a structured response to parole violations; it is a socially influenced definition."[40] Parolees describe the same situation with different words: "Whether or not you make it on parole all depends on which agent you happen to get."[41] An observation by Carter, Neithercutt and Gottfredson will serve to summarize and focus the issue:

> More than this, it has been demonstrated that probation and parole performance--of officers and offenders alike--is effected by the administrative desires of management. Obviously, directives which state that "violation rates must be reduced" (frequently following negative comments by political persons about probation and parole performance) will result in different evaluations of offender behavior. Reserach data have suggested that violation rates are highly correlated with management requirements. Simply put, assume three field offices: Office "A" with a 40% violation rate, "B" with 50%, and "C" with a 60% violation rate. A transfer of administrators from office "A" to "B", from "B" to "C", and from "C" to "A" will, within a relatively short period of time result in office "A" with a 60% violation rate, "B" with 40%, and "C" with 50%./42/

Research by Prus and Stratton involving all 45 parole officers in "a mid-western state" suggests that the decision to revoke for technical violations indicates a lot about agents' coping behavior as they seek to maintain their jobs and the system in which the jobs are based. A number of the agents who were active in seeking revocations shared a concern about what high revocation rates would project about their effectiveness as an agent: "There was the feeling among the agents that those agents who revoked over 10 percent of their cases were suspected of not performing their jobs adequately."[43] As a consequence, there would come a point when the decision to revoke was influenced by the number of individuals already

revoked for a given period, not just by the circumstances of a particular parolee. Many of the same group of agents indicated that they were reluctant to recommend revocation--even when they believed that to be the proper decision--if they believed that their recommendation to revoke would be denied. "Further, in cases where agents have had previous revocations turned down, the consequence of this has been to make not only these agents, but their office mates as well, more reluctant to ask for revocations."[44]

A California study documents the same phenomenon. Though that study examined the decision to grant early discharge from parole rather than the decision to revoke parole, it described a marked decline in the rate of recommendations to grant early discharge (from 64% of cases considered in the first three months to 49% of the cases considered in the subsequent six months) in spite of the fact that the case descriptions remained relatively constant. "It was inferred that high rates of early challenge of parole agent discharge recommendations were responsible for subsequent curbing of such recommendations and that agents tended to be more responsive to ('learn' from) challenge by unit supervisors and regional administrators."[45] Other California research disclosed the same tendency of agents to orient themselves toward the perspective of their immediate supervisors, who ordinarily were more experienced and in a position of authority over them--though they could not overrule the agents' decisions.[46] This study revealed that recommendations to revoke a particular hypothetical case did not vary markedly among agents in a given office but did vary from office to office.[47] Also, of the agents included in this study, a majority agreed that "it mattered to them whether their recommendations were accepted and that violation reports were sometimes prepared based upon what the parole board

would 'buy.'"[48] This tendency was reflected in the likelihood that agents from the same office would make similar recommendations.

The potential arbitrariness, the capriciousness of invoking technical violation as the basis of a revocation, is well summarized in the following paragraph from a doctoral dissertation prepared at the University of Iowa:

> Several of the agents noted that a 10 percent revocation rate didn't mean that they were any more effective, or that their parolees were behaving any better, than when the parole system had a 35 percent revocation rate. A couple of agents suggested that if the director wanted a 1 percent revocation rate, then that probably could be achieved as well."/49/

Revocation data for Louisiana are more difficult to report. Data reported in different sources by the Research and Statistics Division, Department of Corrections, often appear contradictory, and the way in which they are reported makes their precise meaning hard to determine.

The Probation and Parole Report, compiled by Research and Statistics for FY 1975-1976, indicates that there were 1,961 parolees under supervision by the Division of Probation and Parole. (Table VIII: Average Headcount and Type of Supervision by District) Table VII: Case Movements indicates that during this period 244 individuals were removed from parole by revocation. A further breakdown identifies 127 instances in which parole was terminated for "New Felony" and 117 instances in which termination was the result of technical violation. Whether those whose parole was revoked for "New Felony" were convicted of a new felony or were only charged with same is not clear. In either case, the situation appears to be that 84 percent as many offenders are removed from parole as the result of committing ordinarily non-criminal actions as are revoked for being charged with or convicted of a new felony. Or, viewed from a different perspective, only

about 16 percent more parole revocations in FY 1975-1976 were based on felonious behavior than were based on forbidden non-criminal behavior. The figures included in the Probation and Parole Report resemble closely others provided to this staff by the Department of Corrections. The second set of data provides a basis for concluding that the "New Felony" category cited above refers to new felony conviction. In FY 1975-1976, 243 (9.5 percent) of the admissions to Louisiana State Penitentiary, the Louisiana Correctional Institute for Women and the Adult Diagnostic Reception Center were the result of parole revocation. One hundred and thirty-one (131) of these instances are reported as the result of revocation because of new convictions; 112 were the result of technical violations. These figures suggest that 85 percent as many parole revocations are based on technical violations as are based on a new conviction.

From a parolee's perspective there is another inequity created by the possibility of revoking parole for technical violations. When a parolee is suspected of having committed a crime for which there is insufficient evidence to convict him, he can nevertheless be recommitted to prison by invoking technical violations.[50] "He may also be sent back /i.e., revoked/ to serve many months for an offense that might normally call for a week in jail or a $50. fine."[51]

Some Remedies: However, revocation of parole for the violation of technical conditions is not the primary concern. Nor should a central concern be the justification of particular rules. As one researcher observes, "Practically all rules of parole can be justified in one way or another, including the prohibition of liquor, undesirable associates, and changing employment or living quarters."[52]

Rather, the need identified by most authorities seems to be to

reduce the universally imposed conditions of parole to a minimum, then to add specific conditions that address an individual parolee's need and thus involve the parolee in the process of working toward the ends for which parole supervision can be the means.

One set of conditions held up as a good example is England's.

> England's Criminal Justice Act of 1967 established five conditions for the parolee:
>
> 1. He shall report to an office indicated.
>
> 2. He shall place himself under the supervision of an officer nominated for this purpose.
>
> 3. He shall keep in touch with his officer in accordance with the officer's instructions.
>
> 4. He shall inform his officer at once if he changes his address or loses his job.
>
> 5. He shall be of good behavior and lead an industrious life.
>
> This particular set of conditions is significant for a number of reasons. First, the conditions are not a series of "do's" and "don'ts"; they are all written in a positive manner. Further, these conditions do not require a higher standard of behavior on the part of the parolee than would be found among the non-parolee citizenry. They are not technical in nature, e.g., curfew at 10:00 P.M., but rather suggest basically that the parolee should keep in contact with the parole officer and lead a responsible, law-abiding life. These kinds of conditions can preclude many of the problems associated with parole violation hearings based upon technical violations....Finally, these kinds of basic conditions may still be supplemented by specific conditions which are based upon the problems, needs, and capacities of individual parolees./53/

Other similar examples which share the English system's brevity and consequent advantages are the states of Washington and Maine. Washington imposes only four conditions, after requiring a first arrival report. There the parolee is to "(1) obey all laws, (2) secure the permission of a parole office before leaving the State, (3) report to the officer, and (4) obey any written instructions issued by him."[54] Additional conditions

may be imposed as required by individual circumstances. Maine also imposes only four conditions: a parolee must have permission to change his residence or to travel out of state, and he is required to make periodic reports to his officer and to obey the law. Special conditions may be added in individual cases.[55]

The situation in New York perhaps embodies the dilemma many states face. In 1975 New York parole conditions addressed 20 issues and allowed special conditions as well.[56] Perhaps not surprisingly, a citizens' panel report issued that year recommended that the number of conditions be reduced to three: "(a) Seek and hold a job, or demonstrate another legal means of livelihood; (b) Abide by the law; and (c) Report regularly to the parole service."[57]

By reducing the number of conditions and adding individualized conditions, the parole process turns toward acknowledging the parolee as an individual human capable of choice; and in acknowledging him thus, it is more likely that he will be an active participant in the process of supervised re-entry. Furthermore, one author observes, parole conditions must fit the individual because they demand that "the man who has broken a law must live by a more exacting code than the one in force for the rest of society. The rule must represent a goal that can be realistically attained by the individual and that can reasonably meet society's expectation of desirable behavior."[58]

In essence, the reduction of universally applied conditions and the addition of special conditions based on individual cases shift the tenor of the process of imposing conditions from the realm of the purely restrictive to the reintegrative. In the judgment of the President's Commission on Law Enforcement and Administration of Justice (1967) conditions

must be neither "too burdensome or too unrelated to the rehabilitation of the offender or the protection of the community to be justified in the particular case."[59] An article in the Tulane Law Review makes the above qualification more explicit:

> "A more appropriate standard of review...would require a condition to be evaluated on the basis of whether its violation renders the parolee a poorer risk. If violation of a technical condition produces no danger of recidivism, any attempt to justify its imposition would seem tenuous./60/

Indeed, if conditions seem neither to protect the community nor assist the parolee, they are unjustifiable.

National standards have evolved to reflect this attitude. The standard established by Article 305.13 of the Model Penal Code (1962) is the one not so much reflected as repeated in the first ten of eleven enumerated conditions included in Subsection H. of La.R.S. 15:574.4. The only variation of any import is the Model Penal Code's allowance in Subsection (1)(g) that an offender possess a gun or other dangerous weapon if he has written permission. (That topic as addressed in Louisiana's statute allows neither possession nor control of such weapons and includes no circumstances under which he may do so).

In 1973 the National Task Force on Corrections concluded that "rules of parole are best when they are relatively few, simple, and specifically tailored to the individual case."[61]

And recent standards proposed by the National Advisory Commission, the ACA, and the Louisiana Commission on Law Enforcement are indicative of the same trend toward a less restrictive policy. All three agree that parole rules should be reduced to a minimum and that the ones retained should reflect the particular offense and circumstances of the individual parolee.[62]

One author who has studied the subject widely has evolved eyen further:

> Don't visit his job or his home or his tavern; don't make him come in to the office or write in. Leave him alone except for making help available. If he gets drunk or fights or drives a car into a tree, deal with him as you would any other person who does such things. If he commits a burglary or robbery, proceed with arraignment, indictment, trial and punishment, with due attention to his previous record./63/

The staff recommends several items for consideration.

La.R.S. 15:574.4 was patterned closely after the Model Penal Code. The staff recommends that the state again act as it did in adopting the Model Penal Code and move in the direction suggested by newer standards. The standards that the Board of Parole views as essential should be isolated and retained. These standards would of course include the mandate that the parolee obey the law. Probably also retained would be items such as the monthly report function and the requirement regarding changes of job and residence. Consideration should be given to the statement of the latter condition. Its present requirement that a parolee ask permission to change job or residence is unnecessarily paternalistic. An agent can just as well keep track of his parolee if the condition requires notification rather than permission.

Other items seem not to fit all individuals. Must all offenders be refused the right to handle firearms? Even the Model Penal Code allows conditional possession. In a state in which hunting is a popular sport, blanket prohibition may be an unrealistic extreme. The prohibition against excessive drink seems the same. Of a different nature is Condition 4 in which a parolee promises to avoid "injurious or vicious habits and places of disreputable or harmful character." It means potentially anything,

and consequently nothing in particular. The staff also finds the statement that restricts the parolee's movements to a particular location unnecessarily indirect. This appears not to be a problem, however, for the parolees we have observed confronted with its violation at probable cause and revocation hearings.

Concern of a different kind is expressed in an article in the Tulane Law Review regarding the "unusual" condition which gives the parole agent the authority to order a medical or psychiatric examination or treatment. The observation is this:

> /I/t would seem that, absent a legitimate rehabilitative end, an order requiring a parolee to submit to any medical or psychiatric treatment violates the parolee's fourth amendment rights to be secure in his person from unreasonable searches and seizures, his privilege against self-incrimination under the fifth amendment, the prenumbral zone of constitutionally-protected privacy... and due process of law under the fourteenth amendment. The implications of the invasion of body and mind sanctioned by this condition are unsettling; a parole officer would be well-advised to secure ample documentation of the necessity for discovering such information before ordering the parolee to submit to medical and/or psychiatric examinations./64/

Action should be taken with regard to the universal "condition" that does not appear as a condition but which is normally just accepted by the parolee--i.e., that an agent may visit a parolee at home or on the job. Recently, apparently for the first time, a parolee objected to his agent's visits. The agent requested the Board of Parole to add it as a special condition of parole. Because visitation is a universally applied condition, it should also appear in writing as a condition.

Consideration should also be given to providing the definitional conditions in another form. The information regarding loss of good-time and inability to bond out if charged with a new crime is highly relevant and of great interest to a parolee. Greater clarity can best be achieved

by separating that information from the conditions that directly restrict or prescribe behavior.

Undergirding whatever particular modifications are made should be the awareness that change can only be facilitated; it cannot be forced.

CHAPTER X

AGAIN, WHY SUPERVISE? AND FOR HOW LONG?

Surveillance as Crime Prevention

As observed above, conditions of parole are the primary statement of the parole officer's authority to ensure that the parolee lives within the boundaries the parole authority, and, by extension, society deem suitable. The imposition of conditions is the primary instrument by which the agent exercises the surveillance function that is often looked upon as the primary method of "adjusting" the parolee to living again in freedom. Using surveillance to prevent a parolee's return to criminal activity is, however, much like using a pile driver to get a one-inch screw into its proper place: it requires extreme effort; even then it probably cannot be done; and probably there was a less extreme and more effective instrument closer at hand--a dime or a fingernail, for example.

Data released in a report published at UCLA suggest that "surveillance activities, while consuming much of the agents' time, produce little in the way of protection of the community from criminal behavior."[1] Stated in more detail the situation is this:

> It would be a mistake to assume, however, that normal surveillance is the major way in which parolees' misdeeds are brought to light. On the contrary, most violations are discovered when the parolee is caught by others. A study in California reports that "since the /parole/ agent's contacts with the parolee total no more than two hours per month, the agency depends on other sources for information about parolee activities. A review of 1,023 emergency reports prepared by agents on parole incidents shows that 71.2 percent of the reports are based on information supplied by law enforcement agencies /police and routine narcotics testing/."/2/

In California, another group of researchers, who collected experimental evidence which indicated that a parolee who remained

arrest-free his first year on parole was likely to remain arrest-free in subsequent years on parole, appended the following judgment: "Indeed, nothing in this (or any other known) study indicates that parole supervision is effective in controlling criminal behavior of the parolee."[3]

The point can perhaps be made just as well with basic math. A researcher from California has determined that a parole agent in that state can devote about 25 percent of his time to direct personal contact with his parolees. Given that the agent normally has a caseload of 40, he can have one hour's contact with each parolee each month, while each parolee has 720 hours during which he can participate in criminal activities.[4] Calculated another way, the point remains the same. If a parolee who is normally awake 16 hours a day spends 30 minutes each month in direct contact with his parole agent, that interaction occupies about one-tenth of one percent of the total time he is awake that month.[5] Ninety-nine point nine (99.9) percent of his time usually spent awake remains available for criminal activities. If he opts for less than eight hours sleep per night, the balance tilts more heavily still.

The first situation projected above is difficult to apply directly to this state, where caseloads remain about 100 and never approach 40. The example that projects a 30-minute encounter in a month with at least 480 waking hours to devote to crime has closer application. Judged from the very limited number of direct observations Commission staff members made, most direct personal contacts between agents and their supervisees seemed cursory and surface. They tended also to be quite short. One experienced agent explained that even five or ten minutes spent with a familiar parolee can reveal a lot to an agent, can indicate that a problem of some sort exists. This doubtless is true, but one wonders how

many months of 15-minute contacts it requires for a relationship to reach that point.

None of this is to say that surveillance produces no results. Unquestionably, surveillance is not without results, and undoubtedly, every agent who has been with the Division six months or more could cite his own example. There is the mother who called a parole officer to report her son drinking again, brandishing a gun and threatening her. A middle administrator tells of working with a field agent and discovering that the town's new cat burglar was one of their parolees. Someone else recounts dealing with the discovery that a paroled sex-offender had volunteered to babysit with a neighbor's small girls. Apologists for the parole system say that an optimistic interpretation of current evidence "indicates that a sizable percentage of those under parole supervision would wind up in prison if parole were to be abolished."[6] Others question the claim:

> Any combination of visits and reports keeps pressure on the parolee to be law abiding and to stay in touch with the parole office. It is very hard to say whether such supervision really prevents relapses into crime. A parolee determined to make it does not need surveillance; a parolee determined to con his parole officer, evade him, or engage in illicit activities can find ways to do so. A parolee who is not committed either way may be induced to accept guidance and help. /emphasis added/ /7/

It would seem, then, that surveillance of parolees with the intention of preventing criminal behavior works occasionally--but not very well. If it doesn't usually prevent criminal behavior, however, can it at least do as its defenders argue--assist ex-offenders who are amenable to guidance? And if parole supervision is useful, for how long is it useful? Is it necessary, practical or in some other way beneficial to the parolee or to society to retain him in that state for long periods of time?

The Probation-Parole Agent's Other Task

In order to decide whether supervision of offenders is beneficial to the probationer and parolee or to the community of which they are a part, it becomes necessary to examine the rest of the task assigned the probation-parole agent. The whole of the supervisory relationship is not defined by an agent's law enforcement role. The second area of responsibility is that which emphasizes the services that he is to deliver to the probationer-parolee or to direct the probationer-parolee toward.

During the 1930's and continuing through the next two decades, the supervisory aspect of probation and parole casework became equated with social work; the supervisory process was viewed as a therapeutic relationship and the officer became therapist.[8] Even today, just what the helping aspect of probation-parole supervision entails is quite broadly and not very clearly defined. "So elusive is the concept of 'treatment' that almost everything which transpires between probation and parole officer and offender during the period of supervision, at one time or another has been labeled treatment. Indeed, treatment may be functionally or operationally defined as anything which is done to, for, or with the offender."[9]

So wide a territory is difficult for one man to cover thoroughly, or even effectively. Current literature recognizes that difficulty and seeks to isolate the particular functions appropriate to the supervisory relationship. An essential part of this effort to define clearly the supervisory role is the separation of "direct probation-parole services" from services that are appropriately delivered by agencies and sources other than the adult probation-parole division. In the

past and, in many instances, still, problems have had their source in the failure to establish such a distinction:

> Because of community attitudes toward offenders, social agencies other than probation are likely to be unenthusiastic about providing services to the legally identified offender. Probation offices usually lack sufficient influence and funds to procure services from other resources and therefore try to expand their own role and services. This leads to two results, both undesirable: identical services are duplicated by probation and one or more other public service agencies, and probation suffers from stretching already tight resources.
>
> Some probation systems have assumed responsibility for handling matters unrelated to probation.../or have tried/ to deal directly with such problems as alcoholism, drug addiction, and mental illness, which ought to be handled through community mental health and other specialized programs./10/

Though the comment addresses specifically the probation process, the attempt to assist the parolee has in recent years been part of the same effort and has therefore followed the same pattern.*

Again, the corrective measure recommended is to isolate the services that should be delivered uniquely by a probation-parole organization from those that are available through--and should be provided by--other agencies within the community. The identification of direct probation-parole services requires first the identification of those needs that a probationer or a parolee has precisely because he is what he is--a probationer or a parolee. The National Advisory Commission cites four

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*An earlier chapter addressed the essential difference between the probationer and the parolee--i.e., one has experienced prison; one has, normally, not. Apart from that difference, with its many ramifications, the needs and frustrations of the two offenders and the way in which their situations have been and are being addressed are quite similar. Consequently, though various sources quoted below address specifically one kind of offender or the other, the observations are relevant to both circumstances.

characteristics of such services. They must:

> Relate to the reasons the offender was brought into the probation /or parole/ system.
>
> Help him adjust to his status as a probationer /or a parolee/.
>
> Provide information and facilitate referrals to needed community resources.
>
> Help create conditions permitting readjustment and reintegration into the community as an independent individual through full utilization of all available resources. /11/

The goal of providing these services is to assist the individual in his transition from supervised care to independent living.[12]

The particular assistance required in achieving this goal begins before release for the parolee, when ideally a parole agent can begin orienting both an inmate and his family toward the inmate's pending release on parole.[13] Once the offender has assumed his new status as either parolee or probationer, the task required of him is paradoxical: he must concede to the restrictions of his assigned status of probationer or parolee at the same time that he is expected to perform the independent roles normally fulfilled by an adult in this society.[14] The task of the probation-parole officer at that point is to help him to understand his new role and the dilemma it creates and to find a satisfactory way of dealing with the circumstance.

Assistance from probation-parole officers must also be continuously available. Being a probationer or parolee occupies all 168 hours of an offender's week. Normally, the supervising agent is available at most for 40 hours a week, and emergencies occur at other times as well. In order for the supervisee to act under his agent's guidance and permission, the agent or someone else from a support agency must be available.[15]

This is a service that is most needed when the offender confronts his new status: the parolee finds himself no longer part of the perhaps hated but certainly familiar routine of prison and the probationer discovers himself--perhaps much to his relief--still in the community but in the legal custody of the court and under the supervisory jurisdiction of the department of corrections. These major life changes are times of crisis; they are times when emergency support should be available.[16]

The third characteristic that the National Advisory Commission states--"Provide information and facilitate referrals to needed community resources"--embodies the approach that separates past from present: the direct responsibility of a probation-parole organization is to provide information about and referral to community agencies; it is not instead to try to become or even to function in lieu of all those agencies.

Throughout current literature runs the acknowledgement that the probation-parole officer cannot be and should no longer try to be a one-man organization which provides a multitude of professional services to a large and changing heterogeneous group of people. His primary task is instead to assist the probationer-parolee in identifying his particular needs, to help him discover where to go or who to ask in pursuit of these needs, and then to support the probationer's or parolee's efforts toward that end.

"Much of the assistance that probationers and parolees need can come only from institutions in the community," members of the President's Commission wrote; "...help from the schools in gaining the education necessary for employment; help from employment services and vocational training facilities in getting jobs; help in finding housing, solving

domestic difficulties, and taking care of medical disabilities."[17] The probation-parole officer thus serves primarily as a catalyst to initiate interaction between the offender and the community to which he returns. In this capacity--in which he is variously described as "broker of services" or "community resource manager"--the probation-parole officer must be aware of the resources in the community. Aware of these resources and of the offender's needs, he can then involve the offender in planning and preparing for his own future as an again-independent member of society and also thereby remind him of his responsibility for himself. By the same token, an offender's use of community facilities must be voluntary (unless, of course, participation in a specified program is a condition of his probation or parole). Coercion would doubtless get him to an agency, but "forced treatment is unlikely to be effective treatment."[18]

Standards are clear and insistent in their address to the point. The recommendation is brief but direct: "Probation and parole officials should develop new methods and skills to aid in reintegrating offenders through active intervention on their behalf with community institutions."[19] In Standard 12.6 the National Advisory Commission conveys the same general message, though its choice of words seems simultaneously to assign the probation-parole officer a little less active role than is suggested by "intervention": services to parolees "should be drawn to the greatest extent possible from community programs available to all citizens, with parole staff providing linkage between services and the parolees needing or desiring them." The Louisiana Commission on Law Enforcement repeats the opinion verbatim in its Objective 9.6; the National Advisory Commission, in discussing the needs of probationers (Standard 10.2) reiterates

the need to separate direct (probation) services from "other needed services /which/ should be procured from other agencies that have primary responsibility for them" and identifies the primary function of the probation officer as "community resource manager for probationers."

The model described above offers some obvious advantages. It makes available a variety of services, and flexibility and speed in adapting to changing needs within the probationer-parolee population that would not be possible otherwise. This advantage is multiplied when funds are made available for a probation-parole division to purchase from the private sector services not available through publicly funded programs.[20]

As early as 1967, the President's Commission, in fact, recommended that "substantial service-purchase funds should be made available to probation and parole agencies for use in meeting imperative needs of individual offenders that cannot otherwise be met."[21] In doing so, the Commission cited the example of the Vocational Rehabilitation Administration of the Department of Health, Education and Welfare, which had pioneered by purchasing services that they could not otherwise provide to handicapped persons in order to help them overcome obstacles to their self-sufficient functioning in the community.[22] The National Advisory Commission and the Louisiana Commission on Law Enforcement reiterate that standard.[23]

Also, by providing offenders access to the same opportunities on the same basis as other citizens, the number of obstacles that separate the offender and the community is reduced.[24]

A third advantage of the model is that it allows redirection of energy from an impossible task. The eventual result envisioned by the

President's Commission is a probation-parole agent become crusader for probationer-parolee rights: "The officer of the future must be a 'link' between the offender and community institutions: a mediator when there is trouble on the job or in school; an advocate of the offender when bureaucratic policies act irrationally to screen him out; a shaper and developer of new jobs, training, recreation, and other institutional resources."[25]

However challenging the dream projected by the President's Commission, however insistent the standards, however attractive the simply practical aspects of the model--using community resources to increase a probation-parole division's resources, to free its staff to fulfill the duties that are properly theirs and thus to increase the division's overall effectiveness within the community is possible only if there are other agencies and resources in the community to which the offender can be referred. In order to determine what might or might not be possible, one source recommends the following approach:

> Any community with a substantial population of offenders and exoffenders...needs to take inventory of its facilities, both public and private, and then plan to provide the services that are wanting....An inventory might reveal, for example, unmet needs for middle-of-the-night crisis counseling, job-finding help for releasees with professional qualifications, low-interest emergency credit, temporary housing for evictees, or outpatient psychiatric therapy. Financial help could then be systematically channeled for these services, to the extent possible under federal and state grants, as well as privately through community funds. It would be even more appropriate to reallot for this purpose at least part of the funds now being used for parole release and policing functions./26/

Aware of both the model's potential and the potential problem, the staff made inquiry through United Fund offices about community agencies and organizations across the state and sent a "Community Facilities Survey"

to the 173 probation-parole agents assigned to field offices across the state. On this form the agents were asked to indicate several things: (1) the community facilities to which they refer probationers and parolees, (2) the frequency of their referral to each particular agency during a three-month period, (3) the private agencies (if any) to which they also refer supervisees, and (4) the way payment is handled in such instances, (5) the attitudes of all such agencies toward interacting with offenders, and (6) the needed services not presently available in their areas. One hundred one (101) questionnaires were returned. That number represents 58.4 percent of the number mailed. The percentage returned by district varied from 10 percent in one district to 100 percent in two small districts. From five districts the return was greater than 75 percent. Some of the questionnaires not returned reflect the presence of four Area Administrators and 13 District Supervisor I's and II's, who were not identified according to their administrative titles on the mailing list and who normally do not carry a caseload and therefore could not answer the questions posed.

Returns from the questionnaire reveal several things. Most readily they indicate that there are particular agencies in each district to which agents most often refer their supervisees. Probably this feature suggests two things. Reportedly each office has its grapevine along which one agent's discovery of a useful resource is conveyed to others. Probably it also reflects something about the common needs of offenders within the districts. Repeatedly, in all districts, offenders are referred to agencies that provide employment services, vocational training and placement, drug and alcohol treatment and counseling, and mental health assistance. These repeated referrals reflect the common observation

that the typical Louisiana inmate has a poor education and lacks vocational skills. The referrals also reflect the fact that in Louisiana in 1976, 7,208[27] arrests were for drug use.

Many agencies were noted only once or twice on the questionnaire from a particular district; and apart from the effect of several responses which listed dozens of agencies in a district without citing the frequency of referral, it would seem that not many resources that are available within a district are used regularly. Why this is so is a matter of conjecture. The inquiry regarding community attitudes toward serving offenders sheds little light, in that by far most of the respondents indicated that most agencies in their vicinities are helpful when possible.

One suspects that a partial explanation for the infrequent use of available resources is assignable to the lack of a unified training program, which could supplement, even systematize, the gathering of the fruits of the grapevine. The model of community resource manager is widely written about; certainly it is a concept on which many agents are conversant. But to be able to talk about it and to be able to successfully practice the concept are separate parts of a single process. It seems plausible to explain the long lists of community facilities received occasionally among the more modest responses as a way of indicating awareness of the concept (and perhaps of indicating irritation with those who ask). It seems plausible to conjecture too that the response which listed the State Police, Bureau of Identification, the sheriff's office in two parishes, and the clerk of court as the community facilities most frequently used reflects the same fact--awareness of a system that one does not understand or that one has no patience with.

Certainly there are facilities needed that are unavailable.

Respondants to the questionnaire indicated that what is needed is often just more and better of the same--more drug treatment facilities, more sources of vocational education, more and better employment services than those offered by Louisiana Department of Labor. Others cite a need for residential facilities for individuals with drug problems and for those with severe mental and emotional problems. There are needs. But there are resources available that are not being tapped systematically and thus effectively.

The United Fund publishes service directories in many areas; in Baton Rouge and New Orleans their listings are extensive. There are crisis (suicide prevention) centers available across the state that by necessity have resource files. These and the additional knowledge of Division personnel are sources from which to begin an inventory of facilities that are available. From this could come a directory of services especially relevant to the needs of probationers and parolees, a directory such as that compiled by the State Bar of Texas.[28]

As the National Advisory Commission has said:

> To aid the probation /-parole/ officer as a community resource manager, the system must be organized to deliver certain services that properly belong to probation, to secure needed services from those social agencies already charged with responsibility for their provision to all citizens, such as schools, health services, employment, and related services; and to purchase special services needed by probationers /and parolees/./29/

An attractive cost-effective alternative to the Department of Corrections' conducting a statewide resource inventory of services is the utilization of the efforts of the Louisiana Department of Health and Human Resources (DHHR) to establish a comprehensive social service information and referral system. This effort is currently underway and will include both centralized program eligibility and automated information retrieval

components. It is recommended that the Department of Corrections initiate conversations with the DHHR to establish ways by which this service could be utilized. Training efforts to enhance the ability of probation-parole agents to utilize this service should be considered a key component of the Department of Corrections' participation in this project.

A Reassessment: Why Supervise?

Again consider the question: Can the supervisory function really be a helping function? Does parole supervision, with its law enforcement role and its helping role employed singly or in unison, protect the community from the offender or the offender from himself, assist the offender into the community or the community toward the offender?

One does not really expect a definitive answer to that question. At most there are opinions and concerns--widely disparate, tinged with truth. At one extreme is the terse conclusion reached by the New York citizens' inquiry:

> Community supervision, in summary, does not assist the parolee and does not effectively protect the public. Scarce resources are spent on inept social services and ineffective enforcement of the parole agreement. The parole regulations become an albatross on the back of most parolees, actually impeding reentry into society./30/

A milder but more frequently heard observation is that contacts with the probationer or parolee are structured by the requirements of surveillance rather than by a desire to discover and service offender needs.[31] This judgment is echoed by words in a letter from an inmate at Angola:

> No doubt, studies of parole caseloads do show that parole supervision seems not to be a critical factor in determining success or failure in the community, and the conclusion of the New York Parole Inquiry is quite right. But what do you expect when, almost as a rule, the role of the parole supervisors is not to assist the parolee with his problems but primarily to police him?

Indeed, one source chides, "staff members should perceive themselves less as policemen than as counselors."[32] Also relevant to the discussion is the likelihood that the effectiveness of supervision--whatever that effectiveness ultimately is--depends on the personal relationship between the officer and the offender.[33] Yet, because the agent must simultaneously prevent or punish an offender's violation of release conditions or his criminal behavior, and assist the offender in adjusting to society's demands and restrictions, his roles regularly conflict.[34] In a conflict situation society expects that the officer will protect first its best interests;[35] the offender knows this, and this knowledge hinders the development of mutual trust.[36]

Another possible source for an answer is to consider data. Looked at from one perspective, they suggest that supervision "works." "...after 3 years some 65 percent of parolees /released in 1969/ have either terminated successfully or are still performing successfully on parole,"[37] and "73 percent of offenders paroled in 1970 were still under supervision, or parole had been terminated without violation, after two years. Eight percent went back to prison with new major convictions; 5 percent absconded; and 15 percent were returned to prison as technical violators."[38] The research of an inmate at Angola indicates that South Carolina's recidivism rate is 18.9 percent, "/a/nd statistics for Michigan show that parolees constituted only 5 percent of felony convictions for the past decade, and that, of the total adult convictions in that state, only 15 percent have prior prison records in that state."

Whether any of these figures show that supervision works or only that parolees endure the system is not clear. Furthermore, one observer adds, any study that seeks to prove the efficacy of parole supervision

by citing violations "should be rejected out of hand...."[39]

But even if probation-parole supervision doesn't work very well, there is no reason to believe it will be done away with--surely not now and certainly not in Louisiana. Consequently, the real issue is how the process can be made to work better, made to become what the philosophers and seers of the criminal justice system say it can become, made to function as they say it can function:

> It is the element of constructive supervision which places the concepts of probation and parole beyond the definition of either leniency or punishment.
>
> . . .
>
> Supervision, in more modern terms might be defined as "planned guidance based upon a careful study of the needs, problems, capabilities and limitations of the client." It involves utilization of all available community resources; social, educational, recreational, and religious./40/

How Long Shall Supervision Last?

A discussion of the removal of supervision is a process, like supervision itself, best approached in stages. Determinations regarding the conditions and length of probation supervision are a matter for the court's discretion and thus are beyond the boundaries of this study. Consequently, as in Chapter IX the discussion will again focus on conditions and removal of parole supervision and on early discharge from parole. The reader will nonetheless note obvious parallels between the processes.

One logical assumption underlying supervision is that as one has more of it he gradually needs less of it--i.e., as Studt[41] characterizes the situation, he is in transition between statuses (free man to inmate to parolee to "free" man); as supervision enables him to make the transition and to deal satisfactorily with his new status, the need to supervise is diminished.

The first area logically impacted by this assumption is the conditions

which establish the boundaries within which parole supervision occurs. According to some sources the first 60-90 days are the most critical ones in the process of reintegration.[42] From that perspective, a case can be made for binding a parolee initially with a number of conditions.

> While this proliferation of conditions may serve a useful purpose during the immediate post-release period, the goals of parole would be best served by gradually diminishing parole conditions as the parolee demonstrates that he is achieving stability and reintegration into society. In place of the futility born of the knowledge that these same restrictions will control his behavior until his original sentence expires--no matter how he behaves--there would be an incentive to earn more freedom by adjusting to societal behavioral norms....
>
> This method of gradually increasing the grant of freedom could also be used with effectiveness in regulating conditions such as the use of automobiles or installment purchases, thereby giving the parolee a sense of earning his freedom and of acceptance by society./43/

Generally, the emphasis of the standards is on imposing a minimal number of conditions to begin with.

About Louisiana, a contributor to the Tulane Law Review observes:

> La.R.S. 15:574.7(A) (Supp. 1973) would seem to sanction the widespread use of diminished conditions as an incentive for demonstrating successful adjustment to community life, by providing that "/t/he /parole/ board may modify or suspend /parolee/ supervision upon a determination that a parolee who had conducted himself in accordance with the conditions of his parole no longer needs the guidance and supervision originally imposed."/44/

Suspending supervision is not necessarily synonymous with removing conditions of supervision, however. It would seem that the only condition really removed--at least among those universally imposed--is the requirement that a parolee send in a monthly report, which re-informs his parole officer that he is living in the same place and working at the same job as he was the month before. Consequently, in spite of lessened supervision, the parolee can still be revoked for violation of the other conditions. Should he, for example, get drunk and/or beat his wife, girlfriend or

mother-in-law, and should his agent judge his behavior to be "injurious" or "vicious," the parolee is legally liable to revocation and return to finish that portion of his sentence that remained to be served at the point of his parole. He also automatically loses up to 180 days good-time credit earned before his release. Whether this happens and with what frequency is impossible to say. It is though within the parameters of current law that the parolee, with three months remaining to serve on parole, could be revoked and sent back to the institution from which he was released to serve the two, the three, the ten years that remained to be served on his original sentence. Supervision can be suspended; conditions, typically, are not.

The process by which supervision is removed in Louisiana is explained in the Probation and Parole Officer's Operating Manual. Basically supervisory requirements are lessened with the passage of time and the parolee's success in adjusting to the conditions of parole, though they are not, according to Division personnel, lessened so smoothly as their written version would suggest.

According to the Operating Manual, for the first six months, all parolees are maintained under maximum supervision--i.e., there is personal contact at least once a month. Maximum supervision is maintained longer in problem cases. After six months of satisfactory progress, or some time thereafter, the parolee can be moved to medium supervision, which requires personal contact every three months. After a year of satisfactory progress, only minimal (semi-annual) supervision is required. At all three levels, however, the offender is required to make a monthly report.

La.R.S. 574.7(A) gives the Board of Parole the right to suspend supervision. This would follow ultimately only from the recommendation

of the Probation and Parole Chief. Under these circumstances, a parolee is no longer required to make his monthly report.

The subject of diminished supervision can be approached as part of the transitional process referred to in earlier paragraphs, or it can be considered as a status to which one is assigned. The literature states repeatedly that a decision-making body should establish some means of identifying low-risk parolees and should then place them under minimal supervision, consequently freeing parole agents' time for individuals needing intensive supervision and making available money otherwise spent needlessly to watch individuals who require little watching.[45]

The base issue--and the subject of great controversy--is not suspension of supervision but discharge from parole. When shall a parolee be freed altogether from his forced allegiance to a state's department of corrections? Nationally, the situation is this:

> Almost all parolees who are not returned to the institution stay on parole until the completion of their sentences. Some states have statutory provision for a parolee's parole to end at the end of his sentence less his credits for good time. Most states however do not deduct good time when a man is serving his time on parole. Thus men with lengthy sentences may spend decades on parole. /Indeed, in 13 jurisdictions, the minimum sentence is the expiration of maximum sentence, with or without subtraction of good-time./ /46/

> A few states have provision in the statutes for a parolee to be discharged from parole at the end of a specific period of successful parole. /Twelve impose a one-year minimum, six a two-year minimum./ /47/ However, this is not a widely found statute..../48/

That is the situation. This is the question: Do all, or even most, individuals require three, five, even ten years of supervision to insure that they are moving successfully toward a socially acceptable adjustment? It is difficult to believe so. But the literature relevant to the question is extensive and merits attention.

Conventional wisdom indicates that parole failure rates are markedly higher in the early months. The President's Commission indicates that 43 percent of the parole violations that occurred in the State of Washington in 1964 did so within the first six months of an offender's release on parole. Sixty-two (62) percent occurred within the first year.[49] Elsewhere in their report, the Commission states that studies consistently reveal that most difficulties occur within the first one or two years on supervision.[50] Another source cites California data which indicates that "70 percent of the parolees during the early 1970's were arrested in their first year out of prison, but that this outcome increased only to 73 percent at 2 years out. Similarly, data on 1968-1970 parolees from almost all states and territories of the United States except California revealed that about 50 percent had 'serious difficulty' (defined as return to prison for any reason) during their first year on parole, but only about 56 percent had such difficulty at the end of 2 years and 58 percent by the end of their third year under supervision.[51] But anyone who has scrutinized data knows the flexibility and consequent hazards that attend the process. The NCCD examined national figures, compiled in 1965-1967. They found an increasing proportion of violators until the second month of release is past, then a steady and marked decrease after that. But, they asked, what does this "mean"? "On the one hand it might be argued that this 'clearly proves' that parole officers need to work hardest on recent parolees because they are most likely to violate. On the other hand, it might be held that this 'clearly proves' that parole officers (and others) watch new parolees too closely and thus 'see' too many violations."[52] Or perhaps parolees just become more wiley. The data are clear; their meaning is not. Other researchers caution that the early violation phenomenon is often

exaggerated by failure to consider the diminishing base: that is, "if 1000 parolees are released and 250 of them are returned to prison in the first year, 188 the second year, and 140 the third year, superficial interpretation fails to take into account that the violation rate is constant rather than diminishing--25% of the remainder rather than 25%, 19% and 14% of the total."[53]

An extensive literature regarding early discharge from parole has come from data and/or researchers from California. The catalytic event for much of the research conducted there during the last ten years seems to have been the introduction of new legislation into the state's Penal Code (Sec. 2943 P.C.). This bill required that to retain any parolee on supervision longer than two years authorities would have to justify that decision. The two-year criterion was chosen because data presented to the California Assembly indicated that over 90 percent of parolees in California who violate their parole do so in less than two years.[54] In September 1965, after the new bill became law, the Adult Authority (i.e., California's parole authority) began to review the cases of all parolees eligible for release under the new article--i.e., all parolees who had served two consecutive years on parole without major incident.

During the first three months of processing under the new law (October-December, 1965), the Adult Authority reviewed the cases of 1,455 parolees (referred to as the "initial calendar"). Of this group 386 were granted early discharge, and 1,069 were continued on parole.[55] The very fact that the parolees condidered for discharge were still on parole after two years was an indication that they were serious cases: less serious ones are routinely discharged in less than 24 months.[56]

These two groups of parolees from the initial calendar are the

subject of a one-year follow-up study by Robison, Kingsnorth, Robison and Inman. This study sought to document that California's new procedure not only was economically efficient but also was not an undue risk to public welfare. Examination of outcomes from both groups revealed "negligible serious subsequent criminal behavior (2% returned to prison by courts within one year)."[57] Less generally protrayed, the findings were as follows. Of the 386 parolees discharged, 42 (11 percent) were arrested and convicted of a crime within the following year. Of those convicted, only five (1.3 percent) had crimes serious enough to warrant imprisonment; three of the five were convicted of felonies (grand theft, burglary second, and forgery), two on civil matters. These five were judged, on the basis of their case dispositions, to be the ones "mistakenly" granted early discharge.[58] Of the 1,069 initial calendar parolees denied discharge after two years clean, 83 (8 percent) were returned to prison during the one-year follow-up. Only 28 of these entered prison with a new felony commitment; 11 of those 28 were sentenced for either sales or possession of marijuana; only four were convicted of offenses involving violence or threat of violence (three for attempted first-degree robbery and one for possession of a firearm[59]--which perhaps would not have been a problem were he not a parolee). The low subsequent criminal behavior among the parolees not granted early discharge could be interpreted as indicative of the Adult Authority's acuity at spotting risks. The researchers dismiss this conclusion on the basis that supervision afforded third-year parolees is minimal (involves only monthly reports and three- or four-time yearly contacts).

To credit this group's success to supervision, they suggest, is like saying that "because something we dreaded might occur did not occur,

something we did must have prevented its occurence,"[60] i.e., that carrying a lucky penny is the reason that there are no elephants in the courtroom. In view of the very few instances of serious criminal behavior among either those discharged or those continued, the researchers reiterate that two year's crime-free behavior is in itself a good predictor of future success in living a crime-free life. In support of their contention they also cite the results of a similar follow-up study on 100 women parolees also discharged under Sec. 2943 P.C. Eighty-three percent of the group were arrest-free after a 15- to 18-month period, and none of the arrests was for an action serious enough to result in a return to state prison.[61]

The researchers also address the risk factor--a corollary concern to the implementation of any policy that functions to release criminal offenders earlier from the jurisdiction of the corrections system. Occasionally, those discharged from parole will commit violent offenses. The essential question is whether continued supervision could have prevented the offense. That, much evidence suggests, is unlikely. In addition, in acting to combat that possibility, authorities restrict many who need not be restricted.

To illustrate the latter observation, the research team cites some of their own findings. The five (1.3 percent) parolees granted early discharge then subsequently arrested and imprisoned represent a very small error in judgment. In contrast, however, of the 1,069 parolees denied discharge, only 28 (2.6 percent) were subsequently arrested and returned to prison with a new commitment. By extension, the error rate of the body which denied early discharge to 1,069 parolees was 97.4 percent.[62]

Even with erroneous and correct defined more strictly, the point remains the same. Three hundred fourteen (314-81.3 percent) of the 386

early dischargees had no arrests in the year following their discharge. Perhaps only they embody correct decisions. And 83 of the 1,069 continued on parole were returned to prison during the subsequent year (50 to finish their original terms). This number represents 7.7 percent of the group denied discharge; consequently, the parole authority was perhaps overly cautious in its release of only 92.3 percent of the parolees denied discharge.

From the findings of Robinson, Kingsnorth, Robison and Inman arose the next logical question: Could discharge from parole be considered safely at a point earlier than two years? In searching for the criteria by which to allow early discharge, researchers within the corrections department discovered that one possibly dependable predictor of success on parole is the first year on parole. Only 30-40 percent of those released on parole each year remain "clean"--free of arrest for anything more serious than a traffic violation. Of those who do succeed, however, about 90 percent are very likely to complete their second year without serious offense.[63] As a result of this preliminary analysis, the California Adult Authority enacted Adult Authority Resolution 284 (A.A. 284), effective July 1971.[64] This resolution allowed discharge from parole after one year for parolees who had had no arrests during their first year on parole. Subsequent research sought to examine the efficacy of the policy implemented by A.A. 284.

Two studies were conducted and reported in unpublished administrative papers by a departmental researcher in June and August 1972.[65] The first compared the post-discharge performance of 379 men paroled from July through September 1970 and released under A.A. 284 in July through November of 1971 with the 335 men released on parole at the same time who had had no arrests in their first year on parole but who had not been

discharged early. The second study involved the same group of early dischargees (minus the 38 discharged under A.A. 284 in November 1971) and a group of 632 other men who were paroled from July through September of 1969 and who could have been paroled at the end of one year had A.A. 284 been in effect (i.e., they were arrest-free at the end of one year on parole).

Both studies examined performance during the six months following termination of parole (for the dischargees) or during the six months after the first year on parole (for the other groups). Both studies revealed "significantly less known criminal behavior"[66] among the discharge group than among the comparison group: 86 percent of the discharge group and 66 percent of the comparison group were arrest-free on the first study. In the second study 87 percent of the early dischargees were "clean," compared with 78 percent of the parolees in the comparison group. Additionally, in the first study three convictions (0.8 percent) among the dischargees and eight convictions (2.3 percent) among the comparison group involved violence.[67] In the second study three convictions (0.8 percent) among the early discharge group and nine (1.4 percent) among the control group involved violence.[68]

Apart from the observations that can be made about accuracy of decisions made and the illustrated advantages of supervision--such as were cited in the study by Robison, Kingsnorth, Robison and Inman--one can also note that one year on parole free of arrests seems a very good predictor of a second arrest-free year on or off parole.

Data generated from the Uniform Parole Reports also support the contention of other California researchers that one year spent on parole without serious difficulty is a reliable instrument for predicting

satisfactory adjustment during a second year. Bennett and Ziegler[69] extrapolated the male parole population released during 1968-1970 to 100 percent. (They excluded California data.) About 50 percent of that population failed the first year. Of the remaining 50 percent, however, 87 percent successfully completed a second year or were discharged without difficulty, and only 5.3 percent of those designated "not successful" were involved in new offenses.[70] A three-year follow-up based on Uniform Parole Report data for parolees released to parole in 1969 reinforces these findings. About 50 percent completed the first year on parole without serious incident (i.e., without return to prison for any reason); 84 percent of those then reached discharge or completed the next two years on parole without serious difficulty. Of the 16 percent who were embroiled in serious difficulty, only 7.7 percent were involved in new offenses that resulted in a return to prison.[71]

In summary of these results, Bennett and Ziegler wrote, "Even if one considers as 'failures' subjects with major or minor convictions not resulting in return to prison, absconders, and the technical violators returned to prison, the proportion of subjects with no serious difficulty in the first year who continue to perform well is still quite high (87.3 percent of the 1968-1970 sample continuing to adjust through the second year; 83.2 percent of the 1969 sample continuing to adjust through the second and third years)."[72]

Surveying much of the early research conducted in California, Gottfredson and Ballard observed that many claims about when a parolee is most likely to experience difficulties are predicated on studies that follow the subjects for too short a period of time. Consequently, Gottfredson and Ballard selected 1,810 men released to parole in 1956

and traced their performances for eight years thereafter. A summary of their findings appears below.

> Thirty percent of these parolees were classified as having "no difficulty" during the eight years, when "difficulty" included absconding, sentences to confinement of sixty days or more, or prison return with or without new convictions. Forty-two percent had no "major difficulty," defined as absconding or return to prison (regardless of convictions). Sixty percent had not been convicted of new "major offenses" punishable by imprisonment for a year or more; forty percent, however, were convicted of such offenses (in California or elsewhere) and were again imprisoned before the end of eight years.
>
> Of all parolees studied, less than three percent were convicted of major offenses of assault on other persons, and less than four percent were convicted of armed robbery.
>
> One fourth of all new major offenses were check or forgery convictions; next most frequent were burglaries and then narcotics law violations./73/

The authors concede the truth of the frequently heard generalizations that parole violations, if they occur, tend to do so soon after parole and of its corollary that the longer a parolee goes without difficulty on parole, the more likely he is to continue without difficulty. The trend, however, is not so marked as usually projected: "Thirty-five percent of all with minor or major difficulty during the eight year period were so classified during the first year after parole. Sixty-one percent of these men had committed a new major offense, and about ten percent had minor convictions or absconded."[74] Only four or five years after parole "can we expect to identify correctly the bulk of the parole sample which is classified into the "unfavorable" performance category."[75] In the eighth year, only 2.5 percent of all major or minor difficulties occurred; this represents less than one percent of all such difficulties.[76] Their conclusion is that "what proportions of parolees may be classified into the 'no difficulty' category...depends very much on the length of the

follow up study....The proportion with 'no difficulty' ranges from seventy-five percent if a one year criterion is used to thirty percent if the men paroled are followed for eight years."[77]

The summary of Gottfredson and Ballard offers a useful summary of the research discussed thusfar. The longer an individual remains on parole without serious difficulty, the more likely he is to succeed as he continues on parole. Once that hypothesis is accepted, it then becomes necessary to decide at what point the likelihood of failure on parole is outweighed by other considerations--the unnecessary restriction of individuals, the inefficient allocation of supervisory personnel, and the unnecessary expenditure or allocation of funds.

One published study that followed the implementation of Adult Authority Resolution 284 approaches the issue of early discharge through a different means, though it too seeks to assess the issue of relative risk. In the introductory section of their research document Jaman, Bennett and Berochea write: "This study sought to examine the major hypothesis that men discharged under Adult Authority Resolution 284 (A.A. 284) after one year arrest-free parole supervision would demonstrate the same degree of, or even less, criminal involvement subsequent to their discharge as the men terminated from parole after two years of uninterrupted supervision (2943 P.C.) or at expiration of sentence."[78] <u>All</u> subjects included in the study had been released from parole. This procedure avoids the ambiguity created in other studies which compare the performances of men not on parole with the performances of others still on parole. The latter are subject to different standards of arrest, and can be reimprisoned without judicial determination of guilt. Their more serious offenses can also be obscured by the designation "returned to finish sentence." In

their study the researchers extended the follow-up period from six months (which earlier interdepartmental research had covered) to one year because "parole outcome data indicates that follow-up periods of less than one year are too unreliable for evaluative purposes."[79]

In this study, the researchers compared the known criminal involvement within one year of parole termination for three groups--341 men released from prison to California parole from July through September 1970 and subsequently discharged under A.A. 284 during July through October 1971, 413 men paroled in 1969 and discharged from parole from July through October 1971 under Sec. 2943 P.C., and 143 men paroled between 1964 and 1970 (median parole period-33 months)[80] and released by expiration of sentence during July through September 1971. Men in all three groups had spent their first year on parole without arrest.[81] The groups were further comparable in ethnic background, narcotic use, regions to which they were paroled, and type of supervision to which they were released. Men discharged at expiration of sentence were generally younger, had more property offenses and more jail sentences.[82]

The study by Jaman, Bennett and Berochea revealed that the men released under A.A. 284 had a larger percentage of favorable outcomes than did men in the two other groups released at the same time.[83] (Favorable outcome was defined to include no arrest, arrest and release, fines, a jail sentence less than 90 days, and a jail sentence of any length, suspended.) More significantly, the men released under A.A. 284 had a 97 percent favorable outcome, compared to the 95 percent favorable outcome of men discharged at the same time but after two years of parole supervision (those released under Sec. 2943 P.C.). The major difference between these two groups of men was that one had spent twice as long on parole supervision

as the other; the group which had been supervised longer performed slightly less well. "It seems clear that the additional year of supervision had no value in terms of the parolees' later performance nor /consequently/ any value to public protection during the extra 12 months they were under supervision."[84]

The accomplishment heralded in the literature, however, is the discovery of an unambiguous, readily observable criterion for predicting future criminal activity. Whatever slight differences existed among the three groups of men discharged from parole in 1971 and followed up during the next year, the overall success rate was very high. Results of the study indicate that an individual who successfully negotiates his first year on parole is likely nine times out of ten to avoid difficulty the following year and avoid serious difficulty with the law.[85] The researchers further contend that the criterion is applicable to individuals with different commitment offenses: "It is the achievement of the arrest-free period that is of greater significance than background characteristics, in this case."[86]

The essential simplicity of the criterion is advantageous to a parolee as well. There is nothing he can do about his background, which traditionally has been the reference point for parole discharge decisions. He can, however, be responsible for the present and, in the particular instance of concern, he can be responsible for his behavior on parole. His actions in the present can influence his future. With such a criterion it is also easy to understand what is required for discharge: not being arrested is a concrete concept.

The benefits of implementation of A.A. 284 were described this way:

> The new policy embodied in A.A. 284 (1) established an empirically defensible basis for the selective discharge of people from parole, (2) discharged many people from parole much sooner than they otherwise would have been, (3) freed resources which could reduce the costs of the correctional system or be reallocated to provide more intensive supervision for those parolees regarded as requiring it, (4) promised to reduce the size of the parole population, and (5) placed more controls by the Adult Authority on the parole division./87/

In concluding their research report, the authors add a note of caution: because conditions and inmate populations fluctuate, there should be an ongoing evaluation of the program.

When, then, should a parolee be discharged from parole? In spite of their variation, the data indicate, for many individuals, a period shorter than the five or more years that current laws frequently mandate.

The standards support discharge before the expiration of maximum term. Section 305.12 of the Model Penal Code assigns to the Board of Parole the authority to terminate supervision and to discharge when discharge is "not incompatible with the public's protection." More recent documents allow greater latitude in determining when to discharge from parole. The ACA recommends that a parole board should be empowered by law "to discharge from parole at any time when supervision is no longer needed."[88] The National Advisory Commission concurs.[89] The Commission on Accreditation for Corrections of the ACA designates it "Essential" that "the parole authority should have the power to discharge from parole."[90] Movement in this direction is reflected clearly in the recent goals and legislation pending or enacted in other states. Recommendation 6.10 of Colorado's new Corrections Masterplan states the following: "Focus parole supervision heavily in the first few months following release from incarceration, and lessen the level of supervision thereafter. Terminate parole automatically after two years or expiration of sentence, whichever

comes first."[91] The discussion that follows this recommendation explains that statistics from Colorado as well as elsewhere suggest that "95 to 97 percent of all parolees who successfully complete two years of parole status go on to complete a third."[92] It is further conjectured that the automatic termination date will be accelerated to 18 months. Less conjectural is draft legislation prepared in Oregon for presentation to the 1977-1979 Legislative Assembly. The Measure Summary of the proposed legislation describes the bill this way: "Requires State Board of Parole to discharge paroled prisoner convicted of nonviolent crime after successful completion of one year of parole unless parole officer indicates continued parole advisable."[93] The act further provides for the early discharge of parolees sentenced for other than nonviolent crimes any time after one year as long as their release is not incompatible with the welfare of the parolee or of society.[94]

Recent legislation enacted in California as part of that state's new determinant sentencing policy (Senate Bill 42) also addresses the issue. Although that legislation abolishes release by parole, it also creates parole supervision for a period of one to three years following release from prison. The bill also provides that this period can be waived immediately and the prison releasee discharged immediately.[95]

A useful summary to the above multi-faceted and sometimes cyclical decision appears in the closing paragraphs of the earlier cited study by Robison, Kingsnorth, Robison and Inman:

> Whether or not one accepts the belief that treatment is effective, the assumption that it is at least not harmful would lead one to the conclusion that keeping a large proportion of people on parole who in all probability would not engage in criminal activity if they were discharged is justified by the decreased risk parole supervision provides for the smaller part of the population who would engage in criminal activity if discharged. However, it is argued here that

> parole supervision may be harmful to the individual parolee, that the costs of keeping people on parole unnecessarily are quite high, and that parole supervision probably does little to decrease the risk of criminal involvement./96/

In view of the tasks that parole supervision can and cannot accomplish; in view of the tenuous position of the parolee, who is, as a corollary to his position, liable to a different set of legal restraints; in view of unnecessary costs and inefficient allocation of manpower--the staff recommends that the Commission consider legislation that would allow the Board of Parole authority to discharge from parole before the elapse of the time now required by law. The possibility of early discharge should be reviewed automatically after a parolee has completed satisfactorily a specifically designated period of time on parole. The rationale for retaining on parole a parolee eligible for discharge should be explained in writing; such a statement would indicate specifically what would be gained by the community and/or by the parolee as a result of his continuing on parole. If no such justification can be made, discharge should follow automatically.

The specific impact of such a procedure on the State is worth considering. Data received in June 1977 from the Research and Statistics Division, Department of Corrections, indicate that ten years from that date 153 parolees currently on supervision will still be on supervision. During the period from January to June, 1982, five years from the date that the data were compiled, 438 of the current parolee population will still be on parole.

The average cost to the Department of Corrections to maintain an individual on parole is 72 cents per day; thus for each year less that an individual remains on parole, the Department of Corrections has about

$262.80 to re-allocate. And with each individual discharged, the figure should escalate.

Good-Time and Street-Time

Two other related matters remain and deserve at least brief consideration. The first seems initially an opposite to a recommendation for early discharge. The subject is inmates who are released from prison by expiration of sentence rather than by parole. (In Louisiana according to Department of Corrections statistics, 137 inmates were released at expiration of sentence in calendar 1975; 91 ((66.4 percent)) had returned to custody by June 1977.) There is a certain illogic at work in a system that imposes more and more restrictions on its inmates in order to allow out on parole fewer and fewer who are considered more dangerous or more reprehensible and yet at the same time makes no provisions to supervise these same individuals when they leave prison at expiration of sentence. If it is also true that longer sentences often create inmates who experience greater difficulty in adjusting to and interacting with the community, the absence of supervision seems an even more significant omission. The Manual of Correctional Standards of the ACA includes this observation: "The prisoner does not have a right to parole, but for his good and the good of the community, almost all should be given the opportunity of a period of supervision after leaving the regimentation and confines of the institution."[97] Their address is specifically to parole. The rationale of the statement applies to good-time releasees. The suggestion that the ACA's observation encompasses is the subject of a recommendation by the President's Commission: "Every State should provide that offenders who are not paroled receive adequate supervision after release unless it is determined to be unnecessary in a specific case."[98] Such assistance is

available to inmates in North Carolina facing unconditional discharge.[99] Available supervision for mandatory releasees under California's Senate Bill 42 also reflects the awareness that readjustment after imprisonment normally requires assistance.

In view of these circumstances, the staff recommends that supervirsory assistance be made available to those inmates in Louisiana prisons who are released at expiration of term.

Having examined a number of routes away from the jurisdiction of a state's department of corrections, it is appropriate to consider one route back and the ramifications of arrival. What about good-time? What about time served on parole?

An NCCD survey discloses that good-time is automatically lost upon revocation in 13 parole jurisdictions; it may be lost in eight, is rarely lost in one, and is not lost in 20. For ten jurisdictions the matter is not disclosed.[100] To take away a reward earned for good behavior in one circumstance as the result of unsatisfactory behavior in another set of circumstances is perhaps expedient (i.e., it may have a deterrent effect), but it seems unfair.

Finally, how is time spent on parole to be viewed once parole has been revoked? Twenty-nine governments credit "street-time" toward fulfillment of sentence, 22 do not, and one (Pennsylvania) does when revocation is for a technical violation but does not when revocation is for a new crime.[101] One writer who questions not counting street-time observes that, whatever the rationale for not doing so, the denial "cannot aid the rehabilitation of the parolee. Moreover, it seems unfair to add this time to the punishment he is already getting for the violation."[102] Another objection to discounting time spent on parole as time toward fulfillment

of sentence is one based on law: while on parole a parolee remains in the legal custody of the department of corrections, subject to its supervision.[103]

The staff includes the issues associated with revocation of parole simply to bring them into the conscious awareness of the Commission.

CHAPTER XI

CASELOAD: DILEMMAS AND DECISIONS

Caseload--many times mentioned, not yet discussed. Yet all the subjects addressed in the five preceding chapters somehow impact on caseload; now, having considered everything else, it is most feasible to address that subject, thus far omitted.

The term "caseload" is used generically and specifically. Broadly, it designates two things--first, the number of probationers and parolees an agent supervises, and, second, the number of major investigative reports the agent must prepare. For this sense, the term "workload" is often substituted. The narrower application of "caseload" is a designation for the group of probationers and parolees that an agent supervises. (The latter is the sense in which it is used below, unless otherwise indicated.)

In discussing caseload, we are considering the number of probationers and parolees that a probation-parole agent will interact with on a monthly basis. The individuals who make up his caseload are the individuals whose homes and jobs he will visit, whose conditions he will enforce, whose monthly reports he will receive; they are the individuals he will assist in their efforts to develop skills and to find jobs and counseling. Their total number influences the time he has to spend with each, yet he has numerous other duties--related directly and indirectly to his supervisory capacity--and they too influence the time available. In preceding chapters it has been suggested that five to 12 times as much of an officer's time is spent preparing a psi report as is spent with any one supervisee during a month and that little time is available for direct personal interaction. So far unacknowledged is the paperwork, which is multiplied by the number

of probationers and parolees for whom an officer must make record entries and on whom he must write periodic reports. While one assumption is that probation-parole officers choose their jobs because they like helping others, time studies reveal that a significant portion of their time goes to paper work. Reports of the percentage so occupied vary from 70 percent (with only 10 percent available for supervision),[1] to 33.1 percent (with 38.3 of his field time spent traveling and 43.1 percent of his time in court spent just waiting).[2] One researcher notes that "paperwork may have replaced casework."[3]

In Louisiana, the average caseload maintained by agents in the Division of Probation and Parole is 95 supervisees (about 75 probationers and 20 parolees) and five major investigative reports each month. This is a dramatic improvement from the days when there was one agent and a caseload of 522.[4] On the other hand, the current average caseload isn't very close to recommended standards of 50 and 35.

But why caseloads of 50 or 35? Those are the figures included in national standards. Apparently they are, to a degree, arbitrary. Not that there has not been reserach on the subject; studies have been numerous and extensive. But the evidence produced has been inconclusive.[5] One author presents the situation this way: "Will a parole officer do a better job of supervision if he has thirty-five parolees...instead of a hundred? He can more frequently counsel them, help them find jobs or homes, threaten them, look for them, and spy on them. Common sense certainly suggests that this will help them stay out of prison, but common sense appears to be an inadequate guide: the evidence, found in scores of case load research studies, is inconclusive."[6]

Beyond this, there is strong agreement that to consider numbers

alone is to miss the point, to perpetuate "our legacy of restricted, myopic vision."[7] Another source judges that "the various experimentation on caseload size and performance of adult offenders on probation or parole has produced results which are far from encouraging. It appears certain that mere manipulation of caseload size is irrelevant to success or failure under correctional supervision--that is, the "numbers game"--be the number 15, 25, 30, 45, 50, 70, 90 or 100--is not /in itself/ significant."[8]

The only circumstance in which numbers might in themselves be significant would be an extreme one "as in the instance where a probation/parole officer has so many cases he has no chance to impact any of them from a treatment perspective."[9]

If numbers alone have little influence on the outcome of individuals on parole, the search for "correct" ones nevertheless had an impact. In process of discovering that numbers alone do not matter, it was also discovered that some other variables do. The essential awareness derived was that the concept of caseload has no real meaning until it is linked with some system of classification and matching of offender types and needs and officer types and skills.[10] It thus becomes appropriate to use the ACA concept of workload instead of the older idea of an arbitrarily defined caseload of 50, 75, or 100. The ACA's procedure is to assign each case one point and a major investigative report five points. In a month an agent's workload should total 50. (Louisiana's Division of Probation and Parole employs the ACA workload concept but sets the workload at 100+.)

Later sources than the ACA's Manual of Correctional Standards acknowledge a need to differentiate tasks further because not all supervisory

tasks are equally difficult. Neithercutt and Gottfredson cite one such "prototypical" approach, which distinguishes three levels of complexity among probation-parole cases. Case assignments are made based on total work units. So, while the number of cases will vary from agent to agent, the workload would be uniform.[11]

To understand how these conclusions were reached, it is useful to survey the literature briefly. Much of the research involving caseload size has come, like that regarding early discharge from parole, from California. Three studies are widely referenced. The first study was the four-phased Special Intensive Parole Unit (S.I.P.U.) project, operative from 1953 through 1964. That was followed by the Parole Work Unit Program (P.W.U.P.) in 1964 and the San Francisco Project, also in 1964.

The first two phases of S.I.P.U. randomly released parolees either to regular 90-man caseloads or, in the first phase, to 15-man caseloads for three months; in the second phase, to 30-man caseloads for six months. In neither instance did evidence indicate the superiority of reduced caseload.[12] During S.I.P.U. III, special caseloads were increased to 35 and regular reduced to 72; these arrangements were maintained for a year. The comparison of the two groups at both 12 and 24 months after release to parole showed better performances especially by middle-risk parolees released to the 35-man caseloads.[13] In S.I.P.U. IV investigative interest shifted to matching parolees and officer types. Again, no significant differences were noted between regular groups and matched groups.[14] Overall, findings from S.I.P.U. supported the impression that other variables than just number impacted one's effectiveness in assisting parolees.[15] The variable was not, however, isolated.

P.W.U.P. was an attempt to assign parolees to caseloads according to the parolees' needs. It incorporated an elaborate grading system whereby parolees were assigned points according to the seriousness of the offense and other factors. Agents were assigned not caseloads (i.e., a fixed number of parolees) but a workload (some number of parolees whose "points" totaled 120).[16] Consequently, many men were part of caseloads no smaller in size than the regular 72-men caseloads.[17] At first the special caseloads performed no differently;[18] in the second six months of the project they were found to have a 3.2 percent advantage over the regular groups,[19] but the groups were not comparable, and the advantage was discounted.[20] Another finding of P.W.U.P. was that the rate of parolees being returned to prison for technical violations was higher than before.[21] The latter phenomenon was attributable to two things--officers with more time to notice technical violations and a degree of misunderstanding about the goals and purposes of the study. When parole administrators met with area supervisers, these matters were clarified and the violation rates went down.[22] (The situation described here offers a further commentary on the arbitrariness of revocation for technical violation.)

The San Francisco Project involved the random assignment of adult probationers and parolees to caseloads varying in size from 25 units (intensive) to several hundred (minimum). Preliminary data indicated that all sizes of caseloads had violation rates well within those expected of federal offenders under normal circumstnaces. "These data are of particular significance when it is observed that the outcomes of supervision (violation rates) among the four types of caseloads are almost identical despite enormous variation in attention given the

cases as measured by the number of contacts by probation and parole officers."[23] Another observer notes that "no significant difference in new felony rates were found among the different size caseloads, although more technical violations were reported with small caseloads, which reflected the increased time available to officers to discover rule infractions not involving felonies."[24] Another researcher conjectures that the reason for the high technical violation rate might be otherwise: perhaps the increase in violations is real; perhaps the violations are expressions of defiance in response to "the frequent authoritarian intrusions into their lives."[25]

The research recounted above confirms earlier conjectures: "reductions in case load size alone have no 'treatment effect.'"[26]

> There must be recognition that all of the data available indicate clearly that there is no such thing as an ideal caseload size and that a continued serach for the magic number is inappropriate and most likely futile. Rather, there may be ideal caseload sizes, depending upon and varying with different combinations of offenders, officers, programs, communities, and the like. The challenge is to find the appropriate mix; the immediate requirement is to build into the probation and parole system sufficient flexibility to permit restructuring from traditional to experimental caseloads./27/

So the task is summarized and the challenge issued.

What are the approaches that lead most directly toward the desired goal? One such approach is signaled by the reiterated requirement that cases be assigned to a probation-parole officer according to specific criteria rather than randomly. "Classification and assignment of offenders should be made according to their needs and problems,"[28] the President's Commission states. The National Advisory Commission and the Louisiana Commission on Law Enforcement speak of "workloads" and "task groups" as opposed to "caseloads."[29] The National Advisory Commission adds,

"It is essential that parole agencies develop workload data, especially in an era of team supervision, so that manpower can be reasonably related to activities to be done."[30] Toward that end, the Commission's Standard 12.8(1) calls for a "functional work load system linking specific tasks to different categories of parolees."

In spite of directives such as those, the conventional balanced caseload is probably the national norm.[31] It is convenient to administrators assigning cases and guarantees fair distribution of numbers for probation-parole agents, but it inevitably creates markedly heterogeneous caseloads, which, in turn, demand a "general practitioner," the mythical probation-parole officer of the past who "despite variations in background, training, experience, personality, and the like, can meet the varying treatment needs of many differing types of offenders, with equal ease and skill."[32]

That practice recalls--indeed, is a part of--the discussion in Chapter X regarding the resource manager model, which enables one agent to involve many others as he directs a criminal offender toward the community's resources.

Along with the emergence of the resource-manager concept comes another concept which builds further on the awareness that in some circumstances one resource is not so helpful as several different resources. This is the team model of supervision. It accepts and capitalizes on the fact that capabilities and skills vary among probation-parole officers as they do among any group of professionals. This model prescribes that a team--composed varyingly of agency professionals, paraprofessionals and volunteers--be responsible for providing the appropriate services to a group of probationers and/or parolees. If the team members are all

professionals, the group for which they are responsible would be as large as the combined total of their individual caseload/workload. With an all-professional team, team members would be combined according to their different special skills and abilities; or, lacking clearly differentiated skills, members would develop areas of specialty. There would, in any case, be a team leader, and the leadership role might well be a rotating one. The teams themselves could be permanently assigned or brought together for a special task and then disbanded once that task has been completed.[33]

More than just increasing the number of immediate resource persons available to a probationer or parolee, the team model allows supportive contacts of offenders with one another, a situation usually suspect and forbidden.[34] National Advisory Commission standards (and Louisiana Commission on Law Enforcement objectives) that address services to probationers and parole field services recommend a team system whereby a variety of persons work as a unit to identify and address probationer-parolee service needs.[35] In discussing the team model as it applies to parolees, the Commission suggests the make-up of the team to include "parolees, parole managers, and community representatives" (Standard 12.5(4)). Such an approach, the Commission judges, can better meet the needs of parolees and can, at the same time, involve the community directly in the process.[36] Then the Commission goes one step further and suggests that specific team members be assigned to community groups or institutions with which it is important for the probation-parole organization to have a close working relationship--e.g., state employment agencies or vocational training institutes.[37]

North Carolina, Kansas, and Colorado all report using variations

of the team model. In 1974, when North Carolina employed separate probation and parole staff, the Division of Adult Probation and Parole fielded teams of five to ten probation officers. The design was to select team members so that each one had specialized knowledge about and experience in one or more particular areas, such as drug abuse, alcoholism, education, employment, or marriage counseling. Members of teams such as these are given in-service training in their specialty. For each team there is an experienced probation officer as manager. The team meets regularly for case assignment and discussion. Speakers or even probationers may be invited to these conferences. The teams are assisted by local professionals, volunteers and other professionals.[38]

In 1975 there were nine such teams operating in the nine North Carolina cities with high crime rates; 16 teams were scattered elsewhere throughout the state.[39] In addition "mini-teams" of two to five officers were operating in smaller, less populous areas of the state.[40]

Colorado's new ten-year Corrections Masterplan calls for similar teams. Called Community Resources Management Teams (C.R.M.T.), they would be composed of agents who specialize in different aspects of service delivery. Parolees would be assigned to a particular officer according to the parolee's special need, but he would have access to the whole range of services that the group had to offer.[41] The latter arrangement is doubtlessly designed to avoid a drawback that the Kansas Department of Corrections discovered after implementing its team approach. It was difficult for an individual relationship to evolve when the parolee was assigned to the whole team; consequently, the Kansas corrections master plan provides that one officer be assigned primary responsibility for a parolee though the secondary team members will be available.[42]

Just as using teams to deliver services to probationers and parolees increases the flexibility of a probation-parole agency, so does the process of establishing links with prison staffs. "Parole and probation services have often held themselves aloof from jails and prisons," the President's Commission notes, with the result that "the transition between the way an offender is handled in an institution and his supervision in the community is irrationally abrupt."[43] Not only would linkage of staff be an advantage to the offender; it also would open to the parole agent another avenue for understanding the individual with whom he interacts. Presently, the whole of a parolee's prison experience is often beyond the parole officer's purview.

Mentioned periodically in descriptions of the membership of probation-parole supervisory teams, community volunteers are another resource which broadens a probation-parole division's base of services. Volunteers are a very old source of correctional manpower (recall the "guardians" of the Elmira Reformatory and John Augustus in Boston), but they are used sparingly in more recent times. In 1968 a little less than half the correctional agencies in the United States reported using volunteers.[44] (In Louisiana, when probation and parole staffs were merged in 1952, the use of volunteer parole advisers was discontinued.)[45] A questionnaire mailed to all 50 states in 1975 revealed only 18 states (of the 31 which responded) spending money to provide volunteer services to their corrections system.[46] (The money presumably was spent for training and the services of a coordinator of volunteer services.) Community volunteers perform a multiple of tasks, but the one most frequently cited is their provision of direct personal contact, which an offender can perceive as caring but undemanding. One author characterizes

the situation this way: "As a friend, but a disinterested friend (he has no 'angle,' no axe to grind, no power over his 'client'), the volunteer can provide a kind of support and give a kind of advice that neither the parole officer nor the inmate's relatives can give."[47] Another author makes a much stronger comment:

> ...the increased use of lay volunteers by probation departments throughout the country and the success claims attributed to the "one-to-one" relationship with an untrained layman "who cares" suggests that professional training and expertise found in the best of our probation officers may be unnecessary or superfluous..../It is/ also possible that the mere threat of jail...is as effective a deterrent to the defendant, and as "rehabilitative" a force, as the "services and supervision" given by the probation officer. ...no data that contradicts this hypothesis./48/

One can but suspect the statement to be hyperbole; but one might also conjecture that the statement gives voice to a charge that professionals in the field expect, and yet feel threatened by because of the truth it probably does contain--i.e., there are some things that a probation-parole officer gives his time to that others who are not trained in probation-parole work can do as well as or better than he. An articulated objection to volunteers is that screening and training are essential, and both ordinarily require that probation-parole manpower be diverted for the task.[49]

The ABA and the Jaycees sponsor active volunteer programs in prisons across the nation. National Advisory Commission standards recommend that the use of volunteers be expanded, and caution that they must be trained and their services, coordinated.[50] North Carolina reports the use of volunteers to assist both probationers and parolees,[51] and they also note significant gains from the process: it enlists community aid and support for the offender and thus facilitates his reintegration.[52] The significance of that service is elaborated cogently in a statement by the Louisiana Commission on Law Enforcement.

> It must be remembered that volunteers can contribute much more than their services to correctional programs. Many of those now working as volunteers are "gatekeepers" in the community, persons who can help offenders and ex-offenders secure jobs, schooling, and recreation. Perhaps their greatest contribution to corrections lies in demonstrating that offenders are persons who can become useful contributors to the community, people with whom it is a satisfaction to work. In summary, the volunteer can serve as a bridge between corrections and the free community, a bridge which is sorely needed./53/

Reprise

So it is: caseload size is not an independent variable; simply adding probation-parole agents or subtracting probationers and parolees is not likely to be, in itself, effective or efficient. The ratio of agents to offenders matters very little, unless, as a source quoted earlier said, a probation-parole officer has so many cases that he has no chance to impact any. But even that point goes without definition, and one recalls the debate described in Chapter IX which questions the efficacy of at least half of supervision's premise--i.e., that it can prevent/deter overt criminal activity. If that function is impossible or untenable, why should one chafe at not having time to try? Or, is there perhaps always the belief that one could have succeeded had he had more time? Then, again, it is likely that, more than time, he needed access to more sources of assistance, a broader base from which to recommend and to deliver services to the probationers and parolees that constitute his caseload. This is a need more readily met--so long as one can see beyond the tradition that makes of each probation-parole agent the embodiment of the entire system for each of his probationers and parolees. As he can tap whatever resources are available in the community and lobby for others, he can also supplement his skills and

knowledge and complement the skills and knowledge of others by working as a team member, by interacting with other Department of Corrections personnel who knew his parolee first, by enlisting the aid of volunteers who also have skills, interests and--yes--time, which develop further the base from which he operates. For this agent from whom much is demanded, much is possible.

Where against this background is Louisiana's Division of Probation and Parole?

Let's look first just at the numbers. While they do not define the Division, they offer a sketch. The average workload for the Probation-Parole Agent I's and II's is about 95 supervisees and five major investigative reports per month. In ACA work units, that equals 120--(95 x 1) + (5 x 5). Probably this estimate is on the high side, because agents have occasionally reported carrying 85 cases.

At the request of this staff the Division generated data regarding how many agents would have to be added in order to meet the 50-man caseload standard. The total number of agents that would have to be hired in order to reach a 1:50 ratio is 208. A corollary to adding 208 agents would be hiring 104 clerical personnel so that that ratio would remain 2:1. All such agents would be hired at the Agent I level, as is required by departmental guidelines and civil service job description. Even without considering the salaries involved, the subject has the aura of science fiction. With costs sketched in, the sense of unreality increases. The Probation-Parole Agent I hires in at $729/month and earns $8,748/year. As the new Agent I's come into the system, present Agent I's and II's will be promoted (six Agent II's will be needed as Agent III's); with promotion goes salary increase--$11,148/year for a beginning Agent III. Et cetera.

Much more practical for immediate consideration is the information from Adult Services, Department of Corrections, that the Division's caseload is increasing at the rate of 60 per month. Consequently, it was explained, the Division needs seven more agents just to maintain the current supervision load. Such an addition would require additional clerical support staff as the ratio is already too small. When the legislature funded positions for 35 new probation-parole agents in FY 1976-1977, it did not budget for an increase in clerical personnel.

Does the Division of Probation-Parole need additional professional personnel? Like so many other questions raised above, this one has no single, simple answer. But the complexity of the answer reflects a number of viable options. Some number of parolees are retained on parole year after year, in spite of satisfactory performance. One current option which the Division and the Board of Parole cooperate in choosing is suspension of supervision. From the Division's perspective, this is perhaps equivalent to discharge: there is virtually no cost and certainly no expenditure associated with a parolee's remaining nominally on parole. (From the parolee's perspective, the matter must seem quite different. Based on his perspective and with regard to data cited earlier which suggest significantly decreased risk of criminal behavior after two to four years spent successfully on parole supervision, the staff repeats its recommendation from the preceding chapter that the Board of Parole be authorized to discharge an offender from parole before expiration of the sentence given.)

The other avenue by which to approach the question of personnel and caseload is to investigate the Division's service delivery system. Perhaps too many probationers and parolees are being retained within the

system, but perhaps the professionals within the system are not integrating newer and reportedly more effective ways of handling their cases; perhaps they are not tapping other resources in the community and in the corrections system itself in order to increase the range of assistance offered to individuals assigned to their caseloads.

Of central importance in discussing caseload is some system of classifying and assigning parolees to agents. Data indicate that classification of offenders is essential to more effective caseload management and to an offender's increased chances of success. Nevertheless, cases are apparently assigned randomly with concern for balanced numbers rather that degrees of difficulty or common service needs. There have apparently been attempts to make case assignments with a district's geography in mind. Even this offers a savings of time, but turnover among cases within a district makes this plan impractical so that not even a geographical basis of classification exists.

Volunteers from the community are another uninvestigated option for impacting supervisees and lessening the number of tasks an agent faces. Those agents in Louisiana's Division of Probation and Parole who were asked about the use of volunteers were overtly negative: volunteers would take more time to train than they could free; they would not be dependable because they would be just that--volunteers. More recently, however, administrators in the Baton Rouge District have responded favorably to projected implementation of a Volunteer Parolee Aide (VPA) project in the district by the Young Lawyers Section of the Louisiana Bar Association. The initial phase of the planned project will involve a two-person staff (provided by the Louisiana Bar Association) and about ten attorneys who

will commit to participate in the program for at least a year.

An attorney will spend on the average of six to eight hours each month with a newly released parolee, who is also a volunteer. The program is based on the recognition that the attorney by virtue of his profession is skilled and knowledgeable in ways helpful to a newly released parolee: an attorney is used to listening; he deals regularly with red tape and regulations; he knows about establishing credit; he usually has experience counseling about family problems. Perhaps too he has contacts in the community who can assist the parolee to get a job. The program model forbids the attorney to act as advocate in criminal matters but allows the attorney to decide the amount of legal assistance he will provide in civil matters. Training also is included.

As suggested in the last chapter, the resource manager model also awaits implementation, and allows an officer to be primarily a referral agent instead of a one-man probation-parole service impacts caseload. Nor has the Division sought to implement probation-parole teams. While it boasts some specialists--usually experienced agents who are assigned troublesome groups--teams of specialists who supervise a large combined caseload are not currently a part of the Division's services.

It appears that strong consideration should be given to introducing a management and transactual information systems capability to the Division of Probation and Parole. Such a system would, in part, resolve many questions relating to the efficient utilization of resources. However, this action should be viewed very carefully in terms of the high costs and mixed success experienced by other states. Also, the

current ability of the Department of Corrections to utilize the sophisticated procedures and outputs of such systems must be questioned. Therefore, considerations relating to Management Information Systems (MIS) and Transactual Information Systems (TIS) programs must be associated with a strong commitment to staff training and a view toward a multi-year effort involving the entire Department of Corrections operation. Typically, the initial phase of such efforts would be a feasibility study conducted by an outside consultant. However, care must be taken to fully involve Department of Corrections staff at all periods in the design of such systems.

APPENDIX A

Sample Statement of Reasons for Parole Denial

After consideration of the circumstances of your present offense, and in the absence of any statement by the sentencing court tending to indicate the contrary, the Board has concluded that there are certain punitive and deterrent aspects to your sentence. In the absence of any special or equitable circumstances or any affirmative evidence that you can avoid criminal behavior, and since your minimum sentence has not yet expired, the Board feels that the punitive and deterrent aspects of your sentence have not been fulfilled and that, therefore, your release would not be compatible with the community welfare.

After consideration of all records relevant to your confinement, treatment and efforts toward self-improvement while in the N.J. State Prison System, the Board is unable to conclude that there is reasonable probability that you will return to society without violation of law.

The Board feels that you have had an excellent institutional adjustment with the exception of your escape from Leesburg in May of 1970. Your receipt of a BED certificate is also noted, as is the fact that you have served almost 8 years in prison.

The Board would note certain elements which might be construed as "situational" in your murder of a friend's wife with whom you were emotionally involved. However, the Board finds strong indications of a long-standing hostility to females in your history and a potential for violent or aggressive reaction. These indications include your attempted suicide in 1950, your unstable marriages to three different women, your continuing projections of blame on them for marriage failures, and the various reports of professional treatment staff.

Moreover, your escape from prison, your prior attempt at self-destruction, your reported excessive use of alcohol and the circumstances of the present murder, cause the Board concern that you still have the potential to react to not unusual situations where your concepts of masculinity are threatened with impulsive behavior.

There is nothing which affirmatively indicates that you can refrain from serious aggression and parole is therefore denied.

APPENDIX B

LOUISIANA PAROLE BOARD DECISION FORM

Name _____ Number _____ Institution _____

The Louisiana Board of Parole, after due consideration of all the facts in your case made the decision that you are _____ parole.

For the following reasons:

_____ Serious Nature of the Offense

_____ Police and/or Juvenile Record

_____ Prior Felony Conviction(s)

_____ Previous Probation

_____ Parole Violator

_____ Psychological and/or Psychiatric History

_____ No Parole Plan

_____ Crimes Committed While in the Institution

_____ Institutional Disciplinary Reports

_____ History of Drug or Alcohol Abuse

_____

_____ Escape

_____ Violation of Work Release Agreement

_____ Additional Charges Pending

_____ Law Enforcement and/or Judicial Official Object

_____ Other _____

_____

You will be given another hearing _____

Remarks _____

_____

_____

_____
Chairman

_____
Date

CF 14

APPENDIX C

Responses to Questionnaires on the District Attorney's Role at Parole Release Hearings

The following is a summary of responses to a questionnaire addressed to parole boards in 49 states regarding the board's policies on the role of the district attorney at parole release hearings. Please note that the responses of Georgia, Iowa, and New York were received after the completion of the text of the report but before this appendix was prepared. The answers received from these three states do not alter the conclusions drawn in the text. It is likely that additional responses will be received from other states. Commission members who are interested in receiving a summary of any additional information received may contact the staff.

Arkansas -- The Board has no objections to anyone attending parole hearings. However, a form is sent to judges, sheriffs and prosecuting attorneys soliciting their recommendations on prospective parolees. The implication is that this is the means generally used by prosecutors to express their opinions.

California -- The prosecutor is not allowed to appear at parole consideration hearings. The Board notifies the sentencing judge, defense counsel, the district attorney and the law enforcement agency that investigated the case that the inmate will be considered for parole and requests any comments.

Colorado -- Only the applicant, the parole division, institution staff and the Board participate in the hearing, although it is open to the public. This does not, however, exclude written or verbal input from other sources before or after the hearing.

Connecticut -- The parole hearings include only the prospective parolee, members of the Board, and its secretary. The Chairman of the Board conducts numerous pre-hearing conferences with attorneys, members of families and other interested persons, and such conferences are available to prosecuting attorneys. However, the present Chairman indicated he remembered very few such conferences in the past.

Florida -- The Parole Commission makes the decision to grant or deny parole on the basis of interviews conducted by its staff of hearing examiners. Only the Commission staff is present when the decision is made, but information received from court officials, attorneys, interested citizens, institutional records, etc. is included in the parole file.

Georgia -- The Board does not conduct parole release hearings, but welcomes information from any source either by letter or personal visit. In the rare cases when the Board considers paroling an inmate before the time required for automatic initial consideration, the Board must notify in writing the sentencing judge and district attorney and give them an opportunity to express their views. After a tentative decision to grant

parole to a felon with two or more prior felony convictions, it is Board policy to notify the district attorney and give him an opportunity to express his views to the Board.

Iowa -- In Iowa, oral presentations regarding inmates or parolees are heard only with the consent of the Board. Communications concerning individual inmates are included in the file and noted on the dockets of members of the Board.

Maine -- The Board has no policy per se regarding appearance of prosecutors at parole violation hearings, but has only had two instances in the past year. The Board welcomes any information, but would be very cautious of prosecutors using the Board for political purposes. The Board's policy is to notify the prisoner at least three working days before his hearing of any witnesses appearing against him.

Massachusetts -- The prosecuting attorney plays no part in parole release hearings, although he may ascertain an individual's eligibility date and communicate with the Board in writing. The only exception to this practice is when the Board conducts pardon and commutation hearings (as advisor to the Governor) and parole hearings for prisoners with life sentences, when the Board must conduct public proceedings and the district attorney must be given notice of the hearing. Counsel is allowed only at these hearings.

Michigan -- Neither prosecutors nor counsel for parolees may appear at parole hearings. Statutes provide for the presence of a representative from the State Attorney General's Office at Lifer Law and Murder 1st Degree public hearings.

Mississippi -- The Board has never had a request from a district attorney to appear before it.

Montana -- Notifications are sent to county attorneys, but none has ever appeared at a Board meeting.

Nevada -- There is no personal appearance by district attorneys although the Board asks them and sentencing judges for their comments.

New Mexico -- Neither counsel for the applicant nor for the state is permitted by the Board.

New York -- The Board does not allow the prosecutor or the inmate's attorney to appear before the Board. A written opinion of the district attorney is solicited.

North Dakota -- The Board has never had a district attorney appear against one of the inmates at a hearing. The sentencing judge and district attorney are notified and they can comment by letter on an inmate being considered.

Oklahoma -- There is no policy regarding appearances before the Board, but only occasionally does a district attorney appear.

Rhode Island -- The Board has a policy against appearance by a prosecutor at hearings.

South Carolina -- The Board has no policy against appearances of anyone at hearings, but it is not the practice of the state's solicitors to appear in any capacity. The solicitor is notified and may send in a statement of his feelings about the parole.

Wisconsin -- Neither the district attorney nor counsel for the inmate is present at release hearings. The district attorney and sentencing judge are notified to allow them to express written opinions.

APPENDIX D

Louisiana Board of Parole Guidelines

	YES	NO
I. Has the inmate successfully completed work release? *If YES, parole; indicate your decision in III and STOP. If NO, continue.*	___	___
I. Using the board rating for PRIOR CRIMINAL RECORD on the previous page, locate the inmate's PRIOR CRIMINAL RECORD below:		
NO or MINOR PRIOR CRIMINAL RECORD		
A. Was the inmate's offense so serious that you feel he should serve more time solely for this reason?	___	___
B. Are there strong written law enforcement, judicial or other official objections to his release at this time?	___	___
If either answer was YES, deny parole. If both answers were NO, parole. Indicate your decision in III and STOP.		
SERIOUS PRIOR CRIMINAL RECORD		
Is the inmate at his first parole hearing? *If YES, deny parole; indicate your decision in III and STOP. If NO, continue.*	___	___
SERIOUS AT SECOND AND LATER PAROLE HEARINGS or MODERATE PRIOR CRIMINAL RECORD		
Please check ALL factors YES or NO.		
A. Do the following unfavorable factors apply to the inmate?		
1. Factors related to the inmate's prior criminal record:		
a. Pattern of violence against persons	___	___
b. History of crimes related to drug or alcohol abuse	___	___
c. Short time between convictions	___	___
d. Parole or probation violation	___	___
2. Factors related to the immediate crime:		
a. His major role in the offense	___	___
b. Weapon involved	___	___
c. Serious nature of the crime	___	___
3. Factors related to behavior in the institution:		
a. Poor discipline (defined as one or more of the following infraction combinations within the last year: one major and one minor; 2 or more major; 3 or more minor)	___	___
b. One or more escapes within the last six months	___	___
c. Work release violation within the last six months	___	___
4. Factors related to the inmate personally:		
a. Poor civilian work record and attitude toward work	___	___
b. Crime-oriented life style	___	___
c. History of psychological problems or recent unfavorable psychological report	___	___
d. Nomadic, a drifter	___	___
5. Written law enforcement, judicial or other official objections	___	___
If 5 checks or less in Section A were YES, parole; indicate your decision in III and STOP. If 6 or more checks in Section A were YES, continue.		

APPENDIX D

B. Do the following favorable factors apply to the inmate?

1. Factors related to behavior in the institution:
   a. Successfully completed work or study program ___ ___
   b. Very good conduct ___ ___
2. Factors related to the post-release situation:
   a. Family is supportive ___ ___
   b. Community is supportive ___ ___
   c. Good work plan or job skill ___ ___
   d. Good parole plan ___ ___
3. Inmate is likely to complete sentence if not paroled and needs supervision ___ ___

If 2 checks or less in Section B were YES, deny parole. If 3 or more checks in B were YES, parole. Indicate your decision below.

Board decision: PAROLE _____ DENY PAROLE _____

For a decision outside the guidelines, please indicate the reasons:

_____

_____

_____

APPENDIX E

TABLE 1

Guidelines for Decision-Making (Adult Cases):
Average Total Time Served Before Release (Including Jail Time)

Offense Characteristics	OFFENDER CHARACTERISTICS: 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				
Minor theft; walkaway; immigration law violations; alcohol law violations	6-10 months	8-12 months	10-14 months	12-16 months
Category B: Low/Moderate Severity Offenses				
Possess marijuana; possess heavy narcotics, less than or equal to $50; theft, unplanned; forgery or counterfeiting, less than $500; burglary, daytime	8-12 months	12-16 months	16-20 months	20-25 months
Category C: Moderate Severity Offenses				
Vehicle theft; forgery or counterfeiting, greater than $500; sale of marijuana; planned theft; possess heavy narcotics, greater than $50; escape; Mann Act—no force; Selective Service	12-16 months	16-20 months	20-24 months	24-30 months
Category D: High Severity Offenses				
Sell heavy narcotics; burglary, weapon or nighttime; robbery, "spur of the moment"; sexual act, force	16-20 months	20-26 months	26-32 months	32-38 months
Category E: Very High Severity Offenses				
Armed robbery; criminal act weapon; sexual act, force, injury; assault, serious bodily harm; Mann Act force	26-36 months	36-45 months	45-55 months	55-65 months
Category F: Highest Severity Offenses				
Willful homicide; kidnapping; armed robbery, weapon fired or serious injury	Information not available according to sufficient 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, select 24 days (one month) to allow for release date provision.

APPENDIX F

Glossary

The following terms are used in this report. The definitions presented reflect the usages suggested by the Dictionary of Criminal Justice Data Terminology, First Edition 1976, U.S. Department of Justice.

abscond (corrections) - To depart from a geographical area or jurisdiction prescribed by the conditions of one's probation or parole, without authorization.

adult - A person who is within the original jurisdiction of a criminal, rather than a juvenile, court because his age at the time of an alleged criminal act was above a statutorily specified limit.

arrest - Taking a person into custody by authority of law, for the purpose of charging him with a criminal offense or for the purpose of initiating juvenile proceedings, terminating with the recording of a specific offense.

caseload (corrections) - The total number of clients registered with a correctional agency or agent during a specified time period, often divided into active and inactive, or supervised and unsupervised, thus distinguishing between clients with whom the agency maintains contact and those with whom it does not.

client - A person receiving attention, supervision, or services from agencies or individuals in the criminal justice system.

community facility - A correctional facility from which residents are regularly permitted to depart, unaccompanied by any official, for the purpose of daily use of community resources such as schools or treatment programs, and seeking or holding employment.

community resources - The supply of public and private rehabilitative services available to corrections clients within their area of residence.

community-based corrections - The provision of correctional services and supervision to offenders in their general area of residence, rather than in a centralized state facility. A community-based corrections system utilizes local rehabilitative and custody resources.

confinement facility - A correctional facility from which the inmates are not regularly permitted to depart each day unaccompanied.

convict - An adult who has been found guilty of a felony and who is confined in a federal or state confinement facility.

conviction - A judgment of a court, based either on the verdict of a jury or a judicial officer or on the guilty plea of the defendant, that the defendant is guilty of the offense(s) for which he has been tried.

correctional agency - A federal, state, or local criminal justice agency, under a single administrative authority, of which the principal functions are the investigation, intake screening, supervision, custody, confinement, or treatment of alleged or adjudicated adult offenders, delinquents, or status offenders.

CONTINUED

3 OF 4

correctional day program - A publicly financed and operated non-residential educational or treatment program for persons required, by a judicial officer, to participate.

correctional facility - A building or part thereof, set of buildings, or area enclosing a set of buildings or structures, operated by a government agency for the custody and/or treatment of adjudicated, and committed persons, or persons subject to criminal or juvenile justice proceedings.

correctional institution - A generic name proposed in this terminology for those long-term adult confinement facilities often called "prisons," "federal or state correctional facilities," or "penitentiaries," and juvenile confinement facilities called "training schools," "reformatories," "boys' ranches," and the like.

corrections - A generic term which includes all government agencies, facilities, programs, procedures, personnel and techniques, concerned with the investigation, intake, custody, confinement, supervision, or treatment of alleged or adjudicated adult offenders, delinquents, or status offenders.

crime - An act committed or omitted in violation of a law forbidding or commanding it for which an adult can be punished, upon conviction, by incarceration and other penalties or a corporation penalized, or for which a juvenile can be brought under the jurisdiction of a juvenile court and adjudicated a delinquent or transferred to adult court.

crime against person - A criminal offense involving physical injury (or imminent threat of injury) to another human being. Crimes against person include murder, assault, rape, robbery, arson, and kidnapping, among other offenses.

crime against property - A criminal offense involving damage to, loss of, or unauthorized use of property or other objects of value. Crimes against property include theft, larceny, burglary, unauthorized use of a motor vehicle, forgery, issuing bad checks, and possession of stolen property, among others.

crime against statute - A criminal offense involving activity prohibited by law, but without direct injury or threat to persons or property. Crimes against statute include perjury, bribery, drug abuse, criminal activity in drugs, and escape from custody, among other offenses.

criminal history record information - Information collected by criminal justice agencies on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges, and any disposition(s) arising therefrom, sentencing, correctional supervision, and release.

criminal justice agency - Any court with criminal jurisdiction and any other government agency or subunit, which defends indigents, or of which the principal functions or activities consist of the prevention, detection and investigation of crime; the apprehension, detention and prosecution of alleged offenders; the confinement or official correctional supervision of accused or convicted persons, or the administrative or technical support of the above functions.

criminal justice system - All agencies and individuals that participate in processing and supervising persons accused of or convicted of violations of the criminal laws. The "system" includes, but is not limited to, law enforcement and police agencies, prosecutors and defense attorneys, courts, victims and witnesses, corrections agencies, public and private rehabilitative agencies and defendants, clients, and offenders. These elements of the "system" often operate very independently, without mechanisms for assessing the effects of their actions upon other parts of the "system".

diagnosis or classification center - A functional unit within a correctional institution, or a separate facility, which holds persons held in custody for the purpose of determining to which correctional facility or program they should be committed.

diversion - The official halting or suspension, at any legally prescribed processing point after a recorded justice system entry, of formal criminal or juvenile justice proceedings against an alleged offender, and referral of that person to a treatment or care program administered by a non-justice agency, or a private agency, or no referral.

ex-offender - An offender who is no longer under the jurisdiction of any criminal justice agency.

group home - A non-confining residential facility for adjudicated adults or juveniles, or those subject to criminal or juvenile proceedings, intended to reproduce as closely as possible the circumstances of family life, and at minimum providing access to community activities and resources.

halfway house - A non-confining residential facility for adjudicated adults or juveniles, or those subject to criminal or juvenile proceedings, intended to provide an alternative to confinement for persons not suitable for probation, or needing a period of readjustment to the community after confinement.

hearing - A proceeding in which arguments, witnesses, or evidence are heard by a judicial officer or administrative body.

institutional capacity - The officially stated number of inmates or residents which a correctional facility is designed to house, exclusive of extraordinary arrangements to accommodate overcrowded conditions.

jail - A confinement facility usually administered by a local law enforcement agency, intended for adults but sometimes also containing juveniles, which holds persons detained pending adjudication and/or persons committed after adjudication for sentences of a year or less.

jurisdiction - The territory, subject matter, or person over which lawful authority may be exercised.

level of government - The federal, state, regional, or local county or city location of administrative and major funding responsibility of a given agency.

offender syn criminal - An adult who has been convicted of a criminal offense.

parole - The status of an offender conditionally released from a confinement facility prior to the expiration of his sentence, and placed under the supervision of a parole agency.

parole agency - A correctional agency, which may or may not include a parole authority, and of which the principal functions are the supervision of adults or juveniles placed on parole.

parole authority - A person or a correctional agency which has the authority to release on parole adults or juveniles committed to confinement facilities, to revoke parole, and to discharge from parole.

parole violation - An act or a failure to act by a parolee which does not conform to the conditions of his parole.

parolee - A person who has been conditionally released from a correctional institution prior to the expiration of his sentence, and placed under the supervision of a parole agency.

population movement - Entries and exits of adjudicated persons, or persons subject to judicial proceedings, into or from correctional facilities or programs.

presentence report - The document resulting from an investigation undertaken by a probation agency or other designated authority, at the request of a criminal court, into the past behavior, family circumstances, and personality of an adult who has been conficted of a crime, in order to assist the court in determining the most appropriate sentence.

prior record - Criminal history record information concerning any law enforcement, court or correctional proceedings that have occurred before the current investigation of, or proceedings against, a person; or statistical descriptions of the criminal histories of a set of persons.

prison - A confinement facility having custodial authority over adults sentenced to confinement for more than a year.

prisoner - A person in custody in a confinement facility, or in the personal custody of a criminal justice official while being transported to or between confinement facilities.

prison (sentence) - The penalty of commitment to the jurisdiction of a confinement facility system for adults, of which the custodial authority extends to persons sentenced to more than a year of confinement.

probation - The conditional freedom granted by a judicial officer to an alleged offender, or adjudicated adult or juvenile, as long as the person meets certain conditions of behavior.

probation agency syn probation department - A correctional agency of which the principal functions are juvenile intake, the supervision of adults and juveniles placed on probation status, and the investigation of adults or juveniles for the purpose of preparing presentence or predisposition reports to assist the court in determining the proper sentence or juvenile court disposition.

probation officer - An employee of a probation agency whose primary duties include one or more of the probation agency functions.

probation (sentence) - A court requirement that a person fulfill certain conditions of behavior and accept the supervision of a probation agency, usually in lieu of a sentence to confinement but sometimes including a jail sentence.

probation violation - An act or a failure to act by a probationer which does not conform to the conditions of his probation.

probationer - A person required by a court or probation agency to meet certain conditions of behavior, who may or may not be placed under the supervision of a probation agency.

recidivism - The repetition of criminal behavior; habitual criminality.

revocation - An administrative act performed by a parole authority removing a person from parole, or a judicial order by a court removing a person from parole or probation, in response to a violation on the part of the parolee or probationer.

revocation hearing - An administrative and/or judicial hearing on the question of whether or not a person's probation or parole status should be revoked.

sentence - The penalty imposed by a court upon a convicted person, or the court decision to suspend imposition or execution of the penalty.

sentence, indeterminate - A statutory provision for a type of sentence to imprisonment where, after the court has determined that the convicted person shall be imprisoned, the exact length of imprisonment and parole supervision is afterwards fixed within statutory limits by a parole authority.

sentence, mandatory - A statutory requirement that a certain penalty shall be imposed and executed upon certain convicted offenders.

sentence, suspended - The court decision postponing the pronouncing of sentence upon a convicted person, or postponing the execution of a sentence that has been pronounced by the court.

sentence--suspended execution - The court decision setting a penalty but postponing its execution.

sentence--suspended imposition - The court decision postponing the setting of a penalty.

technical violation - The act of disregarding a specified rule or condition of parole or probation that does not involve the conviction for a new crime.

time served - The total time spent in confinement by a convicted adult before and after sentencing, or only the time spent in confinement after a sentence of commitment to a confinement facility.

victim - A person who has suffered death, physical or mental suffering, or loss of property, as the result of an actual or attempted criminal offense committed by another person.

FOOTNOTES

[1]William Parker, Parole (Origins, Development, Current Practice and Statutes; Parole Corrections Project, Resource Document No. 1, American Correctional Institute (College Park, Md., 1975) pp. 14-16.

[2]Ibid., pp. 16-18.

[3]Ibid., pp. 18-20.

[4]National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, 1973) /Source hereafter referred to as NAC/

[5]William Parker, pp. 21-24.

[6]Id.

[7]Dershowitz, "Indeterminate Confinement: Letting the Therapy Fit the Harm," University of Pennsylvania Law Review, 123 (1974) 304-315.

[8]David Stanley, Prisoners Among Us: The Problems of Parole (Washington, D.C., 1976).

[9]Comment, "The Applicability of Due Process and State Freedom of Information Acts to Parole Release Hearings," Syracuse Law Review, 27 (1976) 1013. /Source hereafter referred to as Syracuse Law Review./

[10]Dershowitz, pp. 304-315.

[11]Note, "Illinois Reconsiders 'Flat Time': An Analysis of the Impact of the Justice Model," Chicago-Kent Law Review 52 (1976) 623.

[12]Until adoption of Senate Bill 42 last year in California, that state had a pure indeterminate sentencing law.

[13]Robert Carter, Richard McGee, Kim Nelson, Corrections in America (Philadelphia, 1975) p. 293.

[14]Id.

[15]William Parker, p. 24.

[16]Probation and Parole Officers Operating Manual, rev. (Baton Rouge: Louisiana Department of Corrections, 1972).

[17]Id.

[18]Vincent O'Leary and Kathleen Hanrahan, Parole Systems in the United States (National Parole Institutes and Parole Policy Seminars, 1976) p. 12.

[19]Ibid., p. 19.

[20] Ibid., p. 7.

[21] Ibid., pp. 7-9.

[22] Ibid., pp. 8-9.

[23] La.R.S. 15:574.2(B).

[24] Interview with Ms. Sybil Fullerton, Chairman La. Board of Parole, August 19, 1977.

[25] La.R.S. 15:574.2(C).

[26] For a listing of the crimes which are "unparolable," see text at notes 98-100 of Chapter V, supra.

[27] La.R.S. 15:574.4(A).

[28] Id.

[29] La.R.S. 15:574.4(C).

[30] La. Board of Parole, Rules and Regulations Determining Conduct of the Board of Parole and Related Agencies in the Granting, Releasing, and Supervising of Parolees (Baton Rouge: May, 1975). /Source hereafter referred to as Rules and Regulations./

[31] La.R.S. 15:574.4(E).

[32] O'Leary and Hanrahan, p. 174.

[33] La.R.S. 15:574.4(F) and (G).

[34] La.R.S. 15:574.7(B).

[35] La.R.S. 15:574.9(A).

[36] La.R.S. 15:574.9(B).

[37] La.R.S. 15:574.9(D). A quorum of the Board is three members.

[38] Rules and Regulations.

[39] La.R.S. 15:574.10.

[40] La.R.S. 15:574.4(I).

[41] Sandra Barbier, "Tired of Prosecuting the Same Guy," The Times-Picayune, Sec.I (August 14, 1977) p. 14.

[42] Donald Newman, "Parole" in Parole, eds. William Amos and Charles Newman (New York, 1975) pp. 23-24; NAC p. 390.

[43]Donald Newman, pp. 23-24.

[44]Comment, "Parole Release Decision-Making and the Sentencing Process," Yale Law Journal 84 (1975) 844. /Source hereafter referred to as Yale Law Journal./

[45]Hon. Robert Kastenmeier and Howard Eglit, "Parole Release Decision-Making: Rehabilitation, Expertise, and the Demise of Mythology," in Parole, eds. William Amos and Charles Newman (New York, 1975) p. 78.

[46]"Uniform Parole Reports," National Council on Crime and Delinquency Newsletter (March 1976) p. 6.

[47]According to statistics released by the Louisiana Department of Corrections entitled "Adult Institutions: Parole Board Statistics, Fiscal Year 1975-76," dated January 14, 1977, Table VII, 1,061 paroles were granted in fiscal year 1975. Other Department statistics published in Crime in Louisiana, 1976, by the Louisiana Commission on Law Enforcement and the Louisiana Criminal Justice Information System, April 1977, indicate that 1,643 persons were released during fiscal year 1975-1976. From these two figures, the writer concluded that 64% of releases from La. institutions were by parole.

[48]Parker, p. 9.

[49]President's Commission on Law Enforcement and Administration of Justice, "Task Force Report: Corrections," in Probation, Parole and Community Corrections, eds. Robert Carter and Leslie Wilkins, 2nd Ed. (New York, 1976) p. 290. /Source hereafter referred to as President's Commission Report./

[50]Testimony of Ms. Sybil Fullerton, Chairman La. Board of Parole, recorded in the minutes of meeting of Governor's Pardon, Parole and Rehabilitation Commission, February 7, 1977.

[51]David Stanley, p. 183.

[52]Yale Law Journal, p. 814.

[53]Id.

[54]George Killinger, Hazel Kerper, Paul Cromwell, Jr., Probation and Parole in the Criminal Justice System (St. Paul, 1976) p. 254-255.

[55]408 U.S. 476 (1972).

[56]408 U.S. at 478.

[57]Yale Law Journal, p. 814; Daniel Glaser, The Effectiveness of a Prison and Parole System, abridged ed. (Indianapolis, 1969) pp. 198-200.

[58]Donald Newman, pp. 31-35.

[59]NAC, p. 141.

[60]Yale Law Journal, p. 854.

[61]Leslie Wilkins, "Directions for Corrections," Proceedings of the American Philosophical Society, June 1974, in Probation, Parole and Community Corrections, eds. Robert Carter and Leslie Wilkins, 2nd ed. (New York, 1976) pp. 70-73.

[62]Kay Harris, "Disquisition on the Need for a New Model for Criminal Sanctioning Systems," West Virginia Law Review 77 (1974).

[63]David Stanley, p. 3.

[64]Syracuse Law Review, p. 1013.

CHAPTER III

[1]Gideon v. Wainwright, 372 U.S. 535 (1963).

[2]Compare Betts v. Brady, 316 U.S. 455 with Gideon v. Wainwright, 372 U.S. 535.

[3]Yale Law Journal.

[4]Mempa v. Rhay, 389 U.S. 128 (1967).

[5]Id.; Williams v. New York, 337 U.S. 241 (1949).

[6]Comment, "Parole in Louisiana: Theory and Practice," Tulane Law Review 48 (1974) 349. /Source hereafter referred to as Tulane Law Review./

[7]Syracuse Law Review, p. 1018.

[8]See text at notes 42-64, Chapter II, supra.

[9]397 U.S. 254 (1970).

[10]408 U.S. 564 (1971).

[11]408 U.S. 471 (1972).

[12]408 U.S. at 482.

[13]408 U.S. at 484.

[14]408 U.S. at 485-489.

[15]Yale Law Review, p. 487; Tulane Law Review, p. 350.

[16]387 U.S. 1; 408 U.S. at 479-480; 483-484.

[17]411 U.S. 779 (1973).

[18]Rules and Regulations, p. 80.

[19]Syracuse Law Review, p. 1020.

[20]Killinger, Kerper and Cromwell, p. 258.

[21]See Gulfsmith v. United States Board of Tax Appeals, 270 U.S. 117 (1926); Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964); and Speiser v. Randall, 357 U.S. 513 (1958).

[22]418 U.S. 539 (1974).

[23]418 U.S. at 555-556.

[24]Bradford v. Weinstein, 519 F.2nd 728 (4th Cir. 1974) vacated as moot, 423 U.S. 147 (1975); Childs v. United States Parole Board., 511 F.2d 1270 (D.C. Cir. 1974); United States ex rel. Johnson v. Chairman of N.Y. State Board of Parole, 500 F.2d 925 (2d Cir.) vacated as moot sub nom., Regan v. Johnson, 419 U.S. 1015 (1974); Franklin v. Shields, 399 F. Supp. 309 (W.D.Va. 1975); United States ex rel. Harrison v. Pace, 357 F. Supp. 354 (E.D. Pa. 1973); In re Sturm, 11 Cal. 3d 258, 521 P.2d 97, 113 Cal. Rptr. 361 (1974); Monks v. New Jersey State Parole Board, 58 N.J. 238, 277 A.2d 193 (1971).

[25]Scarpa v. United States Board of Parole, 477 F.2d 278 (5th Cir.) vacated as moot, 414 U.S. 809 (1973); Schawartzberg v. United States Board of Parole, 399 F.2d 297 (10th Cir. 1968); Wiley v. United States Board of Parole, 380 F. Supp.1194 (M.D. Pa. 1974); Cummings v. Regan, 45 App. Div. 2d 415, 358 N.Y.S.2d 556 (3d Dept. 1974). Solari v. Vincent, 46 App. Div. 2d 453, 363 N.Y.S.2d 332 (2d Dept. 1975); Cummings v. Regan, 45 App. Div. 2d 222, 357 N.Y.S.2d 260 (4th Dept. 1974). Cf. King v. United States 492 F.2d 1337 (7th Cir. 1974); Fisher v. Cahill, 474 F.2d 991 (3d Cir. 1973); Johnson v. Heggie, 362 F. Supp. 851 (D Colo. 1973).

[26]Brown v. Lundgren, 528 F.2d 1053 (1976).

[27]State ex rel. Watson v. Henderson, 271 So.2d 532 (La. 1973).

[28]Donald Newman, p. 63.

[29]Fleming v. Tate, 156 F.2d 848 (D.C. Cir. 1946).

[30]Sklor, "Law and Practice in Probation and Parole Revocation Hearings," Journal of Criminal Law, Criminology and Police Science 175 (1964).

[31]NAC, p. 151; Harris, p. 296; Note, "Senate Bill 42--The End of the Determinate Sentence," Santa Clara Law Review 17 (1977) 159.

[32]NAC, p. 145.

[33]Syracuse Law Review, p. 1021, note 54.

[34]NAC Standard 12.3.

[35]Objective 9.3, Louisiana Commission on Law Enforcement: Criminal Justice Standards and Goals on Adult Corrections. /Source hereafter referred to as La. Commission on Law Enforcement./

[36]Standards 1063 and 1064, Manual of Standards for Adult Parole Authorities, Commission on Accreditation for Corrections. /Source hereafter referred to as Manual of Standards./

[37]Federal Register (June 10, 1977) pp. 29934-29935.

[38]Dorothy Parker, "Should Parole Be Abolished," Boston Globe (July 10, 1977) pp. 1-A .

[39]An alternative to early hearing and presumptive sentencing as a means of bringing greater certainty to the parole process is Mutual Agreement Programming (MAP), a concept being experimented with by at least ten states. MAP involves a legally binding contract between the inmate and the parole authority by which the former agrees to participate in certain programs in exchange for a definite release data. It is submitted that the legal problems involved in forming a binding contract (see Epstein et al., The Legal Aspects of Contract Parole, Resource Document No. 8, American Correctional Association) and the complexities involved in administering such a program make the recommendations contained herein preferable to MAP, which is intended to accomplish the same end.

[40]NAC, pp. 397-398.

[41]Stanley, p. 39.

[42]Manual of Standards, Standard 1083.

[43]Syracuse Law Review, p. 1021; Comment, "The Parole System," University of Pennsylvania Law Review 120 (1971). /Source hereafter referred to as Pennsylvania Law Review/; Killinger, Kerper and Cromwell, p. 257; Newman, pp. 63-70.

[44]See e.g., Burton v. Ciccione, 484 F.2d 1322 (8th Cir. 1973); U.S. ex rel. Johnson v. Chairman, 500 F.2d 925 (2nd Cir. 1974); Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974); King v. U.S., 492 F.2d 1337 (7th Cir. 1974).

[45]Stanley, p. 72.

[46]Kenneth Culp Davis, Discretionary Justice (Baton Rouge, 1969) p. 129.

[47]American Bar Assn. Commission on Correctional Facilities and Services, Report to House of Delegates on State Parole Release Procedures (August, 1976) p. 7. /Source hereafter referred to as ABA Commission Report./

[48]Manual of Standards, Standard 1082.

[49]National Advisory Commission on Criminal Justice Standards and Goals, "The Parole Grant Hearing," in Parole, eds. William Amos and Charles Newman (New York, 1975) pp. 9-10. /Source hereafter referred to as "Parole Grant Hearing."/ Pennsylvania Law Review, p. 369.

[50]NAC, Standard 12.3.

[51]Manual of Standards, Standard 1076.

[52]Syracuse Law Review, p. 1027; "Parole Grant Hearing," pp. 10-12; Stanley, p. 74.

[53]ABA Commission Report, p. 5.

[54]Williams v. Virginia Probation and Parole Board, 401 F.Supp. 1371 (W.D. Va. 1975); Franklin v. Shields, 399 F.Supp. 309 (W.D. Va. 1975); Cooley v. Sigler, 381 F.Supp. 441 (D. Minn. 1974); NAC, Standard 12.3.

[55]Manual of Standards, Standard 1078.

[56]Recommendations of the Administrative Conference of the United States July 1, 1970 - Dec. 31, 1972, pp. 730-732, cited in Stanley, p. 71.

[57]ABA Commission Report, p. 6

[58]"Parole Grant Hearing," pp. 12-13.

[59]James L. Beck, "The Effect of Representation at Parole Hearings: A Research Note," U.S. Board of Parole Research Unit Report No. 3, Criminology (1975).

[60]NAC, Standard 12.3; ABA Commission Report, p. 6; La. Commission on Law Enforcement, Objective 9.3; Manual of Standards, Standard 1079.

[61]As discussed earlier, the conclusion that due process has been denied is dependent upon the court's determination that the state has treated him in a manner so as to deny "fundamental fairness." Gideon v. Wainwright, 372 U.S. 535 (1963). Thus, the question here is whether the procedure is inherently unfair.

[62]Menechino v. Oswald, 430 F.2d 403 (2nd Cir. 1970).

[63]See Williams v. New York, 337 U.S. 241 (1949).

[64]In re Ruffalo, 390 U.S. 544 (1968).

[65]411 U.S. at 789.

[66]See e.g., Sandra Barbier, "Tired of Prosecuting the Same Guy," The Times-Picayune, Sec. 1 (August 14, 1977) p. 14.

[67]411 U.S. at 790.

CHAPTER IV

[1]Norval Morris, The Future of Imprisonment (Chicago, 1974) p. 46.

[2]This date is usually one-third of his sentence and if he is a first offender with a sentence of less than five years, he may be considered for parole immeidately upon his incarceration.

[3]Johannes Andenaes, "General Prevention Revisited: Research and Policy Implications," Journal of Criminal Law and Criminology 66 (1975) 341.

[4]Harris, p. 280.

[5]Id.

[6]Id.

[7]Syracuse Law Review, p. 1016; Tulane Law Review, p. 344; Citizen's Inquiry on Parole and Criminal Justice, Inc.,"Report on New York Parole," Criminal Law Bulletin II (1975) 286. /Source hereafter referred to as "Report on New York Parole."/

[8]Killinger, Kerper and Cromwell, p. 249; Stanley, p. 20; Tulane Law Review, p. 344; Syracuse Law Review, p. 1016.

[9]See text at notes 6 and 7 of Chapter II, supra.

[10]William Parker, p. 11.

[11]NAC, p. 397.

[12]William Parker, p. 33.

[13]Id.; Peter Hoffman and Lucille DeGostin, "An Argument for Self-Imposed Explicit Judicial Sentencing Standards," in Selected Reprints Relating to Federal Parole Decision-Making, ed. U.S. Parole Commission Research Unit (Washington, D.C., 1977) pp. E1-E3; "Report on New York Parole," p. 287.

[14]National Parole Institutes, Selection for Parole (New York, 1966).

[15]Robert O. Dawson, Sentencing: The Decision as to Type, Length, and Condition of Sentence (Boston, 1969). The three states studied were Kansas, Michigan and Wisconsin.

[16]Stanley, pp. 3 and 68.

[17]NAC, pp. 394-395.

[18]Paul Chernoff, "Conflicts of Interest," in Proceedings, Second National Workshop on Corrections and Parole Administration, Resource Document No. 4, Parole Corrections Project (College Park, Md.: American Correctional Assn., 1974) p. 22. Mr. Chernoff was Chairman of the Mass. Parole Board at the time of his presentation. Donald Newman, pp. 63-70.

[19]Stanley, p. 27.

[20]Vincent O'Leary, "Parole Theory and Outcomes Reexamined," Criminal Law Bulletin II (1975) 307; Kastenmeier and Eglit, p. 99; Dorothy Parker, p. 4A; NAC, p. 146-147.

[21]Stanley, p. 59.

[22]Kastenmeier and Eglit, p. 95.

[23]Don Gottfredson, M.G. Neithercutt, Joan Nuffield, Vincent O'Leary, Four Thousand Lifetimes: A Study of Time Served and Parole Outcomes (National Council on Crime and Delinquency, 1973) pp. 4-5. /Source hereafter referred to as 4,000 Lifetimes./

[24]NAC, p. 496.

[25]David Ward, "Evaluations of Correctional Treatment: Some Implications of Negative Findings," in Parole, eds. William Amos and Charles Newman (New York, 1975) pp. 256-257.

[26]Lawrence Bennett, "Should We Change the Offender or the System?" Crime and Delinquency (July, 1973) pp. 332-334.

[27]Kastenmeier and Eglit, pp. 85-87.

[28]Gene Kassebaum, David Ward and Daniel Witner, Prison Treatment and Parole Survival: An Empirical Assessment (New York, 1971).

[29]Ward, pp. 256-257.

[30]James Robison and Gerald Smith, "The Effectiveness of Correctional Programs," Crime and Delinquency (January, 1971).

[31]Ward, pp. 256-257.

[32]Robison and Smith, pp. 72-74.

[33]Douglas Lipton, Robert Martinson and Judith Wilks, The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (Praeger, 1975).

[34]Robert Martinson, "Viewpoint on Rehabilitation," in Parole, eds. William Amos and Charles Newman (New York, 1975).

[35]O'Leary, p. 311.

[36]Ward, pp. 256-257; Bennett, p. 332.

[37]NAC, pp. 496-497.

[38]Stanley, p. 14, citing James V. Bennett, Reform of the Penal System (unpublished) p. 1.

[39]William Nagel, The New Red Barn: A Critical Look at the Modern American Prison (Walker and Co., 1973) p. 180.

[40]Maurice Sigler, "Abolish Parole?" Federal Probation (June, 1975).

[41]Richard Munson, "Warden Sees Little Relief for Angola Overcrowding," Morning Advocate, Sec. 1 (July 26, 1977) p. 6.

[42]Testimony of Mr. C. Paul Phelps, minutes of meeting of Governor's Pardon, Parole and Rehabilitation Commission, February 7, 1977.

[43]See e.g., Norval Morris; James Q. Wilson, Thinking About Crime (New York, 1975); "Report on New York Parole"; Martin Gardner, "The Renaissance of Retribution--An Examination of Doing Justice," Wisconsin Law Review (1976) 783 /Source hereafter referred to as Wisconsin Law Review/; Caroline Simon, "A New Look at Punishment," American Bar Assn. Journal 62 (1976)1297./Source hereafter reffered to as ABA Journal./

[44]Stanley, p. 16. Some examples of the way institutions differ from the outside world that may explain the failure of treatment and rehabilitation programs therein are discussed in the test at notes 17-26 of Chapter VIII, supra.

[45]Norval Morris.

[46]National Council on Crime and Delinquence National Research Center, The Diagnostic Parole Prediction Index (Davis, Cal., 1975) p. 5.

[47]NAC, p. 415-416. See e.g., Stanley, p. 175.

[48]James Robison and Paul Takagi, Case Decisions in a State Parole System, Research Report No. 31, Research Div., California Dept. of Corrections (Sacramento, 1968).

[49]Howard Kitchener, Annesley Schmidt and Daniel Glaser, "How Persistent is Post-Prison Success," Federal Probation 41 (March, 1977) 14-15.

[50]U.S. Parole Commission Research Unit, Salient Factor Scoring Manual, Revised (Washington, D.C., 1977). /Source hereafter referred to as Salient Factor Manual./

[51]Charles Newman, Sourcebook on Probation, Parole and Pardon (Springfield, 1970) p. 412; Stanley, p. 51.

[52]Charles Newman, G. Pownell and L. Karacki, District of Columbia Youth Center Post-Release Outcome Study: A Two-Year Follow-Up with Inmates Released in Calendar Year 1963 (Washington, D.C., 1966).

[53]Stanley, p. 50; John M. Stanton, Success Rates of Male Parolees (Albany, New York, 1970) p. 2.

[54]Salient Factor Manual.

[55]Id.

[56]N.G. Neithercutt, "Parole Violation Patterns and Commitment Offense," Journal of Research in Crime and Delinquency 9 (July, 1972) 89; Stanley, p. 52; Charles Newman, p. 421.

[57]Neithercutt, p. 89; "Uniform Parole Reports," Council on Crime and Delinquency Newsletter (July, 1976) Table 1.

[58]M.G. Neithercutt, "Recidivism," paper presented to National College of the State Judiciary at the Alaska Sentencing Conference, Anchorage, Alaska January 15, 1975, pp. 17-20; Charles Newman, p. 42; Stanley, p. 52; "Uniform Parole Reports," NCCD Newsletter (July, 1976) Table I.

[59]Glaser, p. 52.

[60]Peter Hoffman, Paroling Policy Feedback: NCCD Research Center Report No. 8 (Davis, Cal., 1972) p. 21; Dorothy Jaman, Behavior During the First Year in Prison Related to Parole Outcome, Research Report No. 44, California Dept. of Corrections (Sacramento, 1971) p. 1; Glaser, p. 196; Kastenmeier and Eglit, pp. 97-99. Some research seems to indicate that, when combined statistically with other factors, prison conduct may be predictive of parole outcome for some inmates, but these findings are, at best, tentative and have no effect on the conclusion that a parole board probably does not increase its liklihood of correct prediction of post-release behavior by considering prison discipline records. See Stanley, p. 55; U.S. Bureau of Prisons, "Success and Failure of Federal Offenders Released in 1970" (Washington, D.C., 1974) pp. 50-52.

[61]Glaser, p. 292.

[62]Ibid., p. 207.

[63]Don M. Gottfredson, The Role of Base Expectancies in Corrections, unpublished (December 21, 1968).

[64]Glaser, p. 205.

[65]Charles Newman, p. 410; Glaser, p. 291; President's Commission Report, pp.243-244.

[66]Wilkins, pp. 61-63.

[67]Id., Glaser, p. 291; President's Commission Report, pp. 243-244.

[68]President's Commission Report, pp. 243-244.

[69]Glaser, pp. 200-201.

[70]Ibid., pp. 204-205.

[71]Louisiana Board of Parole, Policy Statement Concerning the Grant and Denial of Parole (Baton Rouge, Oct. 5, 1976).

[72]Prior criminal record is defined as follows:

No record: no previous convictions.

Minor record:

1) Incarceration only: maximum sentences totalling no more than one year; or
2) Fines only: 0 to 4; or
3) Fines and incarceration combined: maximum sentences totalling no more than 6 months, if the inmate also has fines and court costs on his record.

Moderate record:

1) Incarceration only: maximum sentences totalling more than one year, but no more than 4 years; or
2) Fines only: 5 to 7; or
3) Fines and incarceration combined: maximum sentences totalling more than 6 months, but no more than 3 years, if the inmate also has fines and court costs on his record.

Serious record:

1) Incarceration only: maximum sentences totalling more than 4 years; or
2) Fines only: 8 or more; or
3) Fines and incarceration combined: maximum sentences totalling more than 3 years, if the inmate also has fines and court costs on his record.

[73]Testimony of Ms. Sybil Fullerton, Chairman La. Board of Parole, in minutes of meeting of Governor's Pardon, Parole and Rehabilitation Commission, February 7, 1977.

[74]Interview with Ms. Sybil Fullerton, Chairman La. Board of Parole, August 19, 1977.

[75]Kastenmeier and Eglit, pp. 97-99.

[76]"Report on New York Parole."

[77]O'Leary, p. 309.

[78]Don Gottfredson, Studying Correctional Decisions, paper presented to 9th National Institute on Crime and Delinquency, Seattle, July, 1962.

[79]Criminal Justice Research Center, "Preliminary Analysis of La. Data and Suggestions for Additional Analysis," unpublished, in Background Materials for the Governor's Pardon, Parole and Rehabilitation Commission, p. 85.

[80]Ward, pp. 251-252.

[81]NAC, Standard 15.5.

[82]President's Commission Report, pp. 250-251.

[83]NAC, Standard 12.2.

[84]La. Commission on Law Enforcement, Objective 9.2.

[85]William Parker, p. 10; Stanley, p. 29; Tulane Law Review, p. 342; Note, "Illinois Reconsiders 'Flat Time': An Analysis of the Impact of the Justice Model," Chicago-Kent Law Review 52 (1976) 644. /Source hereafter referred to as Chicago-Kent Law Review./

[86]O'Leary and Hanrahan, p. xxiii.

[87]Norval Morris; Edward Kennedy, "Should Parole Be Abolished," Boston Globe, Sec. A (July 10, 1977) p.1 and 4A.

[88]Harris, p. 305.

[89]Peter Hoffman and Don Gottfredson, "Paroling Policy Guidelines: A Matter of Equity: NCCD Research Center Parole Decision-Making Project Report No. 9," in Parole, eds. William Amos and Charles Newman (New York, 1975) pp. 190-192.

[90]Wilkins, pp. 70-73.

[91]Hoffman and DeGostin, pp. E10.

[92]Peter Hoffman, "Federal Parole Guidelines: Three Years of Experience," in Research Reports 1-12: United States Parole Commission Research Unit (Washington, D.C., 1976) pp.J10-12.

[93]Hoffman and DeGostin, pp. E13-E14.

[94]Dorothy Parker, p. 4A.

[95]Harris, p. 306.

[96]Yale Law Journal, pp. 888-889, 895.

[97]Tulane Law Review.

[98]Stanley, p. 76.

CHAPTER V

[1]Criminal Justice Newsletter (June 20, 1977) pp. 2-3.

[2]Kennedy, p. 4A.

[3]Criminal Justice Newsletter (June 20, 1977) pp. 2-3.

[4]Stanley, pp. 76-77.

[5]Harris, p. 304.

[6]Ibid., p. 297.

[7]American Friends Service Committee, "Struggle for Justice: A Report on Crime and Punishment in America," Probation, Parole and Community Corrections, 2nd ed., eds. Robert Carter and Leslie Wilkins (New York, 1976).

[8]"Report on New York Parole."

[9]Andrew von Hirsch, Doing Justice (New York, 1976).

[10]Criminal Justice Newsletter (June 20, 1977) p. 2.

[11]Harris, p. 298.

[12]Wisconsin Law Review, p. 781.

[13]Robert Carter, Richard McGee, Kim Nelson, Corrections in America (Philadelphia, 1975).

[14]Norval Morris and Frank Zimring, "Deterrence and Corrections," Probation, Parole and Community Corrections, 2nd ed., eds. Robert Carter and Leslie Wilkins (New York, 1976) pp. 45-47.

[15]Carter, McGee and Nelson.

[16]Harris, p. 274.

[17]Tulane Law Review, p. 332.

[18]Harris, p. 276.

[19]Harris, p. 276, p. 322.

[20]NAC, pp. 145-146.

[21]Ibid., pp. 143-145.

[22]Morris and Zimring, pp. 49-51.

[23]Dorothy Jamon and Robert Dickover, A Study of Parole Outcome as a Function of Time Served, Research Report No. 35, California Dept. of Corrections (Sacramento, 1969) p. 3.

[24]James Beck and Peter Hoffman, "Time Served and Release Performance: A Research Note," in Research Reports 1-12: United States Parole Commission Research Unit (Washington, D.C., 1976).

[25]Jaman and Dickover.

[26]James Robison and Gerald Smith, "The Effectiveness of Correctional Programs," Crime and Delinquency (January, 1971) pp. 70-72.

[27]Id.

[28]4,000 Lifetimes.

[29]Ibid., pp. 7-8.

[30]Ibid., pp. 8-9.

[31]Ibid., pp. 6-7.

[32]Don Gottfredson, Michael Gottfredson and James Garofalo, "Time Served in Prison and Parole Outcome Among Parolee Risk Categories," Journal of Criminal Justice 5 (1977).

[33]Dean Babst, Mary Koval and M.G. Neithercutt, "Relationship of Time Served to Parole Outcome for Different Classifications of Burglars Based on Males Paroled in 50 Jurisdictions in 1968-69," Journal of Research in Crime and Delinquency 9 (1972).

[34]J.A. Inciarty, Dean Babst and Mary Koval, "Procedure Directives for the Computation of Mean Cost Rating (MCR)," Journal of Research in Crime and Delinquency 10 (1973).

[35]Neithercutt, "Recidivism," pp. 23-37.

[36]John Berrecochea, Dorothy Jaman and Welton Jones, Time Served in Prison and Parole Outcome: An Experimental Study, Research Report No. 49, California Dept. of Corrections (Sacramento, 1973).

[37]4,000 Lifetimes.

[38]See discussion of the work of Beattie and Bridges and of Levin in Wilson, p. 167. See also Morris and Zimring, pp. 49-51; Andrew Hopkins, "Imprisonment and Recidivism: A Quasi-Experimental Study," Journal of Research in Crime and Delinquency 13 (1976).

[39]Andenaes, p. 341.

[40]Charles Tittle, "Crime Rates and Legal Sanctions," Social Problems 16 (1969).

[41]Wilson, p. 174.

[42]Jack Gibbs, "Crime, Punishment and Deterrence," Northwestern Social Science Quarterly 48 (1968).

[43]Gray and Martin, "Punishment and Deterrence: Another Analysis of Gibbs' Data," Social Science Quarterly 50 (1969); Chiricos and Waldo, "Punishment and Crime: An Examination of Some Empirical Evidence," Social Problems 18 (1970).

[44]Charles Logan, "General Deterrent Effects of Imprisonment," Social Forces 51 (1972).

[45]Andenaes, p. 346.

[46]Richard Salem and William Bowers, "Security of Formal Sanctions as a Deterrent to Deviant Behavior," Law and Society Review 5 (1970).

[47]Wilson, p. 174.

[48]Tittle and Row, "Certainty of Arrest and Crime Rates: A Further Test of the Deterrence Hypothesis," Social Forces 52 (1974).

[49]Norval Morris and Gordon Hawkins, "From Murder and From Violence, Good Lord, Deliver Us," Midway 10 (1969).

[50]Morris and Zimring, pp. 51-55.

[51]William Bailey and Ronald Smith, "Punishment: Its Severity and Certainty," Journal of Criminal Law, Criminology and Police Science 63 (1972).

[52]ABA Journal, p. 1298.

[53]Barry Schwartz, "The Effect in Philadelphia of Pennsylvania's Increased Penalties for Rape and Attempted Rape," Journal of Criminal Law, Criminology and Police Science 59 (1969).

[54]Andenaes, p. 348.

[55]Charles Tittle and Charles Logan, "Sanctions and Deviance: Evidence and Remaining Questions," Law and Society Review 7 (1973).

[56]Harris, p. 279.

[57]Wisconsin Law Journal, p. 796.

[58]Harris, p. 285.

[59]American Friends Service Committee, pp. 22-23.

[60]American Friends Service Committee; Wisconsin Law Review; von Hirsch; Harris.

[61]Harris, p. 286.

[62]American Friends Service Committee, pp. 22-23.

[63]Harris, p. 277.

[64]David Greenberg, "The Incapacitative Effect of Imprisonment," Law and Society Review 9 (1975).

[65]"Uniform Parole Reports," NCCD Newsletter (July, 1976).

[66]Robert Martinson and Judith Wilks, Knowledge in Criminal Justice Planning: A Preliminary Report, unpublished (October 15, 1976).

[67]Wilson, p. 201.

[68]Id.

[69]Harris; Andrew von Hirsch, "Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons," Buffalo Law Review 21 (1972). /Source hereafter referred to as Buffalo Law Review./

[70]Peter Hoffman, "Mandatory Release--A Measure of Type II Error," Criminology 11 (1974); Wilkins; Stanley; Hoffman and Beck; David Rudenstine, "The Rehabilitation and Risk Assessment Goals of Parole Theory: A Reply to Professor Vincent O'Leary," Criminal Law Bulletin 11 (1975); Glaser; Kingman Brewster, "A Ray of Sunshine," New York Times, (September 6, 1973).

[71]Buffalo Law Review, p. 721.

[72]Hoffman.

[73]Buffalo Law Review, p. 741; Stanley, pp. 12-13.

[74]Buffalo Law Review, p. 738.

[75]Ibid, p. 739.

[76]Wilkins, pp. 75-76; Babst et al, p. 100.

[77]Stanley, pp. 52-53; Ernest Wenk, James Robison and Gerald Smith, "Can Violence Be Predicted?" Crime and Delinquency 18 (1973).

[78]Wilkins, pp. 68-70.

[79]Id.

[80]Yale Law Journal, p. 815; Lawrence Pierce, "Rehabilitation In Corrections: A Reassessment," Federal Probation (June 1974) pp. 14-15.

[81]NAC, p. 151.

[82]Wilkins, pp. 59-60.

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[84]Wilkins, pp. 58-59.

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[87]U.S. Dept. of Justice, National Prisoner Statistics Census of Prisoners in State Correctional Facilities (Washington, D.C., 1973).

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[89]Donald Newman, pp. 374-375.

[90]Chicago-Kent Law Review, p. 635.

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[100]La.R.S. 14:64.

[101]La.R.S. 14:62.1.

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[111]H.B. No. 132, Regular Session, 1977.

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[116]Ibid., Standard 5.3. See text at notes 92-96 Chapter V, supra.

[117]NAC, pp. 547-548.

[118]Andenaes, pp. 362-365.

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[2]Commission on Accreditation for Corrections, Manual of Standards for Adult Probation and Parole Field Services (Maryland, 1977), Standard 2605, p. 0002.

[3]Ibid., Standard 2606, p. 0002.

[4]Ibid., Standard 2608, p. 0002.

[5]Ibid., Standard 2610, p. 0003.

[6]American Correctional Association, Manual of Correctional Standards, 3rd ed. (Rockville, Md., 1966) p. 103; National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C., 1973) Standard 14.1(5-1). /Sources hereafter referred to as ACA and NAC, respectively./

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[11]Commission on Accreditation for Corrections, Standard 2616.

[12]See NAC, Standard 10.4 and LCLE, p. 184.

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[21]NAC, p. 577.

[22]Probation and Parole Officer's Operating Manual, rev. ed. (Baton Rouge, La., 1972) p. 40.

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[11]Ibid., p. 321.

[12]NAC, pp. 220-221; John Wallace in Handbook of Criminology, p. 953.

[13]Judith F. Weintraub, "The Delivery of Services to Families of Prisoners," Federal Probation (March, 1977) p. 28; President's Commission on Law Enforcement and Administration of Justice, "Parole and Aftercare" /from Task Force Report: Corrections/ 2nd ed., eds. Robert M. Carter and Leslie T. Wilkins (New York, 1976) p. 254. Currently in North Carolina a parolee meets his parole officer before release from prison. See Probation and Parole: Invisible Bars (Raleigh, N.C.:DOC, n.d.).

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CHAPTER XI

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[9]Mark G. Neithercutt and Don M. Gottfredson, "Caseload Size Variation and Difference in Probation and Parole Performance," in Parole: Legal Issues/Decision-Making/Research, eds. William E. Amos and Charles E. Newman (New York, 1975) p. 290.

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[12]James Robison and Gerald Smith, "The Effectiveness of Correctional Programs," Crime and Delinquency (January, 1971) p. 76; Stuart Adams, "Some Findings From Correctional Caseload Research," Federal Probation (December. 1963) p. 48.

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[21]Lawrence A. Bennett, "Should We Change the Offender or the System?" Crime and Delinquency (July, 1973) p. 340.

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[25]William P. Adams, Paul M. Chandler and Mark G. Neithercutt, "The San Francisco Project: A Critique" in Parole: Legal Issues/Decision Making/Research, eds. William E. Amos and Charles L. Newman (New York, 1975) p. 333.

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[35]NAC, Standards 10.2(3) and 12.5(4); LCLE, Objectives 7.2(3), 9.5(4).

[36]NAC, p. 429.

[37]Ibid., Standard 12.5(5).

[38]Probation and Parole: Invisible Bars (Raleigh, N.C.: DOC, n.d.) p. 8.

[39]Id.

[40]Id.

[41]State of Colorado, Corrections Master Plan I (Denver, 1977) 6.32.

[42]State of Kansas, Department of Corrections Eight-Year Master Plan (Topeka, 1976) p. IX-5.

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[49]C. Eliot Sands, "New Directions in Probation in the U.S.A.," International Journal of Offender Therapy and Comparative Criminology 20, No. 1 (1976) 38.

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[51]Probation and Parole: Invisible Bars, pp. 11,19.

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