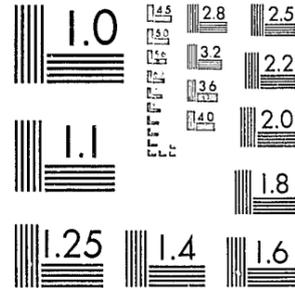


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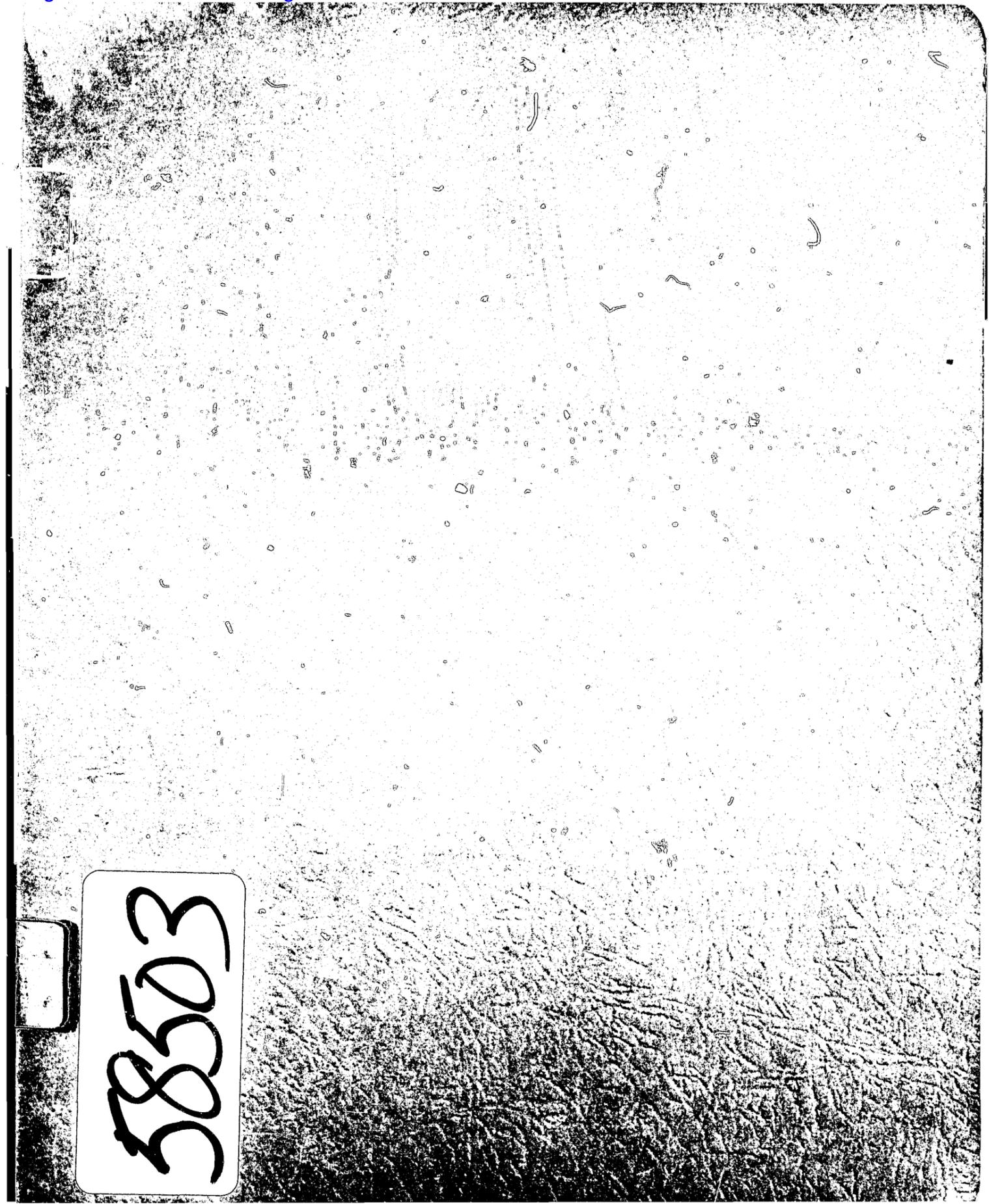
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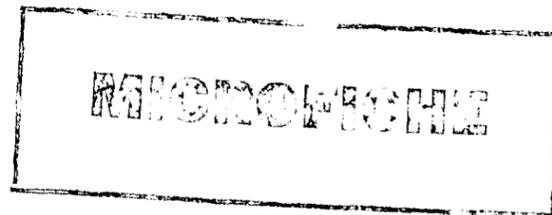


ACQUISITIONS

BACKGROUND

I would like to thank the U. S. Parole Commission for giving me this chance to testify on the parole guidelines currently being employed by the Commission and the proposed modifications (Federal Register, Wednesday, October 11, 1978). It is important to make clear what my role is and what it is not. First, as to what it is not: I am here as a representative of the National Council on Crime and Delinquency. NCCD's willingness to take policy positions in the area of corrections is well known. For an example, I need only cite the issue of prison construction. However, at this point, NCCD has not taken any new formal position on a proposed role for parole. It has not yet responded to the various directions that have opened up in the past few years; that is, the alternatives of the elimination of parole through determinate sentencing models, the continuation of parole more or less in the present form, or the movement towards parole guidelines such as those adopted by the U. S. Parole Commission. While the issues relating to these alternatives have been debated extensively, to my knowledge, no formal position has yet been taken.

Therefore, rather than being here to communicate an NCCD policy position, my role is more that of a researcher who works in the corrections field. Our work at NCCD's



PAROLE GUIDELINES: THE KEY RESEARCH QUESTIONS

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 Denver, Colorado  
 December 8, 1978

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Research Center West in San Francisco includes the Uniform Parole Reports project, and we have a strong interest in issues related to parole. Through the UPR project we are in regular contact with the paroling authorities of the United States. We recognize both the pressures that are being brought to bear on parole as well as some of the responses to these pressures, such as the adoption of guidelines. The UPR Seminar during the last two years has been a setting for debate on new directions for parole. The last seminar focused on the issues of parole guidelines, considering them as one of the major alternatives for the future of parole.

To a researcher the guidelines are of special interest. The parole guidelines approach is a relatively unique correctional innovation in that its implementation was preceded by an extensive program of research. It is imperative that this program research be continued, and that the emphasis shifts to an evaluation of not only the guidelines themselves, but the systematic consequences of the introduction of those guidelines. It would be regrettable if the emphasis on careful and detailed assessment that was fundamental in generating the guidelines was not continued in the assessment of those guidelines. As you are well aware, the National Institute of Corrections has just issued a request for a proposal to conduct such an assessment for both the U. S. Parole Commission and the group of states who have

also adopted various guideline approaches. Parenthetically, I should note that this assessment, being external, will be helpful to the case for guidelines. For obvious reasons, external assessments are generally given more credence than those conducted internally by the agency itself.

I hope that I can be of some assistance by raising some research questions that might be incorporated in a national study, such as the one just mentioned, as well as in a continuing program of research such as that carried on by the U. S. Parole Commission. In laying out such a set of questions I recognize that I will be restating many of the concerns that have already been addressed, or are being addressed through the research activities of the Commission under the direction of Peter Hoffman. At the same time, I raise some of these in order to highlight the particular concerns of NCCD and the Uniform Parole Reports project.

As a prelude to this presentation, let me first outline some of the needs to which the guidelines have become one response. Second, based on the material that I have been sent, I will state briefly what I perceive as the goals of the U. S. Parole Commission guidelines. And third, I will lay out some research questions that appear to be particularly important.

NEEDS

In the debate over the future of parole and the nature of sentencing in corrections, equity issues surface regularly (for example, von Hirsch, 1976; Fogel, 1975; American Friends Service Committee, 1971). Included are the following five needs:

1. The need for reduction of judicial sentencing disparity.
2. The need for greater consistency in parole decision-making with regard to both the release decision and time served prior to release.
3. The general need to reduce, constrain or in some way structure discretion in the criminal justice system.
4. The need to more clearly define the decision-making process, both as it relates to parole and other decision points in corrections in the criminal justice system as a whole.
5. The need to make explicit the basis for decision-making in parole as well as in other areas of the criminal justice system.

OBJECTIVES

The U. S. Parole Commission has responded to these and other needs by adopting a guidelines approach. This approach appears to have three principal objectives which I would summarize as follows:

1. To systematically relate the sentence served to offense severity and other relevant factors such as prior history and mitigating and aggravating circumstances and to exclude other factors.

This is clearly the "just deserts" objective of the guidelines. I wish to note that the concept of punishment as "just deserts" embodied in the guidelines reflects a seeking of equity and fairness (U. S. Parole Commission, 1977; Hoffman and Stover, 1978). Equal sentences are provided for equal crimes with different sentences clearly accounted for by different levels of severity. Absent are the unduly harsh sentences that characterize much of the symbolic sentencing in this country and that grow out of a rationale for punishment based on retribution as social revenge. Because of the apparent link in the guidelines between "just deserts" and equity both terms appear throughout the paper.

2. To systematically provide for the protection of the public through the inclusion of risk assessment in the parole decision-making process.

This is the public protection or incapacitation component. Again, this component is structured with equity in mind.

3. To continue to consider the offender's progress as measured by institutional performance as a factor in the parole decision-making process.

Through this component, rehabilitation as a correctional objective is retained as a consideration in decision-making. I should point out that not all states adopting parole guidelines incorporate this objective into their individual state guidelines.

While my comments are addressed to the issue of guidelines in general, it is important to note here that the proposed changes which are the basis for these hearings do, in fact, fall under the first of these three objectives. That is, they are modifications of the offense severity scale and clear attempts to increase the equity and fairness of this scale.

#### RESEARCH QUESTIONS

The research questions and related research strategies that I propose can be grouped into three areas. The first area is that of offense severity, or the "just deserts" component of the guidelines. The second has to do with the public protection or the risk assessment component. And the third concerns the overall system impact of correctional policy changes such as the adoption of guidelines.

#### Offense Severity and Sentence Length

The proposed changes which form one basis for this hearing focus on changing the prescribed sentence length for certain offenses. These changes appear more in line with the other elements of the severity scale and as such appear to promote a more rational and equitable procedure for determining time served. However, in order to maintain a system such as this on a fair and equitable basis over time, a variety of

questions needs to be pursued on a regular basis.

#### 1. Are the sentence lengths provided for appropriate?

The cited basis for the proposed changes is that they more explicitly reflect current board policy. The difficulty with this sort of procedure is that it can become insulated from both those whose interests it is supposed to reflect, as well as from other work in this same area which may lead to new approaches. For example, while the National Council on Crime and Delinquency has not formally reviewed the severity scale, I suspect its recommendations would be for shorter sentences at virtually all levels and for the decriminalization or deinstitutionalization of certain of the minor offenses, even among parole violators. On the other hand, there are many other concerned interests who might call for more severe sanctions. While there is no easy answer to resolving such competing claims, it does appear that it would be useful to routinely review the severity scale against other sources of validation and research. Sources might include:

- a. Public opinion polls where they are organized to give information on public attitudes towards offense ranking or sentence length or both;
- b. Victimization studies which convey similar sorts of information;
- c. Offense severity research such as that recently reported by Wolfgang and Figlio (1978); and,
- d. Nationwide and cross-national studies in both severity ranking and sentence length.

Routine reviews of this sort would help point out to the Parole Commission areas in which it might wish to depart from current practice in exercising leadership in either determining the relative severity of certain offenses or in terms of modifying the actual sentence served for certain offenses.

2. Is Parole Commission discretion being structured as a function of the implementation of the guidelines?

The basic concern underlying this question is that the guidelines be implemented in the spirit that led to their creation. A variety of empirical questions are involved here. These might include: a. continuing studies of the receptivity of Commission members and examiners towards the guidelines; b. studies of the level of consistency among those within the Commission who apply the guidelines; and, c. observational studies of the actual implementation of the guidelines. The practical outcome of some studies would include: a. an identification of training needs around the use of the guidelines; b. the highlighting of various problems that may require revisions of guidelines; and, c. hopefully, an answer to those who suggest that the guidelines are often subject to manipulation. Regarding the last outcome, one would hope to demonstrate that the instances cited in the Yale Law Journal (1975) article are the exception rather than the rule in the application of the guidelines.

3. What is the inmate perception of the guidelines?

As mentioned earlier, the guidelines are intended to promote equity and to structure discretion. A crucial and related issue, that of increasing determinacy in the system, is handled through the early setting of a release date, a procedure directed at reducing the offender's uncertainty about his or her future. Data on both issues, equity and certainty, can be gathered in a straightforward manner through sample survey interviews and similar techniques. To the extent that the guideline procedures are not known to or understood by the offender population (as also suggested by the Yale Law Journal article), the practical outcome of such research could be better information dissemination. This could influence both the direct contact between the Parole Commission and the offender as well as general communication with the inmate population.

4. What is the impact of the guidelines on time served?

This is a complex but crucial question to address. On the one hand, it might require the rescoring of a sample of offenders processed by the U. S. Board of Parole prior to the implementation of the guidelines in order to establish some baseline for comparative studies. This is important to tie down. For example, some preliminary data from Minnesota (Minnesota Corrections Board, undated) indicate

that time served may have increased slightly with the introduction of guidelines. However, if such data are not adjusted or controlled for the guideline factors, it is hard to determine if disparity is present. Were the changes a function of a changing offender population? A change in correctional philosophies of board members? Or the actual introduction of the guidelines? On the other hand, it might simply require a tracking of time served by offense type and other guideline factors in order to determine any shifts over time in the implementation of the guidelines. Studies such as these would allow the Commission to continuously assess its own work. This would also permit study of the degree to which consistency and equity have been promoted as a function of the introduction of the guidelines. Such studies can also lead to the identification of training and information needs within the Commission as well as highlight any areas that need to be changed within the guidelines themselves.

#### Risk Assessment and Parole Prediction

The second major dimension of the U. S. Parole Commission guidelines is risk assessment based on the salient factors score. Assessing risk is a far more difficult area in many ways than is the determination and application of fair and equitable sanctions. I say this with full recognition

of the problems surrounding sanctions. Recognizing this difficulty, the Parole Commission research staff has characterized the salient factors scores as an "instrument ... intended as a predictive aid (which) may be overridden by the clinical judgement of the examiner panel provided that the reasons for this override are specified" (Hoffman and DeGostin, 1974, p. E-7). It is in the attempt to assess risk that the Parole Commission may become most vulnerable to criticism. On the one hand, there may be the case of the releasee predicted as a success who commits an offense of sufficient magnitude to generate public criticism. On the other hand, there may be the case of the offender denied release who, in fact, may have succeeded in the community and whose retention in prison generates criticism of unfairness. In order to maintain an informed position and to be able to respond to such criticisms, the following four questions are suggested as the basis for inquiry into the risk assessment component. As with the questions raised above, these should be studied on a regular basis over time.

#### 1. How accurate are the salient factors as predictors?

The issue here is to what extent do the salient factors distinguish between those who succeed and those who fail. The Commission's research, developed in cooperation with the NCCD Research Center, shows that parolees grouped according to salient factor vary in their first year success rates

from five out of ten for those at the low end of the score to nine out of ten at the high end (Hoffman and Stone-Meierhoefer, 1977, p. 36). If parole decision-makers are concerned about avoiding failure, this tool will help. At the same time, it is important to note that the score does not pretend to perfect prediction. Even among those with the highest scores, one in ten did recidivate and this number rose to three in ten on a cumulative basis after six years. As the Commission members are well aware, there is no final guarantee against recidivism.

In order to prepare these comments on research questions for the guidelines, the Uniform Parole Reports project attempted to replicate the risk assessment procedure (U. S. Parole Commission, 1977) using the UPR state parole data base. A variety of factors, ranging from item definition to state agency procedures, make the test difficult to compare. At the same time we wished to see to what extent the risk assessment procedure could be applied to other populations. The results for 29,634 persons released on parole in 1973 and followed for up to three years are shown in Table 1. We were able to approximate three of the salient factors and one outcome measure:

a. Item B, Prior Incarcerations -- this differs from the Commission Item B in that it generally excludes all juvenile incarcerations, those adult incarcerations for less serious offenses, and out-of-state incarcerations.

TABLE 1

	<u>Item B</u> <u>Prior Incarcerations</u>	<u>Item D</u> <u>Commitment Offense</u>	<u>Item E</u> <u>Probation/ Parole Violator</u>	<u>Parole Performance</u>
Item B: Prior Incarcerations	1.00	.05	.05	.08
Item D: Commitment Offense		1.00	.07	.05
Item E: Probation/ Parole Violator			1.00	.16
Parole Performance				1.00

Multiple Regression, Parole Performance as the dependent variable.

$$R = .18, R^2 = .03$$

N = 20,634 (35 states) released on parole in 1973 followed through 1976.

Source: Uniform Parole Reports, 1978, unpublished.

b. Item D, Commitment Offense (Auto Theft/Check)-- this differs from the Commission Item D in that it includes certain fraud other than "check" offenses.

c. Item E, Probation/Parole Violator -- this differs from the Commission Item E in that it applies to current commitment only.

d. Parole Performance -- this includes the releasee's performance while under parole supervision as determined from parole board records.

We had hoped to show some transferability of the Commission's risk assessment procedure to the UPR data base. The results are disappointing. All the simple correlations are low and multiple regression reveals a pattern of very weak relationships among the three items and parole performance. Given the compromises in item construction, and differences in both population and jurisdictions, these data are in no way the basis for commentary on the Commission's salient factors. However, they do raise the question of transferability from the construction sample to future populations. In constructing such risk assessment equations or devices, we first engage in post-diction rather than prediction. That is, we predict backwards to an already existing data base. There is a persistent problem in updating these equations, since the weighting of the variables in terms of prediction of risk in future samples may change.

We do know that some of the factors have remained important over time, such as number of prior offenses and age at the onset of the criminal career. Yet a program of research is needed both: (1) to assure that the factors retain their predictive role in the assessment of risk; and, (2) that the level of importance assigned in the salient factors scores remains close to the level of importance demonstrated in the research.

2. Does the risk assessment procedure overpredict recidivism?

An issue often raised in the discussion of prediction is that of "false positives," that is, those cases in which recidivism is predicted but does not occur. The problem is that the paroling authority may not only withhold parole from those who would violate, but at the same time may keep in custody those who, despite their low salient factor score, might succeed on parole. Those with low scores are of particular concern in the federal system in that such a score can more than double the offender's sentence at any level of offense severity. If a large proportion of those with scores indicating a high predicted failure rate do not, in fact, recidivate, then the instrument is subject to criticism on the issue of fairness.

Earlier studies showed various other prediction instruments to have a ratio of three to four such "false positives" for each actual case of recidivism or "true positive" (Simon,

1971, cited in Geiser, 1978). The Commission research previously cited (Hoffman and Stone-Meierhoeffer, 1977, p. 36) includes data on a "Poor Risk" group for whom a high rate of failure is predicted. Among this group, one year after release from prison, one person was still in good status (i.e., a "false positive") for every one who had been arrested (i.e., "true positive"). By the time six years had passed, only one person in good status remained for every four who had been arrested. This ratio of one "false positive" to four "true positives" is the reverse of that found in Simon (1971). For all risk groups and the scale as a whole, Hoffman and Beck (1974) cite a Mean Cost Rating or proportion of successful candidates rejected ranging from .36 to .32. This converts to a ratio of approximately one "false positive" for every two "true positives."

Ratios of one to one, one to two, or one to four represent a considerable improvement over the "three or four to one" found in Simon (1971). Nonetheless, these ratios must be kept in mind in applying the instrument and should be the subject of continuing research.

3. Does the risk assessment procedure have unanticipated consequences?

Of particular concern is the question of unanticipated consequences of a prediction model such as that used in parole guidelines. What we do know is that some consequences exist.

What we do not know is the form that it takes. Two specific questions deserve some examination. First, are there hidden within the guidelines racial or class-connected relationships that need further exploration? For example, the current salient factor computation includes extent and type of previous employment. Clearly, there are many factors that affect the availability of employment and thereby the probability of an individual obtaining employment. It is quite possible that a person who has lived his or her lifetime in a neighborhood with high levels of unemployment, and therefore suffered that unemployment, may be held accountable, unfairly, for the place where he or she lives. Is this the case? Do unintended hidden biases enter into such items? A systematic assessment is necessary to evaluate these questions.

Second, except for the distinction of National Addict Rehabilitation Act and youth offenders, the guidelines at present are applied uniformly across categories. Further exploration needs to be carried out to examine whether such a procedure is justified. For example, what are the consequences of applying guidelines scores derived from an overwhelming male population to the female population?

Again, to turn to data from the Uniform Parole Reports, we find the male and female populations to be different with regard to parole performance, even when controlled for offense type. Simon (1975, pp. 77-83) concluded that, with the exception of those with a history of drug abuse or prior incarcer-

ations, women fare better than men on parole, at least after the first year. Should these differences be reflected in assessing risk for women?

#### Overall System Impact

The final three research questions I will propose concern the general system impact that the introduction of parole guidelines may have. By definition, these questions are broader and more general than those raised earlier. Nonetheless, they should receive the same attention over time as suggested for those already raised -- their importance requires it. They concern: 1) the general issue of discretion in the justice system; 2) the impact of changing philosophies of corrections; and, 3) resource allocation policy.

#### 1. Can discretion in the criminal justice system be structured?

Critics would argue that it cannot. One response to the issue of determinate sentencing concluded:

Given the political impossibility of treating all like offenders with either equal severity or equal moderation, this leaves the third alternative as the likely outcome: to continue as at present with symbolic punishment, combining excessively severe prison sentences for the few with excessively lenient dispositions for the many, using broad grants of discretionary power at all levels as the mechanism to keep the system in balance. Given this direction, one would not be far off the mark by predicting that, from an his-

torical perspective, the current flurry of so-called determinate sentiment will turn out to have been a fad, a minor and temporary irritant to a system whose politics irrevocably wed it to discretion.

(Caleb Foote, 1978, p. 140)

One fear of those observing the move towards guidelines (either at the sentencing or the parole decision-making level) is that if discretion is constrained at one point in the justice system, it will simply reappear at another point. Similar concerns have been expressed in response to determinate sentencing:

Suppose that not an ounce of discretion remains in the hands of trial judges and parole boards - and then suppose that prosecutors retain an unchecked power to substitute one charge for another in the plea bargaining process. It seems doubtful that even Ray Bradbury or Franz Kafka could devise a more bizarre system of criminal justice than this one. The persistence of plea bargaining would yield the same disparity of outcomes, the same racism and classism, the same gamesmanship, and the same uncertainty. The unchecked discretion over sentencing that has apparently distinguished our nation from all others would continue, but it would reside, not just predominantly, but exclusively in the prosecutor's office. The benefits of this discretion would, moreover, usually be available only to defendants who sacrificed the right to trial, and the pressure to please guilty would therefore be likely to increase. We would have abandoned our old discretionary regime - a regime in which mercy could be given - and substituted a new discretionary regime in which mercy would only be sold.

(Alschuler, 1978, p. 71)

Of course these critiques are directed not at parole guidelines and structured discretion but at determinate

sentencing. Of more direct concern to the Commission is the monitoring of its own activities to insure that, in fact, discretion is being structured. From the earliest planning phases leading to guidelines, it has been recognized that virtually no major system would provide a perfect fit with the circumstances confronted by the decision-making body. What is built in to the system is the explicit statement that under some circumstances it would seem appropriate to make a decision that falls outside the guidelines. Existing guidelines all provide a justification within the system under which such decisions can be made. Present data indicate that roughly 10% of the cases of all decisions fall outside of the guidelines. The importance of these cases has not been overlooked in the existing analysis of guidelines. There needs, however, to be continued research on these cases to assure over time that they are not becoming, in some unintended way, the vehicle for reintroduction into the system of the problematic discretion that produced the guidelines in the first place.

2. What is the impact on correctional staff of changing the purpose of corrections?

The U. S. Parole Commission guidelines emphasize both "just deserts" through retribution and public protection through incapacitation as the principal purposes of corrections. While rehabilitation remains a concern within these guidelines, the purpose of rehabilitation is considerably

downplayed. Other guideline systems, Oregon's, for example, have eliminated the rehabilitation purpose entirely. This is not the forum to debate the relative value of the rehabilitative ideal. At the same time there is a general problem of removing from corrections all traces of a positive, rebuilding and reintegrative purpose. At the recent UPR Seminar, Robert Barrington of Northern Michigan University raised this issue, suggesting that few of us who work in the field of corrections would care to be part of a system whose sole purpose was punishment. He voiced concerns about the character that the staff of such a system would ultimately take on.

This suggests that the attitudes of supervisory staff and other correctional personnel are also an appropriate subject of study. Changes which appear may lead to a variety of strategies -- from changes in staff training to a rethinking of the purposes of the guidelines.

3. Will the emphasis on equity in decision-making turn the focus away from resources to the parolee?

The recent survey of manpower found parole supervision to be the most understaffed component of the criminal justice system. This situation may worsen. As parole turns more and more attention to equity in the decision-making process, one unfortunate consequence may be that attention (and resources) may be diverted from the crucial task of assisting

the reintegration of the parolee into the community. To the extent that this occurs, parole may be missing the best chance to advance its own cause. At a previous UPR Seminar, one presentation described approaches to decision-making.

... which are constructed around such static social features ... race, educational background, and past prisons or criminal records, are in fact merely measuring an individual's accumulated vulnerabilities.

The issue here is not whether a person is to be held accountable for violation of law, because the courts and correctional system will, even under idealized situations of social change, continue to serve this function. The question is, when things go wrong, when vulnerabilities accumulate, what is it persons with power do? How do we look at the prediction problem?

Ultimately ... if the issue is predicting high levels of success on parole it may be more important to create a full employment economy (which will produce low violation rates across the board) than to tinker around with multiple regression equations.

.....  
Somewhere this requires vision, theory and commitment. Certainly, one thing is clear. Visions will never come from a regression equation. Positive change will only come if we draw upon knowledge and theory to alter social conditions. While this is not an easy path to follow, it would seem a lot more rewarding way of expressing the issue of how we look at the problem of predicting success on parole.

(Polk, 1977)

Again, I want to thank the Commission for this chance to speak. I think the parole guidelines represent a positive step towards establishing national parole policy and making such policy explicit. The U. S. Parole Commission, in implementing these guidelines, is directly addressing

the very difficult and complex task of achieving a balance between the needs of justice, public safety, and offender rehabilitation. I hope that the research questions raised here can, in some limited way, help support and strengthen this effort.

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