BY THE COMPTROLLER GENERAL

Report To The Honorable Sam Nunn United States Senate

OF THE UNITED STATES

Federal Parole Practices: Better Management And Legislative Changes Are Needed

The United States Parole Commission has parole jurisdiction over all eligible Federal prisoners, wherever confined, and continuing jurisdiction over those released under parole supervision. GAO's review of the Parole Commission and the parole decision-making process shows that major improvements are needed, not only within the Commission, but also within those components of the judicial and executive branches of the Federal Government that provide information to the Commission for its use in rendering parole decisions.

GAO made this review because of the con- existing within the Congress over parole should be abolished or con- be part of the Federal criminal jus- em. The information contained in rt should assist the Congress in its tions on this important issue.

le Commission, the Department of and the Administrative Office of ed States Courts concurred with GAO's recommendations.

ED STATES COUNTING OFFICE

GAO/GGD-82-1
JULY 16, 1982

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-133223

The Honorable Sam Nunn
Ranking Minority Member
Permanent Subcommittee on
Investigations
Committee on Governmental Affairs
United States Senate

Dear Senator Nunn:

This report addresses the need for major improvements in Federal parole practices not only within the United States Parole Commission, but also within those components of the judicial and executive branches of Government that provide information to the Commission for its use in rendering parole decisions. We made this review because of the controversy existing within the Congress over whether parole should be abolished or continue to be part of the Federal criminal justice system.

We are sending this report to you because of the interest you expressed in our work in your letter to us dated March 17, 1980. As agreed with your office, unless you publicly announce the contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE SAM NUNN
UNITED STATES SENATE

FEDERAL PAROLE PRACTICES: BETTER MANAGEMENT AND LEGISLATIVE CHANGES ARE NEEDED

D I G E S T

Parole, the predominant way most offenders are released from prison, is one of the most controversial features of the criminal justice system. In fact, there is considerable discussion in the Congress about abolishing parole for Federal prisoners.

Debate regarding parole is not new. In response to continued criticism of Federal parole practices, the Congress passed the Parole Commission and Reorganization Act of 1976 to foster more rational, consistent, and equitable decisionmaking. This legislation established the Parole Commission as an independent agency with parole jurisdiction over all eligible Federal prisoners and paroled offenders.

GAO's review of the operations of the Parole Commission and the parole decisionmaking process shows that although some progress has been made since enactment of the 1976 legislation, major improvements are still needed. The improvements are needed not only within the Commission, but also within those components of the judicial and executive branches of Government that provide information to the Commission for its use in rendering parole decisions.

THE PAROLE COMMISSION CAN TAKE CERTAIN ACTIONS TO IMPROVE ITS OPERATIONS

The Parole Commission has developed parole decisionmaking guidelines to promote consistency in the parole process. The Commission's hearing examiners visit each Federal correctional institution bimonthly to conduct personal hearings with Federal prisoners who are eligible and apply for parole consideration. Panels consisting of two hearing examiners analyze information about each offender and formulate parole release

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of parole decisions because the Parole Commission does not have an effective quality control system. Of the 182 cases having errors, GAO noted that only 11 had been previously identified and corrected. (See pp. 36 to 40.)

Notifying offenders of parole decisions is also a problem. The Parole Commission and Reorganization Act requires the Commission to make decisions within specific time frames. However, GAO found that in 81 percent of the 3,448 cases reviewed, the Commission failed to meet the statutory time frame. (See pp. 44 to 50.)

LEGISLATIVE CHANGES COULD ALSO IMPROVE PAROLE DECISIONMAKING

Although the Commission can take some action on its own to improve its operations, other improvements require legislative action.

One area involves the role of the National Appeals Board which consists of three Parole Commissioners and is responsible for hearing and deciding appeals of Regional Commissioners' actions. For the past 3 years, Parole Commissioners have strongly disagreed over the proper role of the Board and how it should carry out its responsibilities. Commission records showed that the Board reversed a high percentage of the decisions of the five Regional Commissioners--about 27 percent between fiscal years 1978 and 1980. GAO reviewed 200 cases appealed to the Board during 1979 and 1980; in about 60 percent of these cases, Regional Commissioners' decisions were reversed. However, GAO did not find any evidence that Regional Commissioners had made errors in applying the parole decisionmaking guidelines or that the personal judgments that were a part of their initial decisions were unsound in any way. (See pp. 57 to 71.)

A second area involves the formulation of parole policy. Regional Commissioners are responsible for all parole functions pertaining to Federal prisoners in their regions and attending regularly scheduled meetings of the entire Commission to formulate national parole policy. GAO's review showed that although the Commission complied with the statutory requirement for holding at least four policy meetings annually during

fair and equitable parole decisions. Too often, however, the Commission does not get sufficient information to properly apply its parole release guidelines. Specifically:

--The presentence report, prepared by the Federal Probation System, is the principal document that the Commission uses to establish the range of time that each offender is expected to serve before being paroled. These reports did not always contain enough information about the offender or the offense to satisfy the Commission's needs. GAO examined presentence reports from 10 judicial districts for 342 offenders sentenced to a term of imprisonment in excess of 1 year. Of these reports, 144, or 42 percent, did not include sufficient details to properly apply the parole release guidelines. The Commission had to either go through the time-consuming process of obtaining the information elsewhere, or make a decision without it. (See pp. 91 to 95.)

--Although U.S. attorneys are required to furnish information on the nature and severity of offenses to the Parole Commission, some were not aware of the requirement or considered it a low priority. GAO's review of the 342 case files showed that prosecutors provided information to the Commission in only 53 cases. Information on 25 cases came from one district; five districts did not submit any information. GAO also reviewed case files on 179 offenders identified as organized crime figures and/or major narcotics traffickers. Prosecutors provided information to the Commission in only 30 cases. (See pp. 101 to 107.)

--Judges are required to furnish information relative to their views on parole to the Parole Commission but often do not do so. GAO's review of 342 case files showed that judges had provided information in only 126 cases. However, those judges who seldom furnished information were not familiar with the Commission's needs or perceived that the information would be ignored. (See pp. 107 to 109.)

--The Parole Commission considers study and observation reports and psychological

co-defendants but results in unwarranted disparity with all other offenders who have committed similar crimes and have similar parole prognoses. (See pp. 125 to 129.)

--Major narcotics traffickers convicted of engaging in a continuing criminal enterprise are not eligible by law for parole. Nevertheless, GAO found that some of these offenders were given parole hearings, release dates were set, and in one case an offender was released. (See pp. 130 to 133.)

--By law, the Attorney General may appeal a parole decision. However, GAO found that the Parole Commission has no system for furnishing Federal prosecutors information on parole decisions. As a result, prosecutors could not advise the Attorney General of cases that they felt should be appealed. GAO found no evidence that the Attorney General has ever appealed a parole decision. (See p. 134.)

MAJOR CHANGES ARE NEEDED TO IMPROVE PAROLE SUPERVISION

Major changes need to be made to the procedures followed in supervising paroled offenders. Specifically:

--Clear definitions of program requirements for special conditions of parole and specific criteria for determining what constitutes a violation of such special conditions have not been developed. Without them, there is no assurance that offenders will receive essential services or that those who fail to comply with special conditions will be uniformly disciplined. (See pp. 143 to 149.)

--The Commission and the Probation Division have not established time frames for reporting different types of parole violations or developed specific criteria for probation officers to use in requesting warrants for the arrest of parole violators. GAO found inconsistencies among probation offices in the time frames for reporting violations and in the circumstances necessary to justify requests for warrants. (See pp. 150 to 160.)

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CHAPTER 1

INTRODUCTION

The General Accounting Office reviewed the operations of the United States Parole Commission and the parole decisionmaking process. We made this review because of the controversy existing within the Congress over whether parole should be abolished or continue to be part of the Federal criminal justice system. It was our view that current information on the operation of the parole decisionmaking process would assist the Congress in its deliberations on this important issue.

In criminal law, parole is defined as the conditional return of an institutionalized offender to the community before completion of the term of imprisonment that was originally imposed. It is the predominant mode of release from prison for most offenders. Today, parole is also one of the most controversial features of the American criminal justice system.

The Federal parole system was established by the 61st Congress in 1910. The 71st Congress enacted legislation in 1930 (Act of May 13, 1930, Chapter 255, 46 Stat. 272) which created the United States Board of Parole. The Parole Commission and Reorganization Act of 1976 (Public Law 94-233, dated March 15, 1976, 18 U.S.C. §4201 et seq.) retitled the United States Board of Parole as the United States Parole Commission and established it as an independent agency in the Department of Justice with broad discretionary powers.

The Commission has parole jurisdiction over all eligible Federal prisoners, wherever confined, and continuing jurisidiction over those who are released on parole or as if on parole (mandatory release). 1/ In fiscal year 1981, the Commission had about 180 employees and operated on a budget of about $6 million. During this period, the Commission completed more than 21,700 parole hearings and case reviews, made 7,500 decisions on offenders' appeals, and issued 2,600 warrants for offenders who had allegedly violated conditions of parole.

1/A prisoner denied parole will be released at expiration of the sentence less any institutional good time earned. The prisoner is released to mandatory release supervision (as if on parole) for that portion of the remaining sentence which exceeds 180 days. When a prisoner with 180 days or less remaining on the sentence is released by expiration of sentence, release is without supervision.

which would provide a framework for individual parole decisions. A few years later, the National Advisory Commission on Criminal Justice Standards and Goals emphasized a similar concern. Its Task Force on Corrections observed that articulation of criteria for making parole decisions and development of basic policies were chief tasks that parole decisionmakers should undertake.

The major criticisms of the United States Board of Parole during the late 1960s and early 1970s were that

--it did not have explicit criteria or standards for its decisions,

--it did not provide written reasons for its decisions,

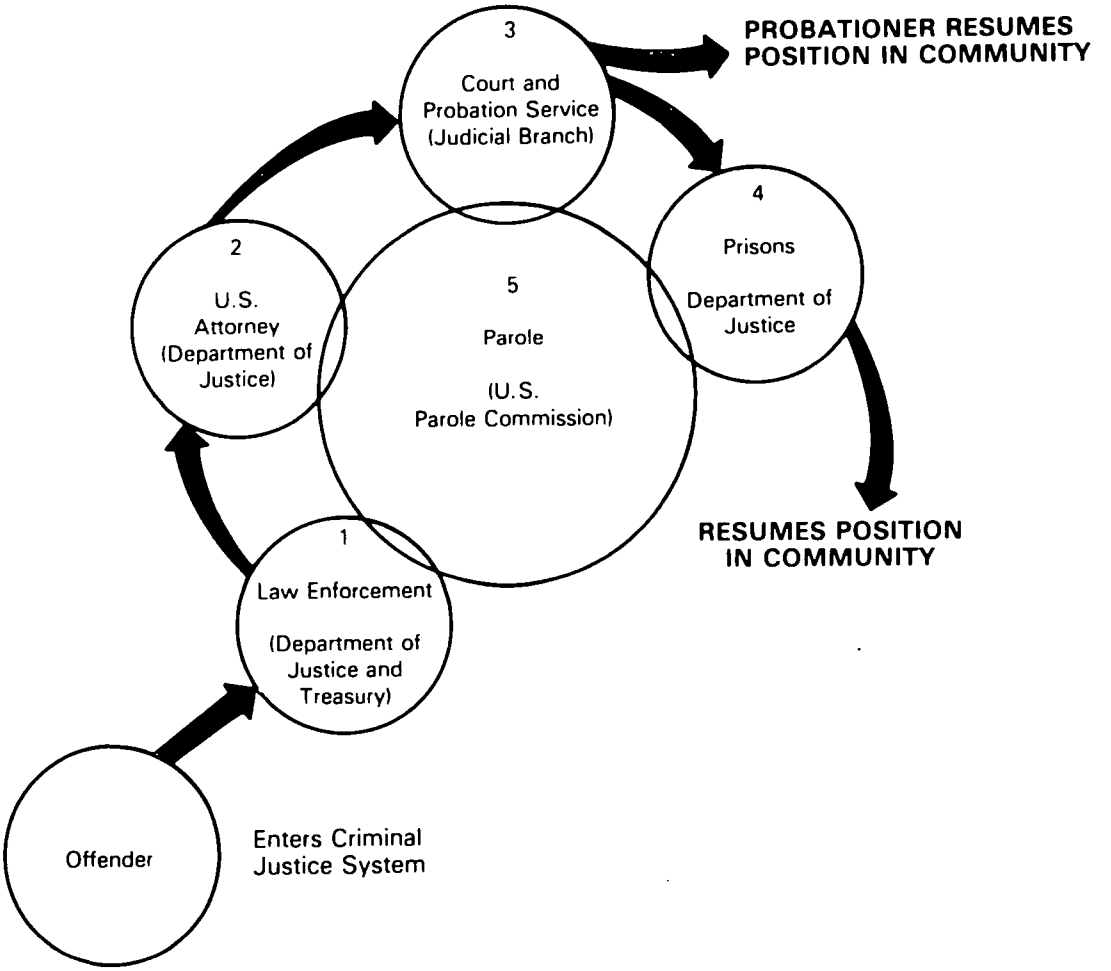
--it created unnecessary uncertainty among prisoners, and

--it lacked protection for the rights of the offender.

Facing increased criticism, the Board of Parole began examining its own operations, and in 1970 inaugurated a study of its own decisionmaking procedures. As a part of this study, the Research Center of the National Council on Crime and Delinquency developed a set of parole guidelines for the Board. In the fall of 1972, the Board began a pilot project involving five institutions in the Bureau of Prison's Northeast Region. The pilot project featured parole hearings conducted by panels of two hearing examiners, written reasons in cases of parole denial, an administrative appeals process, and use of parole decision guidelines. On the basis of experience with the pilot project, the Board decentralized its decisionmaking to five regions and adopted the parole guidelines for use in making all Federal parole decisions.

In response to continued criticism of Federal parole practices, the Congress passed the Parole Commission and Reorganization Act of 1976. This legislation was an effort to constrain and guide parole discretion through more rational, consistent, and equitable decisionmaking. The legislative history of this act recognizes that one of the primary functions of the Commission's parole guideline system is to reduce sentencing disparity by balancing differences in sentencing policies and practices among judges and courts. In this regard, the Commission is limited in what it can do. First, it cannot reduce unwarranted disparity in the determination of who goes to prison and who does not. Second, it has no jurisdiction over prisoners with sentences for felony convictions of 1 year or less. In spite of these constraints, a significant number of offenders--about 28 percent of the 29,868 defendants sentenced in Federal courts in fiscal year 1981--will come under the jurisdiction of the Commission at some future date.

FEDERAL CRIMINAL JUSTICE SYSTEM



Under 18 U.S.C. §4205(b)(1), the judge sets a minimum eligibility date of less than one-third of the maximum term imposed. Also, under 18 U.S.C. §4205(b)(2), the judge may make the offender eligible for parole at any time after commitment by using an indeterminate sentence.

For an offender sentenced under the Narcotic Addict Rehabilitation Act (18 U.S.C. §4254 et seq.), parole eligibility follows after 6 months of treatment and certification by the Surgeon General. Finally, a youthful offender under the age of 26 may be sentenced by a judge under the Federal Youth Corrections Act (18 U.S.C §5010(b) and (c)) to an indefinite term of imprisonment. Such a sentence provides the Commission with total discretion since the offender is eligible for parole consideration at any time after commitment.

position that information in the file describing offense circumstances more severe than reflected by the offense of conviction may be relied upon to determine the portion of the offender's sentence that will be served in prison. The Commission's position has been sustained by several court cases. 1/

The final factor considered in the parole decision is the individual's institutional behavior. The guidelines presume that an offender will maintain a satisfactory record of institutional conduct and program achievement. Individuals who have demonstrated exceptionally good institutional program achievement may be considered for release earlier than the specified guideline range. On the other hand, individuals whose institutional conduct or program achievement is rated as unsatisfactory are likely to be held longer.

The chart on page 8 illustrates the various steps that the Commission follows in processing parole decisions. Panels consisting of two hearing examiners, operating under guidelines issued by the full Commission, conduct initial parole hearings and statutory interim hearings at correctional institutions to formulate parole release recommendations. These recommendations must be affirmed, modified, or reversed by Regional Commissioners before becoming final.

If parole is initially disapproved, a tentative release date is considered to be unsatisfactory, or the initial action otherwise adverse, the offender has 30 days from the date of the decision to file a regional appeal and request reconsideration by the appropriate Regional Commissioner. The Regional Commissioner has 30 days from receipt of the appeal to either affirm or modify the previous decision. Any decision by a Regional Commissioner on an appeal may be appealed by the offender to the National Appeals Board. It has 60 days from receipt of the appeal to either affirm, modify, or reverse the previous decision.

The Commission conducts a prerelease review at least 60 days prior to an offender's presumptive parole date to determine whether all conditions have been satisfied. If all conditions have been met, the Regional Commissioner officially converts the offender's presumptive parole date to an effective parole date. If not, he/she delays parole release and schedules another hearing for the purpose of considering new adverse information.

1/ Billiteri v. United States Board of Parole, 541 F.2d 938 (2nd Cir. 1976); Bistram v. United States Board of Parole, 535 F.2d 329 (5th Cir. 1976); and Zannino v. Arnold, 531 F.2d 687 (3d Cir. 1976).

The chart on page 10 illustrates that of the 29,575 offenders who were placed under supervision by the Federal Probation System for the 12 months ended June 30, 1981, about 35 percent, or 10,252, were being supervised for the Parole Commission.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this review were to assess (1) the adequacy of the criteria used by the Commission to make parole decisions; (2) the quality of case analysis performed by the Commission's hearing examiners; (3) the adequacy of quality control practices over parole decisions; (4) the degree of the Commission's compliance with the statutory requirements for making parole decisions; (5) the need for legislative changes to streamline the operation of the Commission; (6) the quality of information obtained by the Commission from others when making parole decisions; (7) the procedures followed in making parole decisions for co-defendants; and (8) the extent of coordination between the Parole Commission and the Federal Probation System in the supervision of parolees.

This review was performed in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

Between June 1979 and March 1981, we performed detailed work at the headquarters offices of the United States Parole Commission, Bureau of Prisons, Federal Probation Division within the Administrative Office of the United States Courts, United States Marshals Service, the Executive Office of United States Attorneys, and the Criminal Division within the Department of Justice. We also did extensive work at the Parole Commission's five regional offices; the probation offices, district courts, and U.S. Attorney offices in 10 judicial districts; and 15 Federal correctional institutions. In addition, we performed work at two Organized Crime Strike Force offices and did limited work at selected offices of the Immigration and Naturalization Service.

We examined policies and procedures, interviewed agency officials, reviewed records, and analyzed about 1,800 cases involving parole decisions. Although the examples are actual cases, the names have been changed to protect the individuals. The judicial districts and correctional institutions included in our review were selected on the basis of their geographic location and were not considered by us to be better or worse than those we did not visit. Further details on the scope of the review and our methodology are included in chapter 6.

CHAPTER 2

THE PAROLE DECISIONMAKING PROCESS CAN BE IMPROVED

Major improvements can be made to the procedures followed by the Commission when it makes parole decisions. The Commission needs to:

--Clarify its parole guidelines and train hearing examiners in their use.

--Ensure that hearing examiners have sufficient time to properly analyze case material well in advance of parole hearings and require full participation of both hearing examiners at hearings.

--Establish an effective quality control system.

--Make parole decisions within the time frames established by law.

There were inconsistencies in parole decisions within and among the Commission's five regional offices, in part because guidelines used by hearing examiners to make parole recommendations were subject to varying interpretations, and hearing examiners had not received adequate training in their use. Also, we found that erroneous parole decisions had been made because hearing examiners had not adequately analyzed offenders' case files and that quality control activities were not effective in detecting these errors. Finally, offenders were not being notified of the parole decisions in a timely manner. In the 3,448 cases we reviewed for timeliness, the Commission failed to meet the statutory requirements for making decisions in 2,783 cases, about 81 percent.

PAROLE CRITERIA NEED TO BE IMPROVED AND STAFF SHOULD BE PROVIDED MORE TRAINING IN THEIR USE

The Commission developed parole decisionmaking guidelines which have promoted some consistency in the parole decisionmaking process and have improved parole decisions by setting standards for the duration of prison terms for categories of offenders whose situations are similar. The Commission has continued to refine this highly complex set of guidelines; however, even greater consistency in decisions could be achieved by (1) clarifying certain parts of the guidelines and training hearing examiners more extensively in their use and (2) establishing

The Commission's procedures manual must contain clear and comprehensive guidance for use by hearing examiners in determining the offense severity and the salient factor score if consistent parole decisions are to be made. We found, however, that the procedures manual contained some instructions which needed further clarification because they were subject to varying interpretation by the Commission's hearing examiners. For example:

--The procedures manual provides that hearing examiners should count all prior adult convictions for criminal offenses in scoring one item of the salient factor score. However, the manual does not discuss what should be done on multiple convictions on the same indictment, separate convictions in different judicial districts, or concurrent State and Federal convictions.

--The procedures manual does not include any guidance to hearing examiners on whether a felony charge dismissed through a guilty plea to a misdemeanor which results in a jail sentence of over 30 days should be counted as a prior conviction or prior commitment.

--The procedures manual provides that hearing examiners should deduct a point in scoring the salient factor score when the offense involves automobile theft; but not theft of boats, aircraft, or cargo. The manual does not state what should be done concerning theft of pickup trucks and tractor-trailers.

--The procedures manual provides that hearing examiners should award one point when scoring the salient factor score if the offender had at least 6 months full-time employment during the 2-year period immediately preceding incarceration. Also, the procedures manual states that the 2-year period should be counted backwards from the last time the subject was lawfully in the community. The manual does not address when the 2-year period starts. It was unclear to the examiners whether this period starts upon conviction or when the offender is committed to prison. Also, it was unclear as to whether the intervening period between an offender's confinement in a local jail and commitment to prison is included.

--The procedures manual provides that hearing examiners shall award one point in scoring the salient factor score in appropriate cases where the offender functioned as a housewife. However, there is no further guidance on whether this applies equally to men and women or how the determination would be made if there were no children in the home.

original offense while others consider both the original offense and the behavior resulting in the revocation of probation.

Several of the matters discussed above were brought to our attention by Commission hearing examiners, who gave us different interpretations on how they might handle these situations. Others were found during our review of Parole Commission case files. We recognize that the guidelines cannot cover every situation or completely eliminate the potential for differing interpretations by hearing examiners. When there is considerable confusion over the guidelines, however, such as in the cases discussed above, the Commission should clarify the guidelines to the maximum extent possible.

Another problem which contributes to inconsistent interpretation of the Commission's highly complex set of parole policies and procedures is the absence of a comprehensive training program for hearing examiners. Prior to fiscal year 1982, no specific funding had been requested for training of hearing examiners, but limited training was accomplished through use of money allocated to other budget categories. The Commission requested about $140,000 for training in fiscal year 1982. In November 1980, the Office of Management and Budget deleted these funds. The Commission was able to get $70,000 restored upon appeal, but the Office of Management and Budget later deleted these funds from the Commission's fiscal year 1982 budget. No funding was requested for fiscal year 1983.

To determine how consistently hearing examiners interpreted the parole guidelines, we used 30 cases where parole decisions had previously been made. These cases represent a judgment sample which did not include prior knowledge of the adequacy of the information available in the case files. We reproduced the information which was available when the initial decisions were made on these cases, deleted all references to names, and eliminated all material pertaining to the actual parole decisions. In the Commission's five regional offices, we asked the 35 hearing examiners to review all 30 cases and prepare an assessment of the appropriate offense severity level and salient factor score without the knowledge of how other hearing examiners assessed the same case.

We performed a variety of analyses to determine the extent of variation within and among regions in how hearing examiners determine the appropriate offense severity and salient factor score. Our review showed that there were differences within and among regions in how hearing examiners determined the appropriate offense severity and salient factor score. The differences in assessments by all hearing examiners are illustrated in the charts on page 16. For example, looking at case number two, we found that 21 examiners assessed the offense severity as very high, two assessed it as high, 11 as moderate, and one failed to assess the severity because he contended that there was insufficient information. Also,

NORTH—CENTRAL REGION
OFFENSE SEVERITY ASSESSMENTS

SEVERITY LEVEL:																													
Greatest II															3	3			7										
Greatest I				3				6	6				7			3	4		5			4	6	2					6	3
Very High		2		4	4			1	1	7	3	1				1		7	2		5	3	1	5			1		1	2
High	4		3				6					5		3							2				6	7				
Moderate	1	5	4		3	3								1	4										1					
Low Moderate						1																						7		
Low						3																								
Rescission																														
Case Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed	2	0	0	0	0	0	1	0	0	0	4	1	0	3	3	0	0	0	0	0	0	0	0	0	0	0	6	0	0	2

NORTH—CENTRAL REGION
SALIENT FACTOR SCORE ASSESSMENTS

PAROLE PROGNOSIS:	0																													
Poor	1																													
	2										5				1											5				
	3					3					1				1		3	2								2			2	
Fair	4		3			1	2								4	2	4	5											5	
	5		4			4	3								1	5				6										
Good	6												2						2	1				3						
	7					1							1											1	1			6		
	8																		1						1			1		
Very Good	9	1										2		2					1						4				7
	10	6		5				2	1	5			4		3					3			2	1	1		5			
	11			2	7			5	6	2	7		1	4	2							7	2	5	2			1			
Case Number		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed		0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0

SOUTH—CENTRAL REGION
OFFENSE SEVERITY ASSESSMENTS

SEVERITY LEVEL:																														
Greatest II								1								5	5			5										
Greatest I				4				5	4				6			1	1		2	1		4	3	4			2		2	4
Very High	4	4	1	2	1		1		2	4	4	1						6	2		2	1	3	2	2	1	2		4	
High	2		3		1	1	5			2		4		2							2				1	5				
Moderate		2	2		3	2								1	6										1					
Low Moderate																												6		
Low						1																								
Rescission						2																								
Case Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed	0	0	0	0	1	0	0	0	0	0	2	1	0	3	0	0	0	0	2	0	2	1	0	0	2	0	2	0	0	2

SOUTH—CENTRAL REGION
SALIENT FACTOR SCORE ASSESSMENTS

PAROLE PROGNOSIS: 0																														
Poor 1																														
2		1								6							1								6				
3		2				2									4		1	1										2	
Fair 4					2	1									2	1	2	4		2								3	
5		3			2	2										4	1	1		4				3			1	1	
Good 6													1			1	1		1					2			3		
7																			1					1	1		2		
8												1							1						2				
Very Good 9	1								1			3		1					2				1		1		2			6
10	5		3				1		3					3								6	1				4			
11			3	6	1		5	6	2	6		1	5								6		4							
Case Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed	0	0	0	0	1	1[a]	0	0	0	0	0	1	0	2	0	0	0	0	1	0	0	0	0	0	2	0	0	0	0	0

[a]One examiner used rescission guidelines and stated that salient factor score was not applicable in this case.

WESTERN REGION
OFFENSE SEVERITY ASSESSMENTS

SEVERITY LEVEL:																														
Greatest II									1								6			7										
Greatest I				5			1	8	5		1		8			4	2	1	7	1	1	7	2	6						
Very High	2	4		2	2		1		1	7				1		4		7			2	1	1		3				8	
High	2		4			1	6			1		1		3							3					8				
Moderate		3	4		2	6								2	3						2							1		
Low Moderate						1																						7		
Low																														
Rescission																														
Case Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed	4	1	0	1	4	0	0	0	1	0	7	7	0	2	5	0	0	0	1	0	0	0	5	2	5	0	8	0	0	8

WESTERN REGION
SALIENT FACTOR SCORE ASSESSMENTS

PAROLE PROGNOSIS:	0																													
Poor	1																													
	2		2								4				1		3									6				
	3		3								1				1		4	5								2			2	
Fair	4		2				4								3	2	1	3											3	
	5					2	6									5			2	4									3	
Good	6					2							1		1	1			6	4				3				5		
	7					1								1										2	2			2		
	8												1	1											1			1		
Very Good	9											2										1	1		1					2
	10	7		6			3		6	4		2	1	3							1	6	1	1			1			
	11			2	7		5	8	2	4			5	3							7	1	1				1			
Case Number		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Assessments Not Completed		1	1	0	1	3	0	0	0	0	0	3	4	0	0	2	0	0	0	0	0	0	0	5	2	4	0	6	0	0	6

the Commission told us that he would not be able to establish a comprehensive training program for examiners in use of the procedures manual until the Commission receives the funding it requested.

Parole dates advanced without criteria for awarding superior program achievement

The Commission recently established a policy for granting limited advancements of presumptive parole dates for superior program achievement. This policy was implemented without the cooperation of the Bureau of Prisons and before the Commission established adequate criteria to define what constituted superior program achievement. Also, hearing examiners have not followed Commission requirements that reasons for granting superior program achievement be documented.

The Parole Commission initiated the classification of superior program achievement in November 1979 to provide an incentive for prisoners to participate and attain noteworthy achievements in institutional programs. After 6 months of implementation, hearing examiners had awarded superior program achievement to about 5 percent of the prisoners whose cases had been heard. To receive a superior program achievement award, a prisoner is expected to maintain a clear conduct record and exceed expected achievement levels over a sustained period in areas such as educational and vocational training, industry, or counseling. The Commission has established a schedule for advancements of parole dates, which ranges from a 1-month reduction for presumptive dates 15 to 22 months in the future to a reduction of 13 months for those with presumptive dates up to 91 months away.

Prior to adopting this policy, the Commission invited representatives from the Bureau of Prisons to participate in a joint task force to develop criteria for determining superior program achievement. The Bureau declined to participate due to the Director's position that positive institutional behavior and program achievement should play no role in the guidelines used by the Commission to set release dates. The Director further emphasized to the Commission that inmates should have a parole date fixed early during their periods of incarceration to avoid coercing inmates into "game-playing" and other manipulative behavior. As a result, the Bureau has continued its own program of internal rewards based on institutional behavior and program achievement. The Bureau credits an inmate with extra good time credit for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations or employment in industry. The Bureau also provides monetary rewards to inmates who make outstanding contributions to the accomplishment of institutional goals.

At its February 1981 meeting, the Commission agreed to implement a pre-hearing assessment procedure so that hearing examiners will be able to analyze material in offender's files at their offices several weeks prior to actual parole hearings at the institution. This procedure should improve the analysis of case material by hearing examiners and enhance the quality of parole decisions. However, the Commission will not achieve maximum benefits from the pre-hearing assessment process unless further refinements are made in its procedures and the Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4201 et seq.) is amended to provide more time for complete analysis of the material in the file and communication of the assessment to the offender prior to the actual parole hearing.

Hearing examiners were not properly prepared to make parole recommendations

The Commission's hearing examiners visit each of the Bureau's correctional institutions on a bimonthly schedule to conduct personal hearings with those offenders who are eligible and apply for parole consideration. The examiners are responsible for reviewing all the information in the case file and then meeting with the offender to discuss the offense severity rating, salient factor score, institutional behavior, and any other matters the examiners deem relevant. At the conclusion of the hearing, the hearing examiners formulate a recommendation to the Regional Commissioner and personally advise the offender of this recommendation. Also, the hearing examiners advise the offender that he or she will receive a decision from the Regional Commissioner within 21 days of the hearing.

The Commission was making erroneous parole decisions because hearing examiners did not have sufficient time to adequately analyze material in offenders' files. Our review showed that the panel of hearing examiners did not see an offender's file until immediately prior to the hearing and then generally spent less than 20 minutes analyzing the material. Such a procedure did not give hearing examiners sufficient time to completely review material in files, obtain missing information, seek clarification on issues, properly interpret the Commission's highly complex set of parole guidelines, and formulate quality parole recommendations.

The problems with the Commission's practices are obvious from our analysis of 342 cases in 10 judicial districts which involved sentences in excess of 1 year. Our review of these cases showed that hearing examiners from the Commission's five regions made errors in 182 cases, or 53 percent. In 125 cases, these errors could have had an impact on the amount of time that offenders served in prison. The following cases illustrate these problems.

reviewed Tom's case, but they failed to detect that the parole date of March 11, 1980, was about 4 months prior to Tom's parole eligibility date of July 20, 1980. We discussed this case with officials from the Commission's South-Central and Western Regional Offices and they agreed that Tom should not have been paroled prior to July 20, 1980.

--Jim received two concurrent 3-year sentences in the Eastern district of Pennsylvania for conspiracy to manufacture and distribute dangerous drugs. Hearing examiners from the Commission's Northeast Regional Office conducted a parole hearing for Jim in December 1978. They correctly assessed the salient factor score (11), but incorrectly assessed the offense severity as high in this case. The parole guideline range established by the panel was 16 to 20 months. Jim was paroled after 8 months, or 8 months below the bottom of the guideline range, because the panel believed that the offense was uncharacteristic of him, he was a first offender, and he was remorseful. The hearing examiners ignored Jim's part in the cocaine sale because they believed he was not involved. This was an obvious error because the information in the Commission's file clearly showed that Jim had also been convicted of the sale of cocaine. In addition, the panel ignored the instructions in the Commission's procedure which provide that the panel may increase the offense severity rating to the next level for multiple separate offenses. In this case, it called for a very high severity level. The appropriate guideline range for a severity rating of very high and a salient factor score of 11 was 26 to 36 months. Even if Jim had been denied parole, he would have been mandatorily released after 25 months. This would have been below the bottom range of the correct guidelines.

--Donna received a 5-year regular adult sentence in the Southern district of Ohio for conspiracy to commit mail fraud. Hearing examiners from the Commission's North-Central Regional Office conducted a parole hearing for Donna in December 1978. They correctly computed the salient factor score (7) but incorrectly assessed the offense severity as moderate. The parole guideline range established by the panel was 16 to 20 months. The panel selected moderate severity because they believed that the fraud was between $1,000 and $19,999. This was an error because the presentence report clearly showed that Donna was part of an organized ring which used the mail to file fraudulent claims against insurance companies, Medicaid, and workmen's compensation. Also, the presentence report clearly stated that the extent of the fraud was in excess of $100,000, which equates to an offense

severity as moderate and the salient factor score as 10. The guideline range established by the panel was 10 to 14 months and parole was recommended at 13 months. In reviewing the hearing examiners' recommendation, the Regional Commissioner raised the severity level to high because of multiple separate offenses. This change in severity raised the guideline range from 14 to 20 months and parole was granted after 14 months. The panel and the Regional Commissioner correctly calculated the salient factor score, but they made an error in establishing the offense severity because information in the file showed that the total fraud associated with both convictions was in excess of $150,000. This calls for an offense severity level of very high and a parole guideline range of 24 to 36 months.

--Patty received a 4-year regular adult sentence in the Northern district of California for manufacturing 150 grams of methamphetamine. Hearing examiners from the Commission's North-Central Regional Office conducted a parole hearing for Patty in July 1979. They assessed her offense severity as high and calculated the salient factor score as 6. The parole guideline range selected by the examiners was 20 to 26 months and she was to be released on parole after 24 months. The examiners incorrectly computed the salient factor score because Patty was given one point for verified employment when the record clearly showed that this condition had not been met. The panel incorrectly assessed the offense severity as high because the record showed that Patty was involved in the manufacture of synthetic drugs for sale, and this should be rated at least very high according to the Commission's procedure manual. The correct parole guideline range for Patty was 48 to 60 months. If Patty had been denied parole, she would have been mandatorily released after 37 months and she still would have been 11 months below the bottom of the appropriate guideline range.

We also found 144 cases out of the 342 reviewed where hearing examiners made recommendations and Regional Commissioners made parole decisions when in fact there was insufficient information in the files to properly interpret the Commission's guidelines. The following cases illustrate this problem and it is further discussed in chapter 4.

--Rich received a 15-year regular adult sentence in the Northern district of Texas for distribution of cocaine. Hearing examiners from the Commission's South-Central Regional Office conducted a parole hearing for Rich in September 1979. They assessed the offense severity as high and the salient factor score as 10. The panel established a parole guideline range of 14 to 20 months

--Barb received a 2-year sentence in the Eastern district of Kentucky for interstate transportation of stolen motor vehicles. Hearing examiners from the Commission's Southeastern Regional Office conducted a parole hearing for Barb in November 1978. They assessed the offense severity as high and the salient factor score as 10. The panel established a parole guideline range of 16 to 20 months. The presentence investigation report contained no information on the total dollar value of the stolen trucks, and we could not determine how the panel arrived at a severity level of high. The hearing examiners should have obtained further clarification on the value of the stolen property. Information we obtained from the United States Attorney's files indicated that the value of the stolen property could have easily exceeded $100,000. If it did, the appropriate offense severity should have been very high, and the parole guideline range should have been 26 to 36 months.

--Mike received a 4-year regular adult sentence in the Southern district of Ohio for the forgery of a U.S. Treasury check. Hearing examiners from the Commission's Southeastern Regional Office conducted a parole hearing for Mike in November 1978. They assessed the offense severity as low moderate and the salient factor as 2. The panel established a parole guideline range of 20 to 28 months and recommended parole after 20 months. In arriving at the offense severity of low moderate, the hearing summary listed the total value of stolen property as one U.S. Treasury check valued at $124.38. The presentence investigation report stated that Mike was involved in the theft, uttering, and forgery of three U.S. Treasury checks, and the United States Attorney agreed not to prosecute him on eight other potential counts if he plead guilty to forgery of the $124.38 check. Also, the presentence investigation report stated that Mike and a co-defendant had stolen numerous checks in the Huntington, West Virginia, area. We obtained information from the United States Attorney's files which confirmed that Mike was part of an organized check theft ring. The investigative agency report clearly showed that Mike's offense severity should have been rated at least as moderate. This equated to a parole guideline range of 24 to 32 months. Since there was insufficient information in the presentence report to accurately establish the offense severity, the hearing examiners should have requested additional information.

--Wenonah received a 4-year regular adult sentence in the Southern district of Ohio for destruction of a mail depository and the theft of mail. Hearing examiners from the Commission's North-Central Regional Office conducted a

Commission's hearing examiners at 14 Federal correctional institutions. We found that in most cases only one hearing examiner attempted to analyze the material in the offender's file prior to the hearing to be in a position to provide meaningful input to the formulation of a parole recommendation. Also, the average time spent by the secondary examiners who analyzed case material was only about 3 minutes. In 191 cases, or 66 percent, the secondary examiner did not spend any time examining material in offenders' files. Further details are presented in the following table.

Region	Institutions visited	Number of hearings observed	Average time spent by secondary examiner (in minutes)	Number of cases where secondary examiner spent no time
Northeast	3	61	2	35
North-Central	2	44	2	37
Southeast	4	79	1	74
South-Central	3	87	2	41
Western	2	19	10	4
Total	14	290	3	191

In August 1979, one Regional Commissioner admitted to the Chairman of the Commission that only one hearing examiner was giving full attention to each case because the secondary examiner was preparing for the next case. However, this Commissioner's subsequent written instructions to hearing examiners in the region continued to approve of a procedure where only one hearing examiner would fully analyze the material in an offender's file. Subsequently, two other Regional Commissioners acknowledged that both hearing examiners were not fully analyzing the material in each file because there was not sufficient time.

Regional Commissioners rely heavily on the recommendations of hearing examiners when making parole decisions. The Commission's records showed that Regional Commissioners rarely have major differences with the examiners' recommendations. Also, these records showed that the two hearing examiners working as a panel rarely disagreed when making parole recommendations. This can lead to erroneous decisions and improper parole recommendations because, if only one hearing examiner fully analyzes the material in the file, the other examiner is merely concurring without directly ascertaining and evaluating the file contents.

date. In the case of an offender sentenced under 18 U.S.C. §4205(b)(2), the Commission is required by statute to conduct a parole hearing whenever feasible within 120 days of imprisonment. The Commission, as a matter of policy, attempts to conduct an initial parole hearing within 120 days for all offenders except those with a minimum term of at least 10 years.

Our review of 373 cases included in South-Central Region's pilot project showed that in most cases the pre-hearing assessments were completed less than 30 days prior to offenders' parole hearings. This obviously does not permit the Commission to obtain maximum benefits from the pre-hearing assessment process. The time frame between the Commission's receipt of the material for the preliminary assessment and the actual parole hearing is too short for (1) two hearing examiners and the Administrative Hearing Examiner to fully evaluate all case material and obtain additional or clarifying information, and (2) the Commission to notify the offender of the preliminary assessment sufficiently in advance of the hearing so that the offender can obtain additional information if there is an error in the assessment.

Several Regional Commissioners and staff told us that maximum benefits from the pre-hearing assessment process could be achieved by allowing the Commission at least 180 days before scheduling an initial parole hearing for all offenders instead of the current provision for 120 days. To do this would require revising the Commission's procedures and amending the Parole Commission and Reorganization Act of 1976 for those offenders sentenced under 18 U.S.C. §4205(b)(2).

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4208(a)) provides that the Commission need not conduct an in-person parole hearing when it determines on the basis of the prisoners' record that it will parole the prisoner at his or her earliest eligibility date. The Commission has identified a number of cases during implementation of the pre-hearing assessment where it is very clear that the decision to parole the offender will be at the earliest eligibility date. This occurs when an offender is not eligible for parole until he or she has served more time than the guidelines call for. According to the Commission's Research Department, about 12 percent of all cases would fall into this category. In these circumstances, the Commission could save valuable resources by eliminating the parole hearing at the institutions. These resources could then be directed to improving the quality of parole decisions on other more difficult cases. Several Commissioners and staff members thought this was an excellent idea, and the Commission implemented this procedure.

The initial guidance for implementing the pre-hearing review process also did not

Region	Recommendations Examined by GAO	Found to be in error	Corrected in regional review Yes	No
Northeast	42	18	1	17
North-Central	84	43	1	42
Southeast	95	53	5	48
South-Central	81	44	3	41
Western	40	24	1	23
Total	342	182	11	171
	100%	53%		
		100%	6%	94%

The most frequent error made by the panels involved computation of the salient factor score. This was also the least likely error to be detected during regional review. Other errors included making incorrect assessments of offense severity and failing to recognize that the available information was insufficient for decisionmaking. The type of errors and the extent to which each was corrected are summarized below. The number of errors shown exceeds the number of cases with errors because some cases had more than one type of error.

Type of error	Corrected during regional review Total	Yes	No
Computation of salient factor score			
No effect on parole	63	1	62
Affects parole	48	1	47
Assessments of offense severity			
Incorrect severity level	49	5	44
Failure to consider mitigating or aggravating circumstances	28	4	24
Insufficient information for decision	30	0	30
Total	218	11	207
	100%	5%	95%

The appeal process is not effective in correcting erroneous decisions because of inadequate case analyses, failure to properly apply guidelines, and a Commission policy which prohibits a decision more adverse than the one appealed. These and other problems with the appeal process are discussed in chapter 3.

Quality control at the national level is too narrowly focused

The Commission does not have an effective quality control function to ensure that practices are uniform among its regions. The quality assurance function at the national level is assigned to one individual within the Research Department. To date, review efforts have been limited to identifying and correcting errors in the application of the decisionmaking guidelines only. Although some improvements have been made, these efforts are inadequate to

--identify the extent of errors in the application of the decisionmaking guidelines, and

--identify departures from the Commission's operating procedures.

The Research Department identifies errors in the application of the decisionmaking guidelines by reviewing (1) copies of the decisions furnished to offenders, (2) problem cases identified by the National Appeals Board Commissioners or staff, and (3) cases which are identified for review by the Commission's automated information system. The Research Department prepares and distributes quality control memos describing errors found to each regional office to inform the hearing examiners, Administrative Hearing Examiners, and Regional Commissioners of the types of errors occurring and to prevent their reoccurrence. Several improvements have resulted from these procedures.

--Offenses listed in the decisionmaking guidelines have been clarified.

--More complete explanations of parole decisions are provided to offenders.

--Release date and months to be served are shown in the Notice of Action. This makes it easier to verify that the parole date given is correct and will result in the offender serving the desired number of months.

--The number of very obvious errors have decreased (e.g., the amount involved in a property offense shown on the Notice of Action does not correlate with the offense severity shown).

life. The Commission did not have adequate procedures to ensure security of case files. In fact, the Commission did not even have a list of people in the program that had been paroled or would be considered for parole in the future. Some corrective action has been taken on this issue since we discussed it with the Commission in March 1980; however, as of March 1982 it still did not have a complete list of offenders in the program who had been paroled or those eligible for parole.

Parole granted prior to eligibility and to inmates not eligible for parole

In a small number of cases we reviewed, parole had been granted to inmates before they were eligible. However, adherence to the statutory requirements that an individual be eligible for parole before he or she is released is so basic that the Commission's failure to do so in any case is significant. Of greater significance is the fact that the Commission has conducted parole hearings for offenders who were not eligible for parole under any circumstances, and in one instance an offender was actually released (see ch. 4).

Orders not signed

Regional Commissioners are required by the Commission's procedures manual to sign all orders establishing a release date. Compliance with this requirement varied. In the North-Central region, all orders were signed by the Regional Commissioner. In the other four regions, we found that in 39 of 258 cases we examined, orders were not signed. Further details are presented in the following table.

Region	Number of cases reviewed	Number of cases where orders were not signed
Northeast	42	9
North-Central	84	0
Southeast	95	10
South-Central	81	19
Western	40	1
Total	342	39

Correspondence showed that Parole Commissioners in these regions mistakenly assumed that their signatures were not required if an offender's sentence fell within or below the timeframes in the

Corrections resulting from this review should be evaluated to determine the impact, if any, on the parole decision. This is not done in all regions. For example, in the South-Central Region the clerical staff simply corrected the error and mailed the Notice of Action to the offender. The change was not reviewed by the Administrative Hearing Examiner or the Regional Commissioner. This practice could change the intended result of the parole decision. For example, if the intended result is to parole 6 months above the guideline range, and the guideline range selected by the hearing examiners is incorrect, correction of only the guideline range will lead to a different result. This is illustrated below.

	Decision	
Guideline range	Parole at	Months above guidelines
Incorrect 26-34 months	40 months	6 months
Corrected 18-24 months	40 months	16 months

If the offender is to serve 6 months above the guidelines, then both the guideline range and the parole decision must be changed. This will not occur unless the correction is reviewed to determine its impact on the parole decision.

Contract typists not properly supervised

The Commission was advised by its General Counsel in 1977 that because of the sensitivity of Parole Commission records, contract typists must be supervised directly by Federal employees. In October 1978, the internal audit staff of the Department of Justice recommended that the Commission cease its practice of retaining contract typists who had no security clearances to type hearing summaries. These recommendations were not implemented.

We found no evidence that any contract typists had security clearances and many were routinely working unsupervised in their homes. Also, some of the contract typists were regularly typing hearing summaries on witness protection cases. Parole Commissioners told us that hearing summaries on witness protection cases should be typed only by Commission employees; however, only one Regional Commissioner had issued guidelines implementing this procedure.

Regional Commissioner must review the hearing examiners' recommendations and make a decision on the case, and a written notice of the decision must be mailed to the offender.

All of the Commission's five regional offices were experiencing problems in consistently meeting the 21-day requirement. Our review of 342 cases processed by the five offices showed that in 161 cases, 47 percent, the Commission exceeded the 21-day time frame. We found that for 52 cases the Commission took at least 42 days before sending the offender a written notice of the parole decision. We found no evidence that the Commission delayed decisions in these cases to obtain additional information from other agencies. Further details are presented in the following table.

Region	Number of cases reviewed	Number of days to process decision	
		within 21 (note a)	Over 21
Northeast	42	34	8
North-Central	84	40	44
Southeast	95	6	89
South-Central	81	80	1
Western	40	21	19
Total	342	181	161

a/Since we could not determine when the offender received the notice, the figures shown in the table include only the time the Commission took to process the decision.

The most serious delays were occurring in the Commission's Southeastern Region where, in about 96 percent of the cases we reviewed, offenders were not notified in writing of their parole decisions within 21 days. The following cases illustrate some of the delays experienced.

--Donna received an initial parole hearing on September 25, 1979, and her written parole decision was dated 63 days later. In this case, it took 41 days for review of the hearing examiners' recommendations and 22 days to process the decision after it was made by the Regional Commissioner.

--Barbara was given an initial parole hearing on July 17, 1979, and her written parole decision was dated 62 days later. There were delays throughout the entire cycle

Three of the five regional offices experienced serious problems in making decisions on appeals in a timely manner. The following cases illustrate some of these delays.

--Jack's appeal was received at the Southeast Region on September 23, 1979. The appeal was not reviewed by an analyst until January 3, 1980, or 102 days after it was received. The Regional Commissioner reviewed the case on January 15, 1980, and the offender was sent a notice of the decision on January 21, 1980, after 120 days.

--Harold's appeal was received at the North-Central Region on October 29, 1979. The appeal was not reviewed by an analyst until February 5, 1980, or 99 days after the appeal was received. The Regional Commissioner reviewed the case on February 8, 1980, and the offender was sent a notice of the decision on February 11, 1980, after 105 days.

--Steve's appeal was received at the Commission's Western Region on May 29, 1979. The appeal was not reviewed by an analyst until June 27, 1979, or 29 days after it was received. The Regional Commissioner reviewed the case on July 3, 1979, or 6 days later, and modified the previous decision. However, the notice of the decision was not sent to Steve until October 24, 1979, or 113 days after the Regional Commissioner made a decision.

Major delays encountered in making decisions on national appeals

The Commission's National Appeals Board has not complied with the requirements contained in 18 U.S.C. §4215(b) requiring that decisions on national appeals be made within 60 days of their receipt. To the contrary, the Commission's records showed that in calendar year 1980 2,988 appeals were processed, but 86 percent of the cases, or 2,556, took in excess of 60 days before decisions were made.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4215(b)) provides that any final decision by a Regional Commissioner on a regional appeal which is adverse to the offender may be appealed to the National Appeals Board. The offender has 30 days from the date of the regional decision to file an appeal with the National Appeals Board. Upon receipt of the appeal, the case is then reviewed by an analyst who makes a recommendation on the merits of the appeal to the National Appeals Board. By law, the National Appeals Board must reaffirm, modify, or reverse the decision of the Regional Commissioner and notify the offender in writing of the decision and the reasons therefor. The law requires a decision be made on the appeal within 60 days after it has been received at headquarters.

legislation requires that appeals be reviewed by at least two National Commissioners. The first Commissioner completed review of the case on May 30, 1980. A second Commissioner completed review of the case 5 days later. It then took 14 additional days to prepare a written notice of the decision. The total time required to process this case was about 100 days.

--Joe's appeal was received by the National Appeals Board on April 5, 1979. The case was reviewed by an analyst on May 17, 1979, or 42 days later. The first Commissioner completed review of the case on June 20, 1979, or 34 days after the analyst completed his review of the case. About 1 month later on July 17, 1979, a second Commissioner completed review of the case and disagreed with the first Commissioner. A third Commissioner completed review of the case on July 18, 1979, and disagreed with the other two Commissioners, thus necessitating that the case be referred to a Regional Commissioner in hopes of obtaining a second concurring vote on the appeal. The additional vote was obtained 10 days later, and it took an additional 16 days to prepare a written notice of the decision for Joe. The total time required to process this case was about 130 days.

--Jim's appeal was received by the National Appeals Board on June 11, 1979. The case was reviewed by an analyst on July 31, 1979, or 50 days after the appeal was received. The first Commissioner completed review of the case on September 11, 1979, or 42 days after the analyst completed review of the case. A second Commissioner completed review of the case on September 25, 1979, or 14 days later, and disagreed with the first Commissioner. Because of the split decision, a third Commissioner completed review of the case on October 9, 1979, or 14 days later. Two additional days were taken to prepare the written notice of the decision to Jim. The total time required to process this case was about 122 days.

--Terry's appeal was received by the National Appeals Board on March 24, 1980. The case was reviewed by an analyst on April 22, 1980, or 29 days later. The first Commissioner completed review of the case on May 22, 1980, or 30 days after the analyst completed review of the case. The second Commissioner completed review of the case on June 4, 1980, or 13 days later, and disagreed with the first Commissioner. Because of the split decision, a third Commissioner completed review of the case on July 2, 1980, or 28 days later. It took an additional 13 days to prepare the written notice of the decision on Terry's case. The total time required to process this case was about 113 days.

interpretation, and hearing examiners had not received adequate training in their use. Our analyses of the assessments made by the Parole Commission's hearing examiners on the 30 cases we selected provide ample evidence of the need for improvement in the area. The Commission should continue to seek funds for training and look for opportunities to reallocate funds for this purpose in its existing budget.

We also believe that the criteria for awarding superior program achievement needs to be clarified and that the need for two separate inmate reward systems--one for the Bureau of Prisons and the other for the Commission--should be reassessed.

Quality of case analysis also must be improved. Hearing examiners were making erroneous decisions because they were not sufficiently analyzing the material in offenders' files. Hearing examiners were not examining case files until immediately before an offender's parole hearing, generally spent less than 20 minutes reviewing them, and, in most cases, only one of the two hearing examiners present at the hearing looked over the material prior to formulating a parole recommendation. Moreover, the resulting errors were not detected and corrected during subsequent reviews. Only 6 percent of the 192 errors we found in our examination of 342 cases had been corrected. In our opinion, regional reviews would be more effective if the reviewer examined the support for making a recommendation rather than just examining whether the time to be served was reasonable on the basis of the recommendation that was made.

Finally, the Commission needs a system to ensure that parole decisions are made within the time frames required by the Parole Commission and Reorganization Act of 1976. The Commission did not comply with the law in 2,783 of the 3,448 cases we reviewed.

RECOMMENDATIONS

We recommend that the Chairman of the United States Parole Commission:

- --Clarify parole decisionmaking guidelines so that varying interpretations among hearing examiners will be minimized.

- --Work with the Bureau of Prisons to develop criteria for determining what constitutes superior program achievement by offenders and the conditions necessary for advancing parole dates. The Commission should also make sure such decisions are documented and work with the Bureau to resolve the question of whether two reward systems are necessary.

hearing examiners exercised this option; and (2) if essential information was missing, it is likely that it was also missing when the actual decisions on the 30 cases were made. In this regard, chapter 4 points out that the Commission is making many parole release decisions without receiving all the information it needs from other components in the criminal justice system to properly apply its parole release guidelines.

Regarding the Commission's comment that the 30 cases are not representative of the types of cases generally seen by the Commission, we acknowledge that we did not attempt to select "representative" cases. We did not perform a detailed analysis of the case files prior to their being chosen. Thus, we would have had no way of assessing their representativeness. However, we noted that the annual reports prepared by the Administrative Office of the United States Courts clearly show that the major categories of offenses for which offenders received terms of imprisonment during fiscal years 1979 through 1981 were included in our sample cases.

The Commission stated that another problem with our methodology is that the test did not closely replicate Commission practice. Specifically, the Commission pointed out that our test did not allow for an interview with the offender or provide an opportunity for consensus decisionmaking by panels of two hearing examiners. The Commission's statements are not relevant to our findings. First, our test was done to determine how well hearing examiners understood the guidelines. We did not compare the decisions we received with the actual decisions that were made. If we had, interviews with offenders would certainly have been a factor. Second, our observations of 290 initial parole hearings showed that consensus decisionmaking between hearing examiners was not occurring. As discussed on pages 32 and 33 of this report, we found that two-thirds of the time only one hearing examiner reviewed the case file. In the remaining cases, a second examiner reviewed the case file for an average of only 3 minutes.

The Commission also stated that its research unit conducted two studies which disclosed a much greater consistency in the interpretation of the parole guidelines than our study. We acknowledge the research unit's findings; however, its studies were not comparable to ours in that they did not request hearing examiners to independently assess each case. We believe that a June 1981 study of the Commission's guidelines conducted by Arthur D. Little, Inc., for the National Institute of Corrections clearly supports our position on the need for clarifying the guidelines. This study, which used the same 100 cases included in the most recent study by the Commission's research unit, concluded:

with superior program achievement and that it had been a mistake to implement it. The Department of Justice also commented on superior program achievement in its April 16, 1982, comments on this draft report (see app. II). The Department concurred that superior program achievement needs to be defined and stated that the Bureau of Prisons would work with the Commission on this matter.

The Commission stated that we made an unfair comparison in the report by contrasting split decisions between hearing examiners (after a hearing with the prisoner and an opportunity for discussion) with disagreements between examiners that occurred during the prehearing review process. The Commission did not offer any explanation for its position and we do not understand its concern. From our observations of 290 parole hearings at 14 Federal correctional institutions, we concluded that consensus decisionmaking by panels of hearing examiners was not occurring because only one hearing examiner was analyzing most cases. As discussed on pages 34 and 35 of this report, the pilot project in the South-Central Region clearly demonstrated the benefits to be gained by having two hearing examiners independently review each case.

The Commission also questioned the reliability of the statistics in our report on the number of cases where the hearing examiners made errors in applying the parole guidelines. Contrary to the Commission's position, we believe our statistics are accurate and provide evidence of a signficant problem. In this regard, we randomly selected a sample of 342 cases from a universe of 1,069 in 10 judicial districts where offenders were sentenced in 1979 to a term of imprisonment in excess of 1 year. Our analysis showed that the hearing panels made errors in the application of the guidelines in 182 cases. In 125 of the 182 cases, these errors could have affected the amount of time the offender served in prison. We do not agree with the Commission that our study is incorrect because the Commission did not find as many errors as we did. We have already discussed many of these errors with officials in the Commission's regional offices and will have further discussions if the Commission so desires.

The Commission's comments refer to statements in the report concerning quality control practices which it believes are misleading and incorrect. First, the Commission believes that our statement in the report that quality control applies only to the application of the guidelines is misleading and is contradicted elsewhere in the report. However, the Commission did not elaborate on why it considered the statement misleading and we found no evidence of any contradictory statements in our report. Second, the Commission took the position that it has made systematic reviews of case files from all regions. We disagree. While the Commission's research unit made studies in 1980 and 1981 which involved a total of 200 cases, the principal focus of

CHAPTER 3

LEGISLATIVE CHANGES COULD RESULT IN IMPROVED PAROLE DECISIONMAKING

Legislation is needed to improve the organizational structure and operational efficiency of the Commission. Specifically, the Commission needs to seek legislative changes to

--clarify the role of the National Appeals Board,

--facilitate the formulation of Federal parole policy, and

--eliminate requirements for certain activities that are not productive.

The National Appeals Board has reversed a high percentage of the parole decisions of Regional Commissioners--about 27 percent during fiscal years 1978 through 1980. We found that in many of these cases there was no finding that the initial decision materially deviated from the parole guidelines. In some decisions, the National Appeals Board attempted to establish parole release dates which were prior to offenders' statutory parole eligibility dates.

We also found that important policy questions were not addressed and resolved in a timely fashion because the responsibilities of the Regional Commissioners did not enable them to be available for full-Commission meetings more than once or twice each quarter. Centralization of the Parole Commissioners appears to be one option that would enable the Parole Commissioners to spend sufficient time together to discuss and resolve varied and complex issues that occur. Finally, the Commission is spending about $490,700 annually for certain activities which are required by legislation, but no longer are needed.

ROLE OF THE NATIONAL APPEALS BOARD SHOULD BE CLARIFIED

The National Appeals Board has reversed a high percentage of Regional Commissioners' decisions without a finding that the initial decision materially deviated from the parole guidelines. In some of these reversals, the National Appeals Board attempted to establish parole release dates which were prior to offenders' statutory eligibility dates for parole. This problem could be remedied if the role of the National Appeals Board and how it will carry out its responsibilities were more clearly defined in the applicable statutes (18 U.S.C. §4201 *et seq.*).

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4215(b)) provides that any final decision by a

"* * *Unfortunately, NAB has given unwarranted relief to those in organized crime, those who have committed violent acts and also to those who are considered habitual or professional criminals. Their only interest seems to be their concept of fairness to the inmate. Justice, accountability, and protecting society seem beyond their grasp. Their voting patterns raise many questions that staff of other agencies and the public are confused about. The integrity of the Commission has been questioned and our general reputation is the lowest that I have ever seen it."

To deal with this problem, several Commissioners drafted a proposed rule change that would have required the concurrence of all three Commissioners on the National Appeals Board to modify or reverse a decision of a Regional Commissioner. The Chairman of the Commission asked the Commission's General Counsel for an opinion on this matter. In response, the General Counsel's April 1979 letter stated:

"My conclusion is that the proposal is technically permitted by the governing statutory section. Moreover, if the intended effect of the proposal is to restore a proper balance of authority between the Regional Commissioners and the National Appeals Board (and not to create an imbalance), then it is in accord with the spirit of the law as well.

"* * * As I discuss below, I think a bona fide case could be made at present that the National Appeals Board has itself exceeded its intended role of reducing disparity between the regions, and is instead setting policy for the Commission to an unwarranted extent * * *."

* * * * *

"What we have in the proposal under discussion is an attempt to heal an apparent rift between the 'decision patterns' of the National Appeals Board on the one hand, and the Regional Commissioners on the other. If such a disagreement of approach exists, it is a matter that I think should be resolved, for it would work against the Congressional intent which was that the Commission maintain a national parole policy and consistent decisional patterns.

other regions. (2) The National Appeals Board corrects decisional error * * * or procedural error, if the case departs from a specific rule or policy previously promulgated by the Commission."

* * * * *

"The application of Constitutional principles and caselaw to Commission actions by the National Appeals Board is also a sensitive area. It would be better if legal principles were first interpreted and translated into Commission rules and policies before application to specific cases."

For the past 3 years, there has been strong disagreement among Parole Commissioners over the proper role of the National Appeals Board and how it should carry out its responsibilities. At least two committees have been established to study this problem; however, no agreement has been reached. Several Parole Commissioners and staff members believed that this issue would never be resolved, and staff told us that legislation was needed to clarify the role of the National Appeals Board.

The Commission's records showed that for fiscal years 1977 through 1980, the percentage of Regional Commissioners' decisions modified or reversed by the National Appeals Board had increased significantly as shown in the following chart.

Category	Fiscal year 1977	1978	1979	1980
Appeals filed	1,744	2,015	2,727	3,244
Number of decisions reversed	223	524	829	792
Percent reversed	12.8	26.0	30.4	24.4

We selected 200 cases which were appealed to the National Appeals Board during 1979 and 1980. Our review showed that in about 60 percent of these cases, reversals were made to the Regional Commissioners decisions even though there were no findings that the Regional Commissioners had made errors in the application of the guidelines or that their personal judgments in reaching these decisions were unsound. Several examples follow:

--Dale was serving a sentence in a State correctional institution for burglary

"* * * but for the rape of a 12-year old, I would be inclined to be more lenient despite his prior record."

* * * * *

"* * * he is showing signs of hysteria after all his confinement and should be given a presumptive parole date * * *."

The Regional Commissioner was so upset over this decision that he complained to the Chairman of the Commission on August 30, 1979. His letter stated:

"It seems to me that Commissioner * * * has once again missed the essential point of this case. * * * [Dale's] lifestyle has been devoid of any redeeming features. At every juncture of options to choose lawful existence over illegal activities, he has chosen the illegal route. Moreover, his current offense committed while on escape has had a highly traumatizing effect on a 12 year old child. Finally, he has the worst possible salient factor score and is showing few signs of being a good parole risk. Moreover, I would suggest that a potential parolee showing signs of hysteria should be more properly referred for mental health placement than given a presumptive parole date.

* * * * *

"This has been another example of a lack of reality in granting parole dates to people who on their face are showing themselves to be dangerous and whose release is not in the public interest. I would appreciate your using this as an example case in your discussions with * * * members of the National Appeals Board."

is not affected. He was last paroled on September 7, 1973. This offense occurred June 19, 1978--5 years later. Top of the guidelines adequate in view of the length of time he did succeed on parole. Twice guideline top of regional decisions seems too long."

The Regional Commissioner was so disturbed by this reversal that he sent a letter to one of the National Appeals Board Commissioners on March 28, 1980. The letter stated:

> "* * * [Jack's] case was heard and decided by the National Appeals Board on March 16, 1980 with you and Commissioner * * * voting to parole Jack after 22 months at the top of his guidelines. In doing so, you cite that he was in the U.S. military service and you imply that because of his military status he could not have been involved in the several convictions that appear on his record. You may be correct in that assumption; however, the United States Probation Officer who did this investigation knew that * * * [Jack] was in the military service during that time and still found evidence of his involvement in the crime during those two years. Records of the States of Illinois and Iowa substantiate his involvement in those crimes.
>
> "* * * Moreover, in your notes you state that 'he was last paroled on September 7, 1973. This offense occurred June 19, 1978--5 years later. Top of guidelines adequate in view of the length of time he did succeed on parole.' The PSI at page 6 lists as * * * [Jack's] 13th conviction and his 10th incarceration an offense occurring on May 12, 1974, for burglary, for which he was sentenced to 4-20 years in the Illinois State penitentiary. He was ultimately <u>paroled</u> in 1977 and at the time of the instant Federal offense was considered a parole violator.

"Not providing a date has failed to deter this inmate in terms of good behavior, perhaps holding a date would be more appropriate a control, rescission if serious behavior crops up * * *."

The Regional Commissioner brought this case to the attention of the Chairman of the Commission on June 13, 1980. His letter stated:

"If I understand the NAB reasons for reversal, they are saying that although the prisoner has seriously violated the rules of the institution he has been deterred from good behavior because he has not received a parole date; and that they, the NAB, are granting a date so that if he misbehaves the Commission can rescind.

"It is my opinion that these NAB reasons do not justify a decision to reverse an earlier Commission action that was error free. The NAB has interposed its judgement so that it gives the appearance that the prisoner is rewarded because of his appeal or because he had not received a date. The prisoner was continued to expiration precisely because he had such a bad record of institutional misconducts, and I do not understand with what authority, the NAB can now say either that his bad record was caused by the failure to receive a date, or that despite that bad record the receipt of a parole date will ensure good behavior.

"I believe that the NAB's action as rationalized in its reasons, misinterprets the spirit and substance of the PCRA [Parole Commission and Reorganization Act]. In this case, the prisoner has not met the requirements of Section 4206(a). Subsection (c) authorizes the Commission to grant or deny parole notwithstanding the guidelines if it determines there is good cause for so doing."

* * * * *

parole hearing was in February 1979, and the panel established the offense severity as very high and the salient factor score as 2. Parole guidelines call for a period of incarceration from 60 to 72 months. The panel recommended and the Regional Commissioner agreed that Rich should be denied parole and rescheduled a reconsideration hearing in February 1983. The notice of action stated:

> "* * * after review of all relevant factors and information presented a decision above the guidelines at this consideration appears warranted because you have failed to maintain a good institutional record which has resulted in the forfeiture of 851 days of statutory good time and 20 days of withheld time. Additionally, you are a poorer risk than indicated by the salient factor score: You have repeatedly failed to adjust to previous periods of parole supervision and wasn't [sic] a mandatory releasee when this offense was committed * * *."

Rich appealed the decision to the Regional Commissioner who affirmed his previous decision. Then, Rich appealed the decision to the National Appeals Board. Upon review of the case by the National Appeals Board, the Regional Commissioner's decision was reversed and Rich was given a presumptive parole date of July 11, 1980, or almost 3 years sooner than the decision of the Regional Commissioner. In arriving at this decision, one National Commissioner used the following rationale:

> "* * * He should be given a date--and, hopefully motivated to participate in drug and alcohol programs. Most of IDC [Institution Discipline Committee] either drug or alcohol related as are prior offenses. Needs time to get himself straightened out - 9 years enough * * *."

The Regional Commissioner was quite upset over this decision and complained to the Chairman on October 10, 1979. His letter stated:

> "* * * On appeal the NAB granted Rich a presumptive parole on July 11, 1980,

--Ralph was sentenced to 5 years in the Southern district of Texas for illegally transporting aliens into the United States. The panel and the Regional Commissioner established the parole guideline range as 16 to 20 months with release set for 20 months. Upon appeal to the National Appeals Board, the Regional Commissioner's decision was reversed and Ralph was paroled on October 19, 1979, after 19 months. The Regional Commissioner brought this case to the attention of the Chairman and pointed out that Ralph was not eligible for parole until November 18, 1979, or after serving 20 months. The National Appeals Board then corrected its decision on the case.

--Dave was sentenced to 5 years in the district of Arizona for mail fraud. The Commission's Western Regional Office incorrectly established a parole guideline range of 24 to 36 months. Upon appeal, the National Appeals Board incorrectly used the youth guidelines to establish a range of 12 to 16 months. The National Appeals Board set Dave's parole release date after serving 14 months. The administrative hearing examiner brought this case to the attention of the National Appeals Board and pointed out that Dave was not eligible for parole until he had served 20 months. The National Appeals Board then corrected its decision.

--Jim was sentenced to 20 years in the district of Maryland for bank robbery and assault during the robbery. The Commission's Northeast Regional Office established that Jim would be paroled after serving 96 months. Upon appeal, the National Appeals Board reversed the decision of the Regional Commissioner and established a parole date that would require Jim to serve 72 months. The Regional Commissioner brought this case to the attention of the Chairman and pointed out that Jim was not eligible for parole until after he had served 80 months. The National Appeals Board subsequently corrected its decision on the case.

DECENTRALIZATION OF PAROLE COMMISSIONERS HINDERS POLICY FORMULATION

The decentralized structure of the Commission places an awesome workload on the Regional Commissioners and prevents them from being readily available to participate in the formulation of national parole policy. As a result, important policy questions

Region	Number of determinations made	Hours available	Average time (in minutes)
Northeast	5,545	2,000	22
North-Central	5,262	2,000	23
Southeast	7,148	2,000	17
South-Central	3,910	2,000	31
Western	4,778	2,000	25
Total	26,643	10,000	23

During calendar years 1978 through 1980, there were 22 regularly scheduled meetings of the Commission to vote on original jurisdiction appeals. Although the legislative history contemplates that all Parole Commissioners will be in attendance at these meetings to vote on original jurisdiction appeals, our analysis of the Commission's records showed that all Commissioners were not in attendance at these meetings 86 percent of the time. All National Commissioners were in attendance 64 percent of the time while all Regional Commissioners were in attendance only 14 percent of the time. A further breakdown is presented in the following chart.

	Number of meetings		
Year	Held	Where all National Commissioners were in attendance (note a)	Where all Regional Commissioners were in attendance
1978	7	5	1
1979	6	4	2
1980	9	5	0
	22	14	3
	100%	64%	14%

a/This excludes all absences due to vacant positions.

Existing legislation (18 U.S.C. §4203) requires the Commission to hold at least four policy meetings annually. Although the Commission complied during calendar years 1978 through 1980, less than 20 full days were devoted during this period to the discussion and formulation of policy matters. Further, at only two of these

--The Commission adopted a policy in November 1979 to advance presumptive parole dates for superior program achievement. This policy was implemented prior to obtaining the necessary cooperation of the Bureau of Prisons and before the Commission established adequate criteria to define superior program achievement. As a result, the operating procedures have not been consistently followed by either the Commission's hearing examiners or the Bureau's caseworkers. This issue was discussed at the Commission's meeting on October 29, 1980, and it was decided that further study was necessary. No further action had been taken on this matter as of March 31, 1982 (see ch. 2).

--During 1980, the Commission's Southeast Region solicited the cooperation of several probation offices to undertake an experiment which would give the court a greater role in determining how much time an offender would serve in prison. Under this experiment, Commission employees and probation officers jointly established the offense severity, salient factor score, and guideline range for defendants so that the information could be furnished to the judge for use in sentencing. In contrast, a probation officer wrote the Commission's North-Central Region around the same period and requested that the Commission routinely furnish the court with the official version of the severity rating, salient factor score, and the guideline range for use by judges prior to sentencing. The Regional Commissioner for the North-Central Region declined to furnish this information because (1) there was uncertainty in establishing the appropriate severity level prior to sentencing, (2) the requirement for this information on all defendants would place a hardship on the Commission's staff, and (3) he viewed the request for this information prior to sentencing as an inappropriate excursion by the Judiciary into the discretion exercised by the Executive Branch. Obviously, these opposite views on a policy matter need to be addressed and resolved by the Commission.

--The General Counsel of the Commission pointed out to the Chairman on October 2, 1980, that the Commission should make clear what, if any, method it has for dealing with mistakes. His letter stated:

> "* * * A parole release order based on what we subsequently realize to be an incorrect severity rating, would be a release decision of debatable legality, since we assume that Congress expected the Commission to reach

Appendix XVI of this report offers one approach as to how parole decisions could be made if the Commissioners were centrally located. It was developed in consultation with Parole Commissioners and staff members. Most of the officials we talked with believed the approach was not only feasible but also offered the potential to improve parole decisionmaking. Highlights of the approach are presented below.

--The role of the hearing examiners would not change, but the Commission would need to select several Regional Directors who would be responsible for the day-to-day operation of the regional offices and for making initial parole decisions on those cases where hearing examiners recommended parole within the guidelines and they concurred. Regional Directors would also be responsible for designating cases as original jurisdiction in accordance with 28 CFR §2.17 so that initial parole decisions would be made by a majority vote of a rotating panel of Parole Commissioners.

--Regional Directors would forward those cases where they disagreed with the hearing examiners' recommendation for parole within the guidelines to a rotating panel of Parole Commissioners. Further, Regional Directors would also forward all cases to a rotating panel of Parole Commissioners where the hearing examiners recommended parole release above or below the guidelines, except those in which the Commission has no discretion because of the sentence structure. In these three types of situations, the rotating panel of Parole Commissioners would review the cases with the Regional Directors' recommendations and the initial parole decision would be established by a majority vote of the panel of Commissioners.

--All offenders, including those designated as original jurisdiction, would be entitled to appeal the initial decision in their cases to the full Commission, except when the decision called for parole release at the earliest eligibility date. The final disposition on these cases would be made by a majority vote of all Parole Commissioners.

Parole Commissioners and staff believed that the approach also offered the potential to address a persistent problem experienced by the Commission--a lack of voting quorums for appeals processed by the National Appeals Board and the full Commission. A common scenario currently occurring in regular appeals to the National Appeals Board is that one member of the Board agrees with the Regional Commissioner's decision, but two other members of the Board vote to reverse the decision. In effect, this results in a two-to-two split of opinion among the Commissioners

more effective use of at least $256,200 in resources annually if the regional appeals process were eliminated.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4215) provides that an offender may request reconsideration of any action which imposes conditions of parole, modifies or denies release, or revokes parole. The offender must submit a written appeal on a form provided for this purpose to the responsible Regional Commissioner no later than 30 days following the date on which the decision was rendered. Regional appeals may be made on the grounds specified by the Commission's rules, such as: (1) the guidelines were incorrectly applied, (2) a decision outside the guidelines was not supported by the facts, (3) especially mitigating circumstances exist, (4) a decision was based on erroneous information, (5) the Commission did not follow its own procedures, (6) new information has come to light, or (7) there are grounds of compassion which require another decision.

Upon receipt of an appeal at the regional office, a case analyst reviews the offender's file as well as the appeal and prepares a summary of the case for the Regional Commissioner. The Regional Commissioner may order a new hearing, affirm the previous decision, or reverse or modify the prior decision. The reversal of a decision or a modification resulting in a decision below the guidelines requires the concurrence of another Regional Commissioner. In accordance with 18 U.S.C. §4215, the Regional Commissioner is required to make a decision and reasons therefor within 30 days after receipt of the appeal.

Few decisions are changed during this initial step in the appeals process. The Commission's records showed that between fiscal years 1975 and 1980, there were 23,755 regional appeals processed. In 21,520, or 91 percent, of the cases, there was no change in the prior decision. Further details are presented below.

exclusive of travel costs, if this practice was eliminated. Additional procedures have been implemented by the Commission subsequent to the enactment of the Parole Commission and Reorganization Act of 1976 which make the requirement for regularly scheduled statutory interim hearings obsolete.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4208(h)) provides that if a prisoner is denied parole, the Commission shall conduct additional parole hearings not less frequently than every 18 months if the prisoner is sentenced to a term or terms of imprisonment of more than 1 year, but less than 7, or every 24 months if the prisoner is sentenced to a term or terms of imprisonment of 7 years or more. The legislative history shows that it was the intent of the conferees that all of the items which bear upon the parole decision should be considered at the initial parole hearing. The purpose of the statutory interim hearing is to consider those items which changed subsequent to the initial parole hearing.

In March 1979, the Commission adopted a policy (28 CFR §2.12(b)) which provided that it would (1) set an effective parole date (within 6 months of the initial hearing), (2) set a presumptive release date (either by parole or mandatory release) within 10 years of the initial parole hearing, or (3) provide the prisoner a reconsideration hearing after 10 years. Also, the Commission's policy (28 CFR §2.14(a)(2)) provides that following a statutory interim hearing it may

--order no change in the previous decision,

--advance a presumptive release date or the date of a 10-year reconsideration hearing for superior program achievement or for clearly exceptional circumstances, or

--delay or cancel a presumptive parole date for reason of disciplinary infractions.

The Commission's hearing examiners conducted about 16,400 hearings at correctional institutions during fiscal year 1980. About 2,000 of these hearings, or 12 percent, were statutory interim hearings. We estimate that the Commission spent about $219,700, exclusive of travel costs, to conduct these hearings.

The Commission's policy of establishing a release date or continuing the prisoner for a 10-year reconsideration hearing under 28 CFR §2.12(b) limits most subsequent actions that can be taken and makes statutory interim hearings unnecessary. For example, the Commission cannot delay a release date unless a special reconsideration hearing is conducted because of new adverse information under 28 CFR §2.28 or for misconduct under 28 CFR §2.34. Statutory interim hearings are not required for these cases since special reconsideration hearings can be

Previously, any individual under 22 years of age who was convicted under the Federal Youth Corrections Act for any offense punishable by a term of imprisonment would have been sentenced to an indefinite term of up to 6 years. For example, a youthful offender found guilty of a petty offense punishable by up to 6 months' incarceration as an adult would have been committed to prison for an indefinite period of up to 6 years if sentenced under the Federal Youth Corrections Act. This situation prevented magistrates from effectively sentencing youthful offenders under the Federal Youth Corrections Act because they were prevented from sentencing an offender to a term of imprisonment in excess of 1 year. In passing the Magistrates Act, the Congress enabled magistrates to impose a sentence under the Federal Youth Corrections Act by amending 18 U.S.C. §3401; however, magistrates cannot impose a term of imprisonment for petty offenses or misdemeanors which extends beyond the maximum term that they impose on an adult convicted of the same crime.

Magistrates are empowered to sentence youthful offenders under 18 U.S.C. §3401 to terms of up to 6 months and 1 year, respectively, for petty offenses and misdemeanors. When a magistrate imposes a Federal Youth Corrections Act sentence, it automatically constitutes either an indeterminate sentence of up to 1 year for a misdemeanor, with a conditional release under parole supervision not less than 3 months before the expiration of 1 year; or an indeterminate sentence of up to 6 months for a petty offense, with conditional release under parole supervision not less than 3 months before expiration of the 6 months.

The Parole Commission has taken the position that there are substantial practical problems in making parole release determinations for youthful offenders sentenced under the Magistrates Act. First, these sentences are too short to permit the Commission to follow its normal hearing procedures. Second, most youthful offenders sentenced to a term of imprisonment of 1 year or less will not be confined in Federal correctional institutions that are regularly visited by the Commission's hearing examiners. The Commission believes that the costs associated with making parole release determinations on youthful offenders sentenced under the Magistrates Act will outweigh any benefits. Therefore, the Commission recommended to the Department of Justice that the Magistrates Act of 1979 be amended to make youthful misdemeanants and petty offenders ineligible for parole and to allow a magistrate to determine the date of release at the time of sentencing, as is the case with adult offenders sentenced under 18 U.S.C. §4205(f).

In February 1981, the Administrative Officer of the United States Courts issued guidance to all judicial districts which called for the parole supervision of youthful offenders sentenced under the Magistrates Act once they were conditionally released from imprisonment. According to Federal Probation Division

The Parole Commission's involvement in the preparation of study and observation reports on youthful offenders should be terminated

The Parole Commission makes sentencing recommendations to the courts for youthful offenders committed to a period of study and observation under the Youth Corrections Act (18 U.S.C. §5010(e)). The Commission's involvement in these studies could be terminated because it makes little or no contribution to them other than summarizing existing information which the Bureau of Prisons could send directly to the court in a more timely fashion. The Commission could make more effective use of about $14,800 in resources annually if this practice were eliminated.

A Federal judge who wants additional information about whether an offender who is less than 26 years of age will benefit from treatment under the special provisions of the Federal Youth Corrections Act can commit the offender to the custody of the Attorney General for 60 days of study and observation. Upon completion of the study, the Bureau of Prisons regional office forwards it with a sentencing recommendation to the corresponding regional office of the Parole Commission. The materials are then reviewed by a pre-release analyst who prepares a letter for the Regional Commissioner's signature. This letter contains the Commission's sentencing recommendation and serves as a letter transmitting the study to the court.

In fiscal year 1980, the Commission was involved in about 148 study and observation cases where it furnished information to the courts on youthful offenders committed under 18 U.S.C. §5010(e). We estimate that it cost the Commission about $14,800 to process and review these 148 cases. The Commission has taken the position that its involvement in the preparation of study and observation reports for the courts on youthful offenders committed under 18 U.S.C. §5010(e) should be terminated. The Commission makes little or no contribution to these studies other than summarizing existing information which the Bureau of Prisons could send directly to the court as is done for adult offenders sentenced to a period of study and observation under 18 U.S.C. §4205(c). Its involvement also delays receipt of the study by the court.

A December 1977 report of the Federal Judicial Center identified a number of problems associated with the Commission's involvement in study and observation cases on youthful offenders. The report stated:

> "The findings of 5010(e) (youth) studies are reported to the court by the Parole Commission, although the

"All information generated by the Bureau of Prisons that is sent is available to the Court and could be sent to them directly. As the process stands - the Bureau of Prisons needs additional processing time to enable the completion of the review and automatically gets a court extension, delaying the court hearing as well as adding to the subject's time in custody. Once the Bureau of Prisons' staff psychiatric and classification reports are completed, they are sent to the Bureau of Prisons Regional Director who forwards them to the Commission with a 'buck slip' referral memorandum. The Commission in turn does a review of the information submitted and again with a transmittal letter forwards the total package to the court.

"None of the above is critical to the process with the exception of the psychiatric and classification work-up itself which could be accomplished at the community level through the United States Probation Office. Each additional step is a built-in delay and paper-review. The court itself could be the direct recipient and arrive at a determination based on the very same information. As a rule the study requests are received by the Commission within a few days prior to their court due date necessitating that we stop everything to give them priority time in order to meet the deadline. This would be all right if the review were a significant one; instead there is usually no significant contribution made by any of the reviews which follow the psychiatric/social review."

* * * * *

"As I have indicated, I concur and would recommend that the Parole Commission be removed from the process, with the study reports being sent directly to the Court."

All Parole Commissioners and staff, with one exception, supported a legislative change which would terminate the Commission's involvement in these studies and enable the Bureau of Prisons to submit them directly to the sentencing court.

CONCLUSIONS

The role of the National Appeals Board needs to be clarified. The Board is reversing a high percentage of the parole decisions of Regional Commissioners without a finding that the initial decision materially deviated from the guidelines. As a part of reversing some decisions, the National Appeals Board has even attempted to establish release dates which were prior to offenders' statutory eligibility dates for parole.

The Commission disagreed with our recommendation that it seek legislation to eliminate the requirements for conducting statutory interim hearings every 18 or 24 months, preferring instead to extend the timeframe to every 36 months. The Commission implemented additional procedures subsequent to the enactment of the Parole Commission and Reorganization Act of 1976 which allow it to schedule new parole hearings for an offender as needed when new information is available. Also, at a time when the Commission is looking for ways to live within its budget, we do not believe it is cost effective to automatically schedule all offenders for statutory interim parole hearings every 36 months. The need for the hearing should be taken into consideration.

An additional matter that might require legislative change surfaced in the Commission's comments on chapter 2 of this report. The Commission stated that it concurred with our recommendation to establish a system for making parole decisions within the statutory timeframes. However, the Chairman stated that legislative reconsideration of the timeframes might also be needed. If this is found to be necessary, the Commission should take the initiative in proposing these legislative changes.

--judges seldom communicated any information,

--correctional staff did not regularly make study and observation reports and psychological evaluations available, and

--correctional institutions were inconsistent in reporting incidents of poor institutional behavior by inmates.

Also, the Commission was not routinely obtaining other information, such as judgement and commitment orders, indictments, and records of sentencing hearings.

Presentence reports did not always contain enough information

The Federal Probation System is responsible for preparing presentence investigation reports to assist judges in determining the appropriate sentence for persons convicted of a Federal offense. The presentence report is supposed to describe the defendant's character and personality, evaluate his or her problems and needs, help the reader understand the world in which the defendant lives, reveal the nature of his or her relationships with people, and disclose those factors that underlie the defendant's specific offense and conduct in general. After sentencing, the presentence report continues to serve as the basic information source during the defendant's journey through the correctional process.

The Commission is required under 18 U.S.C. §4207 to consider presentence reports when making parole release determinations. We found that although these documents were being used, they did not always contain enough information.

--Presentence reports did not contain complete details of the nature and circumstances of the offense and characteristics of the offender.

--Quality control procedures for review of presentence reports were not adequate.

--Probation officers frequently experienced problems in gaining access to offenders' juvenile records.

--Presentence reports prepared by the District of Columbia Superior Court on offenders serving sentences in Federal institutions were inadequate.

--Some judicial districts refused to make adequate reports available.

Judicial district	Number of presentence reports Reviewed	Adequate	Inadequate
Northern California	35	26	9
Northern Georgia	30	14	16
Southern Indiana	30	20	10
Eastern Kentucky	30	16	14
Western Kentucky	30	22	8
Western Missouri	30	20	10
Southern Ohio	40	21	19
Eastern Pennsylvania	40	24	16
Northern Texas	30	11	19
Southern Texas	47	24	23
Total	342	198	144

The following cases illustrate the problems we noted.

--John received a 4-year sentence for destruction of a mail depository and theft of mail. The presentence report mentioned that John stole about 300 pieces of mail, including U.S. Treasury checks and welfare checks; however, the only dollar value mentioned in the report was $235 for one check. To properly establish the offense severity, the Commission's hearing examiners needed to know the total value of the 300 pieces of stolen mail. Since this information was not included in the presentence report, the Commission's hearing examiners could not accurately establish the appropriate offense severity. We found that the probation officer could have obtained the total dollar value of the checks from the postal inspector.

--Norb received a 4-year sentence for theft from an interstate shipment. The presentence report mentioned that Norb was involved in the theft of a tractor-trailer which contained 371 color television sets. To properly establish the offense severity rating, the Commission's hearing examiners needed to know the total value of the stolen property; however, this information was not contained in the presentence report. We found that the probation officer could have obtained this information from the Federal Bureau of Investigation.

--Rich received a 6-year sentence for importing heroin. To properly establish the offense severity, the Commission's hearing examiners needed to know the weight and purity of the drugs involved in this case; however, this information was not included in the presentence report. We found that the probation officer could have obtained detailed information on the weight and purity of the heroin transactions

South-Central Region to determine how the new unit could improve presentence reports and better respond to the Commission's needs. The consensus of the meeting was that presentence reports needed to be improved. Participants at the meeting felt this could be accomplished by (1) providing more training to probation officers in the preparation of presentence reports, (2) increasing probation officers' awareness of the Commission's need for details on the nature and circumstances of the offense and the specific role of all the persons who were involved in the crime, and (3) ensuring that all information on offender characteristics necessary to calculate the salient factor score has been included in the presentence report. Information on actions taken to implement these procedures was not available at the time we completed our fieldwork.

Quality control procedures for review of presentence reports were inadequate

The Probation Division has not established any formal requirement for quality control reviews of presentence reports or issued any guidance on how this should be carried out at the district court level. In the 10 judicial districts we visited, supervisory review was generally limited to such things as the style, presentation, spelling, and grammar. Such a review will not detect the types of problems with presentence reports which we previously discussed.

Regional Probation Administrators are responsible for reviewing the total operation of probation offices within their respective regions and making recommendations for improvement. But we found that Regional Probation Administrators made only five field visits to the 10 judicial districts included in our review during the last 4 years. Furthermore, the quality of presentence reports was addressed during only one of these visits. The report submitted by the Regional Probation Administrator on this visit stated that he selected 25 presentence reports for review and found a need for more specific information addressing the nature and circumstances of the offense. Also, the report mentioned other deficiencies, such as incomplete information and conclusions, without supporting facts. The Regional Probation Administrator discussed these problems with the supervisors in that district and he suggested that they conduct similar quality control reviews of presentence reports to eliminate such deficiencies. As of April 1982, no action had been taken on this recommendation.

Probation officers frequently experienced problems in gaining access to offenders' juvenile records

The Commission relies on the probation officer to furnish complete information in the presentence report on an offender's

--The Middle district of Florida reported that its probation officers did not actively seek and use juvenile records because such records were supposed to be destroyed under Florida State law once an offender reaches 21 years of age. Also, this district reported that it was useless to make any inquiry concerning juvenile records because most defendants sentenced in this court were adults.

--The Southern district of West Virginia reported that State law prevents anyone, including probation officers, from obtaining access to juvenile records. Also, this district reported that all juvenile records were destroyed after an individual reached the age of 18.

--The district of Wyoming reported that State law makes no provision or exceptions on the disclosure of juvenile records without the consent of the court. The Chief Probation Officer also reported that several State judges interpret the law to mean that juvenile records cannot even be released to the Federal district courts or any law enforcement agencies.

The Commission's parole guidelines were established to promote consistency in parole release determinations. One essential ingredient for consistent parole release determinations is uniform access to the information necessary to formulate offenders' salient factor scores. When probation officers are unable to obtain access to juvenile records, the Commission will not have all the information it needs to properly and consistently implement parole guidelines. Thus, offenders with juvenile records can be treated inequitably depending upon whether probation officers can obtain access to this information and furnish it to the Parole Commission.

Our analysis of the 342 presentence reports included a determination of the impact that the absence of juvenile records might have on an offender's parole prognosis. We ignored all references to juvenile records and recomputed the salient factor scores to establish new parole prognosis ratings for the 342 cases. We found that in 97 cases, the parole prognosis improved by at least one category. For 104 cases, the elimination of juvenile records had no impact on the original parole prognosis. In the remaining 141 cases, there was no change in the parole prognosis because no juvenile records were reported in the presentence reports.

The following case illustrates the impact of the availability of juvenile records on an offender's parole release date.

--Ed had a serious juvenile record including five felony convictions and four incarcerations. Also, he violated

Presentence reports prepared by the District of Columbia Superior Court on offenders serving sentences in Federal institutions were inadequate

The Commission is responsible for making parole release decisions on District of Columbia Code violators who are serving sentences in Federal correctional institutions. The Commission cannot effectively carry out this responsibility because the District of Columbia Superior Court does not provide adequate presentence reports.

Section 24-209 of the District of Columbia Code gives the Commission the authority to make parole release decisions for District of Columbia Code violators who are serving their sentences in Federal correctional institutions. The Commission follows its normal procedures of establishing the offense severity rating and calculating the salient factor score when making parole release determinations for these cases. As of June 1980, the Bureau of Prisons estimated that there were about 1,000 District of Columbia Code violators serving their sentences in Federal correctional institutions.

We found that the probation staff of the District of Columbia Superior Court were not familiar with the information that the Commission needed to make parole release determinations. As a result, presentence reports furnished to the Commission frequently did not contain information essential for establishing the offense severity rating and the salient factor score. Thus, the Commission was forced to delay some hearings until additional information was obtained and make decisions in others on the basis of inadequate information. The Commission has been working with the probation staff of the District of Columbia Superior Court in an effort to improve the quality of presentence reports; however, only limited progress had been made as of March 1982.

Several Commissioners and staff members were in favor of the Commission conducting courtesy parole hearings for District of Columbia Code violators who are incarcerated in Federal prisons, but they did not believe the Commission should make parole decisions in these cases. They supported the need for legislation to relieve the Commission of this responsibility.

Some judicial districts refused to make adequate presentence and postsentence reports available

The Commission has experienced some difficulty in obtaining adequate information in presentence and postsentence reports in several judicial districts because probation officers have been instructed by the courts to limit the information included in these reports. As a result, the Commission has been forced to

"In addition, there is a rather special problem in the District of Colorado that we need to resolve. In a situation that, as far as we know, is unique, the U.S. Attorney has been threatened with contempt by the Chief Judge * * * for sending us 792 reports. * * * I note that there exists precedent for vindicating that right on appellate review. See United States v. Fatico 579 F.2d 707 (2d Cir. 1978). We also know that the Court of Appeals for the Tenth Circuit does not share the District Court's views. See Smith v. United States, 551 F.2d 1193 (10th Cir. 1977)."

The Chairman asked the Assistant Attorney General for support in the litigation of this matter. No action has been taken as of March 1982.

Prosecutors rarely furnished important data to the Commission

The Parole Commission has not been successful in obtaining important information necessary for parole decisionmaking from U. S. attorneys. Most U. S. attorneys were not furnishing information to the Parole Commission because they were not aware of the requirement or considered it a low priority. Thus, the Commission has made parole decisions without all the information necessary to ensure the proper application of the parole guidelines.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4205(e)) grants the Commission the authority to obtain information for parole decisionmaking from various government bureaus and agencies on any offenders eligible for parole. The Commission's rules provide that in making a determination relating to release on parole, it can consider recommendations regarding the prisoner's parole made by the prosecuting attorney.

In August 1976, the Department of Justice notified all U. S. attorneys of the importance of providing information to the Commission for parole decisionmaking purposes. The vehicle for communicating information to the Commission was a form (USA-792 "Report On Convicted Prisoner By United States Attorney") which was to be prepared by the prosecutor at the time the offender was sentenced. The Department emphasized that each form 792 should include information on the details of the offense, the nature and severity of the offender's involvement relative to co-defendants, related charges dismissed upon entry of a plea of guilty which the Government was prepared to prove, the magnitude and duration of the criminal behavior, and mitigating factors such as cooperation with the Government. Finally, the Department stressed that failure on the part of U. S.

narcotics distribution business in Philadelphia, New York City, and Washington, D.C. The Parole Commission should have been aware of this information.

During our visits to U.S. attorneys' offices in 10 judicial districts and two Organized Crime Strike Force offices, we found that prosecutors were not preparing form 792s because they were unaware of the requirement or considered it low priority to furnish information to the Parole Commission. The following examples illustrate this problem.

--One Assistant U.S. attorney in the Northern district of Texas told us that he could only recall preparing a form 792 on one case. He also told us that he did not even know where to go to obtain a blank copy of the form in his office. Another Assistant U.S. attorney in this office told us that he was unaware of a requirement to prepare a form 792 and he had never seen the form until we showed it to him.

--The U.S. attorney in the Northern district of Georgia told us that form 792s generally were not prepared because prosecutors believed that nobody read them. Two Assistant U.S. attorneys told us they had been in this office for over a year before they were made aware of this requirement. They also told us that they rarely completed the form.

--Two Assistant U.S. attorneys in the Southern district of Ohio told us that they did not prepare any form 792s prior to August 1980 because they did not know the requirement existed. Another Assistant U.S. attorney in this office told us that he thought preparation of the form 792 was optional. He also told us that in his opinion it was a waste of time to prepare a form 792, but he would comply in the future.

--The U.S. attorney in the Western district of Kentucky was not familiar with the form 792 or the requirement to complete it until we brought it to his attention. After examining the United States Attorney's Manual and a form 792 we furnished to him, he concluded that the form 792 should be prepared for each conviction where the defendant received a sentence in excess of 1 year.

--One Assistant U.S. attorney in the Southern district of Texas told us that form 792s were not completed because it was his perception that the Parole Commission did not pay any attention to the information contained in them.

--One Assistant U.S. attorney in the Eastern district of Pennsylvania told us that the form 792 was not completed

We also examined case files on 179 offenders who were identified as organized crime figures and/or major narcotics traffickers. Our review showed that prosecutors provided form 792s to the Commission in only 30 cases and even some of them did not meet the Commission's needs. Thus, the Commission made decisions in many cases without the benefit of complete information from prosecutors. The following cases illustrate what can happen when the Commission makes parole decisions without the benefit of complete information from the prosecutor or in its absence.

--Jim was given a 30-year indeterminate sentence on March 25, 1975, in the Eastern district of Pennsylvania for conspiracy to distribute narcotics and use of communications facilities to distribute narcotics. The Commission conducted an initial parole hearing for Jim in February 1976 and decided that Jim should be provided another hearing in 3 years. At Jim's February 1979 hearing, the panel considered the usual materials, including a form 792 prepared by a Strike Force attorney. The form 792, however, contained some vague allegations which were not supported by facts. The panel did not consider the allegations and recommended parole in July 1979. The Deputy Chief of the Narcotics and Dangerous Drug Section within the Criminal Division, who also prosecuted this case, wrote the Regional Commissioner on May 10, 1979, and protested the decision. The Attorney-in-Charge of the Philadelphia Strike Force notified the Regional Commissioner on June 8, 1979, that he strongly opposed Jim's parole at this time. The letter stated:

> "On May 2, 1979, my office received notification that Jim was scheduled to be released on parole as of July 13, 1979. In so much as * * * [Jim] was sentenced in 1975 to 30-years imprisonment for his role in a large scale conspiracy to distribute heroin, I am very surprised and concerned that he is being paroled after serving only four years. The evidence presented at the trial unequivocally showed that * * * [Jim] was in charge of day to day operations of the narcotic trafficking activities of a group which called itself the 'Black Mafia' * * *."

On July 12, 1979, the Commission reopened Jim's case, delayed his parole, and scheduled him for a special reconsideration hearing to consider new adverse information from law enforcement officials recommending against his parole. The panel of examiners recommended a 10-year reconsideration hearing in August 1989 because the new

in 126 cases. Fifty-five, or 44 percent, came from two judicial districts--Western Kentucky and Northern Texas. In the remaining 216 cases, judges failed to submit a form or sent in a blank one. Further details by judicial district are presented in the following table.

Judicial district	Cases reviewed	Number of cases where form AO-235: prepared	not prepared	blank
Northern California	35	9	13	13
Northern Georgia	30	5	18	7
Southern Indiana	30	2	2	26
Eastern Kentucky	30	17	13	0
Western Kentucky	30	30	0	0
Western Missouri	30	0	1	29
Southern Ohio	40	19	16	5
Eastern Pennsylvania	40	10	25	5
Northern Texas	30	25	5	0
Southern Texas	47	9	26	12
Total	342	126	119	97

The June 1980 Harvard Law Review included an article which examined the success of the form AO-235 as a communication device between the sentencing judge and correctional decisionmakers. This article pointed out that 66 percent of 115 judges included in a survey reported that they used the AO-235 in 25 percent or less of their cases. Also, the article pointed out that most judges who seldom used the form believe it is either unnecessary or is ignored by the Parole Commission. Finally, the article concluded that the form had failed to fulfill its intended purpose as a communication device for encouraging consistent treatment of the defendant at the sentencing and parole stages. 1/

Several judges told us that they did not regularly complete form AO-235s because they (1) did not know the type of information the Commission wanted, or (2) perceived that it would be ignored by the Commission.

Correctional staff did not regularly make study and observation reports available to the Commission

The Bureau and the Commission do not have adequate procedures to ensure that study and observation reports are automatically made available to the Commission's hearing examiners for their use in formulating parole release decisions.

1/"Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts": Harvard Law Review, June 1980.

"Unfortunately, despite a Justice Department directive in June 1979 that these reports be considered obligatory for all Federal prosecutors (in those cases where the court has imposed a sentence that includes eligiblity for parole), Assistant U.S. Attorneys have not responded to our need for their cooperation. A recent sample we took shows these reports submitted in only 15 percent of all cases. This figure has been informally confirmed by GAO investigators, (who found an even lower compliance rate in organized crime and major drug cases).

"One result is that an early parole may be granted through a lack of information illustrating the true extent of the crime, thus, diminishing the value of the original prosecutorial effort. Another is a last-minute reopening of a case in which a parole was granted after news of the imminent release causes the prosecutor to surface information that should have been conveyed to us at the outset. This happens too often. For example, we are now litigating in the U.S. Court of Appeals for the Fourth Circuit a case in which critical information concerning one of the offenders in the 1973 assault and shooting of Senator John Stennis was given to us by the U.S. Attorney's Office for the District of Columbia only after the parole of this offender had been announced * * *."

The Assistant Attorney General of the Criminal Division notified the Chairman on June 11, 1981, that steps would be taken to resolve these issues. As of March 1982, the Commission and the Department of Justice were addressing these issues.

Judges seldom communicated any information to the Commission

The Commission has not been successful in obtaining necessary information from sentencing judges on their recommendations for the parole of offenders.

In 1974, the Federal Judicial Center, the Bureau of Prisons, the Board of Parole, and the Probation Division within the Administrative Office of the United States Courts, working under the direction of the Judicial Conference Committee on the Administration of the Probation System, developed a special form (AO-235 - "Report on Sentenced Offender by United States District Judge") to be prepared by the judge on each case at the time of sentencing. This form was designed to assist judges in communicating

they would never make such a request. Others stated that they would only seek authorization from the court when specifically requested to do so by the Commission's hearing examiners. While in attendance at a Sentencing Institute 1/ in May 1980, we were told by a hearing examiner from the Commission's Southeast Region that he had never seen a study and observation report when he made a parole release determination.

The Chairman of the Parole Commission wrote the Director of the Bureau of Prisons on June 23, 1981, concerning the availability of study and observation reports. The letter stated:

> "GAO has expressed concern that the 'Study and Observation' reports prepared by the Bureau of Prisons are not being made available to the Parole Commission, so that they can be used as an aid in making the release decision. Spot checking with Commission personnel reveals that this is so * * *."

The Chairman requested that the Director revise the Bureau's procedures so that study and observation reports could automatically be made available to the Commission's hearing examiners for their use in formulating parole release decisions. The Director of the Bureau of Prisons advised the Chairman of the Parole Commission on July 22, 1981, that study and observation reports prepared under 18 U.S.C. §5010 (e) could automatically be released to the Commission's hearing examiners because the Commission is responsible for furnishing them to the sentencing court. Also, he advised the Chairman that study and observation reports prepared under 18 U.S.C. §4205 and competency studies done under 18 U.S.C. §4244 could not be automatically disclosed to the Commission's hearing examiners because they are considered court documents. However, he expressed a willingness to have his staff seek authorization from the courts to disclose these studies to the Commission's hearing examiners. The Commission and Bureau had not finalized any arrangements on the release of study and observation reports as of March 1982.

Correctional staff did not regularly furnish psychological reports to the Commission

The Commission is required by statute to consider psychological reports when making parole decisions. However, staff at the Bureau's institutions do not routinely furnish these reports

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1/These Institutes are conducted periodically so that the Bureau of Prisons, the Judiciary, and the Parole Commission can address mutual problems.

affect the inmate's behavior if he had access to the information. Also, staff at the institution told us they did not believe that the Commission's hearing examiners were capable of interpreting information in these reports. The case management coordinator was of the opinion that psychological reports were being improperly handled at this institution because hearing examiners were not routinely advised of their existence and the Psychology Department would not summarize them so that they could be disclosed to inmates and used by the Commission. The Chief Psychologist at this institution confirmed that psychological reports were not routinely furnished to the Commission. Several officials at this institution told us that psychological reports were sometimes written to meet the eligibility requirements for programs funded by a State rehabilitation commission as opposed to an accurate diagnosis of an offender's personality disorder. Thus, the Psychology Department did not want these misleading reports released to the Parole Commission.

--Staff at another correctional institution did not uniformly follow the Bureau's policy on disclosure of psychological reports and their release to the Commission. The case management coordinator told us that all reports should be available for the Commission's use; however, she acknowledged that some caseworkers did not fully comply with this policy. Three case managers told us that psychological reports would be summarized for disclosure to inmates, but only the summary would be made available to the Commission. One of these case managers told us that the complete report would be made available to the Commission only if the detailed report was specifically requested. The Chief Psychologist at this institution told us that he briefs the case managers on the psychological status of all offenders so that this information can be included in the progress reports. He believes this procedure gives the Commission all the information it needs.

Several of the Bureau's staff at correctional institutions acknowledged that there were inconsistencies in the procedures followed for release of psychological reports to the Commission's hearing examiners. Also, some of the staff told us that better training was needed by case managers so that there would be uniform implementation of the Bureau's policy.

Correctional institutions were inconsistent in reporting poor institutional behavior to the Commission

The Commission is required under 18 U.S.C. §4206 to consider institutional behavior when making parole decisions. However,

adopted as a result of various court decisions which required that offenders be afforded certain due process rights.

A December 1975 study of the Commission's operations by the Department of Justice noted a need for the Bureau to establish criteria for the categorization of major and minor institutional infractions. 1/ The Bureau appointed a task force to study this problem. In March 1979, the Bureau issued new procedures on the administration of inmate discipline. These procedures were not coordinated with the Commission to obtain its input.

The Bureau's procedures ranked the severity of misconduct into four levels and required that the Institution Discipline Committee review all cases of misconduct in the most severe category. Although the procedures include the option of recommending that parole be cancelled or delayed as a possible sanction for misconduct in two of the other three categories, there is no requirement for the Unit Discipline Committee to refer these matters to the Institution Discipline Committee. Thus, some serious misconduct, such as possession of narcotics, escape, extortion, and counterfeiting, may not be referred to the Institution Discipline Committee. It is significant to note that the Commission has developed guidelines calling for cancellation of parole for some of these offenses. Without a referral to the Institution Discipline Committee and a finding of guilty, the Commission will not act to change a parole date.

Several Parole Commissioners have expressed concern over parole decisionmaking in cases involving serious institutional misconduct. In a letter to the Chairman of the Parole Commission dated January 12, 1979, one Regional Commissioner stated:

> "* * * It is not my belief that parole should be denied to individuals who have from time to time violated institution housekeeping rules. It is my belief that the institution has significant and sufficient variety of sanctions which they apply to inmates which satisfies accountability for violation of those rules. However, I have serious problems accepting the parole of inmates who commit acts that would be felonies if committed in the free world and who are adjudicated for those acts in disciplinary courts. To that extent, I am particularly concerned about drug

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1/"An Evaluation of the U.S. Board of Parole Reorganization", prepared by the Department of Justice, Office of Management and Finance, December 1975.

guilty. The case was referred to the Institution Discipline Committee which also found Ron guilty and decided that he should only forfeit 60 days statutory good time, serve 30 days in disciplinary segregation, and receive a disciplinary transfer. The Committee cited the following reason for this sanction. "Distribution of illegal drugs in a prison cannot be tolerated. Sanctions imposed are necessary to discourage * * * [Ron] from other illegal activity and to discourage other inmates from getting involved in drug activities * * *." A copy of the incident report was furnished to the Commission. It considered the matter serious enough to delay Ron's release by 60 days.

--Ed was sentenced to 10 years for robbery. He was paroled after serving 54 months; however, parole was revoked because of his involvement with drugs. The Commission established a new parole release date of May 1980. Ed received an incident report on April 11, 1980, for possession of marijuana. The Unit Discipline Committee found him guilty of the misconduct and decided the only sanction needed was 1 day's extra duty. Since this misconduct was not referred to the Institution Discipline Committee, the Commission took no further action on Ed's case.

--Bryan was sentenced to a 6-year indeterminate sentence under the Youth Corrections Act for possession of marijuana. In October 1978, he was given a presumptive parole date of January 1980. In November 1979, Bryan received an incident report for lying to a staff member. Bryan received another incident report in January 1980 for lying to a staff member and an unexcused absence from a work assignment. Both of these infractions were moderate severity; however, they were processed through the Unit Discipline Committee and the Institution Discipline Committee. The Commission took action on these two incident reports and delayed Bryan's release by 120 days. On April 30, 1980, 9 days prior to release, Bryan received another incident report for possession of marijuana. The Bureau considers this a high-severity infraction; however, it was informally resolved by giving Bryan 4 hours of extra duty. Since the report was not referred through the Unit Discipline Committee to the Institution Discipline Committee, the Commission took no action. Bryan was paroled May 8, 1980.

The Chief of Correctional Services at one of the Bureau's minimum security institutions had a policy that all misconduct involving drugs would automatically be referred to the Institution Discipline Committee for disposition. The records at this institution showed that between June 1979 and July 1980 there

Our review of 342 cases showed that the Commission did not regularly receive indictments, records of sentencing hearings, and judgment and commitment orders. Copies of judgment and commitment orders are available at the Bureau's correctional institutions and could be included in the material that the Bureau furnishes to the Commission. The indictment is a public record and could easily be obtained from the probation office. A record of the sentencing hearing is available from the court.

In January 1981, the Chief Judge for the Northern district of California took the initiative and started sending a copy of the transcript of the sentencing hearing to the Commission when the offender received a sentence of 2 years or more. Also, he encouraged the Chairman of the Committee on the Administration of the Probation System of the Judicial Conference of the United States to adopt this procedure nationwide. No action has yet been taken on this recommendation by the Judicial Conference. Regional Commissioner of the Parole Commission's Western Region told us that the additional information submitted by this court has improved the quality of parole decisions. She also told us that other Federal courts in Alaska, Arizona, and Oregon have started to furnish transcripts of sentencing hearings to the Commission.

Several Parole Commissioners and staff told us that indictments, judgment and commitment orders, and records of sentencing hearings should be routinely available for the Commission's use because they would improve the quality of parole decisions.

ASSURANCE IS NEEDED THAT DEFENDANTS WILL BE APPRISED OF THE INFORMATION TO BE CONSIDERED BY THE COMMISSION

Defendants are not routinely advised when they enter a plea of guilty that the Parole Commision, when formulating parole release decisions, will take into consideration not only the count or counts pleaded guilty to but will also consider unadjudicated charges dismissed through plea bargaining. Rule 11(c) of the Federal Rules of Criminal Procedure does not require the sentencing judge to inform the defendant that the Parole Commission will consider unadjudicated criminal conduct dismissed through plea bargaining when formulating parole release decisions.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4206) provides that the Commission shall consider the nature and circumstances of the offense and the history and characteristics of the offender when formulating parole decisions. The Commission's rules provide that it shall take into account any substantial information available to it when making parole decisions. The Commission has taken the position that it must consider the criminal conduct that brought the offender into contact with the law rather than just the offense of conviction. Several reasons have been given for this position.

the right to confront and cross-examine witnesses, and the right not to be compelled to self-incrimination.

--That if he or she pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial.

--That if the defendant pleads guilty or nolo contendere, the court may ask questions about the offense to which he or she has pleaded, and if these questions are answered under oath, on the record, and in the presence of counsel, the answers may later be used against him or her in a prosecution for perjury or false statement.

However, the court is not required to inform the defendant that the Parole Commission will take into consideration not only the count or counts pleaded guilty to, but will also consider unadjudicated charges dismissed through plea agreements.

Our review of court cases, observations at parole hearings, and analysis of appeals indicated that some offenders were not aware that the Parole Commission would take into consideration charges dismissed through plea agreements when making parole decisions. Also, we noted that some judges were not familiar with what information the Commission considered when making parole decisions. As a result of a Sentencing Institute in 1978, the judges in the United States District Court of Nebraska established local guidelines for cases involving plea agreements. These guidelines supplement Rule 11(c) of the Federal Rules of Criminal Procedure by ensuring that defendants are aware of the information that will be used by the Commission in formulating parole release decisions. The guidelines state:

"When a defendant enters a plea of guilty in the United States Court, District of Nebraska, the defendant files a Motion to enter said plea. In this Motion to enter a plea of guilty, there are questions regarding the ciminal activity in which the defendant was involved, his representation by counsel, etc. It was decided that there will be inserted another section which will, in effect, inform the defendant that if he is incarcerated as the result of his plea of guilty to the offense, the Parole Commission will take into consideration not only the count or counts pled [sic] guilty to but will consider the entire criminal Indictment in which the defendant was involved. Our Court wants the defendant to be made totally aware of

other hand, advocates of such reform claimed it was necessary to guarantee accuracy and reliability of information provided to sentencing courts. Opponents argued that disclosure would inhibit sources of information who required anonymity, allow numerous challenges to the report and thus significantly delay sentencing proceedings, and impair the rehabilitative process by jeopardizing the probationer's relationship with his probation officer. Proponents of disclosure, however, continued to voice their concern for the reliability of presentence reports.

By 1975, the concern expressed for the accuracy and reliability of presentence reports had gained considerable recognition. The result was a sophisticated compromise of these competing interests, embodied in the adoption of Rule 32(c)(3) of the Federal Rules of Criminal Procedure. The rule furthered the interest in the reliability of presentence reports by requiring disclosure of the factual sections of the report to either the defendant or counsel upon request. The defense was thus afforded the opportunity to bring to the judge's attention and to comment upon information it considered inaccurate, incomplete, or otherwise misleading.

On the other hand, the interest in the completeness of presentence information was protected by certain exceptions to disclosure in Rule 32(c)(3). These exceptions provided that the sentencing judge need not disclose those parts of the presentence report containing diagnostic information that could disrupt a rehabilitation program; identify sources of information obtained upon a promise of confidentiality; or information that, if disclosed, might result in physical or other harm to other persons. If the judge relies upon any of the undisclosed information in determining a sentence, the rule requires that the judge must provide a written or oral summary of that information to the defense.

Despite this compromise, debate over the proper amount of disclosure of presentence reports did not end. The rule gave district court judges great flexibility and considerable discretion in determining the appropriate time and place of disclosure, the proper party to inspect the report, the applicability of exceptions to disclosure, and the correct procedure for receiving defense commentary. Because of the flexibility of the rule, Federal judges have often adopted disclosure practices to fit their individual sentencing procedures. Further, although disclosure is the controlling principle of Rule 32(c)(3), discretion allowed by the rule enables some courts to withhold a significant amount of information from the defense by broadly construing the exceptions to disclosure.

Two of the most important factors affecting the defense's ability to make use of the disclosure process are the timing of the disclosure and whether the defendant is allowed and

part of the presentence report covering the offender's prior criminal record, and this was not done until sentencing. In another judicial district, the disclosure procedures ranged from automatic disclosure of the entire presentence report 3 days prior to sentencing to only partial disclosure, upon request, the day of sentencing.

One excellent example of full disclosure of the presentence report was brought to our attention by a judge during our attendance at a Sentencing Institute in May 1980. This judge told us that he met with the probation officer who prepared the presentence report, the defendant and defense counsel, and the prosecutor several days prior to sentencing to discuss the presentence report. Such a forum provides an opportunity for the defense and the prosecution to correct any inaccuracies and resolve discrepancies prior to sentencing.

On July 2, 1980, H.R. 6915, the Criminal Code Revision Act of 1980, was reported favorably by the House Committee on the Judiciary. To provide defendants with an adequate opportunity to review the presentence report, the bill required that a copy of the presentence report (exclusive of sentencing recommendations) be furnished to the defendant and the defendant's counsel at least 5 days before imposition of sentence. Also, it provided that defendant and counsel were entitled to an opportunity to comment on the report. Although the bill was not enacted into law before the Congress adjourned, it has been reintroduced.

Several Federal Public Defenders told us that present disclosure practices in some Federal courts do not provide the defendant or defense counsel with adequate opportunity to review the presentence report and challenge inaccurate or misleading information. They also told us that they supported the provision in H.R. 6915 which required mandatory disclosure of the presentence report to the defendant and his/her counsel at least 5 days before sentencing. Several Parole Commissioners and staff members told us that they supported mandatory disclosure of presentence reports because they believed it would improve the quality of information used to make parole decisions.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States proposed an amendment to Rule 32(c)(3) in October 1981 to assure that the defendant and his or her counsel have had a reasonable opportunity to read and discuss the presentence report. This proposal will be considered by the Judicial Conference in September 1982.

STRATEGY NEEDED TO MAKE EQUITABLE PAROLE DECISIONS FOR CO-DEFENDANTS

The Commission does not have a strategy for making equitable parole release decisions in cases involving more than

"The Parole Commission is plagued with problems of codefendant [sic] disparity decision making [sic]. Time after time we see cases where codefendants [sic] are handled differently in the area of a parole decision between regions and even within regions."

* * * * *

"On numerous occasions, as outlined in Commissioner * * * memorandum of 7/25/80 * * *, I have observed that codefendants [sic] placed in various Southeast BOP facilities and heard over a several month period or even on the same docket are the recipient of disparate decisionmaking."

The Commission has attempted to equalize the treatment of co-defendants during the appeals process by using the most favorable decision on the defendants as the standard for making decisions on the remaining co-defendant cases. At times, this approach was used even if the most favorable decision was incorrect. This approach avoids the appearance of disparity among a group of co-defendants but results in unwarranted disparity with all other offenders in similar circumstances. The Commission's General Counsel has expressed concern about this practice on several occasions. In a letter to the Chairman of the Commission dated March 18, 1980, he stated:

"* * * A single co-defendant is heard earlier than his fellow offenders. If a mistake of undue leniency is made in that decision (for example, an incorrect severity rating) the mistaken decision is deliberately followed in the remaining cases. The Commission's reasons in the remaining cases often fail to reveal that this is what the Commission has done.

"Such departures from our 'national parole policy' (see 18 U.S.C. § 4203) do not appear to be in accord with announced Commission goals. While unjustified co-defendant disparity is a situation we should avoid whenever possible, the multiplication of what we acknowledge to be incorrect parole decisions solely to avoid disparity quite arguably produces more harm than it prevents.

"In effect, this practice creates unwarranted disparity with all other similarly situated offenders, and fosters within the Commission a tolerance for mistakes and artificial reasoning that undermines

1980, the National Commissioners agreed with the dates set for Bill and Frank. In April 1980, Steve had a hearing at an institution located in another Parole Commission region. The panel recommended parole after 50 months without referral as an original jurisdiction case. The Regional Commissioner concurred and Steve was paroled in July 1980. Once the Commission became aware of the early date granted Steve, the release dates for Bill and Frank were revised to make their time served consistent with Steve's.

--Rich, Dave, Jim, John, and Mike were co-defendants and sentenced to 4, 2, 3, 2, and 3 years, respectively, for importing marijuana. Rich was given an initial parole hearing in October 1979 and the panel established an offense severity of very high and a salient factor score of 9. The parole guideline range was 24 to 36 months and the panel recommended parole after service of 30 months. This recommendation was concurred in by the Regional Commissioner. Dave, Jim, John, and Mike all had their initial parole hearings at the same institution during the week of January 5, 1981. The Regional Commissioner granted parole to Dave after 14 months due to an exceptional family need in the community. This decision was 10 months below the parole guideline range of 24 to 36 months. Jim had a guideline range of 24 to 36 months, but the Regional Commissioner established a parole date after 16 months, or 8 months below the guidelines, because he was less culpable. However, other information clearly indicated that Jim was responsible for providing the equipment necessary to unload the marijuana from the mother ship. Also, two co-defendants stated that Jim was in charge of the operation. The Regional Commissioner did not parole John, so he was to serve 17 months. Mike was not given parole and was to serve 28 months. Both John and Mike then filed appeals on the basis of co-defendant disparity and the Commission changed their dates of parole to below the guidelines--15 and 16 months, respectively, due to co-defendant disparity.

Several Commissioners and staff acknowledged that the Commission has a serious co-defendant disparity problem. They were of the opinion that the Commission needed to develop a formal strategy for making parole decisions on co-defendants. Also, they believed that the prereview process implemented in September 1981 in all offices offered the opportunity to accumulate better information from probation officers and other Commission offices before parole decisions were made for co-defendants. Finally, they were of the opinion that the practice of using the most favorable decision as the standard for deciding co-defendant cases was improper.

it does not set a parole release date prior to an offender's parole eligibility date.

The Bureau and the Commission provided inadequate guidance to their staffs to ensure that offenders convicted under the continuing criminal enterprise statute were not made eligible for parole consideration, afforded parole hearings, or released on parole. The Bureau furnished us a list of all offenders in its custody as of September 30, 1980, who were serving sentences under 21 U.S.C. §848. This list included 12 names; however, through examining other available records, we found that 50 offenders were actually in Federal custody and serving sentences under this statute at that time. Our review also showed that 11 of these offenders had been made eligible for parole, afforded parole hearings, and given tentative release dates prior to the earliest date the offender could be legally released. In one case, an offender had been released on parole and had to be returned to custody. This case is currently under litigation. The following cases illustrate this problem:

--Dave was initially sentenced on January 11, 1977, in the Southern district of Indiana to 3 years for possession of a firearm by a convicted felon. Subsequently, he was sentenced to a 10 year concurrent sentence in the Southern district of Indiana on March 24, 1978, under 21 U.S.C. §848 for engaging in a continuing criminal enterprise. The judgement and commitment order and the presentence report clearly identified the conviction under 21 U.S.C. §848; however, the sentence computation record showed a parole eligibility date of December 19, 1980. Dave was given an initial parole hearing on October 4, 1979, at the Terre Haute Camp and the hearing examiner's recommendation was not to release Dave on parole. The Regional Commissioner disagreed with the panel's recommendation and sent the case to the National Commissioners with a recommendation that Dave be paroled on June 2, 1983. This date was affirmed by the National Commissioners on December 13, 1979. Dave then appealed this decision at the Regional and National levels, but all appeals were denied. In January 1981, we brought it to the attention of the Commission that Dave had been given a presumptive parole date of June 2, 1983, when in fact he was not eligible for release on parole because he had been convicted under 21 U.S.C. §848. The Commission notified Dave on January 14, 1981, that his parole date was revoked.

--Bruce was initially sentenced on September 27, 1978, in the Eastern district of Louisiana to 25 years for violation of narcotics laws. The sentence included 15 years under 21 U.S.C. §848 for engaging in a continuing criminal enterprise followed by a 10-year consecutive regular

found in favor of John and he was returned to the community under parole supervision. The United States Attorney for the Southern district of California filed an appeal in the United States Court of Appeals for the Ninth Circuit in September 1981 concerning the lower court's decision to release John on parole. As of May 1982, a final decision had not been made on the appeal.

--Robert was sentenced on August 5, 1977, in the Northern district of Texas to 15 years under 21 U.S.C. §848 for engaging in a continuing criminal enterprise. The judgment and commitment order and the presentence report clearly identified that Robert's conviction was under 21 U.S.C. §848. However, the sentence computation record showed a parole eligibility date of July 14, 1982. The Commission gave Robert an initial parole hearing on April 1, 1980, and the decision was made to parole him on July 14, 1982, after 60 months. Robert was subsequently moved from the McNeil Island Federal Correctional Institution to the Seagoville Federal prison camp. In August 1981, the Bureau discovered that the sentence computation record for Robert incorrectly reported him eligible for parole. The Bureau asked the Parole Commission to delay notifying Robert that he was ineligible for parole until arrangements could be made to move him to a more secure institution.

Bureau officials told us that better guidance was needed to ensure that offenders sentenced under 21 U.S.C. §848 were not made eligible for parole consideration, scheduled for parole hearings, or released on parole. They also told us that additional training would be provided to the staff responsible for preparing sentence computation records in the institutions. In May 1981, the Bureau issued new guidance to all its institutions which reemphasized the fact that offenders sentenced under 21 U.S.C. §848 were not eligible for parole consideration. Also, this guidance required staff in the records office at each institution to completely review all judgement and commitment orders to ensure that sentence computation records for all offenders convicted under 21 U.S.C. §848 were accurate and these individuals were not improperly given parole consideration.

Also, several of the Commission's employees told us that they were surprised to learn that offenders sentenced under 21 U.S.C. §848 were not eligible for parole consideration. They also acknowledged that better guidance should be provided to the Commission's employees to ensure that all understood the provisions of 21 U.S.C. §848. In May 1981, the Commission issued guidance to its employees which emphasized that offenders convicted under 21 U.S.C. §848 were not eligible for parole consideration and should not be afforded parole hearings.

CONCLUSIONS

The deficiencies discussed in this chapter highlight the fact that parole decisionmaking involves more than the rendering of a decision by the Parole Commission. The Commission cannot be expected to render fair and equitable decisions unless it receives all relevant information about an offender and the offense he or she has committed. Conversely, the agencies that have vital information available to share will not become active participants unless they have a full realization of the impact their lack of cooperation can have on parole decisionmaking.

The problems discussed in this chapter will not be resolved unless all of the parties involved in the parole decisionmaking process make a commitment to work toward improving their communication and information sharing. There has been poor exchange of information and communication between the Parole Commission and other parts of the Federal criminal justice system. Specifically: (1) presentence reports did not always contain adequate information, (2) prosecutors rarely furnished important information, (3) judges seldom submitted any data, (4) correctional staff did not regularly make study and observation reports and psychological evaluations available, (5) poor institutional behavior by inmates was not uniformly reported, and (6) other information, such as judgement and commitment orders, indictments, and records of sentencing hearings, were not regularly obtained by the Commission for consideration. Also, the Federal Rules of Criminal Procedure do not ensure that defendants are routinely advised when they enter a plea of guilty that the Parole Commission, when formulating parole release decisions, will take into consideration not only the count or counts pleaded guilty to but will also consider unadjudicated charges dismissed through plea bargaining. In addition, Federal Rules of Criminal Procedure should guarantee adequate disclosure of these reports to defendants prior to sentencing to ensure the accuracy of information contained in them.

The Commission's problems of co-defendant disparity and conducting parole hearings for offenders who were not eligible for parole consideration could both be resolved through improved communication. And, the Attorney General will not be able to appeal parole decisions unless a system is developed to enable him to routinely become aware of them.

RECOMMENDATIONS

We recommend that the Chairman of the Parole Commission:

--Seek the assistance of the Attorney General, the Director of the Administrative Office of the United States Courts, and the Judicial Conference to improve the flow of

evaluations to the Parole Commission for use in formulating parole decisions, (2) reach agreement with the Parole Commission on the types of offender misconduct which should automatically be referred to the Institution Discipline Committee, and (3) monitor the success of efforts to improve the identification of offenders who have been convicted under 21 U.S.C. §848 and not eligible for parole consideration.

--The U.S. attorneys to provide the Parole Commission form 792s.

--The Director of the Executive Office of the United States Attorneys to work with the Commission in developing a system for routinely advising U.S. attorneys of parole decisions.

We also recommend that the Attorney General and the Judicial Conference resolve the Commission's longstanding problem of obtaining adequate presentence and postsentence reports from judicial districts which refuse to provide them. Also, the Director of the Administrative Office of the United States Courts should require the Chief of the Probation Division to

--stress the importance of providing presentence reports which contain the information necessary for parole decisionmaking, and

--establish procedures for routine quality control reviews of presentence reports.

Finally, we recommend that the Judicial Conference develop proposed amendments to the Federal Rules of Criminal Procedure to (1) make defendants aware of the information that will be considered by the Parole Commission when making parole decisions, and (2) provide for mandatory disclosure of presentence reports to offenders.

it should work with those States and localities in which juvenile records for serious offenses are not available, emphasizing the importance of the impact such records can have on parole decision-making.

The Commission disagreed with that portion of our recommendation calling for it to obtain copies of the indictments on each case for use in formulating parole decisions. The Commission stated that the indictment often does not contain all relevant details of offense behavior and is written in technical legal language. Also, the Commission pointed out that a well-written description of the offense behavior in the presentence report is more useful. We continue to believe that obtaining copies of indictments would improve the basis for formulating parole decisions. We found that the indictments sometimes describe criminal behavior which has not been fully discussed in the presentence report. Using the indictment may result in the Commission making further inquiries into the circumstances surrounding an offense before making its parole decision.

Finally, the Commission agreed with our recommendation that it develop a strategy to improve parole decisionmaking for co-defendants; however, the Commission pointed out that the solution to this problem depends on full implementation of a joint Bureau of Prisons, Marshals Service, and Parole Commission on-line data system. The Commission pointed out that the system is expected to be operational within 1 year. However, the Commission did not mention what it proposes to do in the interim. The problems that we pointed out with co-defendant disparity involve more than just a lack of information. The Commission needs to establish procedures that will enable it to effectively render decisions on co-defendants when this additional information becomes available.

Department of Justice

The Department of Justice fully concurred with our recommendations regarding the identification of offenders who are not eligible for parole, the provision of information to the Commission by U.S. Attorneys, and the development of a system to routinely advise U.S. Attorneys of parole decisions. The Department partially concurred with our recommendation on providing study and observation reports and psychological evaluations to the Commission, and disagreed with our recommendation on identifying the types of offender misconduct that should automatically be referred to the Institution Discipline Committee. It did not comment on our recommendation that the Department assist the Parole Commission in resolving its longstanding problem of obtaining adequate presentence and post-sentence reports from judicial districts which refuse to provide them.

to stress the importance of providing presentence reports to the Parole Commission which contain the information necessary for parole decisionmaking and to establish procedures for routinely reviewing the quality of these reports. It also advised us of actions taken by the Judicial Conference on our recommendations to amend Rules 11(c) and 32(c)(3) of the Federal Rules of Criminal Procedure.

We proposed that Rule 11(c) of the Federal Rules of Criminal Procedure be amended to require that defendants be made aware of the information that will be considered by the Parole Commission when making parole decisions. The Administrative Office of the United States Courts pointed out that in 1981 the Advisory Committee on Criminal Rules of the Judicial Conference considered a recommendation by the Probation Committee requiring that the trial judge specifically advise the defendant of the subsequent uses of the presentence report at later stages in the correctional process. However, the Advisory Committee chose not to burden the trial judge with this additional responsibility. Instead, the Judicial Conference favored the use of a form attached to the presentence report that the defendant would be required to sign. Use of the form, which would advise the defendant of the potential uses of the presentence report, is still under consideration by the Judicial Conference.

With regard to our recommendation that Rule 32(c)(3) of the Federal Rules of Criminal Procedure be amended to require mandatory disclosure of presentence reports to offenders prior to sentencing, the Administrative Office of the United States Courts informed us that the Judicial Conference has drafted a proposed rule that would implement our recommendation and circulated it for comment. The Administrative Office stated that this proposal has proven controversial and that it would be given further consideration by the Judicial Conference.

Finally, the Administrative Office of the United States Courts addressed our recommendation that the Parole Commission obtain records of sentencing hearings for use in formulating parole decisions. The Administrative Office felt that a proposed amendment to Rule 32(c)(3)(d) of the Federal Rules of Criminal Procedure would provide another means for the Parole Commission to obtain clarification of information contained in the presentence reports. As we pointed out on page 118 of our report, the record of the sentencing hearing would also contain the views of the judge at the time of sentencing. Thus, the proposed amendment to Rule 32(c)(3)(d) would not completely satisfy the Parole Commission's needs.

Chief judges

We received responses on a draft of this report from chief judges in 9 of the 10 districts in which we performed our audit work (see app. IV-XII). Five of the chief judges commented on recommendations contained in the chapter, and we believe their

CHAPTER 5

MAJOR CHANGES NEEDED TO IMPROVE PAROLE SUPERVISION

Major changes need to be made to the procedures followed by the Commission and the Federal Probation Division in the supervision of parolees in the community. Specifically, the Commission and the Federal Probation Division need to work together to

--develop clear definitions of requirements for special conditions of parole and specific criteria for determining what constitutes a violation of such conditions;

--improve procedures for reporting parole violations by (1) establishing specific time frames for reporting violations, and (2) clarifying the guidelines probation officers use in requesting warrants for the arrest of parole violators;

--clarify procedures to be followed when terminating parole supervision;

--develop procedures for supervising parolees in the Witness Security Program and alien parolees who are released to the community awaiting the outcome of deportation proceedings; and

--resolve the issue of probation officers' use of search and seizure authority when supervising parolees.

We also found that the Probation Division needed to develop criteria for determining the level of supervision to be given to parolees. Action taken by the Probation Division and the Commission during our review should help to resolve this issue, but additional steps need to be taken to ensure that probation officers have all of the necessary information to determine the appropriate supervision level.

SPECIAL CONDITIONS OF PAROLE NEED TO BE BETTER ADMINISTERED

In addition to the general conditions of parole that the Parole Commission has determined to be necessary to protect the public welfare (see app. XVIII), special conditions of parole may also be required.

Two ingredients are necessary for properly administering special conditions of parole: (1) clear definitions of requirements and (2) specific criteria for determining what constitutes a violation of such conditions. Without these two ingredients, there is no assurance that offenders will receive essential

in the 10 judicial districts we visited. The following cases describe such differences.

--Norb was sentenced in the Eastern district of Kentucky on February 7, 1974, to 20 years for armed bank robbery. He was paroled on April 14, 1980, and the Commission imposed a special condition of parole that Norb participate in an alcohol aftercare program. Norb's probation officer allowed him to choose his own aftercare program. Norb chose to attend counseling sessions with his probation officer. During the first 6 months under parole supervision, Norb attended two alcohol aftercare sessions with his probation officer. In September 1980, Norb's probation officer told him that he could satisfy his alcohol aftercare condition by attending a rational behavior therapy group at the probation office.

--Barbara was sentenced on August 14, 1975, in the Middle district of Tennessee to 5 years for interstate transportation of forged securities. She was paroled on August 21, 1979, to the Western district of Kentucky, and the Commission imposed a special condition of parole that she participate in an alcohol aftercare program. Barbara's probation officer accepted her enrollment in a weekly Alcoholics Anonymous meeting as complying with the alcohol aftercare condition. Information in Barbara's file showed that she regularly supplied verification of attendance at these meetings to her probation officer.

--Clark was sentenced on May 6, 1974, in the Western district of Louisiana to 3 years for interstate transportation of forged securities. Subsequently, Clark was also sentenced on June 21, 1974, in the Middle district of Florida to a 10-year concurrent sentence for a post office robbery. He was paroled on February 9, 1979, to the Northern district of Georgia, and the Commission imposed a special condition of parole that he participate in an alcohol aftercare program. After being paroled, he received counseling from a minister for over a period of about 2 months; claimed to have attended Alcoholics Anonymous for about 2 months, but provided no verification; and then enrolled in an outpatient program for about 2 months, but rarely attended. He was admitted to an inpatient alcohol treatment program without the knowledge of the probation officer, after being delivered to the hospital drunk. He completed this program in December 1979. Clark's annual supervision report which was prepared by his probation officer and dated January 10, 1980, failed to recognize that he had an alcohol aftercare condition but did mention that he had encountered drinking problems. Clark's file contained

was paroled and the test was positive. About 1 month later, another test was administered and it also was positive. Shortly thereafter, Dave was enrolled in a formal drug aftercare program which required a minimum of four scheduled and two unscheduled tests each month and weekly counseling sessions. Three additional tests in less than 1 month proved to be positive so Dave was enrolled in an inpatient drug treatment program.

--Anita was sentenced in the Northern district of Texas on December 17, 1976, to 5 years for possessing and forging a U.S. Treasury check. She was paroled to the Western district of Missouri on August 24, 1979, and the Commission imposed a special condition of parole that Anita participate in a drug aftercare program. The probation officer enrolled Anita in a community based drug aftercare program upon her release from prison. Over the next 5 months, Anita frequently missed counseling sessions and test results showed positive signs of drug usage. Shortly thereafter, the probation officer placed Anita in a halfway house. Four months later, she was discharged from the halfway house because of adjustment problems. The probation officer then enrolled Anita in an inhouse drug program which included four scheduled and two unscheduled tests each month and weekly counseling.

--John was sentenced in the Southern district of Indiana on November 4, 1975, to 10 years for distribution of heroin. Information in the file indicated that he was addicted to heroin prior to incarceration. He was paroled to the Southern district of Indiana on March 31, 1978, and the Commission imposed a special condition of parole that John participate in a drug aftercare program. The probation officer administered unscheduled drug tests to meet John's aftercare requirement. During 29 months under parole supervision, the file indicated that John had been tested about 12 times.

Specific criteria needed for determining violations of special conditions of parole

The Commission's procedures manual does not provide any guidance on what constitutes a violation of a special condition of parole. The instructions in the Probation Division manual are just as vague concerning what constitutes a violation, except that the draft guidance on drug aftercare defines a violation of this condition as two consecutive positive urine tests or one positive test in conjunction with a missed test.

We found a number of diverse opinions among probation officers in 10 judicial districts as to what circumstances should be reported to the Commission as violations of special conditions

His probation officer reported this as a violation to the Commission on December 17, 1979.

--Larry was sentenced on January 7, 1977, in the Northern district of Texas to 5 years for forgery of a U.S. Treasury check. Larry was released on parole from a halfway house on August 29, 1979, to the Northern district of Texas, and the Commission imposed a special condition of parole for alcohol aftercare. During the first year under parole supervision, Larry was enrolled in several alcohol programs, but his participation was unsatisfactory. This was not accurately reported to the Commission. The probation officer reported Larry's violation of the special condition of parole to the Commission in October 1980 after Larry absconded on August 23, 1980.

--Donna was paroled on August 8, 1979, with a special condition of parole for drug aftercare. The probation officer enrolled Donna in a drug program in October 1979. During the next 11 months, Donna missed many appointments for drug testing and on two occasions test results confirmed drug usage. The probation officer wrote Donna three letters warning her that she was not complying with the special condition of parole for drug aftercare. On July 23, 1980, the probation officer forwarded an annual supervision report which failed to acknowledge any problems with Donna's aftercare program. The case file showed that Donna continued to miss appointments for drug testing and counseling after the annual supervision report, but these still were not reported to the Commission.

--Linda was sentenced on August 5, 1977, in the Northern district of Texas to 5-years' probation for forgery. On March 2, 1978, Linda's probation was revoked and she was given a 3-year sentence. One reason cited for revocation of Linda's probation was failure to participate in a drug aftercare program. She was paroled on October 9, 1979, to the Northern district of Texas and the Commission imposed a special condition of parole for drug aftercare. During the initial 10 months in the drug aftercare program, Linda failed to show up for testing on at least nine occasions. This information was not reported by the probation officer to the Commission. In fact, Linda's probation officer asked the Commission to terminate the drug aftercare condition which was accomplished on October 29, 1980. We brought this case to the attention of the post-release analyst in the Commission's South-Central Region. He told us that he would not have recommended termination of the drug aftercare condition to the Regional Commissioner if he had known about the missed appointments for drug testing.

but failed to report it to the Commission until July 27, 1978.

--Patty was sentenced on August 13, 1971, in the Northern district of California to 18 years for armed bank robbery. She also received another 18-year concurrent sentence on September 27, 1971, for armed bank robbery in the Northern district of California. In December 1975, these sentences were reduced to two 12-year concurrent sentences. Patty was paroled on December 6, 1977, to the Northern district of California. During the initial 9 months under parole supervision, Patty was arrested twice for possession of marijuana, once for use of a firearm, and once for possession of a firearm. Three charges ultimately were dismissed and Patty was found guilty on a fourth and received a fine. The probation officer never reported these incidents to the Commission.

--Norb was sentenced on January 5, 1976, in the Eastern district of Kentucky to 5 years for aiding and assisting the escape of a Federal prisoner. He was released to parole supervision on January 11, 1978. Norb was arrested on May 26, 1980, for possession of a forged instrument. The probation officer found out about the arrest on May 28, 1980, but failed to send the Commission any notice of this arrest until June 16, 1980. Subsequently, Norb plead guilty to two counts of possession of a forged instrument and the probation officer asked the Commission for a parole violator warrant on August 28, 1980. The Commission issued a warrant on September 15, 1980, and Norb was returned to prison as a parole violator on October 31, 1980.

--Barbara was sentenced on March 6, 1972, in Western district of Kentucky to 10 years for bank robbery. She was mandatorily released on May 26, 1978, to the Western district of Kentucky. While under parole supervision, Barbara was arrested on two occasions for burglary and assault. The probation officer found out about these arrests on May 28, 1979, and May 14, 1980, respectively. These two arrests were reported to the Commission by the probation officer on June 1, 1979, and May 20, 1980, respectively.

--Clark was sentenced on February 18, 1975, in the Middle district of Florida to 15 years for interfering with commerce by threats of violence. Clark was paroled to the Northern district of Georgia on March 15, 1978. On January 9, 1980, Clark was arrested by local authorities and charged with forgery and theft. The local authorities also found a weapon in Clark's vehicle. The probation officer found out about these circumstances the same day

example, all the offices considered new felony convictions as major criminal offenses and used them as a basis for requesting a warrant. However, the definition of a felony differed by State. Minor offenses did not necessarily result in warrant requests, but probation officers were authorized to request them for such offenses if the offenses resulted in a pattern of criminal activity.

The Commission's procedures manual states that if a parolee's whereabouts is unknown for more than 30 days, the probation officer should immediately report this to the Commission. However, the manual does not differentiate a time frame within which the probation officer should submit a violation report as opposed to a warrant request. Five of the 10 offices had not established criteria for requesting a warrant when a parolee's whereabouts was unknown. The other five offices had established criteria which called for requesting a warrant if whereabouts were unknown for from 1 to 3 months.

A December 1975 study of the Commission's activities by the Department of Justice noted that probation officers perceived that the Commission was reluctant to issue warrants for technical violations. 1/ Probation officers believed that a series of technical violations could predict future criminal activity and should be the basis for revoking parole. They expressed the view that the Commission did not consider violator warrants which dealt with technical violations seriously and suggested improvements in this regard. In our view, the major issue addressed by probation officers was the need for a specific definition of when technical violations constitute sufficient infractions of the conditions of release to justify a warrant request. None of the 10 offices we visited in 1980 had established such criteria.

Inconsistencies in requesting warrants when parolee's whereabouts were unknown

We examined 187 warrant requests in the Commission's five regional offices. In 62, warrants were issued after probation officers reported parolees' whereabouts as unknown. The actual time that elapsed before the probation officers reported the information to the Commission and requested a warrant ranged from 2 to 257 days.

1/"An Evaluation of the U.S. Board of Parole Reorganization", prepared by the Department of Justice, Office of Management and Finance, December 1975.

--Rich was paroled on February 15, 1979, by the Commission's Western Region to the district of New Mexico. Rich failed to report for supervision and on July 12, 1979, the probation officer requested a warrant. The Commission's South-Central Region issued a warrant for Rich on August 3, 1979. Rich was later arrested and convicted on September 25, 1980, of aggravated robbery. The Commission's South-Central Region revoked Rich's parole on December 22, 1980.

In contrast to the aforementioned examples, the following case illustrates a quick response by a probation officer in requesting a warrant when a parolee could not be found.

--Karen was paroled on June 9, 1980, by the Commission's Western Region to the Northern district of California. Karen had a special condition of parole which called for up to 120 days of residence in a Federal Community Treatment Center. Karen failed to report to the Community Treatment Center and the probation officer requested a warrant on June 12, 1980. The Commission's Western Region issued a warrant on June 24, 1980. Karen was later apprehended on July 9, 1980, in Colorado and her parole was revoked on October 22, 1980.

Inconsistencies in requesting warrants for technical violations

Of the 187 cases we examined, 54 involved warrants being issued after probation officers reported technical violations. Our review of these 54 cases showed that probation officers exercised wide discretion in requesting such warrants, especially for offenders with special conditions of parole. Some probation officers requested warrants after parolees incurred a few infractions, while others requested warrants only after numerous infractions over a period of several months. These inconsistencies create disparities in the application of a national parole policy because the Commission is not in a position to consistently sanction parolees who incur technical violations. Further details on the inconsistencies in requesting warrants for technical violations are presented in the following table.

Between August 28, 1978, and April 2, 1979, Larry failed to report for drug testing on 9 occasions and tested positive 18 times for drug usage. The probation officer requested a warrant on April 12, 1979, because Larry (1) failed to work, (2) violated the special condition of parole concerning participation in drug aftercare, (3) used drugs, (4) consumed alcoholic beverages excessively, (5) was charged with larceny, and (6) left the scene of an accident involving injuries. The Commission's South-Central Region issued a warrant on April 19, 1979, and Larry's parole was revoked on December 19, 1979. Larry was again paroled on September 17, 1980, by the Commission's South-Central Region to the district of New Mexico.

--Maryann was paroled on November 28, 1979, by the Commission's Southeastern Region to the Northern district of Ohio. Between December 11, 1979, and August 25, 1980, Maryann had 26 positive tests for drug usage. The probation officer requested a warrant on September 10, 1980, because Maryann (1) used dangerous drugs, (2) failed to report a change in residence, and (3) did not maintain regular employment. The Commission's North-Central Region issued a warrant on September 29, 1980, and Maryann's parole was revoked on December 9, 1980.

--Ken was released on September 22, 1978, to a special parole term in the Northern district of Illinois. Between April 1979 and July 1979, Ken had 8 positive tests for drug usage and failed to appear for testing on 13 other occasions. Ken also withdrew from a drug aftercare program and did not file his supervision report for July 1979. On August 22, 1979, the probation officer requested a warrant. Subsequently, on September 11, 1979, the probation officer requested the Commission to issue a summons for Ken. A local hearing was held on January 11, 1980, to determine whether Ken had violated his conditions of parole. The Commission scheduled a local hearing on February 22, 1980, but Ken failed to appear. The Commission then issued a warrant on March 12, 1980. Ken was eventually taken into custody, and the Commission revoked Ken's parole on September 16, 1980.

In contrast to the aforementioned examples, the following cases illustrate a quick response by a probation officer in requesting warrants for technical violations of parole.

--Margie was reparoled to a special parole term in the district of Colorado on September 18, 1979, by the Commission's Western Region. During November 1979, Margie failed to report for drug testing on six occasions. The

criminal charges and parolees committed additional crimes or absconded before the charges were resolved. The following cases illustrate circumstances where warrants were not issued even though the parolee had been charged with a violent crime or the parolee's record indicated he was a particularly poor parole risk.

--Anthony was released on parole to the Eastern district of New York after serving part of a Federal sentence for armed bank robbery and a State sentence for robbery. Anthony had a long history of drug addiction and a lengthy criminal record including several crimes of violence. In July 1978, he was charged with possession of stolen property and later pleaded guilty to a lesser charge. Subsequently, he robbed a man at gunpoint in a bar. While fleeing the scene, he became involved in a struggle with a bartender and attempted to shoot him. Anthony shot only himself and was taken to the hospital by the police. The probation officer reported the arrest to the Commission on February 26, 1980, and requested that a warrant be issued due to the gravity of the offense and the fact that Anthony had a loaded firearm. The Commission had not complied with the request. However, in April 1980, Anthony was again arrested and charged with the murder of a police officer. The probation officer again requested a warrant which was promptly issued on April 16, 1980.

--Alfredo was paroled in the district of Puerto Rico on July 18, 1978, after serving 37 months of a 5-year sentence for distribution of narcotics. In December 1978, Alfredo's parole supervision was transferred to the Southern district of Florida. Alfredo was arrested and charged with trafficking in marijuana on October 24, 1979, but was released on bond. The probation officer failed to report this arrest to the Commission until December 12, 1979. Then the officer lost contact with Alfredo on March 28, 1980, but waited until May 8, 1980, to request a warrant. The Commission's Southeastern Region issued a warrant on June 4, 1980.

Our review showed that the Commission's regional offices prefer to defer issuing warrants until convictions have been obtained on new criminal charges for several reasons. First, local authorities frequently dismiss charges if the Commission revokes parole and thereby removes the offender from the community. Thus, the parolee benefits from not being incarcerated by local authorities for the new charges. Second, the Commission can make the parolee serve that portion of the sentence for which he or she had been on parole, but only if a criminal conviction is obtained. In this case, the parolee would receive no credit for the time spent under parole against the remaining part of his or her sentence. Third, the Commission believes that a parolee should

CRITERIA FOR EARLY TERMINATION

Less Than 5 Years of Supervision

Conditions	Recommendation
a. Cases with a salient factor score of 9-11: Completion of 2 continuous years of 'clean' supervision. 1/	Terminate jurisdiction, unless specific reasons for continued supervision are present and documented.
b. Cases with a salient factor score of 8 or less: Completion of 3 continuous years of 'clean' supervision.	Terminate jurisdiction, unless specific reasons for continued supervision are present and documented.
c. Cases having completed less than the above applicable period of 'clean' supervision.	Continue jurisdiction, unless specific reasons for termination of supervision are present and documented.

The Commission published in the September 12, 1980 Federal Register the criteria for early termination of parole supervision. The criteria, published as an interim rule, were based on Commission research so that termination decisions required by statute could be based upon an equitable and empirically justified basis. The rule allows (1) earlier termination than indicated by the criteria if continued supervision is considered counterproductive, and (2) continuation of parole supervision beyond indicated termination if specific factors justify it to protect the public welfare. The rule does not provide guidance for evaluating such factors, nor does it state what these factors are.

The probation manual advises probation officers that they should be aware of these criteria but should make their recommendations on the basis of the merits of the case and their best judgment. It also requires them to clearly define the reasons in support of their recommendations when a deviation from the criteria is in order. The manual does not provide any additional direction to guide the probation officers' best judgment of the merits of the case.

Probation officers must make decisions concerning whether to recommend early termination of supervision in all cases where supervision exceeds 2 years. Some of the factors that probation

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1/'Clean' supervision is defined as supervision free of any indication of new criminal behavior or serious parole violations.

decided to continue supervision because of John's employment instability in a bad economy and because John was a bank robber.

--Tom was released to parole supervision after serving about 7 years of a 20-year sentence for marijuana and heroin transactions. His salient factor score was 7 which placed him in the 36-month category for parole supervision. In February 1980, at the end of 37 months of incident free and stable supervision, the probation officer recommended early termination of parole. The Regional Commissioner decided to continue supervision of Tom because of the aggravated nature of the offense.

--Larry was released to parole supervision after serving about 3 years of a 10-year sentence for bank robbery. He had a salient factor score of 8 which placed him in the 36-month category for supervision. In May 1980, the probation officer recommended to the Regional Commissioner that Larry's supervision be continued even though he had been under supervision over 36 months without incident. The Regional Commissioner concurred with the recommendation. The probation officer told us that he did not request termination of supervision for Larry because he knew the Regional Commissioner would not terminate a bank robber after only 3 years of parole supervision.

--Jim was released on parole supervision after serving 17 months of an indeterminate sentence under the Federal Youth Corrections Act for armed bank robbery. His salient factor score was 9 which placed him in the 24-month category for parole supervision. After 26 months under supervision with no encounters with law enforcement officials, the probation officer recommended in October 1978, that supervision be continued because Jim needed to learn a viable trade. The Regional Commissioner, however, saw no need to continue supervision and terminated Jim's supervision on November 1, 1978.

--Dave was released to parole supervision in the district of Kansas after serving about 20 months of a 5-year sentence for interstate transportation of forged securities. He had a salient factor score of 5 which placed him in the 36-month category for parole supervision. Dave's supervision was transferred to the Northern district of California on October 15, 1979, and to the Western district of Missouri on March 13, 1980. The annual supervision report prepared after Dave was under supervision for about 3 years stated that the probation officer did not know him well because supervision had been recently transferred a few months earlier. Therefore, continued supervision was recommended. During his 3 years under

to death of Rich's 4-1/2-month-old son. The probation officer and the Regional Commissioner, however, did not agree on the extent to which this offense should require continued supervision.

The concept of more definitive criteria to be used as a basis for decisions outside of the general guidelines is not foreign to the Commmission. For example, parole decisions outside the Commission's guidelines must be justified. Similarly, we believe this type of guidance could improve the consistency of decisions to continue or terminate supervision.

System needed to ensure that annual supervision reports are completed

The Commission does not have internal control procedures to ensure that the annual supervision reviews required under 18 U.S.C. §4211 are completed. The Commission relies on probation officers to submit annual supervision progress reports and when these reports are received, the Commission's staff reviews the cases to decide whether early termination of supervision is appropriate. In the event an annual supervision report is not received, there is no system to initiate an annual review. Often, it is not made.

The Parole Commission and Reorganization Act requires under 18 U.S.C. §4211 that 2 years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. To comply with this provision, the Commission requires probation offices supervising parolees to submit an annual supervision report for each parolee.

We examined 399 cases which were either under active parole supervision as of June 30, 1980, or had been terminated during 1979 in 10 judicial districts. 1/ We found that annual supervision reports were not always prepared as required. There should have been 1,102 annual supervision reports on these 399 cases. We found 120 were missing and that an additional 184 were submitted more than 30 days late. Further details are shown in the following table.

1/These 399 cases do not include 210 cases under active supervision with special conditions of parole.

Witness Security Program, the Commission generally loses all contact with him or her and has no way of locating the individual.

In addition, the Commission releases aliens on parole to the custody of INS. Some offenders are deported very shortly after release to INS while others, because the parolees contest deportation, can take several months. In the interim, those contesting deportation may request bail at any time and when released are not supervised by INS or probation officers. Finally, the Commission does not routinely receive notification of the final disposition in alien cases so that these cases can be closed or the offenders placed under active supervision if deportation proceedings are cancelled.

Procedures need to be developed to supervise parolees in the Witness Security Program

The Commission and the Probation Division have not developed procedures requiring parole supervision of offenders released to the Witness Security Program. Rather, the Commission releases these individuals to the United States Marshals Service, generally has no further contact with them, and is in no position to assure that they have complied with their parole conditions.

The Witness Security Program was created by the Organized Crime Control Act of 1970. It provides certain services, including new identities and relocation when required, to individuals who are witnesses for the Government. Depending on the circumstances of the individual case, a number of Federal agencies, including the U.S. Attorney's office, Office of Enforcement Operations within the Department of Justice's Criminal Division, Bureau of Prisons, Marshals Service, and the Parole Commission, may be involved. Coordination among all these agencies is essential to effectively monitor parolees and to maintain the program's sensitive security requirements.

The role of the Commission in the Witness Security Program is quite limited. The Commission's procedures manual stipulates that parolees in the program will not be actively supervised by probation officers. After parole, the Commission generally has no further knowledge about the case and no systematic means for learning whether individuals in the program have violated their conditions of parole or voluntarily terminated from the Witness Security Program.

The only contact the Government generally has with the witness is through the Marshals Service; however, even during periods of frequent contact, the Marshals Service takes no responsibility for the parole supervision of individuals released to the Witness Security Program. The Marshals Service contends that it does not have the personnel to maintain contact beyond

released, or over 3,000, were released to detainers lodged by INS. Current procedures for processing these cases require the Bureau of Prisons to identify potential aliens for INS so that a determination can be made as to whether a detainer should be lodged and the offender scheduled for a deportation hearing in the future. Also, the Bureau of Prisons is responsible for notifying INS 30 days in advance of the projected release date for any alien with an INS detainer.

INS generally places the offender in an INS detention center and tries to schedule an immigration hearing as soon as possible. If the parolee does not contest deportation, the hearing is held and the alien is deported within a few days. If the alien contests the deportation process and exhausts all appeal rights, he or she may remain in the United States for some time. Additional delays can result when a country will not issue a passport to accept the alien's deportation, or when the alien has become a permanent resident of the United States and has established family or business ties. Deportation is further delayed by the 6-month period that the alien has before he/she must actually leave. During any point in the process, the alien may apply for bail. Alien parolees released on bail during this process generally are not supervised by INS or probation officers while they reside in the community.

The probation manual provides that probation officers are responsible for verifying the actual deportation of offenders released to INS detainers. If deportation is not effected, or the alien is released to the community, the probation officer should assume supervision and notify the appropriate Parole Commission Region that the case has been placed under supervision. None of the Commission's five offices, however, has any system to determine whether probation officers determine INS case dispositions and report the results to the Commission. We found indications that officials in the criminal justice system have been aware of this problem for over 20 years.

Representatives from the INS, the Commission, the Probation Division, and the Bureau of Prisons all agree that better coordination among these agencies could improve accountability over alien parolees and two efforts to improve accountability over alien parolees by reducing the time required to complete the deportation process have been used on a limited basis. These are:

--Immigration hearings held by judges over the telephone prior to the individual's release from custody.

--Immigration hearings held by judges in the institutions prior to the individual's release.

warrantless search and seizure authority. 1/ The problems cited in our prior report occur when probation officers encounter parolees who are violating conditions of parole by committing new crimes. In these situations, there may not be sufficient time to request a warrant or call local law enforcement authorities for assistance. We recommended that the Commission review its policy on the search and seizure issue.

On March 1, 1978, the Chairman of the Commission assigned three members of the Commission's staff to examine this issue and emphasized that close coordination with the Probation Division was necessary to arrive at a solution to the search and seizure problem. Little progress was made and in a letter dated June 9, 1978, to Commissioners, the Chairman stated:

> "* * * I am very concerned that there appears to have been no initiative to the promise to follow-up of the GAO report. You will recall that I verbally mentioned to you that I was asked what our efforts were in this area during the Senate Appropriations Hearings for the Commission * * *."

By January 1979, a preliminary report had been prepared for the Commission. This report concluded that warrantless search and seizure authority could be legally justified on an individualized case basis under existing statutes. However, the Commission's General Counsel recommended that further study be undertaken by the Commission before any changes were made in its long standing policy of barring the use of warrantless search and seizure authority in the supervision of parolees. The Commission considered the search and seizure issue at its April 1979 meeting and decided to defer action pending the development of a questionnaire which would be sent to all probation offices.

In October 1979, the Chairman sent a letter to each probation office and requested comments on three subjects, one of which was the issue of search and seizure. The Chairman asked for views and comments on five suggested alternatives to the existing policy. These alternatives were:

1. Placing a special condition on release certificates, on a selective basis, providing that a releasee must, on request, permit searches and seizures with respect to his person, premises, and vehicles at reasonable times and places for evidence of parole violations relating to any type of possible criminal activity.

1/"Probation and Parole Activities Need To Be Better Managed" (GGD-77-55, October 21, 1977).

or mandatory releasee. If the probation officer determines there is a valid need for a search of the releasee, his premises, or the vehicle, he should contact the appropriate investigative authority and ask their assistance."

--"The only one of the five possible alternatives endorsed by my staff would be number 1, and this provided that on a selected basis is omitted. In short, we feel that each parolee should have something like this added as one of the conditions of his parole."

--"There is no ground swell here for increased authority for search and seizure by probation officers. This is not to say that the opinion is totally unified in this district, but generally we do not see ourselves as performing the kind of law enforcement function that we expect of the FBI, DEA, etc."

--"With respect to searches and seizures, after a review of the alternatives offered, we feel that the first option is the most appropriate. I am certain the Commission is aware of numerous instances where such a provision would have been a tremendous advantage in our work."

--"It seems somewhat incongruous that the Federal Probation Officer has the authority to seize evidence of a probation violation, but does not have the authority to seize evidence of a parole violation when parolees, generally speaking, are more sophisticated criminals and more likely to commit violations of the conditions of supervision and new criminal violations."

The Commission's General Counsel analyzed the responses and concluded that no convincing arguments were presented for the abandonment of the Commission's traditional stance against probation officers exercising search and seizure authority over parolees. Also, he concluded that there was a real need to better communicate the Commission's existing position in the issues of search and seizure to probation officers. As a part of this improved communication, the Commission could stress the type and quality of evidence necessary to obtain a warrant for a parole violation. The Commission's General Counsel recommended that the Commission allow probation officers to confiscate narcotics or controlled substances when found in plain view on routine contacts with parolees. He concluded that this position would facilitate establishment of drug abuse charges, while not violating the Commission's position against searches and not requiring the use of law enforcement techniques.

The Commission again considered the issue of search and seizure at the April 1980 meeting. At this meeting, the recommendation to allow seizure of suspected narcotics and controlled

The Commission again considered the search and seizure issue at its November 1980 meeting. At this meeting, the Commission voted to defer a decision on this issue for another year. No further action had been taken on this matter as of March 1982.

We believe that the Commission should resolve the controversy over whether search and seizure authority should be granted to probation officers in supervising parolees. This is essentially what the Commission agreed to do over 3 years ago.

BETTER STANDARDS NEEDED FOR DETERMINING THE LEVEL OF PAROLE SUPERVISION REQUIRED

The classification of parolee supervision levels has not been done uniformly throughout the Federal Probation System. In March 1981, the Probation Division issued new guidance to the probation offices which should better define the levels of supervision required for parolees; however, additional steps need to be taken to ensure that the probation officers have all the information necessary to determine the appropriate supervision level.

In 1971, the United States Board of Parole, working in conjunction with probation officers and staff of the Administrative Office of the United States Courts, established standards for caseload classification and supervision contacts with parolees. These standards established a three-tiered system of supervision in which the frequency of contact between the parolee and the probation officer was determined on the basis of the seriousness of the offense, extent of prior record, and stability and personal circumstances.

In a previous report, we pointed out that because of an absence of a system that would provide for uniformly classifying cases, there had been a great diversity among probation officers in determining the level of parole supervision required. 1/ Also, this problem has been addressed by the Probation Division, the Federal Judicial Center, and the Division of Management Review within the Administrative Office of the United States Courts. The consensus was that wide disparity existed in the classification of the levels of supervision required by parolees. Our review of 358 cases under parole supervision in 10 judicial districts indicated that there were inconsistencies in determining the proper level of supervision for parolees. For example, similar cases with special conditions of parole for drug aftercare in some districts were under heavy supervision, while in other districts there appeared to be little supervision.

1/"Probation and Parole Activities Need To Be Better Managed" (GGD-77-55, October 21, 1977).

available to probation officers so appropriate supervision levels could be established.

CONCLUSIONS

Parole supervision is most effective when probation officers and parolees have a clear understanding of what is required of them and violators are dealt with in a consistent manner. Improvement is needed in this area. Existing procedures do not (1) define program requirements for special conditions of parole or what constitutes violations of these conditions, (2) establish specific time frames for reporting parole violations or clearly define circumstances which should lead probation officers to request warrants for the arrest of parole violators, and (3) clearly delineate criteria to be followed in terminating supervision of parolees or assure that annual supervision reports are prepared. Also, the Commission cannot make well-informed decisions concerning parolees in the Witness Security Program and alien parolees released to the community pending deportation hearings because procedures have not been instituted to routinely identify and supervise these individuals.

There has been wide disparity in the levels of supervision provided to parolees because of the absence of uniform criteria for determining the level of supervision required. In March 1981, new guidance was issued to all probation offices which bases this decision on the parolees' salient factor scores. The Probation Division believes this change will encourage more uniform decisions on the supervision of parolees; however, the Parole Commission has not yet taken action to ensure that salient factor scores were regularly made available to probation officers.

Also, the Commission had not adequately addressed the issue of search and seizure authority of probation officers in supervising parolees in the community. This longstanding controversy needs to be resolved.

RECOMMENDATIONS

We recommend that the Director, Administrative Office of the United States Courts, require the Chief of the Probation Division to work with the Chairman of the Parole Commission to:

--Develop clear definitions of requirements for special conditions of parole and specific criteria for determining what constitutes a violation of a special condition.

--Establish specific time frames for reporting parole violations and develop specific guidelines for probation

AGENCY COMMENTS AND OUR EVALUATION

We received comments on this chapter from the Parole Commission, the Department of Justice, the Administrative Office of the United States Courts, and the chief judges in 3 of the 10 districts. The Parole Commission, the Department of Justice, and the Administrative Office agreed with most of the recommendations. Overall, the comments of the chief judges were supportive of the matters we discussed.

Parole Commission

The Parole Commission identified several areas where it has worked in conjunction with the Administrative Office of the United States Courts and the Department of Justice to address several recommendations contained in this chapter. Actions either taken or to be taken include:

--Developing procedures for parole supervision of offenders released to the Witness Security Program.

--Establishing a system for reporting the status of alien parolees released to the community pending deportation proceedings so that these individuals can be supervised.

--Finalizing a procedure for furnishing salient factor scores to the probation officers so that appropriate supervision levels can be established.

The Chairman stated that the Commission might usefully examine the issues underlying the recommendations pertaining to developing definitions of requirements for special conditions of parole, establishing timeframes for reporting parole violations, and clarifying procedures for terminating parole supervision, but he did not believe that, in general, the present practice was inappropriate. With regard to our recommendation regarding termination of parole, comments elsewhere in the Chairman's letter and from the Administrative Office of the United States Courts state that our recommendation was implemented on March 1, 1982.

Department of Justice

The Department of Justice concurred with all the recommendations directed to it in this chapter. The Department stated that the United States Marshals Service and the Parole Commission have been actively pursuing the supervision of parolees that are in the Witness Security Program. The Department stated that this cooperative effort began during October 1981 and since that time, approximately 80 percent of the parole cases in the program have been identified. Regarding the supervision of alien parolees, the Department stated that the Immigration and Naturalization Service was now working with the Probation Division and the Parole

In commenting on the need to resolve the controversy over whether probation officers need search and seizure authority, the Administrative Office stated that the matter should be considered by the Commission and expressed a willingness to assist the Commission in making a decision.

Chief judges

Three chief judges commented on recommendations contained in this chapter. The chief judge for the Southern district of Texas told us that he concurred with our recommendations. The chief judge for the Western district of Kentucky expressed particular concern over the lack of procedures for supervision of parolees released to the Witness Security Program and stressed the need for the development for such procedures. The chief judge from the Northern district of Texas disagreed with our recommendations that procedures be established for requesting warrants and that criteria be developed for determining what constitutes a violation of a special condition of parole. He agreed that timeframes for reporting arrests of parole violators should be established, that parolees in the Witness Security Program should be supervised, and that the Commission's policy on search and seizure needs to be clarified.

--Analyzing the quality of information obtained by the Commission from others when making parole decisions.

--Assessing the procedures followed in making parole decisions for co-defendants.

--Determining the extent of coordination between the Parole Commission and the Federal Probation System for the supervision of parolees.

This review was performed in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

To determine the consistency of parole decisions within and among the Commission's regions, we examined policies and procedures, interviewed Commissioners and hearing examiners, reviewed records, and analyzed cases where parole decisions were made. We used 30 cases in which parole decisions had previously been made. These cases represent a judgmental sample which did not include prior knowledge of the adequacy of the information available in the case files from the Commission's five regions. We reproduced the information which was available when the initial decisions were made on these cases, deleted all references to case names, and eliminated all material pertaining to the actual parole decisions. In the Commission's five regional offices, we asked the 35 hearing examiners to review all 30 cases and prepare an assessment of the appropriate offense severity level and salient factor score without the knowledge of how other hearing examiners assessed the same case.

To determine the adequacy of hearing examiners' case analyses, quality control practices, and information obtained from others which was used to make parole decisions, we selected a stratified random sample of 342 cases from a universe of 1,069 where offenders were sentenced in 1979 to a term of imprisonment in excess of 1 year in 10 judicial districts. For the 342 cases, we reviewed files at the probation offices, U.S. Attorney's offices, Organized Crime Strike Force offices, and the Parole Commission's offices. Using information in the Commission's files and its procedures manual, we recomputed the parole guideline ranges for the 342 cases. We observed 290 initial parole hearings at 14 correctional institutions to identify the extent of analysis performed by the Commission's hearing examiners when formulating parole recommendations to Regional Commissioners. Also, we reviewed applicable policies and procedures and interviewed agency personnel.

To determine the extent that the Commission made parole decisions within the time frames specified in 18 U.S.C §4201 et seq, we computed the actual time it took to make initial, regional appeal, and national appeal decisions. For initial

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U.S. Department of Justice
United States Parole Commission

Office of the Chairman

Park Place, One North Park Building
5550 Friendship Blvd.
Bethesda, Maryland 20015

March 19, 1982

Mr. William J. Anderson, Director
General Government Division
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Anderson:

I am pleased to have the opportunity, on behalf of the United States Parole Commission, to comment on the Draft of a Proposed Report, "Better Management and Legislative Changes are Needed to Improve Federal Parole Practices".

The Report makes a number of recommendations, and I concur with the substantial majority of these. I do, however, have serious reservations about the analyses in certain sections of the Report, particularly Chapter Two, which I believe to be gravely inadequate methodologically, and extremely misleading as presently written.

I was sorry to see that the Report makes little mention of budgetary constraints on the Commission when discussing specific areas for improvement, particularly areas that require allocation of additional manpower. Given the length of time and considerable resources that the GAO invested in this Report (the GAO audit team was active for two and one-half years), we had expected some commentary on whether the resources of the Commission were considered adequate to meet its statutorily mandated tasks.

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CHAPTER TWO

(2) Our most serious criticism of the Report concerns the analysis in Chapter II (pages 15-23) relating to reliability in the application of the Commission's decision guidelines.

First, the 30 cases chosen for the GAO study were clearly not a random, representative sample of the cases seen by the Commission. The Report (page 15) states "we selected the cases without using any prescribed method and without any prior knowledge of the adequacy of the information available in the case files". What "without using any prescribed method" means is unclear. Former Commissioner Mulcrone (North Central Region) reports specifically being told by GAO staff that the cases were not intended as representative, but were chosen to highlight complex problem areas.

> "While not specifically stated, GAO leaves the impression that the cases were randomly selected. However, GAO staff, in conversation with me, indicated that the cases were selected from a core group of special cases which had been selected because of their uniqueness and the degree of difficulty they represented in applying our guidelines. I think that it is imperative that GAO make known to those who read this report that the cases that were selected were not random and were not 'routine'."

Similarly, a GAO staff person assigned to another region (Northeast) explained to Commission staff that he had selected a set of complex, problem cases as candidates for inclusion in the study sample, and that each of the cases he selected did, in fact, appear in the thirty case sample. 1/

It was readily apparent to the hearing examiners participating in the study that the 30 cases were, in fact, not a random, representative sample, but rather were unusually complicated and/or were missing critical information.

1/The characterization in the Parole Commission's comments that GAO selected unusually complicated cases represents a misunderstanding of the circumstances. GAO selected the cases without any prior knowledge of their relative degree of difficulty or the adequacy of the information contained in the files.

Commission for the years covered by the study. A standard statistical test for the equivalence of the distributions shows rejection of the null hypothesis at the 0.001 level (meaning that there is less than one chance in ten thousand that the distributions are equivalent). Since the sample cases were not provided to the Commission's research unit, further examination was not possible.

Third, an additional serious problem with the methodology of this study is that it does not closely replicate actual Commission practice. One, it did not provide the opportunity to obtain and/or clarify information through actually interviewing the prisoner. Not only does this interview provide an important source of information, but the interview process itself provides a source of corrective feedback. Two, in actual practice, recommendations are made by panels of two hearing examiners, providing the opportunity for consensus decision-making. Such consensus decision-making is particularly important in the more unusual and complex cases, such as those in this 30 case sample. However, the GAO study procedure precluded consensus decision-making; cases were to be reviewed individually on the basis of the dummy file material only and without discussion.

Fourth, the Report fails to note that the Commission's Research Unit conducted two studies (USPC Research Unit Reports 25 and 27) on this same issue which found much greater consistency; the GAO was aware of at least one of these studies; it is favorably cited in the Report (page 83) in another context. In contrast to the GAO Report, the Commission studies used larger samples (100 cases each), randomly selected by computer; and compared actual two-person hearing panel guideline ratings with ratings by two-person researcher panels familiar with Commission rules and procedures.

Obviously, the Commission agrees that every effort should be made to improve the guidelines and the quality of information available. However, as presently written, this chapter of the Report, due to its faulty methodology, is grossly misleading in its assessment of guideline reliability. At the very minimum, the above noted limitations need to be clearly stated in the Report, although it is doubtful that the misleading impressions created by this section of the Report can be removed short of drastic revision. Similar comments apply to Appendix 2 of the Report which is derived from this analysis.

(3) The Report (page 23) discusses the issue of superior program achievement. From this discussion, it appears that the GAO misunderstands several issues. "Superior Program Achievement" was not a new concept; the Commission had acknowledged superior program achievement as a reason to go below its guidelines since the guidelines were established in 1972. The superior program achievement rule (1979) provided a standard to produce greater consistency in the weight given to program achievement identified as clearly superior. To avoid unnecessary uncertainty, indeterminacy, and gameplaying on the part of the prisoners, the superior program achievement rule provided that this reward be a limited one (i.e., generally 10%-15% of the original presumptive date). Given the wide variety of programs available in different institutions, plus the wide variety of needs and varying levels of skills and capabilities of different prisoners, attention was focused on providing rationality in the scope of the reward structure. Part of the implementation process was to have the Commission's Research Unit monitor implementation of the new rule to attempt, if feasible, to further define or provide examples of superior program achievement.

GAO, has effectively allowed. Moreover the Report is curiously silent on the severe budgetary constraints facing the Commission. For example, the trend to a larger number of smaller institutions has meant considerably increased travel for hearing examiners; yet the budget and staff for the Commission has been reduced.

(6) The Report (page 34) compares split decisions between examiners (after a hearing with the prisoner and an opportunity for discussion) with disagreements between examiners (scoring only the case record). This is not a fair comparison.

(7) The Report (pages 36-37) discusses regional 'quality control'. While the Report cites the Commission test and subsequent adoption of a prehearing review procedure, it fails to note that the Commission adopted, in early 1981, a revised hearing summary format to substantially improve the presentation of information to the Commission.

(8) The Report (pages 37-38) provides statistics purporting to show recommendations "in error". I seriously question these statistics. The Commission has conducted two analyses of this issue [Research Reports 25 and 27], using random (representative) samples of cases with indepth analysis by a panel of reviewers familiar with Commission regulations. Neither study found any comparable error rate. Nor does experience with various phases of the review process indicate this rate of "error." Furthermore, the Report apparently does not contemplate that one of the functions of the interview with the prisoner is to clarify information; or that, given the constraints of sentencing structure in certain cases, and overwhelming aggravating or mitigating factors in others, certain information may simply not be necessary for

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of Parole) pre-1976 pilot project. Under that project, the Commissioner was required to personally review only certain initial decisions (much as the Report recommends be done in Chapter Three). However, the Congress did not accept this proposal, but rather required personal review by a Commissioner while keeping the 21 day time limit. It is this additional Congressionallly mandated step, plus the ripples in staff backlog created by this process when a Regional Commissioner is out of the office, that is to a considerable extent responsible for the delays noted. Furthermore, the requirment for better, more detailed hearing summaries (which increases the time required to have hearing summaries typed), and to some extent the slowness of the mails (time for the case file and hearing summaries to be shipped from the institution to the Parole Commission office count towards the 21 day limit) adversely affect the Commission's ability to meet these deadlines. When a Commission position has been vacant or a Commissioner has been ill this problem is exacerbated, particularly at the Regional level. As to failure to meet the required time limits on national appeals, this problem appears more susceptible to resolution through refinement of internal procedures such as the summary docket.

(11) In addition, I believe the Report should note that by adopting the prompt hearing/presumptive date procedures (1977), the entire hearing process has been moved forward. While the Commission may be exceeding the time deadlines in 18 U.S.C. 4206, most prisoners are notified of the Parole Commission action months before the date required by statute (when 18 U.S.C. 4205 and 4206 are read together).

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All these proposals were accepted by the House Subcommittee and subsequently the House Committee considering the revision of the criminal code. Taken together, these proposals would have permitted reduction in the number of regions (and consolidation of Regional Offices) and expansion of the National Appeals Board (e.g., to four members). Such action would not only have eliminated unnecessary appeals but would also have made feasible the requirement of a larger NAB quorum for decisions (e.g., the concurrence of three votes for all modifications). This, in itself, would have been a practical vehicle for addressing the NAB role, as well as promoting more efficient use of resources.

(15) The Report (page 57) states:

> "Our review showed that in at least half of these cases, reversals were made even though there were no findings that the Regional Commissioners had made errors in the application of the guidelines."

This implies that errors in guideline application are the only proper grounds for appeal. This is not correct (see 28 C.F.R. 2.25).

(16) The report (pages 53 and 62) states that the National Appeals Board, in certain instances, attempted to set parole release dates prior to the date of parole eligibility. While the National Appeals Board was in error in these cases, it should be pointed out that these unintentional errors were made in a minute fraction of the cases heard; other checks existed to catch such errors prior to actual release; and internal modifications to National Appeals Board procedures have virtually eliminated this problem.

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were present only 14% of the time. It would be much clearer to simply show how many of the Commissioners attended each meeting. Furthermore, the legislative history (Conference Report) of the Parole Commission Act states that the Commission has authority to provide for original jurisdiction procedures but says nothing about original jurisdiction appeals or what quorum should be required.

(21) Certain examples purporting to show that important policy issues were not resolved in a timely fashion are inappropriate:

(a) Codefendant decision-making (page 65). The Commission's action in this matter is handcuffed not by policy considerations but by finances. An appropriate solution (implementation of the SENTRY information system) is known and has been known for several years. Resources to implement this system have only recently been made available.

(b) Obtaining listings of witness protection cases (page 66). Lack of success in obtaining complete listings by 12/81 is not a policy issue; it is due primarily to financial constraints limiting the staff available to perform this task.

(c) Treatment of parole violators (page 66). Although this policy produced unanticipated consequences and was subsequently modified, it did not "directly conflict with other existing policy".

(d) Superior program achievement (page 66). The Report implies incorrectly that "superior program achievement" was a "new concept". Provisions for decisions below the guidelines had always been permitted for this reason. This rule provided specific time limits for existing policy. Added definitions were regarded as desirable, not as a prerequisite for this policy. Thus, the Report is in error in concluding that added definitions or Bureau

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CHAPTER THREE RECOMMENDATIONS

(24) Chapter Three makes four recommendations to the Chairman of the Parole Commission. I concur with recommendations 1, 3, and 4. I concur with recommendation 2 except as pertains to statutory interim hearings. The Commission (then Board of Parole) during consideration of the PCRA recommended that such hearings be conducted every three years, although the Congress chose to require more frequent hearings. I believe that a three year review would be preferable to total elimination of these hearings.

CHAPTER FOUR

(25) Concerning the reported inadequacies of pre-sentence investigation reports, the conclusion expressed in the GAO Report (page 81) -- that 42% of the 342 reports examined did not include enough information on the offense and offender to compute the guidelines accurately. I seriously question this statistic; we have experienced no problems with inaccuracy of reports on this scale. Since the issuance by the Administrative Office of the United States Courts of a revised Instruction Manual (No. 105) in January 1978, which required estimation of the guideline range, the problems with provision of the required information have been even further reduced.

(26) The Report (page 83) quotes from a Commission study (May 1980) which was titled a "Preliminary Assessment of Reliability in Guideline Application". This quotation, concerning the wide variety in the specificity of information provided in the pre-sentence reports examined at that time, must be read in its context, including its footnote 11, which correctly predicted a marked increase in quality of the pre-sentence reports with use of the new manual of instructions which

APPENDIX I

(29) It is agreed that referrals of disciplinary infractions to IDC's need to be made more uniformly, especially for cases of drug use and assaultive behavior. The Commission has, in the past, brought this concern to the Bureau's attention.

(30) The Report (page 106) suggests that various documents be routinely obtained, e.g., indictments. The indictment is often without relevant details (e.g., exact quantities of drugs need not be alleged to indict), and is written in technical legal language. A well written description of the offense behavior in the pre-sentence report is more useful, and is the appropriate place for such information.

(31) It is agreed that better disclosure of pre-sentence reports at sentencing is essential to promote fairness and efficiency in the post-conviction phases of the criminal justice system.

(32) The Report (page 113) correctly notes that access to codefendant information presents a problem in a regionalized system with severe time constraints on decisions, and that the Parole Commission has been aware of this problem for some time. However, the Report fails to note that the Commission has since 1978 been participating in the development of SENTRY, a joint Bureau of Prisons, Marshals, Parole Commission on line data system. This system when fully operational will have the capacity to provide the data necessary. The Bureau of Prisons component of this system has recently become operational. Commission participation in SENTRY development has been handicapped by a lack of Commission financial resources but is nonetheless progressing (a full time position has recently been assigned to this project), and this system is expected to be operational within one year.

APPENDIX I

alcohol abuse may be so severe that it is necessary to involve him in a residential treatment program, whereas another individual may require only weekly or bi-weekly attendance at Alcoholics Anonymous meetings. Rigid compliance standards would prevent the tailoring of programs to individual needs. In addition, resources available within a community differ widely from district to district. Stringent program and reporting requirements could adversely affect the ability of the responsible probation officer to work individually with each parolee within his or her own community.

(36) Reporting Parole Violations (page 133). Parole Commission procedures, §2.42-01(a)-(f), clearly specify time frames for reporting parole violations and indicate that arrests for a new criminal offense punishable by any term of imprisonment must be reported immediately. The procedures manual further states that a probation officer shall not wait for conviction or final disposition to report the arrest but is to submit dispositional information as soon as it becomes available. The procedures further indicate that the authority is delegated to probation officers to exercise their discretion as to when technical violations or lesser law violations not punishable by imprisonment (e.g., traffic violations) shall be reported. Nine (9) circumstances are specifically described, §2.42-01(d), which must be reported immediately to the Commission.

The Report states that the Commission needs to define "immediately." Difficulty with applying a specific time frame to the term arises from the need to consider all factors affecting various districts of supervision, such as size of caseload, clerical support available, length of time required to obtain information from local law enforcement agencies, etc. The Commission clearly intends that violations subject to the rule be reported as soon as possible.

APPENDIX I

(40) The Report (page 148) indicates that a system is needed to ensure that annual supervision reports are completed. The implementation of the SENTRY information system is expected to resolve this problem.

(41) Witness Security Program Cases (WITSEC) (page 149). In February 1981 the Parole Commission adopted a policy that the Commission would assume supervision for all WITSEC cases released since the inception of the program. That policy included centralizing the responsibility for these cases in the Central Office. Procedures were drafted, adopted, and circulated to all agencies involved (U.S. Marshals Service, Bureau of Prisons, Probation Service, and the Criminal Division of DOJ). All persons released from prison to the WITSEC program have been identified, and coordinated efforts by the Commission, the Marshals Service and the Probation Service are being made to activate supervision of those cases whose terms are unexpired.

Interagency bi-monthly meetings have been held for the past year in an effort to resolve procedural problems as they occur. The joint procedures have undergone a process of refinement as a result of these meetings, in recognition of the operational requirements of each agency. The major difficulty experienced by the Commission in implementing the adopted policy has been financial constraints limiting the staff available to perform the required tasks. The Commission has now made a commitment to provide a full-time staff person in the Case Operations Unit to coordinate all activities related to WITSEC cases, and to be responsible for the files of releasees. Additionally, a regional WITSEC coordinator has been designated in each region to handle all pre-release WITSEC cases.

APPENDIX I

CHAPTER FIVE RECOMMENDATIONS

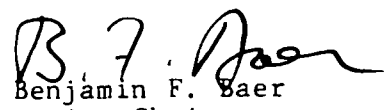
(44) Chapter Five makes seven broad recommendations. I agree with recommendation 4. The Report fails to note that the issues mentioned in recommendations 5 and 6 have been resolved and that draft procedures to resolve the issue raised in recommendation 7 have been developed.. I believe that the Commission might usefully examine the issues underlying recommendations 1, 2, and 3, but I do not believe that, in general, the present practice is inappropriate.

CHAPTER SIX

(45) The statement of methodology in this chapter is not clear in regard to the 30 case sample discussed in Chapter Two of the Report. See our response to Chapter Two of this Report.

I trust that you will find these comments helpful in preparing your final report.

Sincerely,



Benjamin F. Baer
Acting Chairman

provide a transcript of the court statement of reasons for the sentence to the probation system, and, if the sentence included a term of imprisonment, to the Bureau of Prisons. Either the defendant or the Government could appeal the sentence. If the sentence was imposed within the guidelines, the parties could appeal on the grounds that the guidelines had been incorrectly applied. If the sentence was outside the guidelines, the defendant could appeal the sentence if it was above the guidelines range, and the Government could appeal a sentence below the guidelines range, in either case arguing that the sentence outside the guidelines was unreasonable.

We believe that the proposed sentencing revision provisions contain all of the advantages of the existing parole guidelines system while avoiding many of the pitfalls that are pointed out in the draft report prepared by GAO. First, the sentencing guidelines will be used for all defendants, and will recommend an appropriate sentence in cases not only where the term of imprisonment will exceed one year, but in all cases, even if the appropriate sentence does not include a term of imprisonment. Second, the provision assures that the communications problems pointed out in the study would be avoided. This would be accomplished by assuring that all parties to the sentencing hearing have advance notice of the probable application of the sentencing guidelines through receipt of the presentence report and by requiring that the court provide both the probation system and the prison system with the statement of the reasons for the sentence. Third, there would be a single avenue of sentence review, in the United States Court of Appeals, that can deal with all questions concerning the inaccurate application of the sentencing guidelines and unreasonable sentencing outside the guidelines. Further, the provisions of S.1630 require that the reviewing court have a full record of information relating to sentencing in the case, including a copy of the presentence report.

The GAO draft report should prove very useful to the agency that drafts the sentencing guidelines in pointing out a number of problems in the parole guidelines that should be avoided in any future guidelines development. As indicated earlier, we expect that the sentencing guidelines will be considerably more detailed than are the present parole guidelines, particularly as they relate to the effect that a prior criminal history should have on the selection of an appropriate sentence, and on the question of the effect that multiple offenses of conviction should have on the sentence. We also believe that the fact that the sentencing guidelines will be implemented by judges, who as lawyers, are trained in the interpretation of guidelines, rather than by hearing examiners, who generally have a social science background, will improve the evenness with which the guidelines are applied over that achieved by the Commission today.

Executive Office for United States Attorneys (EOUSA)

One of the basic tenants of the report is that better information and greater cooperation among Federal agencies could improve the quality of the Commission's decisions (p. iii). More specifically, the report states that Federal Probation System presentence investigation reports are incomplete and/or are not furnished (p. 80), judges do not supply relevant sentencing information, especially Form AO-235 (p. 96), United States Attorneys do not supply relevant sentencing information, especially Form USA-792 (p. 91), and the Commission does not regularly obtain information, such as the sentencing hearing record (p. 106).

agrees with the intent of GAO's recommendation, but can comply in part only. Study and observation reports prepared under 18 U.S.C. 5010(e) are sent to the Commission. The Commission, in turn, reports its findings and recommendations to the court. We have no knowledge as to why Commission examiners do not have access to these reports. As an alternative, BoP advised the Commission in a July 22, 1981 letter of its willingness to consider changes in current policy and provide a report to the examiners at the inmate's initial hearing. However, we recognize it would be much more advantageous for the examiners to have access to the report from the parole files prior to the in-person meeting with the inmate.

With respect to study and observation reports prepared under 18 U.S.C. 4205(c) and competency studies prepared under 18 U.S.C. 4244, both are subject to the provisions of the Privacy Act and present a more serious problem. These reports are the "property" of the sentencing court and cannot be disclosed without permission. Consequently, BoP cannot authorize their "automatic" disclosure to the Commission. As a resolution to the problem, BoP expressed a willingness in its July 1981 letter to have prison officials seek disclosability from the court, if the Commission desires, at such time as the individual is returned to custody. We believe any other arrangement would be a violation of the Privacy Act and of the long-standing policy regarding the status of these reports shared by BoP and the Federal courts.

The draft also recommends that BoP staff at correctional institutions make psychological evaluations available to the Commission. Greater emphasis and guidance will be given our institutional staffs in the implementation of our current policy on access to these reports. In this regard, it continues to be our concern that the information contained in most psychological reports, or summaries thereof, could adversely affect an inmate's behavior if he or she had access to the material. The decision to restrict the release of such sensitive information must be on a case-by-case basis, with the final determination being made at the discretion of the institution psychologist who wrote the evaluation.

With respect to inmate behavior, GAO recommends that BoP staff at correctional institutions uniformly report incidents of poor institutional behavior by inmates. We do not believe the reporting of poor institutional adjustment can be easily categorized into offenses which should be reported to the Commission and those which should not. Such a procedure would be extremely restrictive and disregard the professional judgment of institutional staff. Moreover, such a procedure would also disregard mitigating circumstances or situations where the charge may not accurately reflect the severity of the offense.

In the area of reporting superior achievement, GAO recommends that BoP work with the Commission to develop criteria for determining what constitutes superior achievement by offenders and the conditions necessary for advancing parole dates. This concept has been advanced by the Commission, but BoP is reluctant to provide any substantive comment until they have had more detailed discussions with Commission personnel. A significant part of the problem has been that no definition of superior achievement has been developed. BoP will continue their dialogue with the Commission in an effort to develop a viable definition.

A final GAO recommendation suggests that the BoP staff receive additional training and guidance to ensure that offenders are identified who have been convicted under 21 U.S.C. 848 and therefore are not eligible for parole consideration. We

APPENDIX II

Concerning the recommendation that immigration hearings be scheduled before aliens are released from prison, procedures will be developed to meet this requirement. Within resource limitations, immigration judges will ensure that aliens' cases are heard and disposed of prior to release. Since BoP notifies INS 60 days in advance of the release of an alien who has an INS detainer, telephone hearings could be arranged before the release takes place. This would require coordination between BoP and INS, but could be arranged on a case-by-case basis. However, the individual circumstances of each case will dictate whether a telephone call or a personal appearance by an immigration judge is necessary to protect due process. This determination will be left to the reviewing judge.

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In summary, the Department recognizes that Commission employees require coordination with many organizations, and their work is very dependent upon the information provided by these organizations. The Department has an express interest in seeing that the information needed by the Commission to make fair and equitable parole decisions is provided. We believe that a good working relationship presently exists between the Commission and organizations within the Department, and to the extent possible, we are committed to strengthening that relationship.

We appreciate the opportunity to comment on the draft report. Should you desire any additional information pertaining to our response, please feel free to contact me.

Sincerely,

Kevin D. Rooney
Assistant Attorney General
for Administration

> but not adopted a requirement that the trial judge specifically advise the defendant of these matters. The Committee believes that this additional burden should not be placed upon the trial judge, and that the problem is best dealt with by a form attached to the presentence report, to be signed by the defendant advising of these potential uses of the report. This suggestion has been forwarded to the Probation Committee of the Judicial Conference.[1]

Disclosure of the presentence report has been considered by the Advisory Committee on Criminal Rules and a proposed rule has been drafted and circulated to the bench and bar and public for comment.[2] The proposed rule provides that at a reasonable time before imposing sentence the court shall permit the defendant and his counsel to read the entire report (subject to specific limitations) and afford an opportunity to comment on the report and, in the discretion of the court, introduce testimony concerning any alleged factual inaccuracy. The proposal has proven to be controversial and will be considered further by the Rules Committee.

On page 124 the report recommends that the Chairman of the Parole Commission obtain judgment and commitment orders, indictments, and records of sentencing hearings (emphasis added) for use in formulating parole decisions. This recommendation is based on the finding at p. 106 that, "during the sentencing hearing, the defendant and his/her counsel have an opportunity to clarify information in the presentence report and the judge indicates his/her resolution of any disputed matters. Also, the judge can express his/her views at the time of sentencing." The Advisory Committee on Criminal Rules has circulated for comment a proposed new Rule 32 (c)(3)(D) which addresses the issue of clarifying information in the presentence report. The rule sets forth a procedure for determining the accuracy of factual information contained in the report and resolving disputes. Further consideration will be given to this proposal when all comments have been received. Please note that while a record of the sentencing hearing is "routinely prepared" in all courts, as stated on page 106 of the report, such routine preparation does not include transcription. Thus, a written report is not always available. The proposed Rule 32(c)(3)(D) would meet the need in a less expensive manner.

[1] Preliminary Draft of Proposed Amendments to the Federal Rules of Criminal Procedure, Advisory Committee on Criminal Rules, Committee on Rules of Practice and Procedure, October 1981, p.50.

[2] Ibid., pp. VII, 45-52.

APPENDIX III

the treatment resources in the community. Likewise strict compliance standards would prevent the tailoring of programs to individual situations. The key to successful treatment is to get the person under supervision involved in planning and participating in his own treatment program. This requires a flexible, adaptive approach. Any rigid standardized prescriptions are counterproductive.

In December 1980 the Probation Division inaugurated a program for semiannual review of all cases under supervision by probation officers. The reviews are to be approved by the supervising probation officer. This system should correct any inadequate approaches to problem solving. This new system was developed in part in response to deficiences noted in the GAO report, Probation and Parole Activities Need to be Better Managed, October 21, 1977.

The report on page 161 recommends that the Administrative Office and the Commission establish specific time frames for reporting parole violations and develop specific guidelines for probation officers to use in requesting warrants for the arrest of parole violators. We believe the guidelines for reporting violations are now adequate. Since June 1981, Section 7501 of the U. S. Probation Officers Manual and Section 2.42-01 of the Parole Commission Rules and Procedures Manual have specified that law violations punishable by imprisonment, certain technical violations, and certain lesser law violations are all to be reported immediately. Other violations are to be reported on the Supervision Progress Report. The gathering of the necessary facts to report a violation depends on the availability of investigating officers and police reports, interviews of the parolee, and clerical support. The Commission clearly intends that serious violations be reported as soon as possible. Practical considerations, however, rule out any fixed formula. We will review the U. S. Probation Officers Manual to make certain that officers are directed to review all arrests with their supervisors. The semiannual review that is now required should also bring to light any unjustified delays.

On page 161 the report recommends that procedures be clarified for terminating parole supervision and a system established to ensure that annual reviews of the need for continued supervision take place. We are complying with this recommendation in several ways. The Supervision Progress Report (Parole Form F-3) was revised in May of 1980. This has improved communication to the Parole Commission by probation officers. In addition, the Bureau of Prisons Sentry Information System will soon support Parole Commission operations in this area. Finally, the Probation Information Management System (PIMS) currently being developed will provide probation administrators with reports on supervision progress reports that are due or past due. This system is being designed with the assistance of an eight district users group which is responsible for making certain that the completed design will meet the requirements of

APPENDIX III

consideration or supervision. On p. 75, the report misquotes the Judicial Conference, which has recommended to the Congress that:

> Favorable consideration should be given to the recommendation of the Parole Commission and the anticipated recommendation of the General Accounting Office that the conditional release provision of the 1979 amendments be modified to eliminate the requirement that youth offenders be discharged three months before the end of their term, either in all misdemeanor cases or in petty offense cases alone.[3]

Note also that these recommendations do not address the issue of the benefits to the defendant that accrue from early termination, setting aside the conviction, and expunction of the record (see Doe v. Webster, D.C. Circuit, N.77-2011, July 24, 1979, 606 F. 2nd, 1226). 1/

Page 127 of the report refers to the "draft guidance" to all probation officers for use in administering drug aftercare programs. It is correct that chapter X of the U. S. Probation Officers Manual is in draft form and should be issued in final form. We plan to do that. In the meantime, however, probation officers were instructed in May 1979 that chapter X represents policy and procedure and it has been updated with 38 memoranda that have been issued as need demands. These documents spell out a detailed treatment program for drug dependent offenders. Two sets of training programs for all probation offices have been conducted utilizing chapter X and the supporting memoranda.

In conclusion we thank you for the report which brings a number of pertinent issues to our attention. As we indicate above, the judiciary has already taken steps to deal with a number of your concerns. May we add that the investigation and supervision of offenders is a difficult task. Most of the problems our professionally qualified staff deal with are complex, longstanding problems of other human beings. There are no set solutions. We will continue to support a wide range of discretion for our professional staff in helping offenders solve their problems. Any issues related to staff performance will be resolved either by supervisory reviews now in place or developed as agreed to above. The planned Probation Information Management System will support management in carrying out improved administrative controls.

[3]The Federal Magistrates System, Report to the Congress by the Judicial Conference of the U.S., December 1981, p.55.

1/This matter has been clarified in the report.

APPENDIX IV

United States District Court
Eastern District of Kentucky

February 23, 1982

Chambers of
Bernard T. Moynahan, Jr.
Chief Judge

Federal Building
Lexington, Kentucky 40501

Mr. William J. Anderson
Director
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

I have received your letter of February 18, together with the copy of your proposed report entitled "Better Management and Legislative Changes Are Needed To Improve Federal Parole Practices."

I do not have any special comment to make on the draft report. However, I will call the alleged deficiencies arising in this district to the Chief Probation Officer.

Very truly yours,

Bernard T. Moynahan, Jr.
Chief Judge

BTM:mbf

APPENDIX VI

United States District Court
Southern District of Ohio
Cincinnati, Ohio 45202

Chambers of
Carl B. Rubin
Chief Judge

March 3, 1982

Mr. William J. Anderson
Director,
United States General Accounting Office
General Government Division
Washington, D.C. 20548

Dear Mr. Anderson:

A copy of a proposed report entitled "Better Management and Legislative Changes Are Needed to Improve Federal Parole Practices" has been referred to me for comment. I have some hesitation about doing so since my activities as a sentencing judge have very little to do with the activities of the Parole Commission.

It is possible, however, that my experiences after 10 years on the Federal Bench might be helpful in expressing a view that I believe is held by most federal judges. That view, simply stated, is that we have little, if any, control over the length of time a sentenced offender will spend in prison.

18 U.S.C. §4205(b)(1) and (b)(2) appear to give a sentencing judge some control over the length of time a prisoner spends incarcerated. As a practical matter, neither section does so and to use either (b)(1) or (b)(2) is a waste of time. I have attended two Sentencing Institutes and several seminars sponsored by the Parole Commission. The information uniformly disseminated at these gatherings is that the length of time will be determined in accordance with "guidelines" and (b)(1) or (b)(2) sentence will have no effect. As a result, I stopped sentencing under these sections some six or seven years ago. I would not do so now unless the Parole Commission changed its position.

On page 96 of the draft, there is a section entitled "Judges Seldom Communicated any Information to the Commission." I read this section with great care because I am one of those judges who does not use Form AO/235. My reason for doing so is very simple. There is no way that confidentiality of AO-235 can be maintained. I learned to my sorrow as most judges learned,

APPENDIX VII

United States District Court
Southern District of Indiana
Indianapolis, Indiana 46204

Chambers of
William E. Steckler
Chief Judge

March 9, 1982

Mr. William J. Anderson
Director, United States General
Accounting Office
General Government Division
Washington, D. C. 20548

Dear Mr. Anderson:

This is in response to your letter of February 18, 1982, with which was enclosed a copy of your proposed report to Senator Sam Nunn entitled, "Better Management and Legislative Changes Are Needed To Improve Federal Parole Practices."

I have read the draft report and have also called upon the Chief Probation Officer of our court to analyze the report and comment thereon. Enclosed herewith is a copy of a memorandum dated March 5, 1982, from David H. Sutherlin, Chief United States Probation Officer, regarding the proposed report.

In all general respects, I concur in the views expressed by Mr. Sutherlin. I would add, however, my comments regarding that part of the report commencing at page 96, pointing out that judges seldom communicated any information to the Parole Commission. It is noted that the judges of the Southern District of Indiana have made little use of Form AO-235. It is my belief that the judges of this district have not made use of Form AO-235 for several reasons, one of which is the impression that the Parole Commission is sufficiently informed of the defendant's history through the Presentence Investigation Report to be able to make a valid judgment as to the date when a defendant has reached the point where he is to be granted parole. I believe another reason is that our judges do not wish to place themselves in a prosecutorial role once the sentencing decision has been made. Judges believe that the Parole Commission is in a far better position to make the decision as to when parole should be granted than the sentencing judge who has no knowledge of the individual's behavior and degree of rehabilitation during the period of incarceration. It is felt that the Bureau of Prisons and the Parole Commission are in a far better position to determine a prisoner's worthiness to be granted parole.

APPENDIX VII

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : The Honorable William E. Steckler
Chief U. S. District Court Judge

DATE: March 5, 1982

FROM : David H. Sutherlin, Chief
U. S. Probation Officer

SUBJECT: Proposed report to Senator Nunn entitled "Better Management and Legislative Changes Are Needed To Improve Federal Parole Practices."

Your Honor:

Per your instructions, the above-listed report was reviewed individually by U. S. Probation Officer Thomas E. Gahl and myself. After jointly conferring, we offer the following comments to Your Honor for observation, additions, or corrections before being submitted to the General Accounting Office and to Mr. William A. Cohan, Jr., of the Administrative Office.

It is also noted that we concentrated only on the areas of the report which had a direct bearing on the operation of the U. S. Probation Office, or a relationship to the U. S. District Court.

Youthful offenders sentenced under the Magistrates Act do not warrant parole consideration or supervision. (page 73)

In making this statement, the authors of the report indicate that officials of the Federal Probation Division feel that there are too few benefits associated with the supervision of these cases because of the length of time, three months, which is too short to effectively work with these offenders. We, on the other hand, disagree with this, and feel that three months, although quite short, is better than no supervision at all. During that short period of time it is still possible to have contact with these youthful offenders, possibly giving them help in job placement, if nothing else.

The Parole Commission's involvement in the preparation of study and observation reports on youthful offenders should be terminated. (page 75)

We concur with this recommendation in that the Parole Commission is obviously making no contribution to these studies other than copying information which has been developed by

APPENDIX VII

The Honorable William E. Steckler
Re: Proposed report to Senator Nunn
Page: 3

Judges seldom communicated any information to the Commission. (page 96)

This conclusion is made by the report based upon their observation that Form AO-235 is seldom used. In our district its use is virtually non-existent; it is difficult to us as probation officers to comment as to why the report is not being used. However, we would offer the comment that if the judges in our district would want us to assist them in filling out this Form, we would be willing to give our full cooperation.

Other information was not obtained. (page 106)

In making this observation, the report indicated that oftentimes at sentencing, information to clarify the presentence report, or a judge's resolution of any disputed matters in the report, are not forwarded to the Commission because they are not receiving a record of the sentencing hearing. We do not feel that it is necessary for the Commission to receive a complete transcript of the disposition, but it would be necessary to make all corrections (which were ordered by the court at disposition) to the presentence investigation report before it was forwarded to the Bureau of Prisons. Our office does this as a standard operating procedure.

ASSURANCE IS NEEDED THAT DEFENDANTS WILL BE APPRISED OF THE INFORMATION THAT WILL BE CONSIDERED BY THE COMMISSION (page 107)

We agree with the report's recommendation that, in all fairness to the defendant, he should be made aware of the fact that the U. S. Parole Commission will consider his entire criminal conduct, even though certain counts against him might have been dismissed under a plea agreement. However, as noted earlier, in some cases the U. S. Attorney's Office objects to some information being placed in the presentence report if the defendant was promised a plea agreement that the information would not be brought to the attention of the court. Furthermore, we concur with the commission's stance that the defendant's actual offense, rather than just his behavior on a particular count, should be considered for parole purposes.

APPENDIX VII

The Honorable William E. Steckler
Re: Proposed report to Senator Nunn
Page: 5

BETTER PROCEDURES NEEDED FOR REPORTING PAROLE VIOLATIONS (page 133)

The report noted that more specific time frames should be required for reporting parole violations, and cited as an example an incident from our district. In that particular case a violation was discovered, but not reported to the Commission until six days later. This specific case, since the last name was not given, could not be recalled. However, oftentimes police reports have to be gathered, or specific investigators interviewed before the report is submitted to the Parole Commission. If it is in an outlying area, and the incident also happens before the weekend, oftentimes the report may get delayed.

System needed to ensure that annual supervision reports are completed (page 148)

The report showed that of the ten judicial districts surveyed, our district was about average in submitting timely annual reports. Since this report was made, our office has instituted a checklist system to insure that all required reports are submitted on a timely basis.

SOME PAROLEES ARE NOT SUPERVISED (page 149)

Specifically the report showed that procedures needed to be developed to supervise parolees in the Witness Security Program. Our office would concur with this observation based upon a recent case, one which was not cited in the report. An individual was in our district for approximately one year without our knowledge; when he should have been under the supervision of one of our officers, but his whereabouts was only known to the Deputy U. S. Marshal in charge of the program.

THE COMMISSION SHOULD RESOLVE THE CONTROVERSY OVER SEARCH AND SEIZURE (page 153)

It is our opinion that the U. S. Parole Commission should authorize U. S. Probation Officers to conduct a reasonable search if they have information from a reliable source that parolee might be in possession of a firearm, narcotic, or stolen merchandise. Training as to procedures involved in such an operation would have to be given, to include

APPENDIX VIII

United States District Court
Northern District of Texas
United States Courthouse 1205 Texas Avenue
Lubbock, Texas 79401 -4096

Halbert O. Woodward
Chief Judge

March 9, 1982

Mr. William J. Anderson, Director
General Government Division
United States General Accounting Office
Washington, D. C. 20548

Dear Sir:

This is in reply to your letter of February 18, 1982, and the proposed report of your agency to Senator Sam Nunn, entitled, "Better Management and Legislative Changes Are Needed To Improve Federal Parole Practices."

I have taken the liberty of submitting this report to our Chief Probation Officer, Mr. Al Havenstrite, and asked for his comments. He has written a report to me giving me his comments and it is attached hereto.

If you would, I would desire that you use these comments as representing my view of the report. These comments are made in a constructive manner and I hope that they will be helpful to you.

Yours very truly,

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

Attachment

of the aftercare counselors, and the experience of his own supervisors to make judgments as to when an addict has gone too far. The same set of circumstances for two addicts may constitute, correctly, a different end. The history of the addict, other social factors in his daily life, including but not limited to his job stability, choice of associates, and predisposition to violence when using drugs must be taken into consideration.

Witness Protection Cases

One of the problems with a report like this from GAO is it acts as if the function audited was a static function when actually it is changing at all times. For instance, parolees under the witness protection program are presently coming under supervision as suggested in the report. Our experience has been that these parolees should be under supervision and, in fact, have involved themselves in some highly questionable activities because they were not under active parole supervision.

Early Parole Release For Superior Program Achievement

With regard to the matter of granting early release for "superior program achievement" in an institution, I would suggest that instead the Parole Commission should clarify its position on retarding parole because of "inferior program achievement". There is no need, in my opinion, to advance release dates. They are sufficiently lenient under the guidelines. There is sufficient flexability under the guidelines. Instead, I would recommend that the commission look very closely at penalizing inmates by severely retarding release dates when the inmate gets involved in violating the rules of the institution. Good institutional adjustment may not predict good postrelease adjustment but poor adjustment within a closed institution certainly suggests that the same individual will not exercise sufficient self-control to make it in the community. One of the most effective tools for inmate control is lost when there is no penalty by the Parole Commission for committing rule infractions including criminal offenses within the institution. This matter represents a weakness in the Parole Commission's present policies.

Adequacy Of Presentence Information

In the section analyzing the adequacy of presentence reports for use by the Parole Commission in determining the salient factor score and offense severity, the auditors indicate that 140 out of 342 presentence reports were inadequate. As I recall, use of the weight and purity of drugs in the offense severity calculation began September 1, 1979. It is now standard procedure to include this in all presentence reports because it is known that the Parole Commission needs it. In 1979, the year studied in this report, this information had not been required

APPENDIX VIII

seldom since the report is reviewed by the inmate and his attorney prior to sentencing but where it becomes necessary, these changes are made. The document which is in the inmate's file after sentencing should be a presentence report free of error as agreed so by the court at the time of sentencing. The Parole Commission and the Bureau of Prisons should not be placed in a position of continuing to argue the merits of the facts in the presentence report months or years after sentencing.

Specificity In Parole Matters

Throughout the report the auditors appeal for "more specific criteria" or methods to "assure equitable and consistent treatment for violators". The truth is parole supervision is not an exact science. Efforts to make more equitable parole decisions through the use of guidelines have resulted in frequent long-running disputes between inmates and parole officials resulting in appeals within the commission and to the courts. These disputes frequently center on whether or not they get nine points or ten points on a scoresheet and/or whether or not they are Greatest II or Greatest I on another scoresheet. The fact is, very little effort to better himself is required of an inmate in the Bureau of Prisons. As long as he does not seriously violate the rules at the institution, he does not have to do much of anything while serving his sentence. This trend toward guidelines to control disparity and accountability for every jot and tittle in the scoring system focuses the attention of the client on the system when what is needed within the prison experience and the parole experience is a concentration on the actions of the inmate. It is a further emphasis upon the rights of the individual as opposed to the responsibilities of the individual, an argument which is longstanding and will not be solved as a result of this audit.

Search And Seizure

My final comment has to do with the matter of search and seizure. It is my opinion that the probation officer needs only one clarification of the Parole Commission's policy. When a probation officer visits the home of a parolee and finds substances or articles which are obviously a violation of the parole rules (hypodermic needles, marijuana, guns, etc.), he should have the authority to seize these without fear of some type of retaliation through the courts or the commission by the parolee. This probably happens in the Northern District of Texas (39 probation officers) once a year. I have seen probation officers in other districts demonstrate the method by which they systematically search the home of a probationer with full authority from their court. To use a probation officer for this function is, in my judgment, a mistake. To grant broad powers to the probation officer in search and seizure falls under the category of "fixing something that ain't broke".

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
UNITED STATES COURTHOUSE
HOUSTON, TEXAS 77002

CHAMBERS OF
JOHN V. SINGLETON
CHIEF JUDGE

March 15, 1982

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, DC 20548

Dear Mr. Anderson:

I have reviewed the draft of a proposed report to Senator Sam Nunn entitled, "Better Management and Legislative Changes Are Needed to Improve Federal Parole Practices." Our Chief Probation Officer has also reviewed this draft and has submitted his comments to Mr. William A. Cohan, Jr., Chief of the Division of Probation of the Administrative Office of the United States Courts. A copy of his letter to Mr. Cohan is attached.

As the Chief Judge of the Southern District of Texas and as a member of the Judicial Conference of the United States, I have several comments to make.

1. One of the statements contained in the report reads: "Judges seldom communicate any information about their reasons for selecting the sentence imposed." I certainly would be opposed to a judge being required to give any reason why he selected a particular sentence to be imposed upon a person convicted of a crime. In the first place, there is a difference between the sentencing procedures in the federal courts and in many of the state court systems. In the federal courts, the sentence is solely the responsibility of the judge. In many state court systems, including Texas, where there has been a trial, the sentence is imposed by the jury that heard the underlying case. I am firmly opposed to "jury sentencing." Juries cannot be given the necessary background information to arrive at an intelligent decision. Second, the judge is sentencing a person not a crime. For that reason, disparity of punishment (sentences imposed) should be readily understood.

2. On page 124, the report recommends that flow of information be improved between the Parole Commission and prosecutors, probation officers, judges, and correctional staff. I certainly join in this recommendation.

3. Also on that page is the recommendation that the Judicial Conference propose amendments to Rules 11(c) and 32(c)(3). I do not understand the necessity for any amendments. Rule 11 details what must be done when accepting a guilty plea, and it requires that the court must do certain things in open court with the defendant present and under oath, to ensure that the defendant understands the nature of the offense, the punishment, his rights, etc. I do not see that

APPENDIX X

POST OFFICE BOX 308
BROWNSVILLE 78520

POST OFFICE BOX 2623
CORPUS CHRISTI 78403

POST OFFICE BOX 547
LAREDO 78040

POST OFFICE BOX 2670
GALVESTON 77550
320 N MAIN, RM 118-A
McALLEN 78501

POST OFFICE BOX 52
RIO GRANDE CITY 78582

POST OFFICE BOX 474
BAYTOWN 77520

SUITE 305, 3307 W DAVIS
CONROE 77304

PLEASE REPLY TO:
Houston

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

LOUIS G. BREWSTER
CHIEF PROBATION OFFICER
POST OFFICE BOX 61207
HOUSTON 77208

March 3, 1982

Mr. William A. Cohan, Jr.
Chief of the Division of Probation
Administrative Office of the U. S. Courts
Washington, D. C. 20544

Dear Mr. Cohan:

As per your instructions in letter dated February 26, 1982, I have reviewed a draft copy of the GAO Report entitled " Better Management and Legislative Changes are Needed to Improve Federal Parole Practices." My comments are as follow:

Presentence Reports Did Not Contain Complete Details of the Nature and Circumstances of the Offense and Characteristics of the Offender (page 81)

It is reported that over 51% of the presentence reports reviewed in this district by GAO were adequate for the needs of the Parole Commission. Of the reports that were found to be inadequate, I wonder if some of them may have been on Mexican Nationals who were convicted on our Mexican Border and the Probation Officers were unable to verify the defendant's prior employment in the Republic of Mexico. Nevertheless, I am confident the percentage of adequate reports is greater at the present time.

Some Judicial Districts Refuse to Make Adequate Presentence and Post Sentence Reports Available (page 88)

To my knowledge, we have never refused to cooperate with the Commission in making available adequate presentence or post sentence reports.

Procedures Which Insure Better Disclosure of Presentence Reports Need to be Developed (page 110)

Since August 10, 1981, our district has followed a district-wide disclosure policy, same attached and identified as District Policy Statement # 81-4. Of course, this district-wide policy was not in effect at the time of the GAO Review.

APPENDIX X

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

PROBATION OFFICE

LOUIS G. BREWSTER
CHIEF PROBATION OFFICER
POST OFFICE BOX 61207
HOUSTON 77208

POST OFFICE BOX 308
BROWNSVILLE 78520
POST OFFICE BOX 2623
CORPUS CHRISTI 78403
POST OFFICE BOX 547
LAREDO 78040
POST OFFICE BOX 2670
GALVESTON 77550
118 FED. BLDG., 320 N. MAIN
McALLEN 78501
POST OFFICE BOX 52
RIO GRANDE CITY 78582
POST OFFICE BOX 474
BAYTOWN 77520
SUITE 305, 3307 W. DAVIS
CONROE 77304
PLEASE REPLY TO:

HOUSTON

August 7, 1981

Honorable John V. Singleton, Jr.
Chief United States District Judge
Southern District of Texas
Houston, Texas 77208

Re: COURT POLICY FOR DISCLOSURE
OF PRESENTENCE REPORT

Dear Judge Singleton:

Rule 32(c)(3) does not provide for automatic disclosure of a presentence report, but only for disclosure "upon request". Realizing that it is the general policy of our Court to allow disclosure of the report prior to sentencing, I am proposing the following steps to be taken by the Probation Service, for the Court's consideration:

Formal Notice to Defense

The Probation Office will notify the defense attorney and defendant of the availability of the presentence report for defense review. Notification will be made in writing. In cases where sentencing is but a few days away, notification may be made by telephone to the defense attorney.

Place of Disclosure

When the defendant is at liberty on bond, a copy of the report will be available for inspection in the Probation Office. When the defendant is in jail, the defense attorney will be permitted to hand carry a copy of the report to the jail, for review by the defendant, provided that the defense attorney agrees not to give or show the report to anyone else and agrees to return the report to the Probation Office prior to 5 p.m. on the same date. In division courts, other than the Houston Headquarters Division, the Chief Probation Officer will determine from the judges what time limitations their respective courts wish to impose on defense attorneys borrowing reports to be reviewed at the county jail by their clients.

APPENDIX X

UNITED STATES GOVERNMENT

memorandum

DISTRICT POLICY STATEMENT No. 81-4

DATE: August 10, 1981

REPLY TO ATTN OF: CUSPO Louis G. Brewster

SUBJECT: PROCEDURE FOR DISCLOSURE OF PRESENTENCE REPORT PRIOR TO SENTENCING

TO: All SUSPO's

On 8-7-81, Judge Singleton approved a proposal submitted by Chief Brewster in letter dated that same date regarding the Court policy for disclosure of presentence reports prior to sentencing. Please refer to that letter which covers formal notice to the defense of availability of the report for review, sets the place of disclosure for defendants on bond or jail and restricts the reproduction of the report.

FORMAL NOTICE TO DEFENSE

The officers who complete a presentence report for our district will be responsible for notifying the defense of the report's availability for review. One of the form letters already drawn up to give formal notice may be utilized. If sentencing is but a few days away and notice by letter seems unadvisable, a phone call to the defense attorney would be proper, provided that we document in the file that the defense attorney was telephonically given notice.

PLACE OF DISCLOSURE

The probation office will be the place for review of the report should the defendant be at liberty. When the defendant is in jail, the defense attorney may check out a copy of the report and hand carry it to the defendant.

RESPONSE TO NOTICE

Once the defendant or the defense attorney responds to notice of the availability of the report for inspection, the form entitled "Acknowledgment Before Reading Presentence Report" should be read and signed by the party wishing to review the report. The officer disclosing the report will then place his initials and the date on the form and may then disclose the report. (A copy of the Acknowledgment form is to be sent to the U. S. Attorney's Office so they may be made aware that the report has been read by the defense and is ready for review by the government.) The disclosing officer will be responsible for seeing that once review of the report is completed in the probation office, the report is returned by the reviewing party. When the report is lent out for review in jail, the disclosing officer is responsible for seeing that the staff member who receives the report back from the defense attorney documents its return by signing their name and the time that the report was returned.

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

APPENDIX X

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BROWNSVILLE 78520

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RIO GRANDE CITY 78582

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BAYTOWN 77520

SUITE 305, 3307 W. DAVIS
CONROE 77304

PLEASE REPLY TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

LOUIS G. BREWSTER
CHIEF PROBATION OFFICER

POST OFFICE BOX 61207
HOUSTON 77208

Formal Notice of PSI Availability to Defense

Defendant on Bond - Letter addressed to defendant with copy to defense attorney

Formal Notice Letter and PSI are to be typed at the same time.

Dear:

Please be advised that your presentence report has been completed and submitted to the Court. The Court wishes to encourage you and your counsel to review the report, pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, in the U. S. Probation Office. Our office is open Monday - Friday, 8:30 a.m. to 5 p.m. Although an appointment is not necessary, it is recommended that you notify my office, phone No. _____, as to when you plan to inspect the report in order that either my supervisor or I may be available to answer any questions you may have.

After reading the report, should you or your counsel feel that an inaccuracy or shortcoming in the report has been discovered, please advise me of same in order that I may research your challenge prior to the sentencing date.

Yours truly,

U. S. Probation Officer

APPENDIX X

LOUIS G. BREWSTER
CHIEF PROBATION OFFICER
POST OFFICE BOX 61207
HOUSTON 77208

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

POST OFFICE BOX 508
BROWNSVILLE 78520
POST OFFICE BOX 2623
CORPUS CHRISTI 78403
POST OFFICE BOX 547
LAREDO 78040
POST OFFICE BOX 2670
GALVESTON 77550
118 FED. BLDG., 320 N. MAIN
McALLEN 78501
POST OFFICE BOX 52
RIO GRANDE CITY 78582
POST OFFICE BOX 474
BAYTOWN 77520
SUITE 305, 3307 W. DAVIS
CONROE 77304
PLEASE REPLY TO:

Formal Notice of PSI Availability to Defense

Defendant on Bond With Complete PSI Done By Another Office - Letter addressed to defendant with copy to defense attorney

Formal Notice Letter and PSI are to be typed at the same time.

Dear:

Please be advised that your presentence report has been completed and submitted to the Court. The Court wishes to encourage you and your counsel to review the report, pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, in the U. S. Probation Office. Our office is open Monday - Friday, 8:30 a.m. to 5 p.m. Although an appointment is not necessary, it is recommended that you notify my office, phone No. _____, as to when you plan to inspect the report in order that either my supervisor or I may be available to answer any questions you may have.

USPO _____ of our _____ office also has a copy of the presentence investigation report in your case. If you wish, you may make arrangements with him to review the report in his office.

After reading the report, should you or your counsel feel that an inaccuracy or shortcoming in the report has been discovered, please advise me of same in order that I may research your challenge prior to the sentencing date.

Yours truly,

U. S. Probation Officer

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF KENTUCKY

LOUISVILLE, KENTUCKY 40202

CHAMBERS OF
CHARLES M. ALLEN
CHIEF JUDGE

April 23, 1982

Mr. William J. Anderson, Director
United States General Accounting Office
General Government Division
Washington, D. C. 20548

RE: Federal Parole Practices

Dear Mr. Anderson:

The Chief Probation Officer of this district and his staff have carefully reviewed the draft of your proposed report. The Chief Probation Officer and his staff feel that the GAO have done a thorough and helpful piece of work. Except for a few minor errors and omissions which the Chief sent to the Cincinnati Office, the report is acceptable without significant change.

We are particularly concerned that procedures for supervising parolees released to the Witness Security Program have not been developed. The prospects of injury or death to persons in the program are manifestly increased without established procedures. The development of such procedures is urgently needed.

Sincerely yours,

Charles M. Allen
Chief Judge

cc: Mr. John M. Murphy, Jr.
Senior Evaluator

U.S. General Accounting Office
8112 Federal Building
Cincinnati, Ohio 45202

Mr. James L. Hurd
Chief Probation Officer

of the Commission's practice of considering, along with the offense of conviction, other charges dismissed through a plea agreement.

The probation report includes information concerning the charges that are to be dismissed so that the defendant and his attorney know that this information is before the judge and will be taken into consideration by him in fashioning his judgment. From my experience, I do not sense that any defendant or lawyer has been misled in this regard. Furthermore, in this district, the presentence report submitted to the court and disclosed to counsel and defendant includes an estimate of a defendant's salient factor score figured from the Commission's guideline application manual. A Sentencing and Parole Data sheet appended to the report outlines current national and Northern District of California sentencing and parole data tables and an estimate of time to be served based upon the Commission's crime severity guidelines and the salient factor score. Consistent with the Commission policy, these estimates take into account total offense behavior which may include information not in the counts on which the defendant has been convicted. Our practice appears to be an appropriate method of making the court, the defendant and counsel for the defendant and the government aware of the parole prognosis and the fact that the defendant's entire criminal conduct will be considered by the Commission.

IV. Procedures Which Assure Better Disclosure of Presentence Reports Need to be Developed. (p. 110)

Although Rule 32(c)(3) of the Federal Rules of Criminal Procedure does not provide for mandatory disclosure of the presentence report to both the defendant and his/her counsel prior to sentencing, the practice in the Northern District of California is to make the presentence report available for review upon request by the defendant and the attorneys of record at any time prior to sentencing after the court has received the report. Generally speaking, the report is available for review no later than two working days before sentencing. At the time of initial referral to the Probation Office, the defendant and counsel are made aware of the availability of the presentence report at the Probation Office prior to sentencing. This notification ensures that the defendant and counsel are permitted a careful and private reading of the report with time to discuss and verify information or to challenge the report's contents. The Probation Office is developing a procedure to allow timely and thorough review of the presentence report by incarcerated defendants.

APPENDIX XIII

United States Court of Appeals

Eleventh Judicial Circuit

Gerald Bard Tjoflat
Circuit Judge
Jacksonville, Florida 32201

March 18, 1982

Mr. William J. Anderson
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Anderson:

Thank you for your letter transmitting the proposed report to Senator Sam Nunn entitled, "Better Management and Legislative Changes Are Needed To Improve Federal Parole Practices."

I am coordinating my response with that of the Director of the Administrative Office of the United States Courts. Our joint response should be in your hands no later than April 12, 1982.

Sincerely,

Gerald Bard Tjoflat

cc: Mr. William E. Foley
Director
Administrative Office of the
United States Courts

APPENDIX XIV

	very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
MODERATE (continued)				
Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)]				
Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)]		ADULT RANGE		
Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun)	10-14 months	14-18 months	18-24 months	24-32 months
Gambling law violations - managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000-$15,000); Horse books (estimated daily gross $1,500-$4,000); Numbers bankers (estimated daily gross $750-$2,000)]		(YOUTH RANGE)		
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000-$19,999	(8-12) months	(12-16) months	(16-20) months	(20-26) months
Smuggling/transporting of alien(s)				
HIGH				
Carnal Knowledge[3/]				
Counterfeit currency or other medium of exchange [(passing/possession) $20,000 - $100,000]				
Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)]		ADULT RANGE		
Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)]	14-20 months	20-26 months	26-34 months	34-44 months
Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana / 20-199 lbs. of hashish / .20-1.99 liters of hash oil)]				
Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)]				
Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate]		(YOUTH RANGE)		
Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons)	(12-16) months	(16-20) months	(20-26) months	(26-32) months
Gambling law violations - managerial or proprietary interest in large scale operation (e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000)]				
Involuntary manslaughter (e.g., negligent homicide)				

APPENDIX XIV

	Very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
GREATEST I (continued)				
Drugs (other than specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)]	ADULT RANGE			
Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)]	40-52 months	52-64 months	64-78 months	78-100 months
Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)]				
Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving to a secluded location, and releasing victim unharmed)]	(YOUTH RANGE)			
Robbery (3 or 4 instances)	(30-40) months	(40-50) months	(50-60) months	(60-76) months
Sex act- force (e.g., forcible rape or Mann Act (force)]				
Voluntary manslaughter (unlawful killing of a human being without malice; sudden quarrel or heat of passion)				
GREATEST II				
Murder	ADULT RANGE			
Aggravated felony - serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim	52+ months	64+ months	78+ months	100+ months
Aircraft hijacking	(YOUTH RANGE)			
Espionage	(40+) months	(50+) months	(60+) months	(76+) months
Kidnapping (for ransom or terrorism; as hostage; or harm to victim)	Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.			
Treason				

APPENDIX XIV

REFERENCED NOTES

1. Alcohol or cigarette tax law violations involving $2,000 or more of evaded tax shall be treated as a property offense (tax evasion).

2. Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than $19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity.

3. Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

DEFINITIONS

a. 'Other media of exchange' include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.

b. 'Drugs, other than specifically categorized' include, but are not limited to, the following, listed in ascending order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phencyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated towards the bottom of the guideline range and PCP will normally be rated towards the top).

c. 'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.

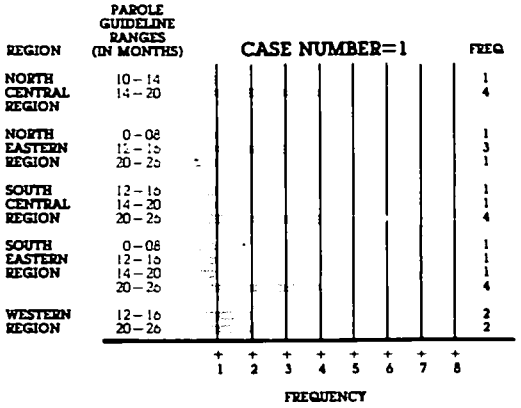
d. The 'opiate' category includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.

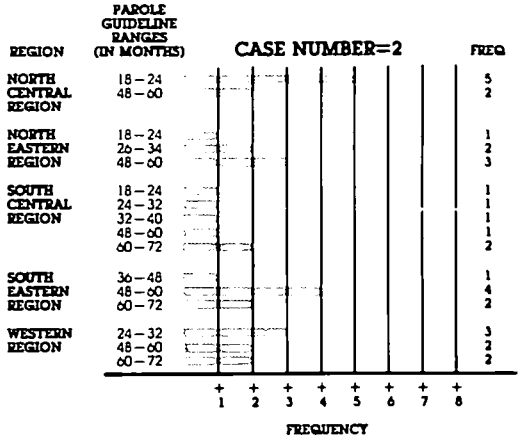
e. Managerial/Proprietary Interest (Large Scale Drug Offenses):

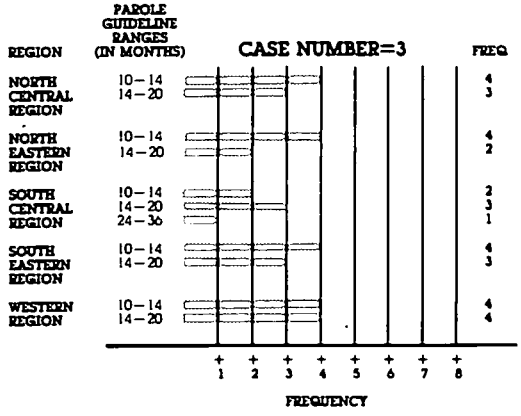
Managerial/proprietary interest in large scale drug cases is defined to include offenders who sell or negotiate to sell such drugs; or who have decision-making authority concerning the distribution/sale, importation, cutting, or manufacture of such drugs; or who finance such operations. Cases to be excluded are peripherally involved offenders without any decision-making authority (e.g., a person hired merely as a courier).

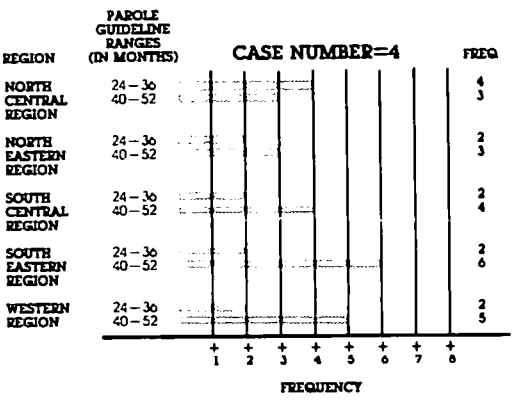
APPENDIX XV

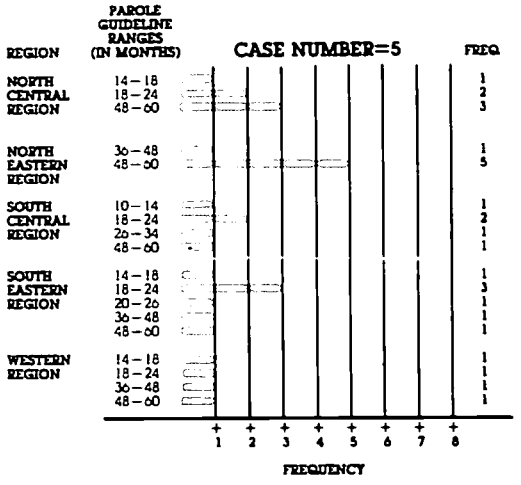
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE

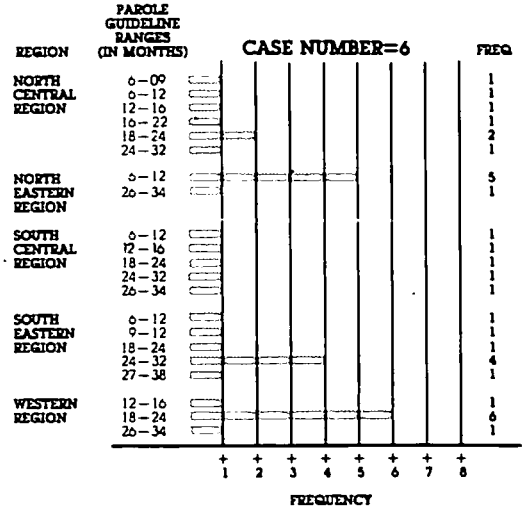






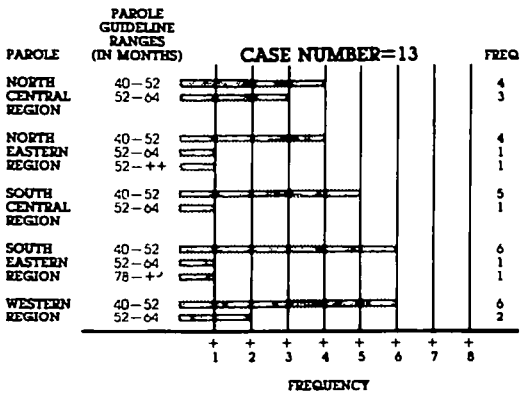


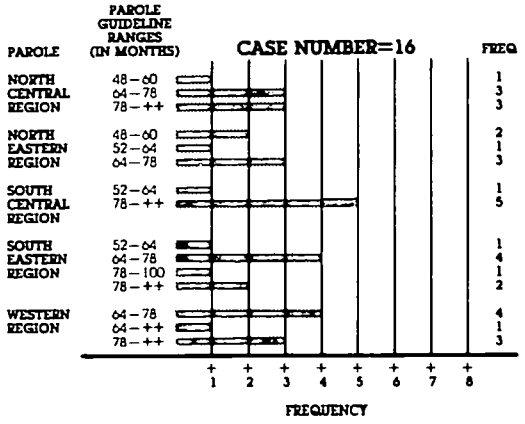


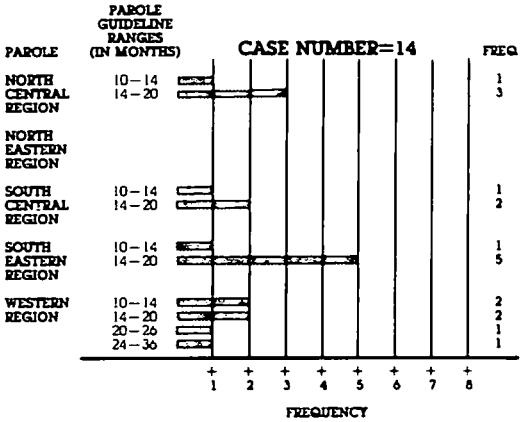


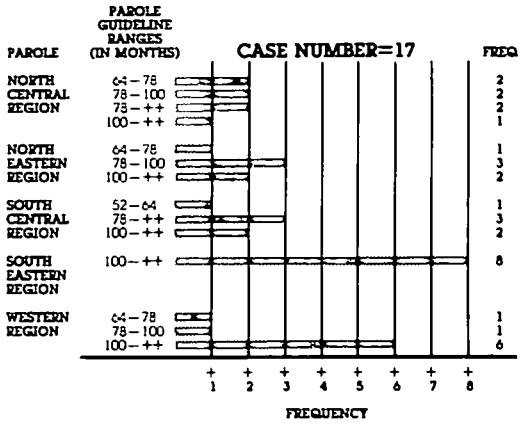
APPENDIX XV

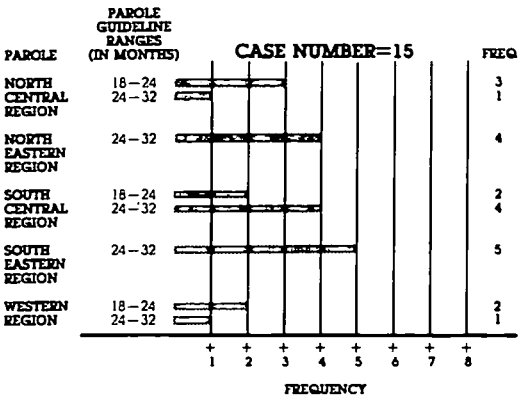
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

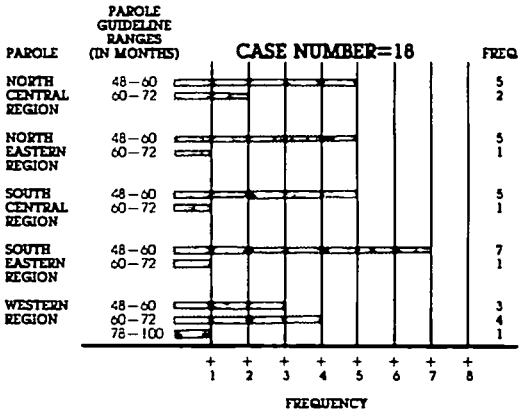






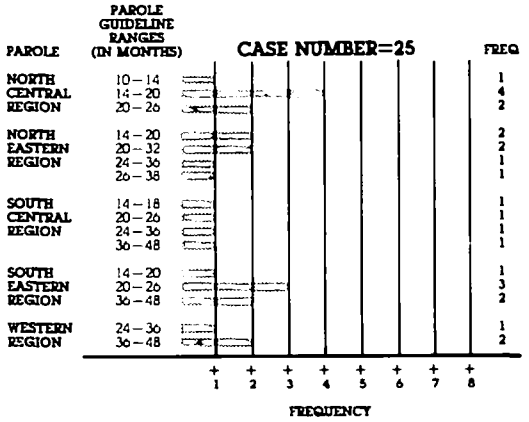


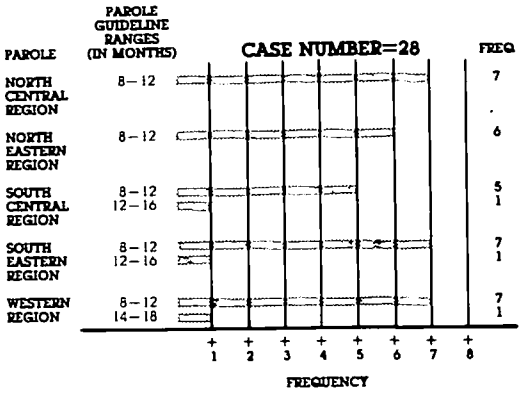


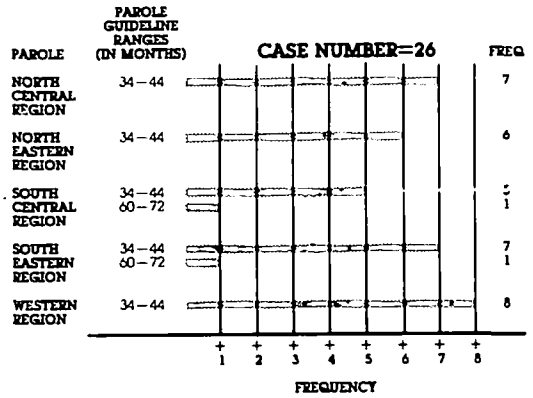


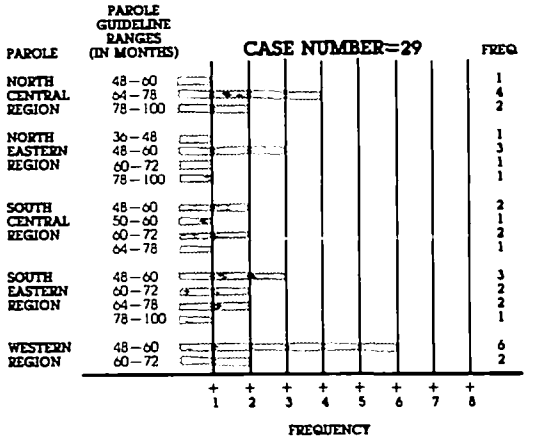
APPENDIX XV

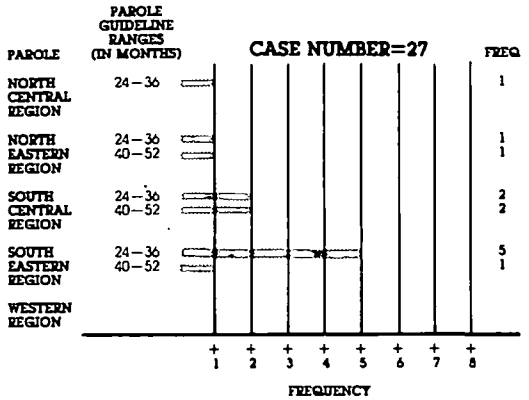
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

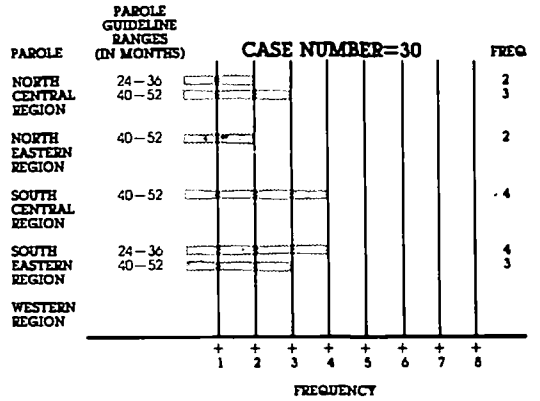






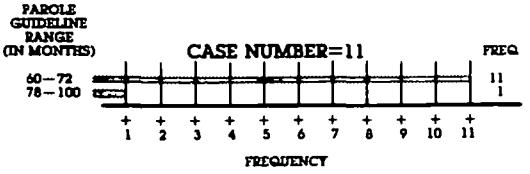


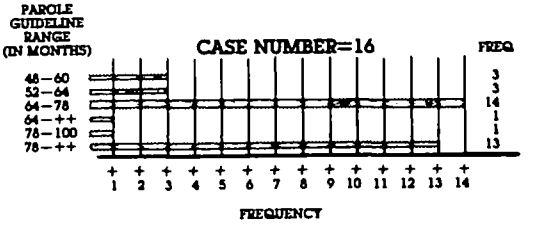


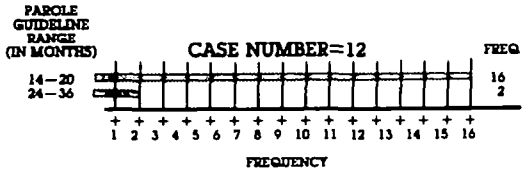


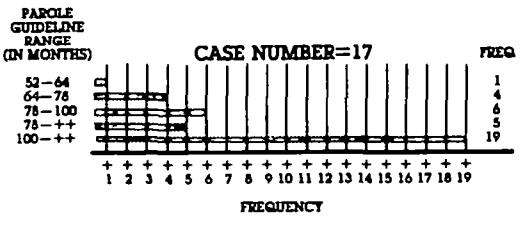
APPENDIX XV

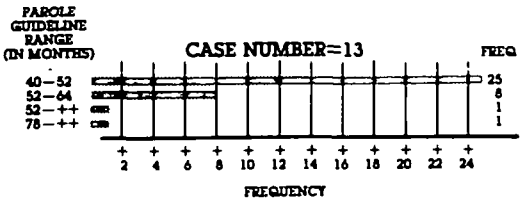
VARIANCE IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGES (Continued)

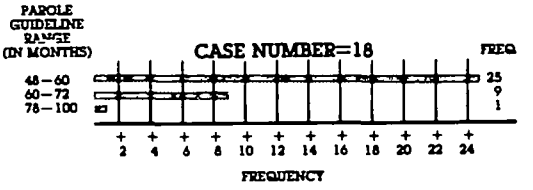


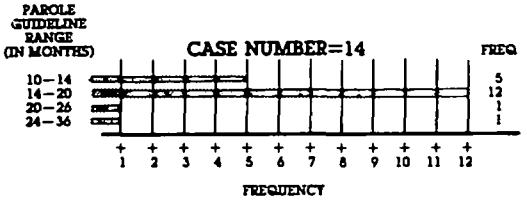


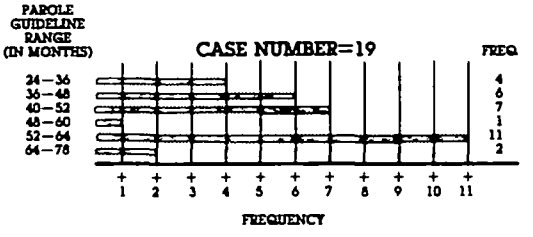


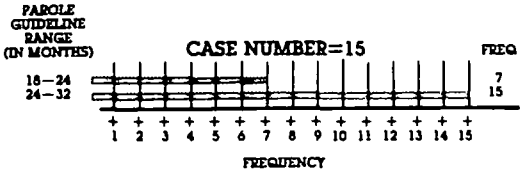


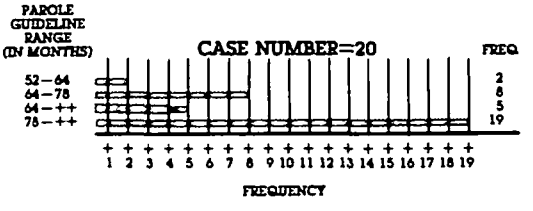




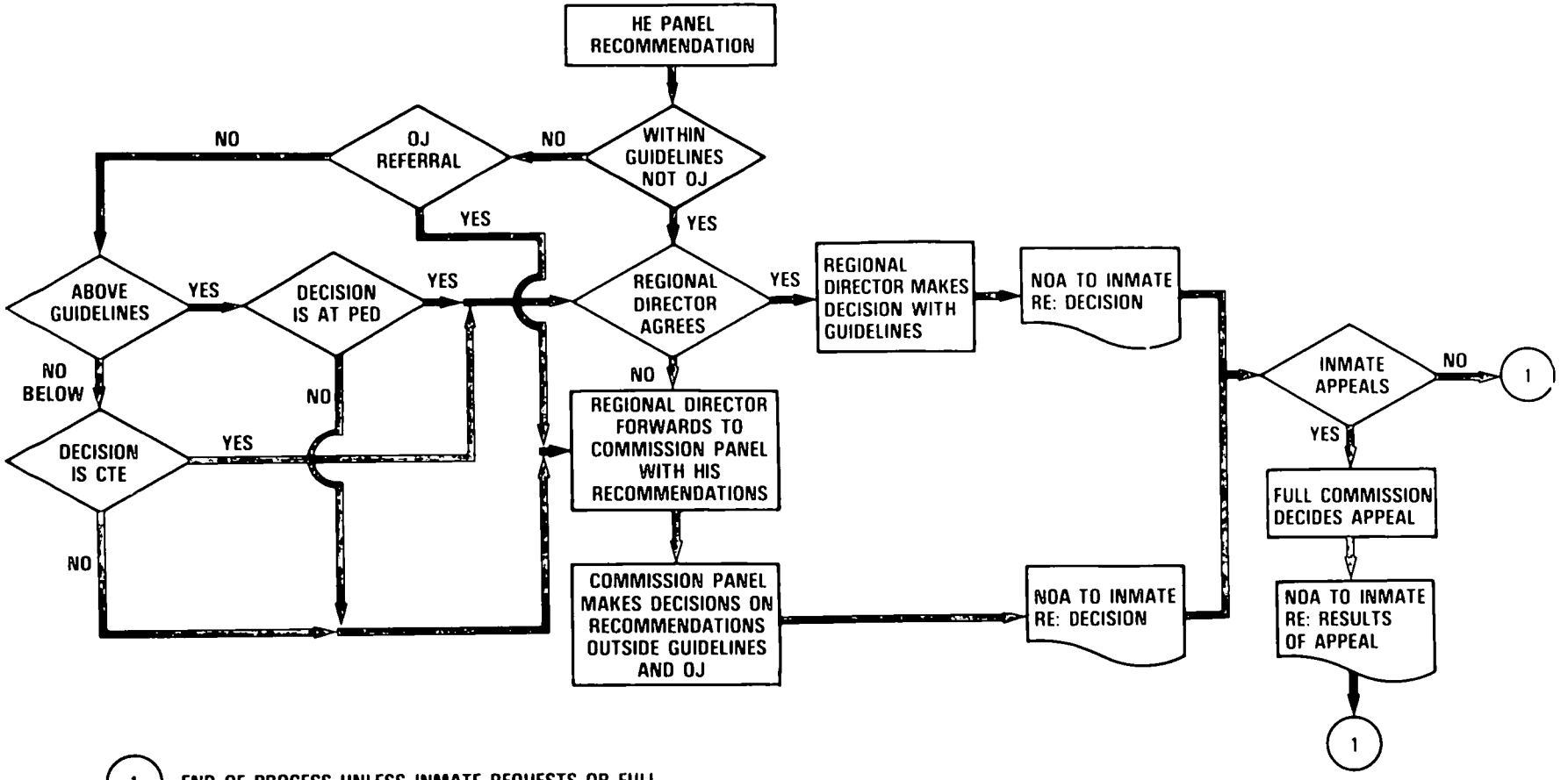








ALTERNATIVE NATIONAL PAROLE DECISIONMAKING PROCESS



(1) END OF PROCESS UNLESS INMATE REQUESTS OR FULL COMMISSION ORDERS CASE BE REOPENED UNDER APPROPRIATE RETULATION. IF THIS OCCURS, PROCESS WILL BEGIN AGAIN WITH THE HE PANEL.

HE (HEARING EXAMINERS)
OJ (ORIGINAL JURISDICTION)
PED (PAROLE ELIGIBILITY DATE)
CTE (CONTINUED TO EXPIRATION)
NOA (NOTICE OF ACTION)

APPENDIX XVI

APPENDIX XVII

Parole Form H-7
(Rev. April 1978)

UNITED STATES DEPARTMENT OF JUSTICE
United States Parole Commission
Washington, D. C. 20537

NOTICE OF ACTION

Name _____

Register Number _____ ***Institution*** _____

In the case of the above-named the following parole action was ordered:

A presumptive parole date is conditioned upon your maintaining good institutional conduct and the development of a suitable release plan. Prior to release your case will be subject to review to ascertain that these conditions have been fulfilled. In NARA cases a parole date is also contingent upon certification of release readiness by the Surgeon General.

(Reasons for continuance or revocation) (Conditions or remarks)

Appeals procedure: You have a right to appeal a decision as shown below. You may obtain forms from your caseworker and they must be filed with the Commission within thirty days of the date this Notice was sent.

A. Decision of a Hearing Examiner Panel. Appeal to the Regional Commissioner.

B. Decision of a Regional Commissioner relative to Parole condition or continuance under supervision. Appeal to the Regional Commissioner.

C. Other decisions of the Regional Commissioner. Appeal to the National Appeals Board.

D. Decision of National Commissioners in original jurisdiction cases. Appeal to the entire Commission.

E. Other decision of the National Commissioners. Appeal to the Regional Commissioner.

Copies of this notice are sent to your institution and/or your probation officer. In certain cases copies may also be sent to the sentencing court. You are responsible for advising any others, if you so wish.

(Date Notice sent) (Region) (NAB) (Nat. Dir.) (Docket Clerk)

COMMISSION COPY

FPI MAR—11 9 78 7,700 SETS 1089

APPENDIX XVIII

CONDITIONS OF PAROLE

1. You shall go directly to the district shown on this CERTIFICATE OF PAROLE (unless released to the custody of other authorities). Within three days after your arrival, you shall report to your parole adviser if you have one, and to the United States Probation Officer whose name appears on this Certificate. If in any emergency you are unable to get in touch with your parole adviser, or your probation officer or his office, you shall communicate with the United States Parole Commission, Department of Justice, Washington, D.C. 20537.

2. If you are released to the custody of other authorities, and after your release from physical custody of such authorities, you are unable to report to the United States Probation Officer to whom you are assigned within three days, you shall report instead to the nearest United States Probation Officer.

3. You shall not leave the limits fixed by this CERTIFICATE OF PAROLE without written permission from the probation officer.

4. You shall notify your probation officer within 2 days of any change in your place of residence.

5. You shall make a complete and truthful written report (on a form provided for that purpose) to your probation officer between the first and third day of each month, and on the final day of parole. You shall also report to your probation officer at other times as he directs.

6. You shall not violate any law. Nor shall you associate with persons engaged in criminal activity. You shall get in touch within 2 days with your probation officer or his office if you are arrested or questioned by a law-enforcement officer.

7. You shall not enter into any agreement to act as an "informer" or special agent for any law-enforcement agency.

8. You shall work regularly unless excused by your probation officer, and support your legal dependents, if any, to the best of your ability. You shall report within 2 days to your probation officer any changes in employment.

9. You shall not drink alcoholic beverages to excess You shall not purchase, possess, use or administer marihuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician. you shall not frequent places where such drugs are illegally sold, dispensed, used or given away.

10. You shall not associate with persons who have a criminal record unless you have permission of your probation officer.

11. You shall not have firearms (or other dangerous weapons) in your possession without the written permission of your probation officer, following prior approval of the United States Parole Commission.

I have read, or had read to me, the foregoing conditions of parole and received a copy thereof. I fully understand them and know that if I violate any of them, I may be recommitted. I also understand that special conditions may be added or modifications of any condition may be made by the Parole Commission upon notice required by law.

. . . . . (Name) . . . . . (Register No.)

WITNESSED . . . . . .

. . . . . (Title) . . . . . (Date)

UNITED STATES PAROLE COMMISSION:

The above-named person was released on the . . . . . day of . . . . . 19 . . . . . with a total of . . . . . days remaining to be served.

. . . . . *(Warden or Superintendent)*

(182640)

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