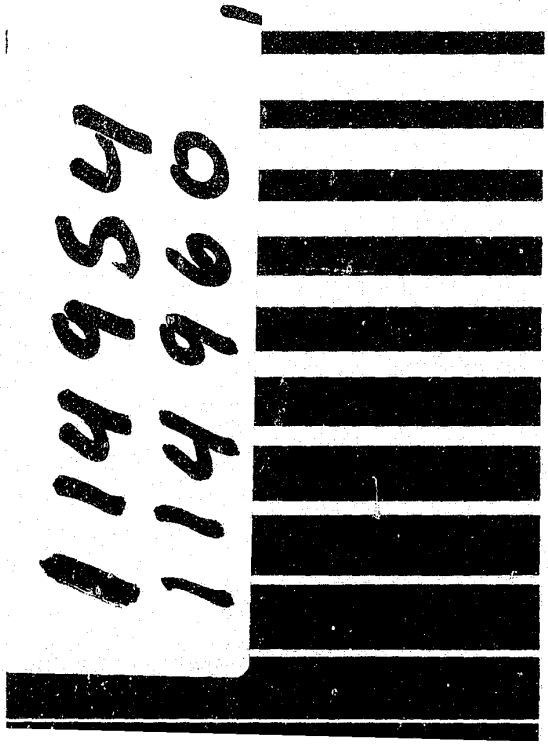
U.S. Department of Justice National Institute of Corrections

Current Issues in Parole Decisionmaking: Understanding the Past; Shaping the Future



CURRENT ISSUES IN PAROLE DECISIONMAKING: UNDERSTANDING THE PAST; SHAPING THE FUTURE

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July 1988

This monograph was supported under Contract Number 8702 from the National Institute of Corrections, U.S. Department of Justice. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U. S. Department of Justice.

NATIONAL INSTITUTE OF CORRECTIONS

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ISBN No. 0-942570-32-4

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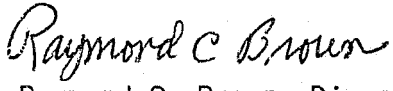
FOREWORD

There has been intensive discussion about parole in recent years. However, there is little written information available regarding the current status of parole in the various states, discretionary release practices, or policy implications of parole decisionmaking.

Because of the extensive interest in parole decisionmaking and associated policy issues, the National Institute of Corrections awarded a grant to COSMOS Corporation to provide technical assistance to state parole decisionmakers. The project team worked on-site with paroling authorities and conducted several national parole conferences and workshops.

This document shares the project team's thoughts and experiences about technical assistance and related activities. It reflects a clear perspective on both the philosophical/historical context of parole and the state-of-practice in parole decisionmaking today. The report identifies the problems now faced by paroling authorities and what they can do to help shape the future. Predominantly intended for use by current parole practitioners, this document should also be of interest to staff in governors' offices, legislative policy analysts, and others influencing the justice system.



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Corrections

PREFACE AND ACKNOWLEDGMENTS

From November of 1985 through the summer of 1987, the National Institute of Corrections (NIC) funded a program of technical assistance for state parole decisionmakers--individuals involved in making release and revocation decisions concerning individuals incarcerated in state institutions. During the course of the technical assistance effort, the project team also became involved in the design of a national training conference for paroling authorities, sponsored by the California Board of Prison Terms and the Association of Paroling Authorities International, and funded by NIC. The major purposes of these two projects were to provide assistance and to deliver training; and those purposes were accomplished.

But these projects bore other fruit as well. A great many issues then facing paroling authorities came into sharper focus, a greater understanding of the state-of-practice in parole decisionmaking emerged, and the changing roles that paroling authorities were being asked to play were clarified. While a number of significant changes were taking place in parole release and revocation decisionmaking, and plans were under way to conduct a landmark survey of the status of parole throughout the country,[1] no current summary of these issues was available. In order to capture the learning that had grown out of the technical assistance project and other parallel activities, in a form accessible to parole board members, state legislators, and others involved in the criminal justice system, NIC commissioned this monograph. It is deliberately written in a non-academic style, although numerous references are included for the academic reader. In addition, the document identifies a number of other sources of information geared to the needs of the practitioner. (See the appendix to this volume for a listing of information resources.)

It is important at the outset of this document to clarify the definition of parole release/revocation

decisionmaking and to draw a distinction between such decisionmaking and parole supervision. The major topic of discussion within these pages is that of parole release/revocation decisionmaking. This is the function lodged with paroling authorities--known as parole boards, parole commissions, or boards of pardons--of deciding if, when, and under what conditions prisoners in state institutions may be released once they have attained parole release eligibility under the law. The word if is underscored, since it is important to note that discretionary releasing authority carries with it the authority to grant or deny release. Paroling authorities also have the responsibility of deciding if, when, and under what conditions offenders released on parole within the community will have their parole revoked, be reincarcerated, and\or have the conditions of their release adjusted. These release and revocation functions are distinguished from the responsibility for supervising such inmates, once they have been released.

In some states release/revocation and supervision are housed within a single organization. In most the functions are split, with release/revocation housed with a paroling authority and supervision housed with a department of corrections. Although the functions are closely linked from a practical and policy perspective, this document is chiefly concerned with the parole release/revocation decisionmaking function. This is not to diminish the importance of parole supervision or to suggest a lack of interest. However, the experience upon which this monograph is based stems largely from work with paroling authorities as they exercised parole release and revocation functions.

As the author of this monograph, I owe a significant debt to the individuals who were involved in designing and providing technical assistance under the NIC grant for parole decisionmakers. Linda Adams, Gerald Kaufman, Peggy McGarry, Becki Ney, and Nancie Zane (of the Center for Effective Public Policy) formed the core team along with myself and have been invaluable colleagues in every aspect of the work. Kermit Humphries, our NIC project

monitor, was a working member of the team and is largely responsible for the existence of this monograph. Among the consultant pool that assisted the core team so ably, I must mention Todd Clear, Stephen Gottfredson, and Vincent O'Leary for their key roles in crystallizing our thinking around the issues. Final and most important are those members of paroling authorities who participated in the technical assistance project and the training conference. Without their willingness to engage difficult issues, neither the technical assistance project nor this monograph would have been possible.

Thanks are also due to those individuals who generously agreed to review and make suggestions on an original draft. These include John Curran, Gretchen Faulstich, Chris Hayes, Ronald Jackson, Vincent O'Leary, Edward Rhine, and Robert Yin. The author, of course, is responsible for the final document.

It is my hope that this monograph will be useful to those individuals who sit on paroling authorities, as well as to those who sit in legislative chairs, and those who are part of gubernatorial staffs as their work shapes the course of parole in the future. Dostoyevsky charges us to judge a society's degree of civilization by entering its prisons. He might well have included those who keep watch over the exit doors to those prisons as indicative of our society's values.

EXECUTIVE SUMMARY

SURVIVAL

Discretionary parole release decisionmaking has been under attack since the 1970s when the philosophy of criminal sanctioning shifted away from rehabilitation toward "just deserts." A number of states have abolished or restricted discretionary parole release decisionmaking (as distinct from post-release supervision) and have moved toward more determinate sentencing. This monograph, based upon two years' experience providing technical assistance to paroling authorities, examines the question of whether discretionary parole decisionmaking has survived the attack. It concludes that, for the time at least, the move to abolish parole has abated.

Discretionary parole release decisionmaking has been given a reprieve from the attack, largely as a result of dramatically increasing prison populations. Prison overcrowding has diverted attention away from the debate concerning parole and has highlighted the usefulness of discretionary parole release in managing prison populations.

The danger in this reprieve for parole is that paroling authorities will focus only upon whether and how to be responsive to the population crisis, and that they will not focus upon the need for parole to rethink its role and to be more than just a convenient vehicle for population management. The future of discretionary parole release depends heavily upon how well paroling authorities respond to this challenge.

CURRENT ISSUES

During this reprieve, paroling authorities are facing many troubling issues. Prison populations continue to grow and the pressure for paroling authorities to take a lead in managing that problem increases.

Paroling authorities are also confronted by growing interest and support for the use of research-based "risk assessment" devices as tools to assist them in making release decisions and to assist them in "managing risk." But these raise difficult policy and technical issues. It is important that paroling authorities realize that for all the promise of research and statistics, risk assessment tools are only tools. They must be technically sound, and they must be shaped by policymakers in light of policy goals. They certainly do not present solutions for all the difficult issues inherent in making parole release decisions.

New roles are being demanded of paroling authorities. More than ever before parole decisionmakers find themselves acting as policymakers in addition to acting as decisionmakers about individual cases. They are participating in the design of information systems. They are consumers of research. In some cases, they are managers of large and growing organizations. They are spokespersons to the community about parole and about the criminal justice system in general. They are participants in state-level policy groups grappling with system-wide criminal justice issues.

These changes imply the need for new support systems, resources, information, and training for parole decisionmakers.

While much is changing, many paroling authorities still feel strongly that significant discretion should remain with parole decisionmakers. They are seeking ways to structure their discretion and to provide accountability to the community.

FUTURE STRATEGIES

Parole release decisionmaking is no longer an activity undertaken behind closed doors, with complete discretion, and solely by individual decisionmakers. It is increasingly subject to public scrutiny, discretion is

circumscribed, and norms for release are developed and stated as policy by members of paroling authorities working together. In response to this new scenario of parole release decisionmaking, a number of strategies for the future take shape. Perhaps the most critical elements of a strategy for the future can be suggested in a few phrases: judicious use of policy, cautious use of decisionmaking technology, creation of professional supports, and careful thinking about goals.

Policy

Conventional wisdom about parole boards is that their strength is in diversity. Governors typically appoint members from different walks of life, different professions, and different political persuasions. The strength in diversity for a parole board, however, is not that members will make individual release decisions in disparate ways, but that they will synthesize those different perspectives within a set of principles to guide the entire membership.

Guiding principles, expressed in explicit policy to guide individual decisions are, in essence, the codification of a board's own discretion. This allows parole release decisionmaking to be guided by specific objectives, to be analyzed for impact upon population and resources, and to be expressed to the inmate, to the public, and to the rest of the criminal justice system. It also allows a parole board to justify individual decisions and to present its decisionmaking process as well-reasoned and accountable. Explicit release decisionmaking policy is an indispensable element of parole's strategy for the future.

Technology

Advances in scientific methods, primarily aimed at increasing the validity and reliability of research-based risk prediction devices, are hotly debated within the parole community. Experience indicates that this technology has both its promise and its limitations. What-

ever aids to decisionmaking are used, they must meet several criteria. They must be consistent with a paroling authority's goals for decisionmaking, they must be technically sound, and they must be developed within a policy framework that allows the decisionmaker to understand and have confidence in them. They cannot rightly replace the human decisionmaker; they can be a tool for human decisionmaking. The judicious use of decisionmaking technology should certainly be an element of parole's strategy for the future.

Professional Supports

The parole community is a small one. There is no reason why new ideas, new approaches to decisionmaking, and new resources cannot be shared widely and in a timely fashion. Parole decisionmakers cannot allow the isolation fostered by heavy hearing schedules to prevent them from forging strong professional networks with their colleagues around the nation. Other critical professional supports include keeping current on research and new publications in the field; knowing about and using available training resources; seeking and securing adequate resources to do their jobs from legislative funding bodies; and forging all-important constituencies among the public and within the criminal justice system. With higher visibility, more demands for accountability, increasing workloads, and expanding roles, members of paroling authorities must view themselves as professionals and demand the support they need to do their jobs.

Thinking About Goals

Goals are mentioned last, not because they are least important, but because they are most important. While their importance may seem self-evident, the concept of setting shared goals for release decisionmaking is uncharted territory for many paroling authorities. The reason for this is that parole board members have in the past operated primarily as individual decisionmakers. They considered a case and cast a vote. There was no

need to be explicit with one's colleagues about why the vote was cast, what factors were considered, or what goals were sought. But conditions have changed. More structure, accountability, and scrutiny are required of parole. Setting explicit goals is the first step in policy development and effective management.

Explicit goals can help determine what decisionmaking tools are appropriate and how to measure success. Explicit goals also allow a paroling authority to think strategically about the future--to consider what resources are necessary, where bases of support lie, and what new programmatic thrusts make sense.

Another virtue of setting explicit goals is that they allow paroling authorities to consider how parole release goals complement goals served by other elements of the criminal justice system--law enforcement, prosecution, the judiciary, and corrections. They may even allow paroling authorities to consider themselves from a criminal justice system perspective rather than as an isolated agency at the end of the sentencing process.

CONCLUSION

There is substantial evidence that discretionary parole release is not on the wane. Certainly, the responsible exercise of release discretion after initial sentencing is still needed. The argument can be made that it is needed as clearly now as it was when parole release was first conceived. It offers a number of key strengths. It offers the opportunity to manage the transition from prison to community. It provides a tool to assist in the management of correctional resources. It also provides checks and balances within our system of criminal sanctioning. The future will not be without challenge to parole. However, if paroling authorities can seize the current opportunity to manage their responsibilities more effectively, to communicate the function and worth of discretionary parole release clearly and persuasively to the public, and to build constituencies

inside and outside the criminal justice system, discretionary parole release will have a role in the future of criminal justice.

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PAROLE IN 1988

THE ASSAULT ON DISCRETIONARY PAROLE RELEASE

The central question surrounding parole at the state level in 1988 is whether it has successfully survived the move to abolish discretionary parole release which began in the 1970s and continues to the present time. If it has survived, will it continue to do so?

More than a decade ago, many believed the death knell of discretionary parole release in the United States had been sounded. Published in 1976, Doing Justice: The Choice of Punishments[2] was the report of the Committee for the Study of Incarceration commissioned by the Field and New World Foundations. It is only one example of the philosophical attack launched during the 1970s against indeterminate sentencing and the implicit role of parole release in such a system of criminal justice. It also can be seen as an indicator of the seriousness of the debate then raging about the efficacy and appropriateness of the existing system of indeterminate sentencing in this country.

In Doing Justice, the committee and its respected executive director, Andrew von Hirsch, who authored the report, argued for a much more determinate sentencing system based on the concept of "desert" or "just deserts" to replace the (for them) discredited rehabilitative ideal. Though the debate had deep philosophical roots, its consequences were far from academic. It shaped legislative agendas in numerous states, resulting in modified sentencing statutes. Between 1976 and 1979, seven states passed legislation abolishing or severely limiting the discretion of paroling authorities and establishing some form of determinate sentencing. Those states were California, Colorado, Illinois, Indiana, Maine, Minnesota, and New Mexico.[3]

THE SURVIVAL OF PAROLE RELEASE DECISIONMAKING

Later we will explore some of the changes that preceded and gave rise to the ideas put forth in Doing Justice, as well as what has transpired since. For the moment, in answer to the question of whether discretionary parole release has survived and will continue to survive, the answer is a qualified yes. While some states and the federal system have, indeed, eliminated parole release discretion, and other states have limited such discretion, the movement to abolish parole appears to have peaked. There are several bases for that judgment.

Reduction in the Number of Boards Abolished

The first indicator that the movement to abolish parole has peaked has to do with the pace of change. While during the four years from 1976 through 1979 seven states took action to abolish or severely limit parole, during the more than eight years from 1980 through mid-1988, only five jurisdictions have taken similar action. In addition, among those jurisdictions where parole release was formerly abolished or limited, there are indications of movement back toward the exercise of release discretion after sentencing.

Between 1979 and 1983, only three states (North Carolina, Florida, and Connecticut) abolished parole board releasing authority for newly sentenced offenders. That represents a significant slowing in the level of legislative activity directed at abolishing parole. Since that time, no comprehensive survey of state parole statutes has been conducted, so information is necessarily fragmentary. What we do know, however, tends to confirm a lessening of pressure upon the parole release function in state legislatures. Since 1983, the State of Washington and the federal system have done away with discretionary release of new offenders. However, while the federal sentencing guidelines and accompanying loss of discretion for the U.S. Parole Commission went into effect in the fall of 1987, that change was largely de-

termined by legislative mandates that had their roots in the early and middle 1970s.[4]

Moves Back Toward Discretionary Release

The second indicator of a retreat in the move to abolish parole is that some reversal of the flow of discretion away from parole boards can be seen. Florida, which had legislatively mandated that its parole authority go out of existence in July of 1987, has extended that date to July of 1989 and legislation is now pending that would repeal "sunset" for the paroling authority altogether.[5]

The State of California, which had gone to a highly determinate sentencing system, has gradually added a few classes of offenses to those that must be reviewed by its paroling authority, the California Board of Prison Terms. In California's case, this cannot be interpreted as a move back to a philosophy of rehabilitation, but is certainly introducing slightly more indeterminacy into its sentencing structure.[6]

In Maine, one of the earliest states to abandon discretionary parole release along with post-release supervision, changes are in evidence. A clemency advisory board now assists the governor in considering executive clemency actions with respect to incarcerated offenders. While this function pre-dates the abolition of parole, the number of these actions has grown in number in response to prison overcrowding. In addition, inmates in increasing numbers are petitioning the sentencing court to be placed outside of correctional institutions and in intensive supervision settings in the community prior to the expiration of their sentences. While not found under the title of parole, these changes suggest a movement back toward discretion regarding release after the initial sentencing decision in the State of Maine.[7]

In North Carolina, where 1981 legislative changes all but abolished traditional parole release, subsequent

amendments to that legislation beginning in 1983 have gradually revested the paroling authority with discretionary release for certain offenders.[8]

New Roles for Paroling Authorities

A third indicator of retreat in the move to abolish parole is that paroling authorities are assuming additional roles in some states with respect to emergency releasing functions. State paroling authorities have been called upon through legislation to exercise emergency releasing authority (examples include Michigan, North Carolina, South Carolina, Tennessee, and Washington).[9] Even in the absence of legislation specifically designating the paroling authority as responsible for prison population management, paroling authorities have emerged with such responsibility. Texas is one example here. Another example is the State of Georgia, where the paroling authority has taken as one of its stated goals, the control of prison population through the use of its releasing guidelines. Although Georgia has also enacted emergency releasing legislation, that legislation has never been invoked, and the Board, within the purview of its own constitutional authority, has embraced the function of population management.

Public Support

A fourth indicator that may suggest more support for discretionary parole release than formerly thought is new information on the public's opinion about both parole release and post-release supervision. It is conventional wisdom to cite public fear of crime and thirst for tougher penalties as a strike against parole. Some have even assumed that this translates into public support for the abolition of parole.

A survey of the general public and criminal justice professionals conducted for the Figgie Corporation in 1985 reported that only eight percent of the public, ten percent of lawyers, and two percent of judges surveyed voiced support for the abolition of parole release.[10]

However, when asked about the public's opinion, 43 percent of lawyers and 25 percent of judges answered that the public would like to see parole release abolished. Those within the criminal justice system may well have been underestimating the public's support and overrating its desire to do away with parole release. It is important to note, however, that this same survey reports that 61 percent of the general public favor the reorganization of parole release. This is clearly not a time for paroling authorities to rest on their laurels.

There are indications that the picture of the public as searching for ever more punitive sanctions for crime may also be inaccurate. A recent Maryland poll by Stephen Gottfredson and Ralph Taylor is an illustration.

> Contrary to general belief, we found the general public not to be especially punitive; rather, they also appeared to stress more utilitarian goals, such as rehabilitation, deterrence, and incapacitation.[11]

A more recent analysis of public opinion, "Crime and Punishment: The Public's View," conducted by the Public Agenda Foundation, found surprising support for alternatives to incarceration and a belief that supervision of offenders in the community is an important ingredient to such a strategy.[12]

Even the popular press is beginning to question the wisdom of sentencing approaches that have swelled prison populations and are draining public revenues for construction and operation of increasing numbers of prisons.[13]

It is interesting to speculate on the cumulative implications of these bits of information. One could make the argument that the public cannot be counted as irrationally supportive of punitive, costly responses to all criminals and all crimes. Rather, the public may be more thoughtful and supportive of discretionary release

than is generally assumed. One may also conclude that, while parole release may be enjoying a respite from the pressure for abolition, there is much work to be done in rethinking its function and operations.

OVERCROWDING: BURDEN AND OPPORTUNITY

Aside from the philosophical debate that was finding expression in academic circles and in state legislatures in the 1970s--and some would say because of it--another aspect of the criminal justice landscape was changing during those years. Virtually every state in the nation was at that time beginning to experience a growth in prison population that would eventually reach crisis proportions. It is this change that may well be the single most important factor in derailing the move to abolish parole. While "just deserts" in theory served what many labeled the "liberal" quest for equity and what many also labeled the "conservative" quest for punishment, in practice it has pushed inexorably upward toward longer prison terms. Indeed, Daniel Glaser states bluntly that it is the "...just desert movement that has produced extreme overcrowding of American prisons in recent decades."[14]

With benefit of hindsight, it is now clear that, at the time the von Hirsch work was published, many states were already moving into a period of steady and significant growth in prison populations. At the beginning of the decade of the 1970s, under 200,000 individuals were incarcerated in federal and state facilities. This translated into an incarceration rate of 96 for every 100,000 in the general residential population.[15] By 1980 incarcerations had risen to almost 330,000, a 68 percent increase, and the incarceration rate had reached 138 for every 100,000 in the general residential population. By 1985, prison populations had doubled from 240,593 to 481,616 in just ten years. While such a doubling has taken place before in this country, it took 47 years to do so (between 1927 and 1974). By 1986, federal and state prison populations had risen to 546,659, a 65.7

percent rate of growth since 1980.[16] The result is that among state and federal prison systems in the United States, only ten were operating within their reported capacities in 1986. Prison capacity taken as a whole in the United States was operating at 126 percent of capacities in 1986. And this growth was apparently not a response to increasing crime rates, since, during this period, crime rates have remained fairly stable in the United States.[17]

The staggering growth in prison populations over the last decade and a half makes a persuasive argument that the single most significant fact for corrections in the decade of the 1980s is the growth of institutional populations. A conversation with virtually any parole decisionmaker in the country will support this argument.

The move to abolish parole seems to have been brought up short by the enormous attention focused upon the problem of prison overcrowding and by the accompanying need for some flexible mechanism to deal with overcrowding, particularly in light of mandates from the federal courts for maintaining population limits.

If prison overcrowding has served to shift attention from the move to abolish parole, it has not "saved" parole. It has, rather, given the parole community a breathing space during which it has the opportunity to continue to come into its own as a professional element of the criminal justice system. Some changes have already begun. Among these are the following.

- The move toward professional boards and away from part-time lay boards.
- Accreditation of many paroling authorities.
- Significant research and progress in decisionmaking technology that has been embraced

and supported within the arena of parole. This includes the development of explicit parole policy to guide decisions and the development and use of decisionmaking tools including risk assessment devices. While the statistical methods to do risk assessment have been available for some time, recent and wider access to low-cost data management and computing capabilities in state agencies have made such decisionmaking technology practical.

- Assumption of new roles in the criminal justice system. These include policymaking, utilization of research in decisionmaking, development and utilization of automated data bases, participation in criminal justice system-wide policy groups, management of large and growing organizations, liaison and responsiveness to victims of crime and to organized victim advocate groups, and provision of information on parole and the criminal justice system to the public.

- Expansion of old roles. Given increasing institutional populations, hearing calendars are burgeoning as well. Parole boards are faced with more and more of the traditional hearing and decisionmaking chores they have always faced. As a result, many have developed new support systems, ways of handling information, and

ways of communicating these roles to staff, to inmates, to others in the criminal justice system, and to the public.

THE PRESSURE UPON PAROLE BOARDS TO MANAGE RISK

The second most hotly debated topic among paroling authorities today, while quite separable from the first topic of overcrowding, is a result of increasing institutional and field supervision populations. It has come to be known most often under the name of "risk management." Growing institutional populations create pressure upon paroling authorities to release individuals and to place more individuals under field supervision than they might otherwise choose. While not all paroling authorities feel this pressure to the same degree--political climate and the posture of courts, chief executives, and corrections agencies create varying scenarios from state to state--some pressure is a fact of life for most paroling authorities.

Parole decisionmakers have never had the luxury of selecting only the obvious and non-controversial candidates for parole release--those who have committed crimes of low severity, who have served significant time in prison, who present a repentant and law abiding profile, and who have little or no criminal history. The decisions have never been easy. But with increasing populations in institutions, decisionmakers are required to consider individuals for release who might never have been seriously considered at a time when population pressures were not an issue.

In addition, parole decisionmakers no longer operate with unfettered discretion and without public scrutiny. The decisions are getting harder to make, and the spotlight on parole is much sharper now than ever before.

But how can paroling authorities best decide whom to release and when to release them? Beyond that, how can

these more "difficult" offenders be successfully supervised in the community? What conditions should be set? What resources should be used for which offenders? If prison populations are growing, the direct result is that community supervision populations are growing too. More clients are being admitted to community supervision for longer periods of time. All of these questions must be answered, then, by paroling authorities facing growing workloads and stable or shrinking staffs and budgets.

These questions are being answered every day by paroling authorities. Some are doing so on an "ad hoc" basis through individual decisionmaking. Other paroling authorities are proceeding through more deliberate efforts to use research-based risk prediction scales and explicit policy. Faced with the need to identify parole candidates from among individuals with substantial criminal histories who have committed serious crimes, is it any wonder that paroling authorities are in search of methods to make those decisions in responsible ways? They are in search of decision tools that will balance resource constraints with the public's concern for protection.

WHAT IS DISCRETIONARY PAROLE RELEASE?

MISCONCEPTIONS REGARDING DISCRETIONARY PAROLE RELEASE

Despite great changes in the criminal justice system and fundamental rethinking of our system of criminal sanctions, the purposes and functions of parole in this country are widely misunderstood by the public and the media. Even though recent public opinion research suggests support for parole release, although with some restructuring, this research does not strongly support the conclusion that the public is clear on how parole release actually functions. Almost half of the respondents to the Figgie Report,[18] for instance, indicated that parole boards release offenders as soon as they are eligible for parole. This does not reflect actual practice.

A perfect example of the misunderstanding of parole release decisionmaking is the media's perennial targeting of parole release as the culprit in reporting sensational crimes. Recent reporting of a highly controversial case in a determinate sentencing state is illustrative.[19] In this case, the media persisted in reporting about a "paroled" offender who had been convicted of a crime involving rape, attempted murder, and mutilation of a victim. The community was outraged at the offender's release from prison and several towns in the state vehemently protested his residence within their boundaries. Ultimately, the offender was placed under supervision while living within a correctional facility. The public was given a clear message from the media that the release was discretionary and that the paroling authority was to blame.

In fact, the release was a result of a determinate sentence that **required** release at that point in time. Once again, parole appears to have taken the blame for decisions taken elsewhere in the system. Indeed, parole is often criticized as circumventing the will of the judge--even when eligibility is established by law and

judges make their sentencing decisions in full knowledge of parole statutes.

REALITIES OF PAROLE'S PLACE IN THE CRIMINAL JUSTICE SYSTEM

It may be helpful, then, to sketch precisely how parole fits into the criminal justice system in this country. The precise character of parole differs from state to state, but in general the outlines of parole are similar. In most states where parole exists in the United States, individuals found guilty of certain criminal offenses may be sentenced to a period of incarceration under a more or less indeterminate scheme (e.g., from two to ten years). Under such a scheme, the individual is sentenced to serve a maximum period of time under the jurisdiction of the state. At some point during that time the offender becomes eligible for release from incarceration and, once released, would be expected to serve the remainder or some portion of the remainder of the sentence in the community under some type of supervision and/or conditions. The time of eligibility is usually established by law, but may be a choice of the individual sentencing judge or a policy decision of the paroling authority. The body charged with making such release decisions is a paroling authority, often referred to as a parole board, a parole commission, a board of pardons, or a board of pardons and paroles. Post-release supervision is often referred to as field parole supervision. In most states such supervision responsibility falls to an organization independent of the paroling authority (e.g., the state department of corrections), but in 14 states, field supervision is also the responsibility of the paroling authority.[20]

The concept of parole as embodied in the indeterminate sentence has been closely linked to the ideal of rehabilitation. To be consistent with the rehabilitative ideal, sanctions are tailored, not to the crime, but to the criminal. Release is timed to coincide with progress toward rehabilitation and toward the ability of the

individual to return to the community as a law-abiding citizen. In addition, the prospect of a shorter time of incarceration serves as an incentive toward cooperation on the part of the offender. What we will see later in this paper, however, is that parole from its very beginning has association with other goals as well, including that of controlling institutional populations. In the 1980s, a rethinking of sanctioning purposes and increasing prison populations have underlined other possible goals for parole. A concern for public safety might argue that discretion with respect to exact time of release--within bounds set by a judicial sentence--can take into account readiness for release, plans for residence and employment, and the need for supporting services during the transition from prison to the community. Discretion near the time of release can also take into consideration specific concerns of the community or particular victims.

Another function of paroling authorities that is often overlooked is the authority they can hold over paroled offenders. During a period of conditional parole release, the paroling authority has the ability for good reasons to revoke parole, bringing the inmate back to custody, or to restructure the conditions of parole, requiring other intermediate sanctions. This can provide "strings" for the community and "support" for the offender when each are needed.

EFFICACY OF DISCRETIONARY RELEASE DECISIONMAKING AND PAROLE SUPERVISION

Most parole decisionmakers and individuals involved in parole field supervision are convinced that parole makes sense and represents a cost-effective vehicle for managing the transition from prison back to society. Understandably, these individuals look to research for corroboration of their own observations and beliefs.

What does research tell us about the success of discretionary parole release and post-release parole super-

vision? Is it really true that, in correctional programming, "nothing works?" That famous phrase, drawn from a widely hailed review of research conducted by Lipton, Martinson, and Wilks in 1975,[21] has been much exaggerated. In 1977 the National Research Council's Panel on Research and Rehabilitative Techniques was convened in order to assess the then current state of knowledge about rehabilitation of criminal offenders. It took exception to Martinson's earlier conclusions, pointing out that the methods used to study program effectiveness were not uniform and were often weak, and that no attempt was made to determine whether treatment had actually been carried out. It concluded that "...no recommendations for drastic or even substantial changes in rehabilitative efforts can be justified on empirical grounds."[22]

In a subsequent study in 1979, Martinson himself disavowed his earlier conclusion that rehabilitation programs were "impotent," and reported that some newly studied programs were indeed capable of bringing about changes (both positive and negative) in an offender's behavior.[23]

With this controversy surrounding correctional programs generally, it is not surprising that few across-the-board conclusions about the effectiveness of parole can be drawn based on research. Some individual studies have found lower recidivism rates among those under parole supervision than among those released without supervision. Other studies have found the opposite. The evidence, then, is conflicting and inadequate. **That does not mean that nothing works. It means that the problem of criminal behavior is so complex and the responses which we lump under the label of parole so diverse, that it simply does not make sense to ask the question in that form.** It is analogous to asking whether education works. We still have significant illiteracy in this country. Or one might ask whether health care works. We still have a high level of infant mortality in comparison with other Western nations.

We do know something about parole release and parole supervision. Most of what we know, however, is based on individual studies of specific programs in specific jurisdictions. With respect to release decisionmaking, we do know that the risk assessment instruments utilized by some paroling authorities have been demonstrated through empirical research to be valid tools for identifying groups of parolees with differing rates of recidivism. If the tools are designed and used appropriately, they offer a systematic way of identifying different offender risk groups and enable officials to focus supervision resources upon higher risk groups of parolees in the field.[24] We also know that explicit parole policy can be associated with decreases in disparity among time served by similarly situated offenders and that decisionmaking policy can introduce more equity and consistency in decisionmaking.[25] With respect to supervision, studies in Wisconsin and Illinois have documented lower recidivism rates for parolees in comparison with mandatory releasees.[26] In 1984, then Director of the National Institute of Corrections, Allen Breed, reported that experience to date comparing parolees and mandatory releasees indicated that parolees had lower failure rates.[27] One can also conclude that those selected for parole through discretionary parole release are those less likely to commit new crimes.

Unfortunately, research results can often be interpreted quite differently and, depending upon the emphasis, be construed to indicate different conclusions. For instance, in a recent study the Bureau of Justice Statistics[28] reported that among a sizeable group of young parolees--who are demonstrably the most criminally active offenders who move through our prison systems and who present the highest risk for reoffending--37 percent were rearrested during the period of their parole and less than 20 percent of the charges against those rearrested were for violent crimes. The number of those subsequently convicted and incarcerated for offenses committed while on parole was not reported in the study. But for all offenders studied, the percentage of convictions and incarcerations was, necessarily, signifi-

cantly lower than the 37 percent rearrested. Assuming a proportion of convictions and reincarcerations approximately equivalent to those in the study population as a whole, approximately 28 percent and 26 percent of those reoffending while still on parole were reconvicted and reincarcerated respectively. Thus, about one quarter of those paroled during the most criminally active time in their lives returned to prison--and only a subset of those for the violent crimes that the public fears most. Some might see that as significantly better than a 75 percent success rate among the toughest population for parole in this country.

However, media coverage of the report might well be interpreted to suggest a 69-percent "failure" rate. The media heavily emphasized another finding of the report--that 69 percent of these young parolees were rearrested within six years of release on parole. This ignores the fact that most of that six-year period occurred after the average offender was released from parole supervision, that many arrests did not result in convictions or reincarcerations, that many of the offenses were for property crimes, and that the age of those studied was not representative of all parolees--in fact it was focused exclusively on an age group that is most criminally active. Without benefit of context, then, the lay reader might assume that the study indicates a "failure" rate of 69 percent.

The lesson to be learned is that even the limited information that we have now is subject to wide variation in interpretation. The selection of a criterion of success or failure can be a critical one. On might argue that the criterion of arrest--emphasized in this study and by the media coverage--particularly with a population already heavily involved in the criminal justice system, is an unrealistic indicator of parole success or failure. Another potential indicator of parole success or failure--parole revocation--was not included in the study. Revocation, returning an inmate to custody, is a type of control exercised over an offender while on parole. It can be an indicator of failure--when the offender has

engaged in significant criminal behavior. It can also be viewed as an appropriate exercise of control, when an offender is returned to custody before serious criminal offenses have taken place.

The research currently at our disposal certainly cannot be construed as evidence to abandon what common sense and experience support. It seems consistent with common sense that a period of supervision and support during a transition from the structure of life within an institution to life in the community would benefit both the offender and society.

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PHILOSOPHICAL FOUNDATIONS: WHY DO WE INCARCERATE; WHY DO WE RELEASE?

The intended audience of this document includes parole board members, legislators, citizens, and others with a day-to-day stake in the criminal justice system. Such individuals are practitioners with little luxury to contemplate philosophical matters. However, remembering Kurt Lewin's admonition that there is nothing so practical as a good theory, this section of the paper will touch briefly upon the variety of theoretical purposes that our system of criminal sanctions serves. (A much more thorough and thoughtful discussion can be found in M. Kay Harris's work "The Goals of Community Sanctions.")[29] The inclusion of this topic is a response to several facts.

First, unless one has a clear idea of purpose, it is almost impossible to plan effectively or to identify shortcomings and successes.

Second, there is great debate and disagreement over the purposes of criminal sanctions and about the role of parole release. Parole board members cannot assume without question that their own goals are shared by even their colleagues who sit on the same board. Without consensus about goals within a single paroling authority, movement toward consistency, equity, and explicit policy to further goals will be impossible to achieve.

Third, while any paroling authority will likely have more than one purpose in making release decisions and in supervising parolees, being clear about those purposes will identify conflict, will underline the need to set priorities, and will assist decisionmakers in making compromises and trade-offs when goals come into conflict in individual cases.

Last, we include the topic because parole board members often see themselves first as individual decisionmakers rather than policymakers. The demands of

heavy hearing schedules make opportunities for team building relatively scarce and there are few occasions or forums for members of paroling authorities to discuss and debate their purposes.

It is hoped that this paper will contribute to an increased focus on the purposes of discretionary parole release decisionmaking and on the importance of considering those purposes.

JUST DESERTS

Proponents of desert (or just deserts) as the appropriate purpose of criminal sanctions hold that punishment should be proportionate to the harm done by the crime and to the blameworthiness of the offender. The purpose of punishment is to right the imbalance or advantage the criminal has seized by refusing to live by the laws of society. This orientation is rooted in the thinking of Immanuel Kant and his contemporaries of the 18th Century Enlightenment. Radical for its time, this thinking was based on the concept that all individuals should be treated equally under the law without regard for rank or station. This thinking was a strong influence upon the drafters of the United States Constitution. Under such an orientation, information regarding the risk of future criminality, behavior while incarcerated, or plans for post-release activities is irrelevant to the choice of punishment. Desert was the philosophical orientation that gave rise to much change and rethinking of criminal justice during the 1970s. Pure desert has been challenged by those who find it foolhardy to completely ignore issues of risk or of individual circumstances in making sanctioning decisions.

GENERAL DETERRENCE

General deterrence is based upon the assumption that, in order to maintain respect for law, those who break the law must be punished as a warning to other

potential criminals. It is not concerned with redressing the imbalance of past criminality, but looks to prevent criminality among others in the future. The ability of the criminal justice system to effect general deterrence is often questioned, however. As the system now operates, the likelihood of apprehension, conviction, and punishment for crime is so low that many question how realistic a goal of general deterrence can be.

INCAPACITATION

Incapacitation as a goal for criminal sanctions seeks to "incapacitate" individuals for some period of time by taking away their opportunity to commit crimes against the public. It is forward-looking and depends on the accuracy of predicting future criminal behavior. It would benefit greatly from reliable and valid predictions about future criminality. Proponents of incapacitation are often challenged as to the fairness of sanctioning someone for crimes that might be committed in the future.

REHABILITATION

The goal of rehabilitation is a child of the great reform movement of the early 20th century and of a then-growing body of thought in the social sciences. It sees the causes of crime within the environment of the offender and seeks to bring about changes in the individual that will render his or her future choices about behavior less criminal in nature. While it shares some of the objectives of incapacitation, it would strive for reduced criminal behavior through a changed mind-set of the offender, rather than through external controls. Although rehabilitation lost much of its prominence in correctional thinking in the 1970s, it continues to be a concern of the public, of those working in the correctional system, and of researchers.

OTHER CONCERNS

As mentioned before, in addition to these philosophical goals for sanctioning, other pressing concerns are impinging upon the decisionmaking functions of a parole board. One goal certainly pushing itself into this arena is that of maintaining reasonable population levels within institutions. Other goals may include the need to maintain order within institutions, to effect the humane treatment of offenders, and to address broader resource management issues. Still others have to do with maintaining credibility within the criminal justice system and with the public by avoiding high-visibility "failures" of parolees involved in serious and publicized crimes.

It would be naive, even foolhardy, to suggest that parole boards must or should choose a single goal for their release decisionmaking and supervision responsibilities. It is well to remember, however, that other actors in the criminal justice system have responsibilities for these goals as well. It may be that different actors should place more emphasis upon one goal than another, based upon their particular perspectives in the system. By thinking clearly about what goals are being served, it is possible to identify areas of conflict, to set priorities, and to gear specific policies and individual decisions to serve agreed-upon goals in a strategic fashion.

HISTORICAL CONTEXT: HOW HAVE PHILOSOPHICAL FOUNDATIONS CHANGED OVER TIME AND WHY DOES IT MATTER?

The preceding discussion about trends in thinking that have shaken our criminal justice system to its roots underlines the importance of understanding history as a first step in understanding the present and future with respect to parole. Here we will examine in a bit more detail the practical history of incarceration and the discretionary release function known as parole.[30]

With our current heavy reliance upon incarceration as a criminal sanction, it may be difficult to believe that the modern prison has been with us only a short time. The concept of imprisonment while awaiting another punishment, or as a way to simply remove the undesirable from the community, has a long history. But the modern prison was

> ...meant to be a grand and even noble experiment in prison reform...The ideal of reform through discipline captured the American imagination. Americans thought of the penitentiary as nothing less than a new punishment for a new world...It reflects many aspects of American character and history.[31]

In early colonial days, punishment for crimes most often included banishment, public shaming in the stocks, or whipping. After the American Revolution, and at least partially as a result of a rejection of the British tradition of capital and corporal punishment, Quaker reformers conceived of imprisonment as a punishment for crime as well as a vehicle for repentance. Their approach was to isolate the individual from the distractions of the flesh and to encourage contemplation of self and sinful-

ness. The criminal was to repent in solitude. Isolation from the world and from other inmates was an essential element of the approach. But inmates in solitary confinement were unable to work and the economic burden of allowing for solitary confinement, as well as the toll of suicide among inmates, eventually led to communal living arrangements within these institutions. Corporal punishment such as flogging became commonplace, and gradually the Quaker ideals of rehabilitation disappeared as prisons became warehouses for convicted criminals.

REHABILITATION: THE 1920s THROUGH THE 1960s

In the late 19th and early 20th centuries, the social sciences acquired more visibility and influence in public policy. The social science perspective focused on the heavy influence of environment on human behavior. The criminal could be seen not simply as deviant, but also as responding to negative influences in the environment. A person who was a criminal was not bad, but rather, sick. Given proper treatment and "rehabilitation" he or she could become a law-abiding citizen. With this perspective, prisons became places to treat clients--a medical model--rather than to punish inmates. Sentences were made indeterminate so that release could occur at the time appropriate to the individual rather than to the crime. Parole boards were charged with monitoring progress toward rehabilitation and to timing release accordingly.

The practical beginnings of this thought can be traced to 1877 when a new reformatory for young men opened in Elmira, New York with Zebulon Brockway, a noted Michigan penologist, as superintendent. Brockway was a proponent of methods based on the British ticket of leave and drafted legislation allowing for youthful offenders to be sent to Elmira under an indeterminate sentence. The timing of release was determined by a board of managers, based on the individual's performance while in the institution. The whole purpose of incarceration began changing to include the reformation of the individual.

Eventually the length of incarceration was to be governed by the individual's progress toward readiness for release. Release from incarceration was conditional for a short period during that the parolee was required to report regularly to an appointed citizen guardian and to maintain an upstanding behavior. It was possible to reincarcerate the parolee during this period for cause.

This system was gradually imitated in other reformatories and by 1922, 37 states had adopted some form of independent parole board system. The movement toward parole was encouraged by economic conditions as well. The Great Depression, with its large number of unemployed workers, saw the end of the exploitation of convict labor. Given the enormous cost of prison construction absent such labor, prison overcrowding ensued as did riots. Inmates began to be released on parole in ever greater numbers, and eventually every state had an independent paroling authority.[32]

Rehabilitation as a correctional ideal continued unchallenged into the middle of the twentieth century. It is interesting to note, however, that even though parole is closely associated with the rehabilitative ideal, it has served other purposes even in its early history. It evolved out of the power of governors to issue pardons to some convicts, a power that was used by governors to relieve conditions of overcrowding.[33] Alfred Blumstein states that even during the period of the indeterminate sentence, parole agencies served a "safety valve" role, lowering the threshold of what was acceptable rehabilitation as populations approached capacity.[34] While it is possible to sketch the history of parole release as following major trends in criminal justice thinking, it is well to remember that purposes for this function have been multiple, even from its beginning.

As we are now only beginning to realize fully, the 1960s ushered in a time of enormous tumult and change for American society. The civil rights movement, the war in Vietnam, the women's movement, and the coming to young adulthood of the largest generation of young Americans in

history created that tumult. No aspect of American life was immune--certainly not our thinking about crime or the way we created our criminal justice system. The decade of the 1960s was a time of basic change in our criminal justice system and merits careful examination.

During the 1960s, our focus on the individual in every facet of society was intense--the individual black, the individual woman, the individual soldier, the individual defendant, the individual inmate. The rights of the accused and the rights of the prisoner were debated with passion, and a wave of litigation began to establish precedents and transform the criminal justice system.

The seeds of dissatisfaction with parole were sown during that decade as well. With a concern for the prisoner, advocates began to question all aspects of the sentencing system. It was not long before they hit upon parole--the deciding of an individual's liberty behind closed doors--as an "arbitrary and capricious" exercise of power over the individual. Those concerns led to numerous reforms including the requirement for due process protections in the parole revocation process, the allowability for representation at the release hearing in some jurisdictions, and the push for "parole guidelines" to reduce unwarranted disparity in time served resulting from disparity of judicial sentencing and parole decisionmaking.

A parallel set of developments was emerging, one that would eventually create a powerful coalition against parole. That set of developments had to do with our disillusionment with rehabilitation as a goal of criminal sanction. With characteristic American optimism and faith in our ability to solve any problem, we had, in the early 20th century, embraced the positivist school of thought that held that criminals were not bad, they were simply the creatures of their environment. They could be "fixed" or "rehabilitated" much as someone who had contracted an illness from an unhealthy climate. But when social science research began to question our ability to rehabilitate, the medical model of criminal

sanctioning and the indeterminate sentence structure tailored to that model seemed to come crashing down about our ears.

DESERT: THE 1970s

Eventually, those who felt that sentencing--particularly the parole aspect of sentencing--was inequitable, and those who were convinced that rehabilitation was not possible, found themselves espousing the same cause--the abolition of parole, the adoption of a determinate sentencing structure, and a philosophy of criminal sanction based almost exclusively on the precepts of desert. These two camps were joined by yet a third--the "get tough on crime" advocates. While the desert theorists were focusing on "sure and certain" punishment as an antidote for the ills of the indeterminate sentence, those concerned with crime rates were thinking about "sure, certain, and longer" to describe this new approach to sentencing. The result was the abolition of parole in a number of states, and a dramatic decrease in the breadth of paroling authorities' discretion in other states. Sentencing laws were changed establishing more mandatory prison terms and minimum sentences than ever before. Habitual offender statutes, toughening of drug offense sentences, and sentences of life without parole were only a few of other more punitive measures that grew out of changes in thinking at this time.

INCAPACITATION: THE 1980s

While prisoners' rights had been the cry of the 1960s and early 1970s, the later 1970s and the 1980s found the spotlight focused upon the rights of victims. Public concern about crime was on the rise, and the political pendulum in this country had changed direction. Sentencing practices yielded longer periods of incarceration in the hopes of serving retributive, crime control, and incapacitative goals.

There is often a lag before practice catches up with changes in philosophy. Even though desert has come under some fire in recent years, it has been during the 1970s and 1980s that the response to the move to desert has been reflected in parole. During this period, the focus in some jurisdictions has been on parole as a tool to level unwarranted judicial sentencing disparity with a heavy focus upon the nature and circumstances of the crime. Indeed, the entire movement toward parole guidelines and structuring discretion of parole board members first evolved out of a concern over the arbitrary and capricious exercise of power that was attributed to parole boards and to widely disparate judicial sentences. What parole boards failed to foresee, however, was the import of desert as a concept that looks backward in time to crime already committed. It seeks to impose punishment proportionate to the harm of the crime and does not look forward to prevent future crime. When the entire focus of criminal sanctioning is backward toward crime already committed, the logic of making a final decision about length of incarceration at the judicial sentencing stage is compelling. Indeed, this is the logic of sentencing guidelines, determinate sentencing, and the abolition of parole. Discretionary parole release only retains its usefulness when the sanctioning decision is also forward-looking, seeking to avoid crime in the future, to measure progress toward rehabilitation, and to manage the transition from prison to the community. Such a perspective argues strongly that the sentencing decision be shared by the judge and parole authority. Such a perspective is re-emerging in the current high interest in risk management.

As prison populations began to escalate, however, and the federal courts began to intervene, attention in the corrections field shifted from the rehabilitation vs. desert vs. incapacitation debate to addressing the population crisis.

SIGNIFICANCE OF HISTORY

A historical perspective on parole in America is useful to today's parole practitioners for three reasons.

First, the historical perspective makes it clear that the dilemmas and controversies surrounding parole are really only part of broader debates going on in the society as a whole. Those debates revolve around the purposes of criminal justice generally, and specifically around the purposes we try to serve in imposing criminal sanctions. Some solace can be drawn from knowing that lack of consensus and continuing debate is not unique to parole.

Second, if there is a lack of clarity of purpose or of an easy agenda for change, it is because the problems are so difficult and so bound up with the core problems of humans as social beings. A historical perspective underlines the significance of clarifying purposes.

Third, if we are to learn from our experiences in the field of parole, it is vitally important to have some common understanding of what has gone before. What has been learned as a result of the focus on desert, the use of structured decisionmaking tools, and the move to determinate sentencing? A common understanding of issues such as these will help parole to chart its future course more realistically.

The message of history, then, is that parole is not alone in its struggle to define its role and purposes within criminal justice. Thinkers throughout history have struggled with these same questions. Their answers typically remain satisfactory for only a short time, and then the society moves forward.

WHAT PROBLEMS DO PAROLING AUTHORITIES FACE TODAY?

We have seen the role of parole change dramatically in this century. From 1920 through 1970, the emphasis was on rehabilitation, and paroling authorities had extensive discretion that was almost completely unstructured. During the 1970s, emphasis was focused on desert, and parole board discretion was drastically reduced in many jurisdictions, and heavily structured in others. During the 1980s, we have seen a focus upon incapacitation, or risk management, and revesting of discretion with paroling authorities, though usually with formal structure, policy, or guidelines. Given that environment, let us examine the major issues facing parole now and in the future. The issues are many and complex. Some of the most critical are included here in order to encourage debate and discussion.

PRISON OVERCROWDING

Because of the overriding reality of overcrowding in the nation's prisons, there is virtually no paroling authority in the country that has not had to confront this issue. As usually framed, the question most often asked is: Is it appropriate for a paroling authority to consider population issues in making policy or in making individual case decisions? On the one hand, some paroling authorities eschew such a role, finding it inappropriate to their goals of rehabilitation and public protection. On the other hand, some paroling authorities have embraced this role as offering them a legitimate and critical part in the criminal justice system. Still others, consider population more or less openly, but with little relish. It seems, however, that there is no longer any question of whether paroling authorities will become involved in population issues, but rather, exactly how and when. If this issue is not met head on, it will sooner or later be thrust upon a paroling authority, either in the form of emergency powers legislated as a

responsibility of a paroling authority, as a formal or informal mandate of the governor, or in the form of legislatively mandated guidelines.

One of the most powerful tools in addressing this crisis continues to be the development of explicit policy for release decisionmaking. Such policy can enable a board to examine the impact that its release practices have on population and allow that board to plan its own response to the situation, rather than having its own actions dictated to it by outside forces. It allows a paroling authority to work with other elements of the criminal justice system--law enforcement, prosecutors, judges, corrections agencies, and legislators--all of whom have a responsibility together to address the population issue.

DISCRETION

Discretion is a topic that surfaces early in discussions with parole decisionmakers. Particularly with those paroling authorities where no explicit policy has been adopted, the concept of individual discretion is a closely guarded one. There is a belief that any encroachment upon individual discretion is a loss of ground for parole as an institution or a denigration of the value of the individual decisionmaker.

Indeed, many parole decisionmakers feel that they have been appointed to their positions to ensure diversity and a broad representativeness to their membership. They see their individual perspective as valuable to the group. What seems unclear to many parole decisionmakers is that the strength in diversity for a body of decisionmakers, is not that they will make individual decisions in disparate ways, but that they will synthesize those different perspectives within a set of principles to guide the entire membership. Guiding principles, expressed in explicit policy to guide individual decisions are, in essence, the codification of their own discretion. Structure need not be imposed from outside,

the breadth of the area of discretion can be defined by the decisionmakers themselves, and the frequency of allowable departures from policy may be determined by them as well.

The message here is that the use of policy is ill-understood. Explicit policy to guide individual release decisions is, in effect, a powerful tool for the decisionmaker, not something that draws power away from him or her. It is also important to recall that the unfettered and invisible use of discretion by paroling authorities was a major criticism of parole during the 1970s. Such criticism remains one of the most powerful arguments against parole.

The weaknesses that have emerged in determinate sentencing structures are significant. At a minimum, they include a lack of flexibility with individual cases, the inability to consider the timing and conditions of release close to the time of actual release, and the lack of ability to consider institutional population issues. These weaknesses can be met head-on by the judicious exercise of discretion close to the time of release from incarceration. Parole, as it is being reshaped today with greater accountability and structure, offers a setting within that this discretion can be responsibly exercised.

RISK MANAGEMENT

As mentioned earlier, paroling authorities are focusing heavily upon the concept of risk. There are several reasons for this attention. First, as institutional populations soar and pressure to release increases, boards must select from an increasingly less promising pool of inmates to grant parole. They are continually seeking methods to help them make those choices more effectively. Second, with community concern about crime still much in evidence, boards continue to be concerned about releasing individuals who may "go bad" and commit the heinous, sensational crime. Third, the

technology to assess risk through the use of empirical risk assessment devices exists and has been used with touted success in a number of paroling systems. The arrival of easily accessible computing power and automated data bases have now made the methods--developed decades ago--more easily accessible to parole.

Several critical issues are of import to paroling authorities in the area of risk management. First are the ethical problems involved in assessing risk. There is no question that it is constitutionally and legally insupportable to inflict sanction upon an individual solely as a result of the risk he or she may present in the future. Such an approach would undermine the presumption of innocence inherent in our justice system. Sanctions can only be inflicted as the result of a conviction for a criminal offense.

Two principles for the use of predictions of dangerousness in the criminal law have been suggested by Norval Morris and Marc Miller in order to address the ethical concerns raised.[35] These scholars maintain that predictions of dangerousness may only be used provided that:

- Punishment is not to be imposed or extended as a result of such predictions, beyond what would be justified as a deserved punishment regardless of the prediction. In other words, it is inappropriate to punish a person out of proportion to the seriousness of an adjudicated offense and his/her culpability, regardless of the risk he or she may present.

- In order to justify intensifying punishment--even within a range proportionate to the severity of the offense and culpability of the offender--reliable evidence must exist that the risk presented by an individual is substantially greater than the risk presented by other offenders with similar crimes and criminal records.

Second, it is important to remember that whatever tools are available, however technically sound, they will still permit errors in making individual release decisions. Risk assessment tools typically make statements about groups of individuals, based on past experience with similar groups of individuals. Such a tool may tell a decisionmaker that a particular offender belongs to a group of offenders where the anticipated failure rate is a particular percentage. That statement may be quite accurate; research has demonstrated that tools can be developed to differentiate such groups. What an instrument will not tell the decisionmaker is whether the individual offender is among those who will fail or will succeed, however success is determined. Hence, when judiciously used, such tools can be helpful for making decisions about large numbers of individuals, but there will still be errors about specific individuals.

The third important point is that such tools must be designed and developed within a policy context--guided by the goals and judgment of the policymakers who will use them. The development of risk instruments requires technical expertise, but it is not, at its core, a technical exercise. It cannot be delegated to technical staff. Policymakers must choose precisely what it is that they wish to predict and how that fits with their goals for decisionmaking. They must inform the process of selecting information to be analyzed, rejecting the contamina-

tion of the predictive scale by any factors inappropriate for ethical reasons. They must be prepared to build a policy framework around such tools, and to continue to monitor and validate them at regular intervals.

Fourth, while policy concerns are primary, the development of a risk assessment instrument is a technically demanding task requiring certain minimum standards to be met. An excellent discussion of these requirements can be found in a recently published work by Todd Clear, "Statistical Prediction in Corrections."[36] This document identifies a number of pitfalls to be avoided in developing risk instruments for decisionmaking, including the dangers of borrowing a risk instrument from one jurisdiction for use in another, without benefit of empirical research or validation.

A last issue under risk management has to do with the reluctance of many parole decisionmakers to utilize objective decisionmaking tools, including risk assessment devices aimed at making predictions about future behavior. Among parole decisionmakers concerned with the preservation of discretion, the use of explicit policy and the use of objective decisionmaking tools--especially risk assessment devices involving prediction--are seen as encroachments upon human decisionmaking. They fear that the use of such devices will inevitably lead to decisions made by computer, not by human decisionmakers. Those fears are unfounded. These devices, that have been in use in some places for more than 15 years, have not led to decisionmaking by computer or by mathematics. The decisions that must be made continue to be so complex, and the value of human perspective so ingrained, that they remain no more than tools to aid in the process. As Dr. Clear points out in the journal referenced just above,

> Prediction is such a fundamental aspect of correctional decisionmaking and it carries such significant consequences for the offender and society that any practice

less than the best possible is inexcusable.[37]

POLICY

Although the policymaking role of paroling authorities has been recognized for some time,[38] numerous parole authorities operate on a completely unstructured basis, with individual board members having no stated guidance to influence their votes on individual cases. In the 1970s, the U.S. Parole Commission and subsequently quite a number of states experimented with and eventually implemented "guidelines." While conceptually neutral with respect to the purpose of parole, guidelines began to be identified with a desert orientation--since they often focused heavily on the severity of the instant offense and sought in many instances to reduce disparity in time served among similarly situated offenders. With the implementation of empirically based risk assessment tools, guidelines began to become associated with a move toward incapacitation and risk management.

In reality, the idea of having some set of guidelines to guide individual decisions might serve any possible goal or goals of criminal sanctioning. The concept of guidelines is nothing more than the existence of explicit policy to guide such decisions. It is the explicit articulation of the rules by that one plays the game. What those rules are, who makes them up, how carefully they are followed, and how stringent they are is up to the discretion of those writing them.

In this document, we will refer, then, not to guidelines--as they have become identified with particular philosophical approaches and with particular models of decisionmaking--but to explicit policy. In the course of technical assistance efforts under NIC's auspices, it has become clear that policy to guide decisionmaking is of interest to paroling authorities for a wide variety of reasons.

- Explicit policy provides some consistency in decisionmaking such that like-situated offenders are treated in a like-manner--something that appeals to a basic sense of fairness, whatever the correctional goals might be.

- Explicit policy provides a defensible base for individual decisions, allowing a paroling authority to justify a decision as rational and appropriate within the context of a reasoned set of routine practices.

- Explicit policy allows for greater understanding of the impact of decisionmaking upon workload for the parole board and upon the population of institutions.

- Explicit policy contributes to a sense of continuity and institutional memory, allowing shared norms for decisionmaking to be passed on or purposely modified as membership of Boards turns over.

- Explicit policy opens the decisionmaking process to inmates, inmates' families, victims, and the community at large--a fact that is sometimes viewed positively and sometimes viewed as a negative consequence of parole policy by parole decisionmakers.

- Explicit policy contributes to a sense of professionalism and organization for parole decisionmakers.

- Explicit policy serves as a vehicle to communicate standards for decisionmaking to hearing officers who may conduct in-person interviews for parole board members and (where policy extends to revocation decisionmaking) to field parole officers as they make choices concerning that cases to bring to the attention of the Board.

- Explicit policy provides some direction for the assembly of information in preparation for parole release hearings.

- Explicit policy communicates to the public and to victims the concerns that the Board has for their input.

- Explicit policy allows for collection of data and analysis regarding effectiveness of release decisionmaking and supervision.

LEGAL ISSUES

Paroling authorities, along with field parole officers, are typical of the corrections field in their concern regarding legal liability. In recent years, court decisions have tended to widen the classes of public officials held liable for actions taken in the course of discharging their duties. There are specific strategies that can be adopted, however, to lessen the risk of liability, and a few general principles to

remember. Paroling authorities are particularly interested in whether the publication of explicit policy with respect to release and revocation will open them up to a greater risk of litigation. In reality, paroling authorities are frequently sued, whether they have explicit policy in place or they do not. The major thing to remember is that if a paroling authority publishes rules or policy it may well be sued for not following those rules or that policy. Hence, in drafting policy, it is critical to use language that makes it clear that the paroling authority is free to override rules, guidelines, or policy in specific cases.

For a complete treatment of this topic, the reader is referred to two volumes published by NIC and authored by Rolando del Carmen. Both are cited in the appendix to this volume along with other information resources.

Virtually any action taken by a paroling authority or a field parole officer can be the subject of court challenge. However, the risk of challenge can be significantly reduced and challenges successfully met when specific strategies for reducing liabilities are adopted.

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WHAT CAN PAROLING AUTHORITIES DO TO SHAPE THEIR FUTURE?

What has been learned from parole's experiences in recent years that can guide parole in the future? Certainly from the enormous turmoil, high visibility, and crisis atmosphere, there are many lessons to be drawn.

UNDERSTANDING THE CONTEXT OF PAROLE

Those who practice and influence parole come from every walk of life and every sort of training. It is no surprise that many who come to the task have not had the opportunity to explore the history, philosophy of criminal sanctioning, or even the current issues in parole. It is critical for parole decisionmakers, legislators, and others who influence the direction of parole to do so with a knowledge of what has gone before and with a grasp of the difficult philosophical questions involved in criminal sanctioning. There are resources available to outline that context. This document is one, others are cited in the appendix to this document. Operating absent such knowledge dooms us to revisit debates already completed or to repeat our mistakes.

PAROLE DECISIONMAKERS AS MEMBERS OF A TEAM

In no jurisdiction in the nation is parole release decisionmaking the responsibility of one individual. It is, without exception, entrusted to a group, usually to a board of co-equal decisionmakers. These groups must individually and together face difficult questions about goals, policymaking, decisionmaking, and management. Clearly, unless boards address these issues as teams, their efforts will be hampered. This requires creating opportunities to work on team building. Boards cannot continue to see their main responsibility as individual decisionmaking. Incentives for teamwork should be considered in constituting boards.

THE IMPORTANCE OF SETTING GOALS

Enough has been written in this paper to underline the fact that individuals may bring a wide range of goals to the field of parole. Unless those shaping parole--or any other endeavor--are clear and in agreement about the goals to be served in making release decisions, it will be virtually impossible to achieve them. Indeed setting goals is the first step in effective management, role definition, ensuring continuity, and in thinking strategically about the future.

CLARIFYING ROLES AND BUILDING SUPPORT SYSTEMS FOR DECISIONMAKING

If the demands of the criminal justice environment are changing and are requiring that parole decisionmakers play new roles, then attention must be paid to understanding those roles and creating support systems for them. In addition to the traditional skills of individual decisionmaking, administrative procedure, and interviewing skills, parole decisionmakers now find themselves as policymakers, designers and users of automated data bases, consumers of sophisticated empirical research, managers, developers of decision tools, and public spokespersons. Efforts must be made to provide adequate training, staff support, and information resources to assist in these new roles.

STRATEGIC THINKING

It is traditional to think of parole as the last stop in the criminal justice system, a function for that workload is determined by arrest policies, sentencing practices, and institutional resources. With that perspective, it is easy to assume a reactive posture, responding to workload as it is defined by others and viewing the criminal justice system as defined by forces outside of parole. Some parole decisionmakers, however, have chosen to take a more active stance--choosing to

work toward developing the capacity to anticipate workload, to examine their own policies with respect to deployment of resources, and to take an active stance in shaping their own future as well as shaping the system-wide responses to criminal justice problems. Such a strategic approach to the role of parole can only serve to strengthen its viability in the system and to encourage a positive contribution for parole within the system.

NETWORKS FOR INFORMATION AND SUPPORT

As currently practiced in the United States, parole release and revocation decisionmaking can tend to isolate the individual decisionmaker from his or her colleagues within a single jurisdiction and from colleagues in similar positions in other states. So much of an individual decisionmaker's time is committed in the parole hearing, that very little time, energy, or attention remains for other responsibilities. This is an unfortunate circumstance, and as other policymaking, management, and problem-solving roles become more important, must be remedied. The parole community is actually a rather small one, innovations occur quickly, and information about them could be shared widely and in a timely manner with adequate formal and informal networks. Professional associations are key, as are support for routine data collection efforts, and opportunities for workshops, seminars, and conferences.

FINDING AND SECURING RESOURCES

Three basic types of resources are important to parole decisionmakers. First are the resources to provide staff and services to meet parole's legislative mandate in specific jurisdictions. In order to secure those resources, paroling authorities must be skilled at presenting their cases to the legislatures and to the chief executives. Securing resources for state activities is, essentially, a competitive process--one by that

parole is judged in context with all others competing for the same resources. It is important for paroling authorities to view this as part of their job.

The second resource, also vital to parole decision-making, is information. Though not as plentiful as one might like, information resources are available for parole decisionmakers. It is important to know what they are and how to access them. In the appendix to this document, specific resources are listed. They include published materials, technical assistance, and training.

In 1988 and 1989, for the first time in a number of years, NIC plans one-week training courses for new parole board members. There are indications that this course will become a recurring part of NIC's annual training plan. Technical assistance is also available from NIC to support on-site work of expert consultants at no cost to paroling authorities. Such assistance can be very helpful. Information about both training and technical assistance are available from the Community Corrections Division of NIC. Instructions for contacting NIC are included in the appendix to this document.

It is important to know what information does exist and where to find it. It is also important to understand the limits of current knowledge and to identify those questions in need of further investigation and research. Parole decisionmakers, as consumers of research, must speak with a clear voice concerning their own needs for new information and promising areas for new research.

The third resource so critical to a well-run parole system, is the availability of community services to meet the needs of offenders once released on parole. In some jurisdictions, these resources overlap with the parole agency itself and they include adequate resources for field supervision staff. But the needs go beyond this. They go to community mental health services, drug and alcohol treatment facilities, employment and housing services, and other social services needed by offenders returning to the community. Parole as a community must

work to increase the visibility of these needs and to mobilize public and private resources and organizations to make such services available.

BUILDING A CONSTITUENCY FOR DISCRETIONARY PAROLE RELEASE

In the arena of criminal justice, one's constituency in the legislature, the public, and within the system is an important asset. In the past, with parole decision-making an activity sequestered from public view and cloaked with unchallenged discretion, constituency beyond the appointing governor seemed unimportant. But the world has changed for parole. Its usefulness is constantly challenged, its activities are now under public scrutiny, and its roles are broadening. Building credibility with the public, with the legislature, and with sister agencies within the criminal justice system is becoming more critical for parole.

At the risk of appearing repetitive, or even naive, it is time for paroling authorities to think of themselves as part of a system, not as an independent actor, one of a set of uncoordinated organizations. Paroling authorities must strive to make their own operations intelligible to and sensitive to other parts of the system, and to begin to work at refocusing on the common concerns of prosecutor, judge, corrections agency, and paroling authority.

CONCLUSION

While the move to abolish parole appears to have peaked, the vulnerability of parole will remain high until paroling authorities are able to articulate their policies, to explain their place and legitimacy in the criminal justice system to the public, and to continue to assess and improve their own performance.

The real issue is not, however, whether discretionary parole release as an institution will survive. The more important question is whether the public response to convicted offenders can effectively serve the goals of public protection and fair handling of the offender within the realities of limited resources and imperfect knowledge. If discretionary parole release can enhance those goals, it will continue to be a viable part of the criminal justice system. If it cannot, it will likely outgrow its usefulness. Perhaps the most sensible survival strategy for parole, then, is to look beyond its traditional concerns and to become a catalyst for change--for a more systemic perspective on the problems of crime and criminal sanctioning.

What does lie ahead? What follows rehabilitation, desert, and incapacitation? There are those who suggest that all of these principles are relevant--desert as a limiting principle, rehabilitation with somewhat limited expectations, and incapacitation within clearly defined boundaries of fairness. Still others suggest that we should look to restorative purposes for our system of justice--restoring the victim to wholeness, the community to a sense of fairness, and the offender to a responsible role within the law.

Whatever the future directions of criminal justice, the parole community appears to have the opportunity to share in charting them.

NOTES

[1]The American Correctional Association Task Force on Parole was constituted in 1985 and as this document goes to press is gathering data via a survey of all paroling authorities in the nation. The results of the survey are scheduled for release in the fall of 1988.

[2]Andrew von Hirsch, Doing Justice: The Choice of Punishments Report of the Committee for the Study of Incarceration (New York: Hill and Wang, 1976).

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[4]U.S. Sentencing Commission, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements (Washington, D.C., June 18, 1987), 2.

[5]Interview, Assistant to the Chairman, Florida Probation and Parole Commission, April 1988.

[6]Interview, Chairman, California Board of Prison Terms, April 1988.

[7]Interview, Executive Secretary, Maine Parole Board, May 1988.

[8]Interview, Administrator, North Carolina Parole Commission, April 1988.

[9]Edward E. Rhine, "Prison Overcrowding Emergency Powers Acts: A Policy Quandary for Corrections," Proceedings of the 116th Congress of Corrections (Las Vegas, Nevada: American Correctional Association, 1986), 115-124.

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[11]Stephen D. Gottfredson and Ralph B. Taylor, "Public Policy and Prison Population: Measuring Opinion about Reform," Judicature 68 (4-5), 190-201.

[12]John Doble, Crime and Punishment: The Public's View (The Public Agenda Foundation, June 1987), 36-37.

[13]Richard Green, "Who's Punishing Whom?" Forbes, March 21, 1988, 132-136.

[14]Daniel Glaser, "Classification for Risk" in Don M. Gottfredson and Michael Tonry (eds.), Prediction and Classification: Criminal Justice Decisionmaking (Chicago: University of Chicago Press, 1987), 284.

[15]U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: State and Federal Prisoners, 1925-1985 (Washington, D.C., October 1986).

[16]See note 15 above and also U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1986 (Washington, D.C., May 1987).

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[18]Figgie International, Inc., op. cit., p. 16.

[19]"Not in My Town: No One Wants a Paroled Rapist," Time, June 1, 1987. See also "Paroled Rapist Leaves Apartment After California Residents Protest," The Washington Post, May 26, 1988.

[20]American Correctional Association, Probation and Parole Directory (College Park, Md., 1985).

[21]D. Lipton, R. Martinson, and J. Wilks, The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger Press, 1975).

[22]Lee Sechrest, Susan I. White, and Elizabeth D. Brown (eds.), The Rehabilitation of Criminal Offenders: Problems and Prospects, Panel on Research on Rehabilitative Techniques, Committee on Research on Law Enforcement and Criminal Justice, Assembly of Behavioral and Social Sciences, National Research Council (Washington, D.C.: National Academy of Sciences, 1979), 29-34.

[23]Robert Martinson, "New Findings, New Views: A note of Caution Regarding Sentencing Reform," 7 Hofstra Law Review, 243 (Winter 1979).

[24]M. Eisenberg, Factors Associated with Recidivism (Austin, Texas: Texas Board of Pardons and Paroles, 1985). See also Peter B. Hoffman, "Screening for Risk: A Revised Salient Factor Score," Journal of Criminal Justice, 1983.

[25]Peggy Burke and Joan Lees, Parole Guidelines in Four Jurisdictions: A Comparative Analysis (U.S. Department of Justice, National Institute of Corrections, 1981).

[26]S. Knight, Repeat Offenders in Illinois: Recidivism Among Different Types of Prison Releasees (Chicago: Illinois Criminal Justice Information Authority, 1987). See also Wisconsin Department of Health and Social Services, Division of Policy and Budget, Bureau of Evaluation, Special Action Release--Three Year Followup, (Madison, 1985).

[27]"The superior performance of parolees as compared to mandatory-releasees, while of limited magnitude, is still sufficiently great to constitute a strong argument for continued parole board discretion. Sufficient cases sentenced under previous indeterminate procedures exist in those states that have adopted determinate sentencing to allow for comparative studies of the two groups following release from prison. In most of the determinate sentence states, the law provides for some form of post-release supervision, that now seems to average about 1 year. This contrasts with an average period of parole

supervision of approximately 2 years. In spite of this doubling of the period of exposure to possible revocation or recommitment, studies completed during the past several years clearly indicate that on the average, the parolees had a "revoke rate" of only 24.8 percent as compared to the mandatory releasees whose return rate was 30.9 percent. This difference in revocation rate is not to be ignored with about one-fourth more of the mandatory releasees in the failure category....That data would indicate that: Discretionary selection of inmates released coupled with parole supervision reduces criminal behavior of persons released from correctional facilities over mandatory release." Allen Breed, "Don't Throw the Parole Baby Out with the Justice Bathwater," Federal Probation, Volume 48, No. 2, June 1984, 11-15.

[28]Allen J. Beck, Bureau of Justice Statistics Special Report: Recidivism Among Young Parolees (U.S. Department of Justice, Bureau of Justice Statistics, Washington, D.C., May 1987).

[29]M. Kay Harris, The Goals of Community Sanctions (U.S. Department of Justice, National Institute of Corrections, June 1986).

[30]This historical framework for viewing changes in the purposes of criminal sanctioning and the level of discretion lodged with paroling authorities can be attributed to Vincent O'Leary, unpublished remarks at the 1988 Conference, Association of Paroling Authorities International, Washington, D.C.

[31]Robert Johnson, Hard Time: Understanding and Reforming the Prison (Monterey, California: Brooks/Cole Publishing Company, 1987), p. 16.

[32]Jack Foster, et al., Definite Sentencing: An Examination of Proposals in Four States (Lexington, Kentucky: Council of State Governments, 1976), 5.

[33]Howard Abadinsky, Probation and Parole: Theory and Practice (Englewood Cliffs, N. J.: Prentice Hall, Inc., 1987), 156.

[34]Alfred Blumstein, "Sentencing Reform: Impacts and Implications," Judicature, 68 (October-November), 131.

[35]Norval Morris and Marc Mill, Research in Brief: Predictions of Dangerousness in the Criminal Law (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, March 1987).

[36]Todd Clear, "Statistical Prediction in Corrections," Research in Corrections, March 1988, Volume 1, Issue 1.

[37]Ibid, p.35.

[38]Donald M. Gottfredson, Colleen A. Cosgrove, Leslie T. Wilkins, Jane Wallerstein, and Carol Rauh, Classification for Parole Decision Policy (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, July 1978).

APPENDIX

INFORMATION RESOURCES FOR PAROLE

NATIONAL INSTITUTE OF CORRECTIONS PUBLICATIONS

Civil Liabilities of Parole Personnel for Release, Non-Release, Supervision, and Revocation by Rolando V. del Carmen and Paul T. Louis, February 1988.

Directions for Community Corrections in the 1990s by Vincent O'Leary and Todd R. Clear, June 1984.

The Goals of Community Sanctions by M. Kay Harris, June 1986.

Handbook for New Parole Board Members by Peggy McGarry, to be published.

Liability Issues in Community Service Sanctions by Rolando V. del Carmen and Eve Trook-White, June 1986.

Observations on Parole: A Collection of Readings from Western Europe, Canada and the United States, proceedings of the First International Symposium on Parole, compiled by Edward E. Rhine and Ronald W. Jackson, Association of Paroling Authorities International, November 1987.

Structuring Parole Decisionmaking: Lessons from Technical Assistance in Nine States by Peggy Burke, Linda Adams, Gerald Kaufman, and Becki Ney, August 1987.

"Statistical Prediction in Corrections" by Todd Clear, Research in Corrections, Volume 1, Issue 1, March 1988.

All of these publications, as well as other information relevant to parole, are available from the National Institute of Corrections Information Center, 1790 30th Street, Suite 130, Boulder, Colorado 80301 (303-939-8877).

TRAINING AND TECHNICAL ASSISTANCE FOR PAROLE

The Community Corrections Division of the National Institute of Corrections can provide information regarding training and technical assistance available for paroling authorities. The division can be reached at 320 First Street, N.W., Washington, D.C. 20534 (202-724-7995).

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This publication was printed at the UNICOR Print Plant, Federal Correctional Institution, Ray Brook, NY