119224

BY THE COMPTROLLER GENERAL

Report To The Honorable Sam Nunn United States Senate

OF THE UNITED STATES

Federal Parole Practices: Better Management And Legislative Changes Are Needed

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

GAO made this review because of the controversy existing within the Congress over whether parole should be abolished or continue to be part of the Federal criminal justice system. The information contained in this report should assist the Congress in its deliberations on this important issue.

The Parole Commission, the Department of Justice, and the Administrative Office of the United States Courts concurred with most of GAO's recommendations.

GAO/GGD-82-1
JULY 16, 1982

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

B-133223

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

Dear Senator Nunn:

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

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

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States

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

FEDERAL PAROLE PRACTICES: BETTER MANAGEMENT AND LEGISLATIVE CHANGES ARE NEEDED

D I G E S T

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

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

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

THE PAROLE COMMISSION CAN TAKE CERTAIN ACTIONS TO IMPROVE ITS OPERATIONS

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

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recommendations which must be affirmed, modified, or reversed by Regional Commissioners before becoming official.

GAO found that the guidelines used by hearing examiners are not clear enough, and the Commission has no training program on how to use them. To determine how consistently hearing examiners interpreted the parole guidelines, GAO selected a judgment sample of 30 cases where parole decisions had been made. GAO reproduced those portions of the Commission's files which were available when initial decisions were made, deleted all material pertaining to actual decisions, and asked the Commission's 35 hearing examiners to review them. The outcome of the hearing examiners' reviews--in terms of how much time offenders would be expected to serve prior to parole--varied significantly. As a result of different interpretations of hearing examiners, the time offenders would be expected to serve varied by over 1 year in 28 of the 30 cases. (See pp. 11 to 23.)

The lack of clarity in the guidelines was a factor in numerous inaccurate parole decisions. GAO reviewed 342 cases of offenders sentenced in 10 judicial districts. Hearing examiners from the Commission's five regions made errors in 182 cases, or 53 percent. In 125 cases, these errors could have had an impact on the amount of time that the offender served in prison.

Another factor causing errors was inadequate analysis by hearing examiners of material in offenders' files. The examiners did not examine the case files until immediately before the parole hearing and generally spent less than 20 minutes reviewing each file. GAO observed 290 initial parole hearings at 14 Federal correctional institutions and found that in 191 cases, or 66 percent, only 1 hearing examiner attempted to analyze the material. In those cases where two examiners reviewed the case file, the second examiner spent only about 3 minutes looking at it. (See pp. 24 to 34.)

Furthermore, it is unlikely that such errors will be detected before they affect the outcome

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

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

LEGISLATIVE CHANGES COULD ALSO IMPROVE PAROLE DECISIONMAKING

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

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

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

calendar years 1978 through 1980, less than 20 full days were devoted to the discussion and formulation of policy during this period. Thus, important issues, such as co-defendant disparity and supervision of parolees in the Witness Security Program, have not been resolved in a timely fashion. Centralization of all Parole Commissioners in Washington, D.C., is one approach that offers potential for resolving this problem. (See pp. 71 to 78.)

A third area involves the need to eliminate several legislative requirements for certain activities that are not productive. Specifically:

--The regional appeals process should be discontinued because the same Commissioner who makes the initial decision also rules on the appeal.

--Interim hearings on the parole status of offenders are no longer necessary because the Commission has implemented procedures which enable it to reopen cases as needed.

--Youthful offenders sentenced under the Magistrates Act do not need parole consideration because their sentences are short and the Commission cannot follow its normal hearing procedures.

--The Commission's involvement in study and observation cases committed under the Federal Youth Corrections Act should be terminated because it makes little or no contribution to the results of these studies. (See pp. 78 to 87.)

In addition to time, about $490,000 could be saved annually if these activities were discontinued.

BETTER INFORMATION AND GREATER COOPERATION AMONG FEDERAL AGENCIES COULD IMPROVE THE QUALITY OF PAROLE DECISIONS

The Parole Commission, in formulating parole decisions, is very dependent upon information provided by others, such as U.S. attorneys, judges, probation officers, and prison staff. The completeness and accuracy of this information is critical if the Commission is to make

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

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

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

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

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

evaluations as important tools to use when formulating parole release decisions. GAO's review showed that staff in Federal correc-- tional institutions did not regularly furnish this information to the Commission. (See pp. 109 to 113.)

--The Commission is required by law to consider the institutional behavior of each prospective parolee. Individuals whose institutional conduct is rated as unsatisfactory are likely to be held longer. GAO found that the Bureau of Prisons and the Commission have not agreed on the types of institutional behavior which should be reported regularly. As a result, some institutional misconduct was reported and considered by the Commission, while in other cases similar misconduct was not reported. (See pp. 113 to 118.)

Also, the Commission did not routinely obtain information, such as judgment and commitment orders, indictments, and records of sentencing hearings, which could be useful when making parole release decisions. (See pp. 118 and 119.)

GAO noted other areas where better exchange of information and communication is needed. Specifically:

--Offenders convicted of Federal crimes are not being given adequate opportunity prior to the imposition of their sentences to review their presentence reports and assess the accuracy of information contained in them. (See pp. 122 to 125.)

--The Commission's offices operate autonomously and little effort is made to coordinate case analysis for co-defendants. Consequently, the Commission's decisions on co-defendants are not always consistent with offenders' roles and participation in the commission of the crimes. GAO found that the Commission has attempted to equalize the treatment of co-defendants during the appeals process by using the decision made on one, even if it was incorrect, as the standard for the remaining cases. This approach avoids the appearance of disparity among a group of

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

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

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

MAJOR CHANGES ARE NEEDED TO IMPROVE PAROLE SUPERVISION

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

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

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

--Procedures used to determine when a parolee's supervision in the community should be terminated are not clear. The Commission does not ensure that annual reviews for establishing the need for continued supervision are made. GAO found that annual supervision reports are not always prepared as required; some were missing and others were late. (See pp. 160 to 166.)

--The Commission does not have procedures to routinely identify and supervise parolees released to the Witness Security Program and alien parolees released to the custody of the Immigration and Naturalization Service pending deportation proceedings. (See pp. 166 to 170.)

RECOMMENDATIONS

This report contains a number of recommendations to the Parole Commission, the Attorney General, the Director of the Administrative Office of the U.S. Courts, and the Judicial Conference of the United States designed to improve the operations of the Parole Commission and the parole decisionmaking process. Those recommendations are included on pages 51, 52, 88, 135 to 137, 177, and 178.

AGENCY COMMENTS

The Parole Commission, the Department of Justice, the Administrative Office of the U.S. Courts, and the chief judges of 9 of the 10 judicial districts where GAO performed extensive audit work commented on this report. There was no collective disagreement on any of the issues. The agencies concurred with almost all of the recommendations and identified corrective action that either had been taken, was in process, or planned. The comments are included in appendixes I through XIII, and GAO's analysis is presented on pages 52 to 56, 88, 89, 138 to 142, and 179 to 181.

Contents

ABBREVIATIONS

CFR	Code of Federal Regulations
GAO	General Accounting Office
INS	Immigration and Naturalization Service
NAB	National Appeals Board
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

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

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

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

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

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

THE PURPOSE OF PAROLE HAS CHANGED

Shifts in correctional philosophy have changed the purpose of parole several times over the last century. Parole originated in this country in the 1870s. During its first 50 years, the main emphasis of parole was a system of clemency tied closely to a structured system of rewards for good behavior. The chief functions of the parole board were to ensure that the offender demonstrated through good behavior that he/she was a fitting candidate for the privilege of supervised release, and to balance that assessment against prevailing community sentiment.

Beginning in the 1920s, the field of corrections increasingly defined itself as a therapeutic enterprise with heavy emphasis on counselling and change in an offender's behavior. Although parole decisionmaking continued to reflect elements of clemency, it also began to stress the clinical approach, which had at its root a philosophy that the criminal was ill and a period of imprisonment would provide a cure. This approach, sometimes referred to as the medical model, assumed that because it was impossible to accurately predict how long the cure would take, judges should set only the outside limits of the prison term. The parole board would assess the progress of the offender towards rehabilitation and decide when the offender should be released. Parole boards were granted wide discretion to make predictions about whether a cure had taken place and whether the offender could safely be released into society.

The rehabilitative sentencing philosophy continued in the United States for most of this century. The past 10 years, however, have seen a growth in criticism of the medical model. Critics claimed that some parole boards operated without any written, or even unwritten, policies, rules, or standards. Parole was also criticized for another and more fundamental reason--that parole boards did not have the capability to perform the tasks expected of them. First, some social scientists claimed either that prison programs had little appreciable effect on whether a prisoner was going to commit new crimes on release, or that it was impossible to predict which programs worked and under what circumstances. Second, most experts agreed that neither parole boards nor any other panel of experts, including psychiatrists, could accurately predict when or if an offender was rehabilitated.

At the Federal level, the United States Board of Parole, predecessor to the United States Parole Commission, like many other parole authorities in the Nation, was operating in a climate of change and criticism during the 1960s and early 1970s. In 1967, the President's Commission on Law Enforcement and Administration of Justice described the parole decision as an invisible administrative action seldom open to attack or subject to review. It recommended the development of policy guidelines

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

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

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

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

--it created unnecessary uncertainty among prisoners, and

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

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

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

A DESCRIPTION OF PAROLE DECISIONMAKING IN THE FEDERAL CRIMINAL JUSTICE SYSTEM

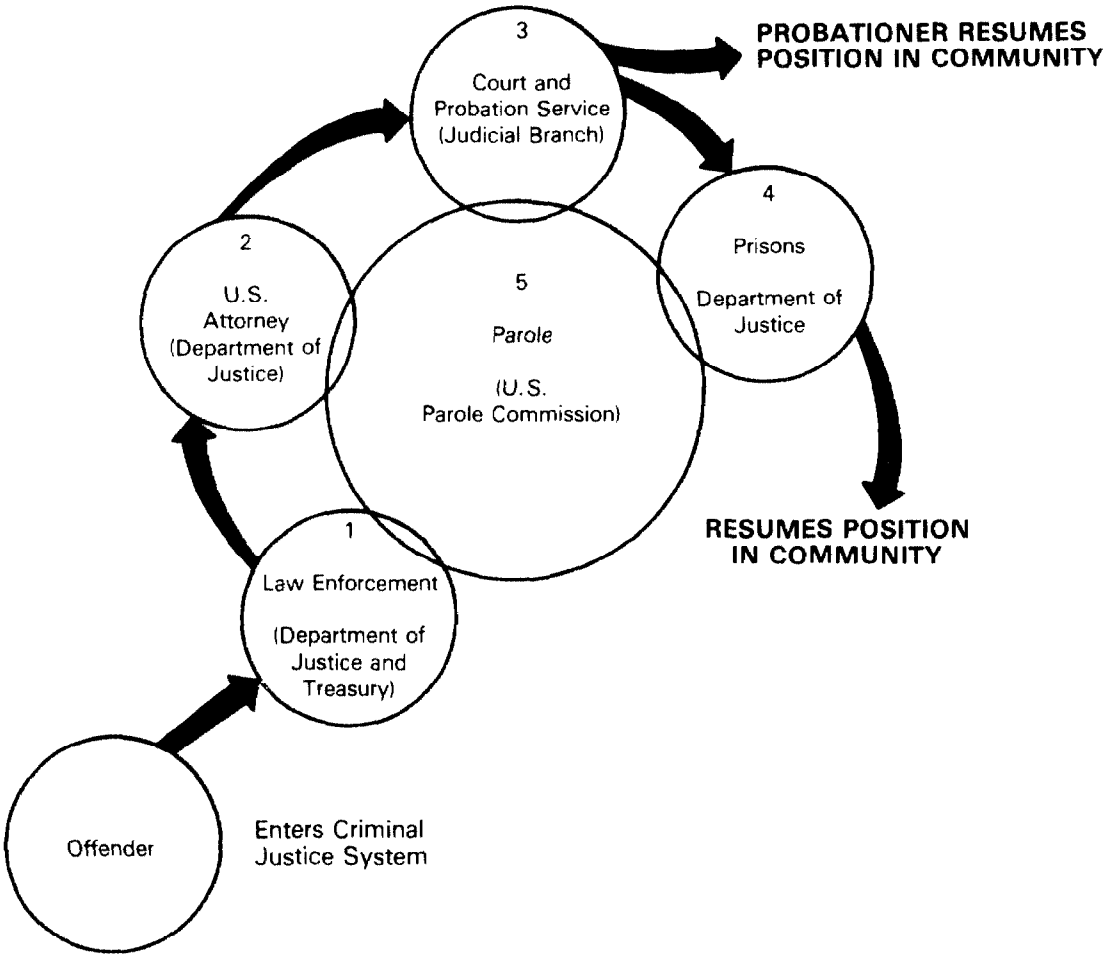
The Commission is comprised of nine members who are appointed by the President for 6-year terms with the advice and consent of the Senate. One member is designated by the President as the Chairman. The Chairman is responsible for designating the members who are to serve as Regional Commissioners or on the National Appeals Board, supervising the Commission staff, convening and presiding at Commission meetings, and serving as a spokesman for the Commission.

The five members who are designated as Regional Commissioners are responsible for making parole decisions for all Federal prisoners eligible for parole who are incarcerated within the boundaries of their regions and for supervising the Commission's regional staff. The three remaining members, who are located in Washington, D.C., with the Chairman, comprise the National Appeals Board. The Board is responsible for hearing and deciding appeals of Commission actions.

Although the Parole Commission is an autonomous body with its own legislation, budget, and staff resources, its caseload and area of discretion are heavily influenced by others. As shown on page 5, Parole Commission employees' duties require coordination with many organizations. The Commission is very dependent upon information provided by others, such as U.S. Attorneys, judges, probation officers, and prison staff, when making parole decisions. The completeness and accuracy of this information is critical if the Commission is to make fair and equitable parole decisions.

Under present Federal practices, judges determine whether or not to incarcerate an offender at the time of sentencing. If incarceration in excess of 1 year is chosen, the authority for determining the actual duration of the prison term is shared between the sentencing judge and the Commission; however, it is largely the Commission which determines when the offender will be released. The sentencing judge has several options which prescribe the timeframe within which the Commission may exercise discretion. Unless otherwise provided by statute, a Federal prisoner confined and serving a definite term or terms of more than 1 year is eligible for parole consideration under 18 U.S.C. §4205(a) after serving one-third of such term or terms or after serving 10 years of a life sentence or a sentence of over 30 years.

FEDERAL CRIMINAL JUSTICE SYSTEM



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

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

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4203) requires that the Parole Commission establish at least five regional offices. Each of the Commission's five regional offices has a corps of hearing examiners. The examiners travel to each of the Federal correctional institutions on a bimonthly schedule to conduct personal hearings with Federal prisoners who are eligible and apply for parole consideration. As a matter of policy, the Commission attempts to undertake a first consideration of every prisoner, except those with a minimum term of 10 years or more, within 120 days of imprisonment and establish a release date for most offenders at that time. This release date is referred to as an effective parole release date if it is within 6 months. A release date more than 6 months away is referred to as a presumptive parole release date.

On a cooperative basis, the Parole Commission uses the services of Bureau of Prisons staff assigned to the various correctional institutions throughout the United States. Staff at the correctional institutions prepare classification summaries, progress reports, and other reports concerning parole applicants. Caseworkers at the Bureau's institutions are responsible for preparing a file on each offender which is used by the Commission in making a parole decision. The file should include the presentence report, which is a report on the offender that is prepared for the sentencing judge by a probation officer, information from the judge and the U.S. Attorney, and other material developed by the staff at the correctional institution which can be used in establishing a parole release date for the offender.

The Commission is required under 18 U.S.C. §4206(a) to consider the nature and circumstances of the offense and the history and characteristics of the prisoner. After taking this information into consideration, the Commission is to establish a release date for the prisoner unless release would (1) depreciate the seriousness of the offense, (2) promote disrespect for the law, or (3) jeopardize the public welfare. The Commission has established parole release guidelines pursuant to 18 U.S.C. §4203(a)(1) which indicate the customary range of time to be served before release for various combinations of offense severity and offender characteristics. The guidelines used by the Commission are discussed in more detail in chapter 2 and are included in appendix XIV.

The Commission's policy has been that it will take into account any substantial information available to it in making a parole release decision, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission's policy is to resolve such disputes by the preponderance of evidence standard. The Commission has taken the

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

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

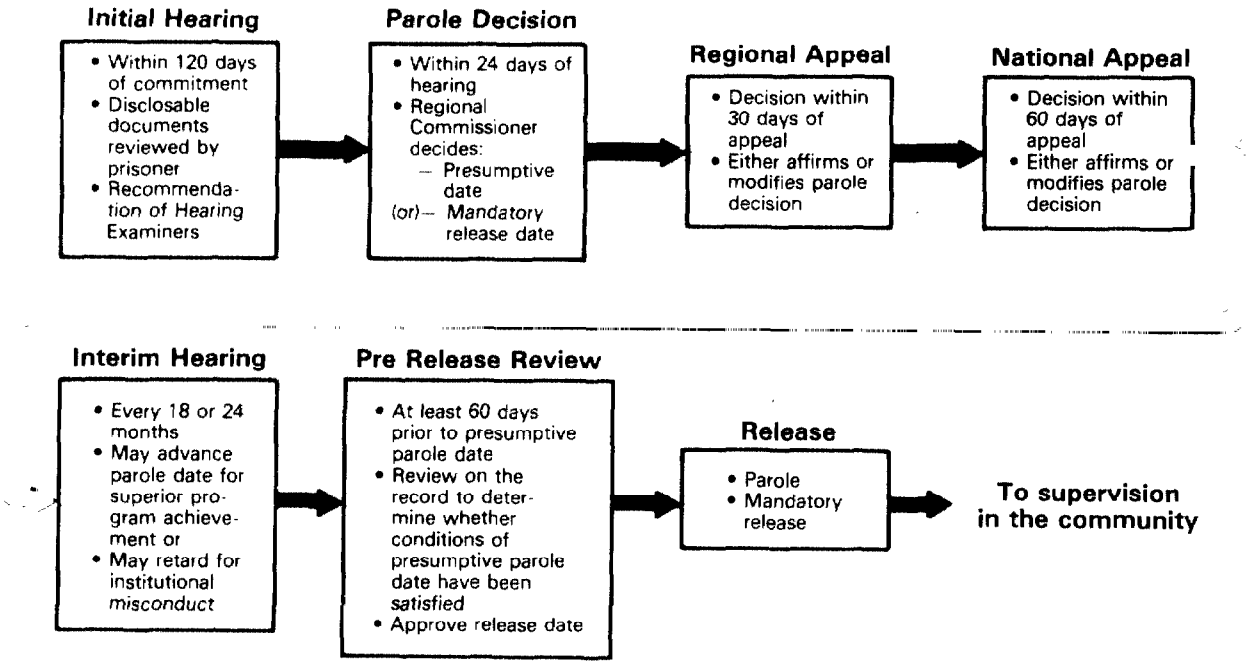
The chart on page 8 illustrates the various steps that the Commission follows in processing parole decisions. Panels consisting of two hearing examiners, operating under guidelines issued by the full Commission, conduct initial parole hearings and statutory interim hearings at correctional institutions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

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

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

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

UNITED STATES PAROLE COMMISSION CASE PROCESSING



The Federal Probation System, established in 1925, consists of 94 probation offices under the overall administrative direction of the Administrative Office of the United States Courts. The Probation Division within the Administrative Office of the United States Courts is responsible for providing direction to and evaluating the operations of the Federal Probation System. The principal responsibility of the Federal Probation System is the preparation of presentence investigation reports and the supervision of probationers for Federal district courts.

Although the Federal Probation System has no direct organizational affiliation with the Commission, probation officers provide field supervision for offenders paroled and mandatorily released from Federal correctional institutions in accordance with 18 U.S.C. §3655. Probation officers are also responsible for submitting reports to the Commission on offenders' adjustment in the community. These reports can be used by the Commission as a basis for revoking an offender's parole.

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

OBJECTIVES, SCOPE, AND METHODOLOGY

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

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

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

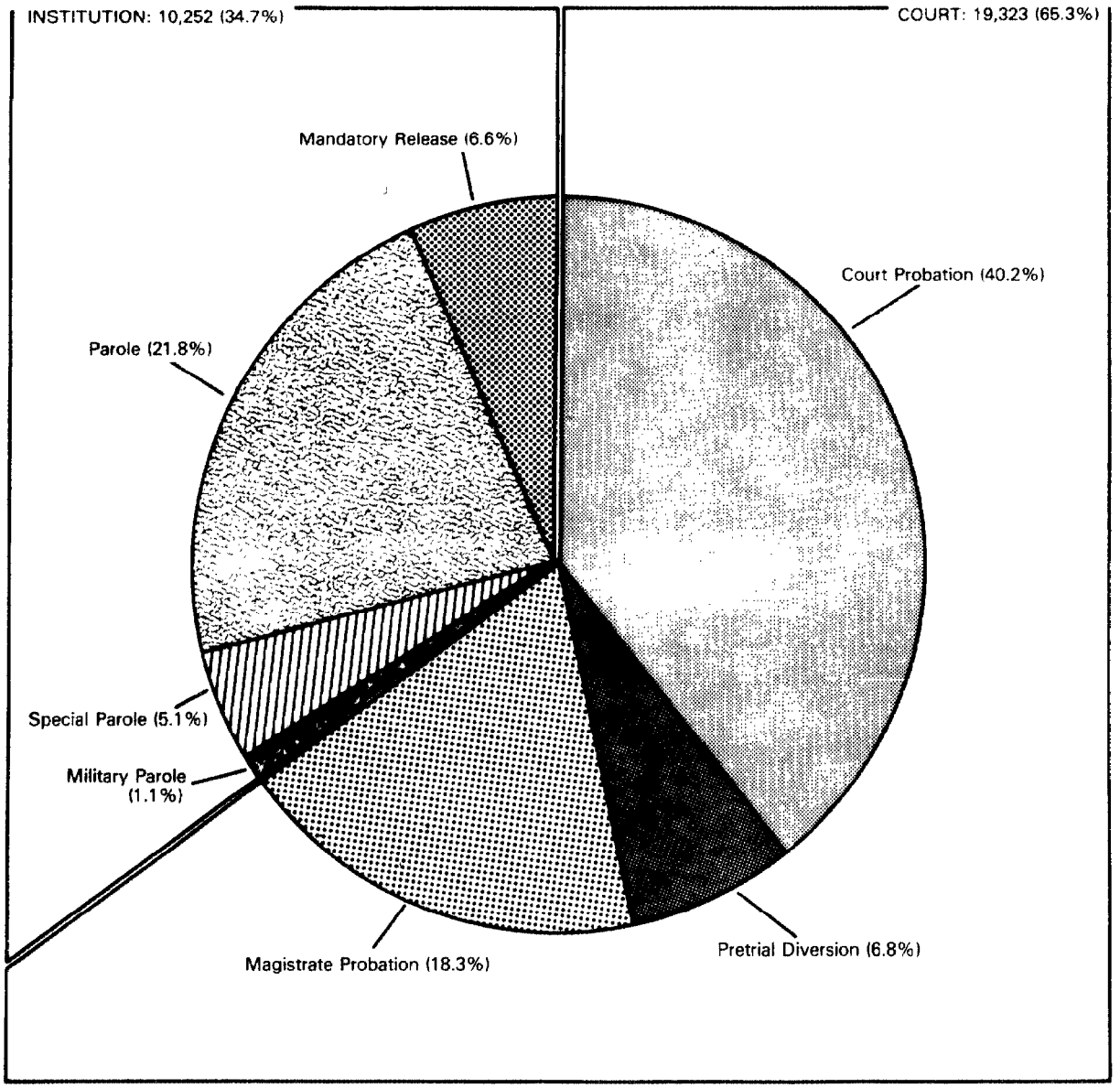
We examined policies and procedures, interviewed agency officials, reviewed records, and analyzed about 1,800 cases involving parole decisions. Although the examples are actual cases, the names have been changed to protect the individuals. The judicial districts and correctional institutions included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

TYPE OF SUPERVISION FOR PERSONS RECEIVED BY THE FEDERAL PROBATION SYSTEM

(EXCLUSIVE OF TRANSFERS)

12 MONTHS ENDED JUNE 30, 1981

TOTAL NUMBER OF PERSONS RECEIVED: 29,575



Note: Does not add to 100% due to rounding.

CHAPTER 2

THE PAROLE DECISIONMAKING PROCESS CAN BE IMPROVED

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

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

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

--Establish an effective quality control system.

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

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

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

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

adequate criteria for the advancement of parole dates for prisoners who are deemed to have accomplished superior program achievement.

We found inconsistencies in parole decisionmaking both within and among the Commission's regions. We also found that parole dates for some offenders were being advanced for superior program achievement when in fact no criteria had been established to make these determinations.

Clarification needed in parole guidelines and more training required

The Commission has developed a procedures manual which includes guidance for its staff to use when making parole decisions. This manual includes guidelines for determining the customary number of months offenders will serve before release, assuming good institutional behavior. The criteria which establishes the range consists of a two-axis chart--one for offense severity and the other for parole prognosis (see app. XIV). The Commission has one guideline table for adults, and another for youthful offenders under the age of 22. The latter table is also used for adult offenders sentenced under the Narcotic Addict Rehabiliation Act (18 U.S.C. §4254 et seq.).

For parole decisionmaking purposes, the severity of the offense committed is broken down into seven categories which range from low to greatest II (see vertical axis on the chart in app. XIV). The guidelines include examples of some common offense behaviors for each of the severity levels. Parole prognosis includes four categories which range from poor to very good. An actuarial device known as a salient factor score was developed by the National Council on Crime and Delinquency to assist the Commission in making parole prognosis assessments. The salient factor score is composed of various offender characteristics, including prior criminal record, opiate dependence, employment history, and whether the current offense involves a stolen check or vehicle. The salient factor score can range from 0 to 11. A poor parole prognosis for an offender includes a score of 0 to 3, while a very good parole prognosis includes a score of 9 to 11. The greater the offense severity and the lower the salient factor score, the more time the offender will normally be expected to serve before release.

Once the appropriate guideline range has been determined, the Commission considers mitigating or aggravating information when deciding the release date. The establishment of a release date is also influenced by the length and type of sentence imposed by the court. For example, if an offender received a 6-year regular adult sentence (72 months) under 18 U.S.C. §4205(a), he or she would not be eligible for parole until one-third of it (24 months) had been served.

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

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

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

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

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

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

--The procedures manual provides that the offense severity may be increased for multiple separate offenses, such as convictions on a drug charge and a firearms violation. However, the manual does not give any further guidance on what circumstances warrant an increase in the severity level or the number of severity levels to be increased.

--The procedures manual provides that hearing examiners shall deduct a point in scoring the salient factor score for uttering/passing/possessing stolen checks, check forgery, theft of checks, and passing bad checks. This provision also includes credit cards and money orders. However, the manual is silent relative to offenses involving such items as travelers checks, stocks and bonds, and food stamps.

--The procedures manual provides that hearing examiners shall establish the severity level for property offenses on the basis of the value of the stolen property. However, the manual provides no further guidance on whether the value should be based on fair market value, replacement cost, original cost, wholesale, or retail.

--The procedures manual, at the time our fieldwork started, did not provide any guidance to hearing examiners on how to determine whether to place offenders at the bottom, middle, or top of the parole guideline ranges. Subsequently, in August 1980 the Commission issued some guidance to hearing examiners on this matter.

--The procedures manual provides that hearing examiners may recommend a parole release date sooner than prescribed by the guidelines if the offender has provided substantial cooperation to the Government which has been otherwise unrewarded. However, the manual provides no further guidance on what factors should be considered, such as the length of the sentence, risk that the offender presents, value of the offender's testimony, or how far the Commission should go below the parole guidelines in rewarding cooperation.

--The procedures manual provides that the Commission may retard or rescind a parole date only on the basis of a valid finding of misconduct by the institution's disciplinary committee. However, the manual provides no further guidance on whether the Commission can or should consider disciplinary findings by other lower levels of management within the institution.

--The procedures manual provides no clear guidance on how to establish the offense severity level for probation violators. Some hearing examiners consider only the

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

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

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

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

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

SUMMARY OF OFFENSE SEVERITY ASSESSMENTS

SEVERITY LEVEL:																														
Greatest II								1	1				2			8	24			24										
Greatest I				21			1	32	20		1		33			14	11	1	20	10	2	21	13	17			4		12	12
Very High	11	21	1	10	15		2	1	7	32	11	2		1		13		34	11		14	12	13	15	7	2	9		23	6
High	13	2	15	2	2	3	27			3		17		13							14				17	33				
Moderate	1	11	18		12	18[a]	1							5	22						2				2			1		
Low Moderate	2					2	1																					34		
Low						5																								
Rescission[b]						7			1																					
Case Number	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
Assessments Not Completed	8	1	1	2	6	0	3	1	6	0	23	16	0	16	13	0	0	0	4	1	3	2	9	3	9	0	22	0	0	17

[a] Includes one who assessed moderate and added the rescission guidelines

[b] The Commission has adopted specific guidelines for the rescission of parole dates under certain circumstances. In cases 6 and 9, some hearing examiners believed that the rescission guidelines were appropriate

SUMMARY OF SALIENT FACTOR SCORE ASSESSMENTS

PAROLE PROGNOSIS:	0																													
Poor	1																1													
	2		4								24				2		8									28				
	3		6				11				4				17	1	16	10								7			11	
Fair	4		13			3	11								11	9	8	23		2									18	
	5		9			17	11						1		1	21	1	2	3	26				3				2	5	
Good	6					6							6		1	4	1		12	7				13	1			13	1	
	7		1			3							1	1					2					4	9			17		
	8												1	1					5					3	4			3		
Very Good	9	5		2					1			13		3					8			2	2	1	10		3			27
	10	29		23				9	2	21	5		11	1	15				3		1	29	5	5	3		17			1
	11			10	34	1		25	33	10	30		2	25	11						34	4	21	3			6			
Case Number		**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**	**17**	**18**	**19**	**20**	**21**	**22**	**23**	**24**	**25**	**26**	**27**	**28**	**29**	**30**
Assessments Not Completed		1	2	0	1	5	2[b]	1	0	3	0	7	8	0	4	3	0	0	0	2	0	0	0	7	3	8	0	9	0	0	7

[b] Two examiners used the rescission guidelines and stated that salient factor score was not applicable in this case

NORTH—CENTRAL REGION
OFFENSE SEVERITY ASSESSMENTS

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

NORTH—CENTRAL REGION
SALIENT FACTOR SCORE ASSESSMENTS

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

NORTHEAST REGION
OFFENSE SEVERITY ASSESSMENTS

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

NORTHEAST REGION
SALIENT FACTOR SCORE ASSESSMENTS

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

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

SOUTH—CENTRAL REGION
OFFENSE SEVERITY ASSESSMENTS

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

SOUTH—CENTRAL REGION
SALIENT FACTOR SCORE ASSESSMENTS

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

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

SOUTHEAST REGION
OFFENSE SEVERITY ASSESSMENTS

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

[a] Includes one assessing at moderate plus rescission guidelines

SOUTHEAST REGION
SALIENT FACTOR SCORE ASSESSMENTS

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

WESTERN REGION
OFFENSE SEVERITY ASSESSMENTS

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

WESTERN REGION
SALIENT FACTOR SCORE ASSESSMENTS

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

looking at case number two, we found that four examiners calculated the salient factor score as two, six calculated it as three, 13 calculated it as four, nine calculated it as five, one calculated it as seven, and two failed to calculate it because they contended there was insufficient information. In addition, the charts on pages 17 to 21 illustrate the differences in assessments made by hearing examiners within the same regional office.

Our analysis showed that in none of the 30 cases did all hearing examiners agree on both the offense severity level and salient factor score. In only one case did all the hearing examiners who determined offense severity agree on one offense severity level (see case 15). In the remaining 29 cases, there were from two to five different severity levels established by the hearing examiners. Also, there was only one case where the hearing examiners who calculated the salient factor score agreed on it (see case 4). In the remaining 29 cases, there were from two to seven different salient factor scores. In 22 of the 30 cases, from one to 23 hearing examiners failed to completely assess the offense severity or salient factor score. They contended that there was insufficient information even though the same information had been used previously by the Commission to make parole decisions. The problem on the adequacy of information supplied to the Commission by other agencies is discussed in chapter 4.

The different interpretations of hearing examiners on how to assess the offense severity level and the salient factor score resulted in variances of over 1 year in the time offenders would be expected to serve in 28 of the 30 cases. For example, in one case, 27 hearing examiners established five different ranges for the amount of time to be served. Two hearing examiners established a range of from 0 to 8 months, 1 established a range of from 10 to 14 months, 7 established a range of from 12 to 16 months, 6 established a range of from 14 to 20 months, and 11 established a range of from 20 to 26 months. The variances in guideline ranges for each case as well as the variances among hearing examiners within and among the regions for all 30 cases are summarized in the charts in appendix XV.

Several Commissioners and staff members told us that inconsistencies in parole decisions could be minimized by (1) further clarifying parole procedures and (2) implementing a comprehensive aggressive training program for hearing examiners in use of the parole guidelines. The Director of Research for the Commission acknowledged to us that parole procedures were unclear in several respects and that this presented some problems for hearing examiners. His unit prepared a report on this matter in May 1980. The Director told us that the Commission has made an effort over the years to clarify ambiguities in the procedures manual and he hoped many of the ones we identified would be eliminated in future revisions to the manual. The Chairman of

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

Parole dates advanced without criteria for awarding superior program achievement

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

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

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

The Commission recognized the lack of criteria when superior program achievement was originally proposed; however, it opted to initiate the program and develop the necessary criteria at a later date. As a result, there were inconsistencies among hearing examiners as to what constituted superior program achievement and how it should be awarded.

The Commission's operating procedures require that reasons for granting superior program achievement be included on the written notice of the parole decision that is sent to the offender. We examined 53 of the 157 cases awarded superior program achievement during the first 6 months of the program. The Commission's research staff obtained these cases from four of the Commission's five regions to use in developing a definition of superior program achievement. Our analysis of these 53 cases showed that for about 40 percent there were no reasons given for granting superior program achievement.

Several Parole Commissioners told us they were dissatisfied with superior program achievement and favored its elimination. They felt that it was not needed, uniform criteria could not be developed, and consistent application could never be achieved. However, the Commission's Research Director favored retaining the use of superior program achievement. One Commissioner told the Chairman that the Director of Research had stated:

> "* * * It is too soon, let's try it longer, it would look bad for us to change and to publish a change, if we eliminate this the Commission will be abolished * * *."

We did not attempt to assess the merits of using superior program achievement awards or the Bureau of Prison's reward programs. However, we believe that if there are to be rewards for superior program achievement, criteria should be established and justification should be documented. We also question whether there needs to be two reward systems.

QUALITY OF CASE ANALYSIS SHOULD BE IMPROVED

Hearing examiners need sufficient time to properly analyze the material in offenders' files well in advance of parole hearings. We found that the Commission was making erroneous parole decisions in part because hearing examiners were not adequately analyzing the material in offenders' files. The hearing examiners did not examine the case files until immediately before the parole hearing, generally spent less than 20 minutes reviewing them, and, in most cases, only one of the two hearing examiners present at the hearing looked over the file prior to formulating a parole recommendation.

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

Hearing examiners were not properly prepared to make parole recommendations

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

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

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

--Sharon received a 3-year sentence in the Northern district of Georgia for possession of a stolen U.S. Treasury check. Hearing examiners from the Commission's Southeastern Regional Office conducted a parole hearing for Sharon in February 1979. They assessed the offense severity as moderate and the salient factor score as 6. The examiners correctly assessed the offense severity, but incorrectly computed the salient factor score. Sharon was given one point for 6 months full-time employment when information in the file clearly showed that this condition was not met. The parole guideline range was incorrectly established by the hearing examiners at 16 to 20 months. The correct guideline range was 20 to 24 months. Sharon was paroled after serving 17 months.

--Linda received a 15-year sentence in the Southern district of Texas for bank robbery. Hearing examiners from the Commission's Northeastern Regional Office conducted a parole hearing for Linda in December 1979. They assessed the offense severity as very high and salient factor score as 5. The examiners correctly calculated the salient factor score, but incorrectly assessed the offense severity as very high. Other aggravating information in the case file showed that Linda had been convicted by the State of Texas of 4 other armed robberies which occurred about the same time and that she admitted to 12 others. According to the Commission's procedures manual, this information would have increased the offense severity from very high to greatest II. The hearing examiners incorrectly established a parole guideline range of 48 to 60 months. The correct guideline range was 78+ months. Linda was scheduled for parole on her eligibility date after serving 60 months.

--Tom received a 5-year regular adult sentence in the Southern district of Texas for possession with intent to distribute approximately 1,199 pounds of marijuana. Hearing examiners from the Commission's South-Central Regional Office conducted a parole hearing for Tom in February 1979. They correctly assessed the offense severity (high), salient factor score (11), and established the parole guideline range as 16 to 20 months. The panel of examiners recommended and the Regional Commissioner granted Tom a presumptive parole date of March 11, 1980. This date required Tom to serve 16 months and coincided with the bottom of the guideline range; however, Tom was not eligible for parole until he had served 20 months. In August 1979, Tom was transferred to another institution which was in the Bureau's Western Region. Tom's case was reviewed in January 1980 by staff from the Commission's Western Regional Office and he was paroled on March 11, 1980. At least seven of the Commission's employees

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

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

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

severity of very high and a parole guideline range of 36 to 48 months. The Commission also erred in paroling Donna on February 7, 1980--about 2 months prior to her parole eligibility date of April 15, 1980.

--Norb received two concurrent 3-year sentences in the Western district of Kentucky for interstate transportation of stolen firearms and interstate transportation of stolen motor vehicles. Hearing examiners from the Commission's North-Central Regional Office conducted a parole hearing for Norb in July 1979. The hearing examiners correctly assessed the offense severity as very high, but incorrectly computed the salient factor score (9) in this case. Norb was given one point for verified employment when the record clearly showed that this condition had not been met. Also, Norb was given three points for no prior convictions when in fact the record clearly showed he had one. Norb should have received two points in this category rather than three. The hearing examiners incorrectly established Norb's guideline range as 20 to 26 months because of these two errors. Norb was paroled within the guideline range after 24 months. With an offense severity of very high and a salient factor score of 7, Norb's correct parole guideline range would have been 26 to 32 months.

--John received a 5-year regular adult sentence in the Southern district of Ohio for the sale of a stolen motor vehicle. Hearing examiners from the Commission's Southeastern Regional Office conducted a parole hearing for John in July 1979. They correctly assessed the offense severity as high and computed the salient factor score as 4 in this case. The hearing examiners established a parole guideline range of 26 to 34 months. They recommended release at 20 months--1 day after his parole eligibility date and 6 months below the guidelines--because they viewed John as less culpable than his co-defendants. The Regional Commissioner approved the panel's recommendation and John was released on December 22, 1980. The hearing examiners and the Regional Commissioner made an error in considering John less culpable because the presentence report clearly stated that John was one of the upper echelon in a car theft ring which stole and transported a large number of automobiles, manipulated the titles, and then sold the cars for profit.

--Dave received two concurrent 5-year sentences for conspiracy and misapplication of funds and mail fraud in the districts of Kansas and Western Missouri, respectively. Hearing examiners from the Commission's North-Central Regional Office conducted a parole hearing for Dave in December 1979. They assessed the offense

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

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

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

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

but recommended parole after 60 months because Rich was not eligible until he had served one-third of his sentence. The presentence investigation report stated that Rich plead guilty to the sale of 82.9 grams of cocaine and that Rich was involved in large scale cocaine sales in Texas. The hearing summary recognized that Rich could have been involved in a large scale narcotics conspiracy, but the hearing examiners chose to parole Rich on his eligibility date after 60 months because only limited information was available on the extent of the narcotics conspiracy. We obtained information from the United States Attorney's files which confirmed that Rich was the head of a large scale narcotics ring in Texas. We discussed this case with the Administrative Hearing Examiner from the Commission's South-Central Regional Office who told us that the panel should have deferred the hearing and requested additional information on the extent of Rich's involvement in the large scale narcotics conspiracy. He also told us that Rich should not have been scheduled for parole until after he had served considerably more time than specified by the parole guidelines because of his involvement in a large scale narcotics operation.

--Norb received a 4-year regular adult sentence in the Eastern district of Kentucky for conspiring to transport, receive, conceal, store, sell, and dispose of stolen motor vehicles. Hearing examiners from the Commission's Southeastern Regional Office conducted a parole hearing for Norb in May 1979. They assessed the offense severity as high and the salient factor score as 10. The panel established a parole guideline range of 16 to 20 months and recommended parole at 16 months, or 1 day after his eligibility for parole. In arriving at the offense severity of high, the hearing summary stated that the total value of stolen property was $79,000. The presentence investigation report contained no information on the dollar value of the stolen trucks, and we could not determine how the panel arrived at a figure of $79,000. Our review of other information in the file, however, showed that the sentencing judge furnished information which indicated that the value of the stolen property was $100,000, while the Assistant United States Attorney furnished information which indicated that the value of the stolen trucks exceeded $100,000. Since there was conflicting information on the value of the stolen property, the hearing examiners should have obtained further clarification on whether the value exceeded $100,000. We confirmed that the value of stolen trucks exceeded $100,000. If the total value of stolen property exceeded $100,000, the appropriate offense severity should have been very high, and the parole guideline range should have been 26 to 36 months.

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

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

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

parole hearing for Wenonah in December 1979. They assessed the offense severity as low moderate and computed the salient factor score as 5. The panel established a parole guideline range of 12 to 16 months and recommended parole upon eligibility at 16 months. In establishing the offense severity of low moderate for Wenonah, the panel, in essence, made the determination that the value of the stolen property was less than $2,000. There was insufficient information in the presentence investigation report to establish the total value of the theft. However, the presentence investigation report stated that Wenonah and her co-defendant stole about 300 pieces of mail, including U.S. Treasury checks and welfare checks. We obtained information from the United States Attorney's files which showed that Wenonah and her co-defendant stole about 300 pieces of mail, including U.S. Treasury checks, welfare checks, and food stamps. Also, the investigative agency report cited 20 U.S. Treasury checks and 49 welfare checks. The combination of these checks plus the food stamps would have raised the severity to moderate because of a value in excess of $2,000. The appropriate parole guideline range for an offense of moderate severity would have been 16 to 20 months. Since there was insufficient information in the presentence report to accurately establish the offense severity, the panel should have requested additional information.

Regional Commissioners and hearing examiners told us that quality parole decisions could not be made when offenders' files were seen for the first time just prior to the actual hearing and only a limited review of the material was made at that time. They also acknowledged that such a procedure leads to errors because important information will be overlooked or not fully assimilated.

Hearing examiners did not fully participate in parole hearings

The Parole Commission and Reorganization Act of 1976 provides that parole determination proceedings shall be conducted in Federal correctional institutions on a regular schedule by panels of two hearing examiners. Also, this legislation provides that all parole recommendations to Regional Commissioners be based upon the concurrence of not less than two hearing examiners. The legislative history states that Regional Commissioners shall rely heavily upon the recommendations of hearing examiners.

The quality of hearing examiners' recommendations and Regional Commissioners' parole decisions could be enhanced if two hearing examiners fully evaluated the material in each offender's file. We observed 290 initial parole hearings conducted by the

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

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

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

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

As a result of our work, a pilot project was begun in the South-Central Region in November 1979 which demonstrated the importance of having two hearing examiners fully evaluate the material in each offender's file. The pilot project was implemented for the purpose of improving the quality of hearing examiners' recommendations and the Commission's parole decisions. One key element of this project was that each hearing examiner would make an independent assessment of each case. Another was that the material would be reviewed prior to the date of the hearing. During the initial stages of the pilot project, the assessments were reviewed by the Administrative Hearing Examiner in the South-Central Region who noted a substantial number of disagreements between hearing examiners.

Our review of 373 cases included in the pilot project during the period June through September 1980 showed that there were disagreements between the hearing examiners in 196 cases, or 53 percent. This sharply contrasted with the Commission's statistics for all regions, which showed that in 1980 there was disagreement between the hearing panel members in only about 3 percent of all parole recommendations on initial hearings to the Regional Commissioners. The Administrative Hearing Examiner in the South-Central Region attributed much of this difference to the fact that the pilot project required both hearing examiners to independently assess each case.

Several Regional Commissioners acknowledged to us that in most instances only one hearing examiner was fully analyzing material in offenders' files. They also stated that parole decisions could be improved if two examiners fully analyzed the material in each offender's file.

Modifications to the Commission's pilot projects needed

Two of the Commission's regions implemented separate pilot projects in fiscal year 1980 for the purpose of improving the quality of parole decisions and action was being taken to implement such projects nationwide in September 1981. Certain elements could be incorporated into the pilot projects to improve their effectiveness. First, additional time should be provided for staff to obtain missing information, seek clarification on any unresolved issues, and schedule a parole hearing. The Commission will need to change its procedures and seek legislation to amend 18 U.S.C. §4208 so that this can be accomplished. Second, the Commision needs to fully implement a procedure to eliminate parole hearings on those cases where it is obvious that parole will be granted at the earliest possible date.

Title 18, United States Code, §4208 provides that the Commission shall, whenever feasible, conduct a parole hearing for an offender at least 30 days prior to the offender's eligibility

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

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

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

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

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

--require that two hearing examiners independently review each case,

--state that the hearing examiners who reviewed the case should participate in the hearing, or

--require the Administrative Hearing Examiners to review the pre-hearing assessments in time to resolve any differences prior to the hearing.

Incorporating these suggestions into the procedures manual should improve the pre-hearing review process even further.

MORE EFFECTIVE QUALITY CONTROL IS NEEDED

Quality control at the regional level is not adequate to ensure that the guidelines are properly interpreted and followed or that good cause exists for decisions outside the guidelines. Also, the Commission has not assured itself that practices are uniform among its regions and that all policies are followed. Quality control at the national level is focused too narrowly on the decisionmaking guidelines and has not identified departures from other Commission policies or inconsistent practices among the regions.

Quality control at the regional level needs to be improved

The legistative intent of the Parole Commission and Reorganization Act of 1976 is that most panel recommendations will be within the guidelines and that departures from the guidelines will be based upon a finding of good cause. The Regional Commissioners' primary responsibility in such cases is to ensure that the guidelines have been properly interpreted and followed and that good cause exists for any decision outside the guidelines. The Commission's records showed that most panel recommendations were within the guidelines and accepted. However, we found that reviews of these recommendations are inadequate because they did not include an independent verification of the basis for making them.

We examined 342 panel recommendations and found errors in 182. Only 11, or about 6 percent of the erroneous recommendations were corrected in the regional quality control review process. The number of cases we examined and errors found in each region are summarized below.

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

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

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

The examples previously discussed on pages 26 to 32 illustrate the types of errors not corrected during regional reviews.

The regional reviews were not effective because they did not include independent verification of the panels' decisions. Instead, the reviews were generally limited to determining whether the decision appeared reasonable on the basis of information presented by the panels. This approach did not assure that all information was considered by the panels or that it was considered properly. Only an independent verification can assure this, as is demonstrated by the South-Central Regional Office's experience with the pre-hearing review (see p. 33). Initially, one hearing examiner computed the salient factor score and offense severity, and a second examiner reviewed it. Under this arrangement, few differences occurred. However, under the pilot project, examiners were required to make these determinations independently, and differences occurred in 53 percent of the cases. Resolution of these differences prior to parole hearings prevented many errors and possibly some appeals.

This latter procedure was not used at the time we selected cases for review, and the quality control review procedures in effect in each region at that time varied significantly.

As previously discussed on page 35, all regions have now implemented the prehearing review process. If an independent verification of the salient factor score and offense severity is incorporated into this process, the number of erroneous panel recommendations should be reduced significantly. This, however, will not relieve the Administrative Hearing Examiners and Regional Commissioners of the responsibility for reviewing case file material such as the presentence report to ensure that all information is considered and that the panel recommendations are in accordance with existing Parole Commission procedures.

The appeal process is not an effective quality control mechanism

An inmate may appeal his or her parole decision to the Regional Commissioner, and then to the National Appeals Board on the basis that the guidelines were incorrectly applied, correct procedures were not followed, the decision was based on erroneous information, or a decision outside the guidelines was not supported. Although the Commission considers the appeal process to be part of its quality control mechanism, its value is limited. Of the 182 erroneous panel recommendations, we found that 171 were not corrected through the regional review process. Of the 65 appealed, only 9 were corrected.

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

Quality control at the national level is too narrowly focused

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

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

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

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

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

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

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

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

--A third concurring vote is now required for a National Appeals Board decision to parole an offender sooner than specified by the guidelines.

Although the procedures followed to identify errors in the application of the decisionmaking guidelines have resulted in some improvements, they do not identify the extent to which such errors may be occurring. The review of the Notices of Action on individual cases identify only obvious errors, such as a parole date outside the guidelines when the decision was to parole within the guidelines. It will not disclose errors resulting from inadequate file review or failure to properly consider all information in the file by regional officials. These errors may be disclosed through review of problem cases identified by the National Appeals Board Commissioners or staff. However, only a small percentage of all cases are appealed, and in those appealed, not all errors are detected.

The extent of errors occurring in the application of the decisionmaking guidelines can be disclosed only through systematically reviewing case files from each region. A systematic review of case files has not been utilized because the Commission expressed the view it would lead to comparisons of how well the different regions were doing. Such comparisons are considered to be organizationally dysfunctional by the Commission. We do not agree.

Systematic reviews would identify the errors occurring most frequently and allow the Commission to concentrate corrective actions on these errors. If only one or two regions were making certain errors, they could be instructed in the correct application of those parts of the guidelines where errors were made. If all regions were making certain errors, the guidelines could be clarified or additional instructions provided to all regional staff. If this were done, it would result in more consistent application of the guidelines nationwide.

In addition to the narrow focus of quality control at the national level, we noted a number of other problems at both the headquarters and regional levels that relate to quality control matters. Even though not all of the matters pertain directly to the application of decisionmaking guidelines, they demonstrate a need to tighten the process and improve day-to-day operations of the Commission. In some instances, action has been taken to ameliorate the problem.

Failure to safeguard Witness Security Program case files

Witness Security Program cases are among the most sensitive cases the Commission must deal with. Inadvertent disclosure of an individual's location or identity could jeopardize his or her

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

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

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

Orders not signed

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

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

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

Commission's guidelines. In January 1980, the Commission clarified its procedures to correct this problem.

Failure to comply with statutory time limits

Statutory time limitations for various Commission actions are incorporated in the Commission policies. These include the time within which an offender must be notified of the decisions in his or her case and the time permitted to decide an appeal. The regional offices and the National Appeals Board failed to act within these statutory time limits in 81 percent of the cases we reviewed. This is discussed in more detail beginning on page 44.

Failure to obtain required concurrence of other Commissioners when changing parole dates

Regional Commissioners may change parole recommendations that are outside the guidelines to the nearest guideline range. Any other changes that exceed 6 months require the concurrence of another Commissioner. In regional appeals, Commissioners are further limited in that they need the concurrence of another Commissioner to establish a more favorable parole date.

Compliance with these limitations varied. This was caused in part because Commissioners believed these limitations applied if the Regional Commissioner was correcting an error, while others did not. The Commission recently clarified its procedures to specify when these limitations applied in correcting errors.

Corrections made by clerical staff are not reviewed

A clerical review is made of each case before the Notice of Action is mailed to the offender. This review is to ensure that the

--offense severity and salient factor score shown in the Notice of Action are correct,

--guideline range selected is correct on the basis of the offense severity and salient factor score shown,

--parole date will result in the offender serving the number of months specified, and

--number of months to be served correctly reflects the decision to parole within or outside the guidelines.

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

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

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

Contract typists not properly supervised

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

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

Poor controls over payments for contract typing services

The internal audit staff of the Department of Justice reported in October 1978 that none of the Commission's offices was reviewing the work of contract typists to assure that the work performed agreed with the billings received. Our review at the Commission's Southeastern Regional Office disclosed that vouchers for contract typing were being approved for payment with no assurance that the services had been performed or the bills were proper. In fact, we found that relatives of Commission employees were hired as contract typists in this office, including the husband of the Regional Commissioner's secretary, and the daughter of the Administrative Officer. Inquiries made by the Commission after we surfaced this issue disclosed that the relatives were not doing any typing. The employees, however, claimed that they were doing the typing at home. The Chairman of the Commission referred this matter to the Department of Justice for further investigation.

SYSTEM NEEDED TO ENSURE COMPLIANCE WITH STATUTORY REQUIREMENT TO MAKE PAROLE DECISIONS

One of the major criticisms of Federal parole practices in the past centered around long delays before offenders received notification of parole decisions. The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4201 et seq.) attempted to eliminate this problem by requiring the Commission to make parole decisions in writing within a specific time frame.

Our review showed that the Commission does not have a system to ensure that parole decisions are made within the time frames specified by law. We found long delays before decisions on initial parole hearings, regional appeals, and national appeals were communicated to offenders. Our review of 3,448 cases showed that in 2,783 cases, or 81 percent, the Commission did not comply with the law.

Initial parole decisions are not processed in a timely manner

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4206(b)) provides that an offender shall be furnished with a written notice of the parole decision in his or her case within 21 days, excluding holidays, after the date of the parole hearing. To implement this provision, the summary of the hearing must be typed, the Administrative Hearing Examiner must analyze the case and the recommendations of the hearing examiners, the

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

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

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

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

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

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

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

on this case, but most notable was the fact that it took 35 days to process the decision after it was made by the Regional Commissioner.

--George was given an initial parole hearing on July 18, 1979, and his written parole decision was dated 61 days later. In this case, 41 days passed before the hearing examiners' recommendations were reviewed and an additional 20 days passed before the written decision was sent to George.

Decisions on regional appeals are not made in a timely manner

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4215(a)) provides that an offender may submit a written appeal of the parole decision to the responsible Regional Commissioner within 30 days of the date of the initial decision. Upon receipt of the appeal, the case is examined by an analyst who makes a recommendation on the merits of the appeal to the appropriate Regional Commissioner. By law, the Regional Commissioner must reaffirm, modify, or reverse the original decision within 30 days after the appeal is received in the office, and must inform the applicant in writing of the decision and the reasons therefor.

All five of the regional offices were experiencing problems in consistently meeting the 30-day time frame established in the statute. Our review of 118 appeals processed by the Commission's five regional offices showed that in 66 cases, or 56 percent, the 30-day time frame was exceeded. We found that in 22 cases, it took at least 60 days to make a decision on the appeal.

Region	Number of cases reviewed	Number of days to make decisions on appeals		
		30 or less	Over 30	Over 60
Northeast	13	11	2	0
North-Central	25	5	14	6
Southeast	37	5	21	11
South-Central	28	26	2	0
Western	15	5	5	5
Total	118	52	44	22

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

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

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

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

Major delays encountered in making decisions on national appeals

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

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

The following table shows details on actions of the National Appeals Board during calendar year 1980.

Region	Total appeals	Appeals Processed: Within 60 days	Between 61 and 120 days	Over 120 days
North-Central	624	63	546	15
Northeast	701	150	547	4
South-Central	628	103	510	15
Southeast	687	76	592	19
Western	348	40	286	22
Total	2,988	432	2,481	75

Our review of 200 appeals submitted to the National Appeals Board through the Commission's five offices showed that in 177, or 88 percent, the 60-day requirement was exceeded. Further details on these cases are presented below.

Region	Number of cases reviewed	Number of days to make decisions on appeals: less than 60	Over 60	Over 90
Northeast	51	7	14	30
North-Central	37	0	21	16
Southeast	25	5	15	5
South-Central	62	10	29	23
Western	25	1	4	20
Total	200	23	83	94

The seriousness of this problem is illustrated by the fact that for 94 cases, or 47 percent, more than 90 days elapsed before the decision on the appeal was made. Following are examples of the delays in processing decisions on national appeals.

--Bob's appeal was received by the National Appeals Board on March 10, 1980. The case was reviewed by an analyst on March 25, 1980, or 15 days later. The enabling

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

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

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

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

In 1979, the National Appeals Board became concerned over the length of time required to process appeals and the growing backlog of national appeals. In order to facilitate processing of national appeals, the National Appeals Board began using a summary docket for certain categories of appeals. Cases placed on the summary docket do not receive a detailed review by a case analyst and are reviewed simultaneously by two Commissioners. The seven categories of national appeals which were susceptible to speedy decisionmaking included cases where (1) the parole decision is already below the parole guidelines, (2) the parole date is within 1 year, (3) the parole date is within 6 months of the eligibility date on a regular adult sentence, and (4) the parole date is the earliest eligibility date.

We found that this procedure has helped relieve some of the delays in processing national appeals, but better case management practices are needed to ensure that the 60-day time frame in the statute is met. In calendar year 1980, the Commission's records showed that 754 cases were handled on the summary docket. Our analysis of these records showed that 520, or 69 percent, handled through the summary docket procedures exceeded the 60-day time frame. Further details are presented in the following table.

Region	cases	Number of days to process decision: 60 or less	Between 61 and 120	Over 120
	200	76	123	1
North-Central	132	36	94	2
Southeast	178	44	134	0
South-Central	167	53	113	1
Western	77	25	51	1
Total	754	234	515	5

Regional and National Commissioners told us that more attention must be given to this problem to ensure that parole decisions are furnished to offenders within the time frames specified in the Parole Commission and Reorganization Act of 1976. They also stated that a system should be established to ensure that these requirements are met.

CONCLUSIONS

The Parole Commission needs to improve the procedures it follows when making parole decisions. We found inconsistencies in parole decisions both within and among the Commission's five regional offices, in part, because guidelines used by hearing examiners to make parole recommendations were subject to varying

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

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

Quality of case analysis also must be improved. Hearing examiners were making erroneous decisions because they were not sufficiently analyzing the material in offenders' files. Hearing examiners were not examining case files until immediately before an offender's parole hearing, generally spent less than 20 minutes reviewing them, and, in most cases, only one of the two hearing examiners present at the hearing looked over the material prior to formulating a parole recommendation. Moreover, the resulting errors were not detected and corrected during subsequent reviews. Only 6 percent of the 182 errors we found in our examination of 342 cases had been corrected. In our opinion, regional reviews would be more effective if the reviewer examined the support for making a recommendation rather than just examining whether the time to be served was reasonable on the basis of the recommendation that was made.

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

RECOMMENDATIONS

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

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

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

--Improve the quality of case analysis by hearing examiners by (1) allotting sufficient time to properly analyze the material in offenders' files well in advance of parole hearings, (2) requiring that both examiners assigned to a hearing fully analyze the information in offenders' files and participate in the hearing, (3) refining the pre-hearing process being implemented in the regions, and (4) changing the Commission's procedures and seeking amendments to 18 U.S.C. §4208 so that sufficient time will be available for hearing examiners to obtain missing information or obtain clarification of information prior to the parole hearing.

--Develop an effective quality control system in the regions and at headquarters. The system should provide for review of case file material to ensure that pertinent information is considered and that panel recommendations are made in accordance with Parole Commission procedures.

--Establish a system to ensure that parole decisions are made within the time frames required by the Parole Commission and Reorganization Act of 1976.

AGENCY COMMENTS AND OUR EVALUATION

The Parole Commission commented on a draft of this report by letter dated March 19, 1982. (See app. I.) The Commission agreed with the recommendations in this chapter and identified a number of corrective measures either taken or in process to improve its parole release guidelines. However, the Commission expressed some disagreement with certain information in the draft. It expressed serious reservations about the analyses in certain sections of the chapter which, according to the Commission, were inadequate methodologically and misleading as presently written. A detailed discussion of these matters follows.

The Commission stated that the 30 cases we used in testing the consistency of hearing examiners' interpretations of the parole guidelines (1) were not selected randomly, (2) were not "representative" of the types of cases heard by the Commission, and (3) were unusually complicated cases that were missing critical information. We acknowledge that the 30 cases were selected judgmentally rather than randomly. However, we selected them without any prior knowledge of their relative degree of difficulty or the adequacy of information contained in the files. We carefully reviewed the 30 case files and provided the hearing examiners with all of the information that was available when the initial parole decisions were made by the Commission. Regarding the Commission's comments about the files being incomplete, it should be noted that (1) we gave hearing examiners the option of stating that sufficient information was not available to properly establish the parole guideline ranges and some

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

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

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

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

"There is no established standard against which to measure the consistency of a guidelines system, i.e., no research has documented or even suggested that a system must be 98% or 90% consistent in order to be deemed a success. The rate of agreement between the ADL [Arthur D. Little] research team and the actual U.S.P.C. [United States Parole Commission] guidelines rating--if truly reflective of the consistency of this system--suggests a consistency rate of from 61% to 72%. (The 61% figure includes researchers error; the 72% figure eliminates it.) That rate, simply on the grounds of common sense, appears to leave room for improvement. The number of disagreements further suggests that the Parole Commission retains a great deal of latitude in the discretion it exercises in defining both offense severity and risk * * *."

* * * * *

"Concurrent with Arthur D. Little's study of consistency in the U.S. Parole Commission, the Commission's research staff conducted a similar analysis using the same sample of cases as did ADL. Our findings are, as might be expected, somewhat different than those of the Parole Commission staff. Their research staff were much less likely to disagree with actual panel ratings as a result of error--they were clearly more familiar with the guidelines than are we. In addition, they were less likely to view certain aspects of the guidelines as unclear. This was not surprising, since this staff has been involved since the very beginning in guideline development and is more familiar with the intricacies of the guidelines and supporting policy than the typical hearing examiner * * *."

The Commission stated that it appeared from our discussion of superior program achievement that we misunderstood several issues and it also took issue with our statement in the report that several Commissioners expressed dissatisfaction with the concept of superior program achievement. Based on the Commission's response, we believe it has misunderstood our point. We are saying that criteria must be established to define what constitutes superior program achievement. The program has been in operation over 29 months and criteria has not been established. Also, the Chairman stated that the confusion over superior program achievement was resolved at a December 1981 meeting. We were present at that meeting and little time was spent discussing superior program achievement. After the meeting, we talked with several Commissioners who told us that they were still dissatisfied

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

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

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

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

these two studies was on the clarity of the parole guidelines rather than a regular on-line quality control function. We believe that an effective quality control function requires the systematic sampling of case files from each region on a continuing basis.

The Commission expressed some concern in its comments over budgetary problems that it is experiencing and the need for additional resources. Some immediate relief would be available to the Commission if it modified the prompt hearing/presumptive date procedures referred to on page 11 of its comments. Under these procedures, the Commission conducts initial parole hearings for every offender who has a sentence of less than 30 years generally within 120 days after his/her arrival at a correctional institution. These hearings could be delayed for those offenders whose earliest parole eligibility dates are far into the future. Other areas in which the Commission could achieve more efficient use of resources are discussed in chapter 3.

CHAPTER 3

LEGISLATIVE CHANGES COULD RESULT IN IMPROVED PAROLE DECISIONMAKING

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

--clarify the role of the National Appeals Board,

--facilitate the formulation of Federal parole policy, and

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

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

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

ROLE OF THE NATIONAL APPEALS BOARD SHOULD BE CLARIFIED

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

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

Regional Commissioner on parole release which is adverse to the offender may be appealed to the National Appeals Board for reconsideration. The act states that the National Appeals Board is empowered to reaffirm, modify, or reverse the decision of a Regional Commissioner and that it must advise the offender in writing of the reasons for its decisions. The only additional guidance on the role of the National Appeals Board and how it will carry out its responsibilities is contained in the legislative history of the act. It states:

> "* * * Review procedures should be designed to identify and resolve decision patterns involving significant inconsistencies between regions or involving departures from national parole policies promulgated by the Commission."

Our review showed that there was extensive discussion among Parole Commissioners on the role of the National Appeals Board at the Commission's February 23, 1979, meeting. Several Regional Commissioners voiced displeasure over the National Appeals Board's practice of frequently reversing their decisions when no errors were made and no reasons were given for the changes. One Regional Commissioner formally expressed this concern to all Parole Commissioners on April 3, 1979. His letter stated:

> "The present divided Commission organizational structure particularly to the NAB [National Appeals Board] allows the NAB to set policy, when that is the responsibility of the full Commission by statutes and cannot be delegated; it allows the NAB to reverse a case because they are in disagreement with the Regional Commissioner rather than being limited to reversal only for procedural or factual error. The NAB has tinkered with decisions, by moving cases below or within the guidelines. The NAB has considered matters not raised on appeal and has voted accordingly, when their authority is limited to consideration of the issues raised by the prisoner in his appeal * * *."

Another Regional Commissioner in a letter dated April 3, 1979, to other Commissioners also expressed concern about the actions of the National Appeals Board. His letter stated:

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

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

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

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

* * * * *

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

"The Commission would thus be carrying out the Congressional intent by making an appropriate procedural change designed to restore the function of national appellate review to its original purpose of reducing disparities between the decision patterns of the various regions. If the National Appeals Board is establishing a decision pattern of its own, then it is unavoidably setting policy for the rest of the Commission, a role that I do not believe the Congress contemplated for it."

At its August 1979 meeting, the Commission voted to amend its rules to require the concurrence of all three Commissioners on the National Appeals Board when a reversal or modification of a Regional Commissioner's decision within or above the guidelines would result in a parole date below the guidelines. Part of the Commission's rationale for this change was that appellate decisions to set a parole date below the guidelines had raised some concern within the Commission about whether the decisions conformed to general Commission practice.

However, the decision of a Regional Commissioner can still be reversed if only two National Commissioners feel that the offense severity rating or salient factor score were incorrectly established. In effect, the concurrence of three National Commissioners is necessary only when there is agreement on the severity rating and the salient factor score, but the National Appeals Board has decided to reverse a Regional Commissioner's decision for parole within or above the guidelines to below the guidelines.

In April 1981 the Chairman of the Commission asked the Commission's General Counsel for a legal analysis of the statutory role and authority of the National Appeals Board. The General Counsel's May 1981 letter stated:

"We conclude that the National Appeals Board's delegated authority does not at present permit the establishment of new policy and procedures by innovative case decisions, or permit such substitutions of discretion."

* * * * *

"* * * we see the National Appeals Board as necessarily serving two purposes: (1) The National Appeals Board exercises decisional discretion to correct a decision or a pattern of decisionmaking that significantly departs from the norm established by the

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

* * * * *

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

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

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

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

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

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

when he escaped. On December 30, 1967, he stole a truck, kidnapped four children, and raped a 12-year old girl at gunpoint. While in custody on these charges, Dale along with three other Federal prisoners and five State prisoners escaped from jail. During the course of the escape, the jailer was injured which resulted in his hospitalization for some time. Dale was recaptured the same day and later sentenced on June 21, 1968, in the district of Nevada to 40 years for kidnapping. In December 1978, he was given a parole hearing. The information in the file showed that Dale led a life of criminal involvement from his earliest juvenile years to the latest offense. He had a salient factor score of 1 and the offense severity was classified as greatest. The parole guidelines called for 72 plus months with no upper limit. After Dale had been in custody about 132 months, the Regional Commissioner denied parole and scheduled Dale for a reconsideration hearing in 4 years. The notice of action stated:

> "* * * Your offense behavior has been rated as Greatest severity because of aggravated sexual assault and kidnapping. * * * After review of all relevant factors and information presented, It [sic] is found that your release at this time would depreciate the seriousness of your offense behavior and this is incompatible with the welfare of society * * *."

Dale appealed the decision to the Regional Commissioner who affirmed his previous decision. Then, Dale appealed the decision to the National Appeals Board. In the interim, the parole guidelines were changed in June 1979. The offense severity in Dale's case was changed to greatest II and the guidelines called for 100 plus months with no upper limit. Upon review of the case by the National Appeals Board, one National Commissioner agreed with the Regional Commissioner, but the other two National Commissioners voted to parole Dale on July 14, 1980, after he had served about 150 months, or 28 months earlier than recommended by the Regional Commissioner. Thus, the Regional Commissioner's decision was reversed. In arriving at this decision, one National Commissioner used the following rationale:

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

* * * * *

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

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

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

* * * * *

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

Prior to his parole date Dale was transferred to a halfway house on January 29, 1980, and placed in escape status on February 9, 1980. Upon return to custody, his parole date of July 14, 1980, was rescinded. However, he was paroled on March 6, 1981. His adjustment on parole has been less than satisfactory since he has been cited for use of narcotics, use of intoxicants, and he absconded from parole supervision on two occasions.

--Jack received a 5-year regular adult sentence in the Northern district of Illinois on March 23, 1979, for postal theft. His initial parole hearing was in July 1979, and the panel established the offense severity as low moderate and the salient factor score as 3. Under these conditions, parole guidelines call for a period of incarceration of between 16 to 22 months. The panel recommended and the Regional Commissioner agreed that Jack should be mandatorily released in March 1982 because his record included 10 prior convictions for burglary and breaking and entering. Jack appealed the decision to the Regional Commissioner who affirmed his previous decsion. Then, Jack appealed the decision to the National Appeals Board. Upon review of the case by the National Appeals Board, one Commissioner agreed with the Regional Commissioner, but the other two Commissioners voted to parole Jack on May 2, 1980, after he served 22 months, thus reversing the Regional Commissioner's decision. In arriving at this decision, one member used the following rationale:

> "* * * Subject submits a copy of his certificate of Military Service showing he served in the Army of the U.S. from June 21, 1954 to July 5, 1956, and that he received a general release under honorable conditions. It is unfair for the NAB analyst to raise questions in the face of this evidence to the effect that 'he was supposedly in the military service' - The U.S. Government records show he was in the service - i.e. - in the Army. That eliminates from the P.S.I. [Presentence Investigation Report] all offenses between above dates.
>
> "Nonetheless, he has 7 convictions and 6 incarcerations, so his salient factor

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

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

"* * * [Jack's] case was heard and decided by the National Appeals Board on March 16, 1980 with you and Commissioner * * * voting to parole Jack after 22 months at the top of his guidelines. In doing so, you cite that he was in the U.S. military service and you imply that because of his military status he could not have been involved in the several convictions that appear on his record. You may be correct in that assumption; however, the United States Probation Officer who did this investigation knew that * * * [Jack] was in the military service during that time and still found evidence of his involvement in the crime during those two years. Records of the States of Illinois and Iowa substantiate his involvement in those crimes.

"* * * Moreover, in your notes you state that 'he was last paroled on September 7, 1973. This offense occurred June 19, 1978--5 years later. Top of guidelines adequate in view of the length of time he did succeed on parole.' The PSI at page 6 lists as * * * [Jack's] 13th conviction and his 10th incarceration an offense occurring on May 12, 1974, for burglary, for which he was sentenced to 4-20 years in the Illinois State penitentiary. He was ultimately paroled in 1977 and at the time of the instant Federal offense was considered a parole violator.

> "* * * I grow weary of calling this kind of over-reach to the attention of yourself and Commissioner* * *. [Jack] is a life-time criminal. His only means of support when in the free world in the past twenty-eight years has been crime. From all appearances, he is a career criminal, the fullest meaning of that descriptive term. His release ill serves the interest of the public's safety."

Nevertheless, Jack was paroled on May 2, 1980.

--Steve received a 10- to 12-year sentence under 18 U.S.C. §5010(c) in the Western district of Texas on July 11, 1971, for armed bank robbery. His initial parole hearing was in September 1977 and the Commission's decision was to deny parole. The Commission conducted a parole hearing in September 1979 and established Steve's offense severity as very high and his salient factor score as 9. Under these conditions, parole guidelines call for a period of incarceration of between 20 to 26 months. The Regional Commissioner recommended that Steve be mandatorily released. The notice of action stated:

> "* * * After review of all relevantffactors [sic] and information presented, a decision above the guidelines appears warranted because you have a record of institutional misconduct, specifically: An extremely serious disciplinary record including twenty misconduct reports since your last hearing including one for stabbing another inmate and for which you received a two year consecutive sentence * * *."

Steve appealed the decision to the Regional Commissioner who affirmed his previous decision. Upon review of the case by the National Appeals Board, two National Commissioners voted to parole Steve in July 1982 after serving 60 months. In arriving at this decision, one National Commissioner used the following rationale:

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

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

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

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

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

* * * * *

"I might add parenthetically, if not collaterally, that subsection (d) in its discussion of 'two-thirds' consideration for parole determination criteria states:'... the Commission shall not release such prisoner if it determines that he has seriously or frequently violated institutional rules and regulations or that there is a reasonable probability that he will commit any Federal, State, or local crime.'"

* * * * *

"I think it would be useful to add to a future discussion, the whole question of policy interpretation of institutional behavior and the authority of one or more Commissioners to supersede affirmed decisions based on judgements or comfort."

In January 1981, the Chairman of the Commission asked the General Counsel for his opinion on this case. The General Counsel stated:

"* * * Commissioner * * * analysis of this case appears quite sound and I do not see the cogency of the reasons for the NAB's decision.

"* * * There does not appear to be any legal question in the NAB decision, even though the statute requires good institutional conduct as a condition precedent for parole consideration, since a review of conduct is contemplated before release * * *."

In February 1981, Steve was charged with assaulting another inmate and in June 1981 his parole was rescinded.

--Rich received a 15-year regular adult sentence in the Western district of Texas for possession with intent to distribute heroin. His initial

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

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

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

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

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

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

having reversed the Commissioner in the Region who had given a four year reconsideration hearing in February 1983. Rich has been in custody for nearly nine years. He has an extremely poor institutional record, having at this time nearly 900 days of forfeited statutory good time. The NAB Commissioners sidestepped the issue of the institutional behavior by citing its relationship to his alcohol and drug problem. I would submit that it is foolhardy for us to ignore the behavior of an individual in an institution so completely. If Rich is involved in drug-related crime in the free world after his parole, there will be no way to explain how we released him after citing the fact that his poor institution behavior was drug related. This is another example of a case where we have isolated ourselves completely from the recommendations of the institution, our hearing examiners, the administrative hearing examiner, the Commissioner in the Region, and the NAB Analyst. In spite of all of those individuals saying one thing, NAB Commissioners have determined a parole date nearly three years earlier. I would appreciate your taking this matter up with the Vice Chairman. If NAB continues to take actions such as these, I will place back on the agenda an item to limit the authority of NAB to make these kinds of reversals * * *."

Rich was transferred to a halfway house in April 1980; however he continued to exhibit poor behavior and in September 1980 a rescission hearing was conducted and the panel recommended that Rich be mandatorily released. Rich eventually appealed the decision of the Regional Commissioner to the National Appeals Board and it too was reversed. Rich was given a presumptive parole date of May 11, 1981. Subsequently, the Commission delayed this parole date after Rich had been found guilty of possession and use of intoxicants and assault on a Bureau of Prisons employee.

We found that as a part of reversing some decisions of Regional Commissioners the National Appeals Board attempted to establish parole release dates for 17 offenders which were prior to their statutory eligibility dates for parole. Several examples follow.

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

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

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

DECENTRALIZATION OF PAROLE COMMISSIONERS HINDERS POLICY FORMULATION

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

have not been addressed and resolved in a timely fashion because meetings of 1 or 2 days each quarter have not provided sufficient time to discuss and resolve varied and complex issues.

Regional Commissioners are responsible for the parole functions pertaining to Federal prisoners confined in correctional institutions and all parolees and mandatory releasees within the boundaries of their respective regions. Also, Regional Commissioners are responsible for the supervision and direction of regional office staff and liaison with other parts of the criminal justice system. The Commission has delegated to Regional Commissioners the responsibility for initial determinations with respect to parole release decisions, revocation of parole, modification of parole conditions, and termination of supervision. Also, Regional Commissioners must decide on offenders' initial appeals of decisions regarding these matters.

Regional Commissioners are responsible for attending regularly scheduled meetings with the National Commissioners to vote on appeals in original jurisdiction cases. These cases include offenders who (1) committed serious crimes against the security of the Nation, (2) were part of a large scale criminal conspiracy that involved an unusual degree of sophistication and planning, (3) received national attention because of the nature of the crime and the status of the victim, and (4) were serving long term prison sentences of 45 years or more. Further, the Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4203) provides that the Commission shall meet at least quarterly to carry out national parole policy matters, and the legislative history states that all Commissioners are expected to attend these meetings.

Regional Commissioners do not have the time to carry out all their duties

Regional Commissioners do not have sufficient time to carry out the responsibilities of operating a regional office, attend regularly scheduled meetings to make parole decisions on appeals of original jurisdiction cases, and at the same time devote adequate attention to the formulation of national parole policy. In fiscal year 1980, the five Regional Commissioners made 26,643 parole release determinations. If all five Regional Commissioners worked 8 hours per day for 250 days on only these determinations, our analysis showed that on the average a Regional Commissioner had only 23 minutes to review a case and make a parole release determination. A breakdown by region is shown below.

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

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

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

a/This excludes all absences due to vacant positions.

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

meetings were all Commissioners in attendance. Thus, important policy questions have not been resolved in a timely fashion. For example:

--The Commission discussed the issue of co-defendant disparity at its January 24 and April 12, 1978, meetings. However, as of December 1981 the Commission still had not adopted a strategy for making consistent parole release decisions in cases involving more than one defendant. Rather, staff in the Commission's offices operated independently and made little effort to coordinate case analyses for co-defendants either within or among offices when formulating parole release decisions. Also, the Commission has frequently used an erroneous parole decision in one case as the standard when making parole decisions at a later date for other co-defendants rather than correcting the error in the original case (see ch. 4).

--In March 1978, the Chairman of the Commission assigned three members of his staff to study the issue of search and seizure authority of probation officers. This issue has been discussed at several of the Commission's meetings and additional information has been obtained from 88 probation offices. However, after more than 3 years the Commission still has not resolved the issue (see ch. 5).

--The issue of lack of parole supervision for parolees in the witness protection program was discussed at the Commission's April 9, 1980, meeting. Over a year later the Commission still had not finalized any guidelines for supervision of these parolees with the Probation Division. Also, the Commission had not been successful in its efforts to obtain complete listings of witness protection program participants who were previously paroled (see ch. 5).

--The Commission modified its policy regarding the treatment of parole violators incarcerated with new sentences at its December 4, 1979, meeting. The new policy, which became effective July 1, 1980, provided that the unexpired portion of the original Federal sentence would commence after serving 18 months of the new sentence (if the prisoner was not released from the new sentence before that time), except that the Commission could commence the unexpired portion of the original sentence at an earlier or later time if two Commissioners voted to do so. Shortly after implementation of this policy, several Parole Commissioners realized that they had not fully understood the policy change or the fact that it directly conflicted with other existing policies. The Commission did not act on this problem until its June 4, 1981, meeting.

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

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

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

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

> the conclusions required of it under 18 U.S.C. §4206(a)(1) and (2) in good faith. In such a case, the Commission could not at the time of release, declare in good faith that release would not 'depreciate the seriousness of the offense', or unduly 'jeopardize the public welfare'. Yet, each parole certificate handed to an outgoing parolee attests to precisely those conclusions."
>
> * * * * *
>
> "* * * It is an open question that ought not to be swept under the rug * * *."

The Commission declined to take any action on this proposal, except to table it. No action had been taken as of March 31, 1982.

Centralization of Parole Commissioners could facilitate formulation of parole policy

The present organizational structure of the Commission did not permit adequate attention to be devoted to resolving policy issues in a timely manner. Also, the current structure of the Commission promotes a conflict between the requirement to process cases and the need to participate in frequent meetings to formulate parole policy. When we asked Parole Commissioners and staff members how these problems might be remedied and studied available documentation on the matter, three basic alternatives emerged. They were to:

- --Retain the present organizational structure with minor modifications, such as changing the locations of the regional offices.
- --Centralize the entire Parole Commission.
- --Retain the regional office structure, but centralize all the Parole Commissioners.

When we began this review, determining how best to organize the Parole Commission was not one of our objectives. However, on the basis of our work it appears that centralization of the Parole Commissioners while retaining a regional office structure offers the most potential for improvement. It would facilitate policy formulation and at the same time minimize travel costs of hearing examiners by keeping the Parole Commission's offices in close proximity to the institutions they serve.

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

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

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

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

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

who considered the case, but the Commission accepts the concurring vote of two National Commissioners as decisive in this situation when in fact there may very well have been a different decision if the appeal had come before the full Commission.

Another common scenario which can occur in original jurisdiction cases where the National Commissioners vote for a more lenient decision than the one recommended by the Regional Commissioner, and the offender appeals the initial decision. The more lenient decision becomes the standard for the full Commission to use in making a release decision. This is irrespective of the fact that an error could have been made by the National Commissioners in reversing the Regional Commissioner or a majority of all Commissioners may have agreed with the recommendation of the Regional Commissioner.

Although we are not advocating this approach as the only alternative to improving parole decisionmaking, we believe it ought to be given careful consideration. Other items which would need to be considered before making any such change include (1) the number of Parole Commissioners required, (2) how many regional offices would be required, and (3) where the offices should be located.

LEGISLATION NEEDED TO ELIMINATE NONPRODUCTIVE EFFORTS

The Commission could make more efficient use of at least $490,700 in resources annually if legislative changes were enacted to relieve it of the responsibility for carrying out certain activities that are not productive.

--The regional appeals process is not needed.

--Statutory interim parole hearings are no longer needed.

--Youthful offenders sentenced under the Magistrates Act do not warrant parole consideration or parole supervision.

--The Commission's involvement in study and observation cases committed under 18 U.S.C. §5010(e) should be terminated.

Regional appeals process is not needed

The Parole Commission has established a two-step administrative review process in accordance with 18 U.S.C. §4215 to reconsider offenders' appeals of parole decisions. However, the initial step--reconsideration by the Regional Commissioner--could be eliminated because the Regional Commissioner is the same person who initially rules on the case. The Commission could make

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

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

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

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

Category	Fiscal year 1975	1976	1977	1978	1979	1980	Total
Appeals filed	3,425	4,092	3,436	4,087	3,958	4,757	23,755
No change in decision	2,969	3,904	3,250	3,727	3,408	4,262	21,520
Decision reversed	456	188	186	360	550	495	2,235
Percent reversed	13.3	4.6	5.4	8.8	13.9	10.4	9.4

We estimate that it cost the Commission about $256,200 to process and review the regional appeals that were filed in fiscal year 1980.

In commenting to the Subcommittee on Criminal Justice, House Committee on the Judiciary, on proposed revisions to the criminal code, the Parole Commission recommended that the regional appeal process be eliminated. The Commission pointed out that its experience since passage of the Parole Commission and Reorganization Act of 1976 had shown that the initial step--reconsideration by the Regional Commissioner--was no longer required because the Regional Commissioner fully considered the case when making the initial decision. Also, the Commission pointed out that a single step appeals process would be more efficient and expedite a final decision on the case. The House Committee on the Judiciary passed a bill entitled the Criminal Code Revision Act of 1980 on July 2, 1980, (H.R. 6915) which would have amended certain provisions of the Parole Commission and Reorganization Act of 1976, including elimination of the regional appeals process. It was not enacted into law.

Several Parole Commissioners told us that their positions on this matter had not changed. They also told us that such legislation would enable the Commission to make better utilization of the resources presently spent to process and review regional appeals of parole decisions.

Statutory interim hearings are no longer needed

The Commission conducts statutory interim parole hearings as required under 18 U.S.C. §4208(h) every 18 months for prisoners serving sentences of less than 7 years and every 24 months for prisoners serving longer sentences. The Commission could make more effective use of at least $219,700 in resources annually,

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

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

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

--order no change in the previous decision,

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

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

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

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

conducted on an as needed basis when adverse information is brought to the Commission's attention.

Also, the Commission is restricted in what it can do to advance a parole date subsequent to its establishment at the initial hearing. This may be done for superior program achievement under 28 CFR §2.60 or for new and significant favorable information under 28 CFR §2.28(a). At the present time, superior program achievement is normally considered during the statutory interim hearing; however, there is no reason why the Bureau of Prisons could not routinely notify the Commission of this information in progress reports so special reconsideration hearings could be scheduled as necessary. Statutory interim hearings are not required for the Commission to consider new and significant favorable information because the Commission normally schedules a special reconsideration hearing when such information is brought to its attention.

Several Commissioners and staff told us that better utilization could be made of the resources presently expended by the Commission to conduct statutory interim hearings at 18- and 24-month intervals. They saw no reason why special reconsideration hearings could not be conducted as necessary to consider information on superior program achievement, prison misconduct, and new adverse or favorable circumstances. They favored legislation which would eliminate the requirement for statutory interim hearings but pointed out that such a change would require close coordination between the staffs of the Commission and the Bureau of Prisons.

Youthful offenders sentenced under the Magistrates Act do not warrant parole consideration or supervision

The Parole Commission makes parole release determinations and the Federal Probation System supervises youthful offenders sentenced under the Magistrates Act (18 U.S.C. §3401 et seq.). However, youthful offenders are sentenced under the act to a term of imprisonment of up to 6 months for a petty offense or up to 1 year for a misdemeanor. Their sentences are so short that few, if any, benefits will be obtained from parole consideration or supervision.

The Federal Magistrate Act of 1979 was enacted on October 10, 1979, to expand the magistrates' authority to dispose of certain minor criminal cases and civil cases upon the courts specific designation and the litigants' consent. Also, this legislation expanded the trial jurisdiction of magistrates in criminal cases and clarified the authority of magistrates to sentence youthful offenders under the Federal Youth Corrections Act (18 U.S.C. §5005 et seq.).

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

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

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

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

officials, there are few benefits associated with the supervision of these cases because the length of time under supervision--3 months--is too short to effectively work with these offenders.

A December 1981 report to the Congress by the Judicial Conference of the United States discussed some of the problems associated with parole consideration and parole supervision of youthful offenders sentenced under the Magistrates Act. 1/ The report stated:

> "The United States Parole Commission has proposed that the conditional release provision of the 1979 amendments be repealed. Under its regulations the Parole Commission must conduct a hearing before the release of an offender. A three-month period of incarceration is said not to provide sufficient time to process an offender into an institution, to give notice of a parole determination proceeding, to conduct the hearing, and to release the offender. The mandatory three-month period of supervision by a parole officer following discharge, moreover, is too short to be effective. The costs of administration and paperwork in such a short-term situation are significant. Even a nine-month period is said by the Commission to be too short to warrant consideration of parole. The Commission has therefore recommended an amendment to the 1979 legislation to make misdemeanants and petty offenders ineligible for parole and to allow a magistrate to determine the date of release at the time of sentencing, as is the case with adult misdemeanants under 18 U.S.C. § 4205(f)."

Several Parole Commissioners told us that if its recommendation were implemented, the cost associated with making parole release determinations and supervising these individuals would be eliminated.

1/"The Federal Magistrates System", Report to the Congress by the Judicial Conference of the United States, December 1981.

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

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

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

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

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

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

Commission neither prepares these studies nor provides the policy guidance for their preparation. [Footnote: The Parole Commission has left the task of designing these studies to the Bureau of Prisons and has reserved for itself a minor reviewing role. Many Parole Commission personnel interviewed for this project had no idea why they were required to review these reports."]

* * * * *

"* * * When considering sentencing recommendations from the Parole Commission, the courts should be aware of the limitations and the arbitrary nature of the Commission's review. First, pre-release analysts do not conduct qualitative reviews of these studies. Second, they make no effort to determine whether these studies adequately addressed issues raised by sentencing judges. Third, the Parole Commission has not established guidelines for the pre-release analyst's review of these studies or for the preparation of sentencing recommendations * * *."

The report concluded that the Parole Commission's review of 5010(e) studies should be terminated because it no longer served a useful purpose, increased the number of people routinely involved in study and observation cases, and extended the time required before the studies were provided to the court.

Regional Commissioners and staff generally saw no role for the Commission in these study and observation cases because the Commission made no meaningful contribution to them. One Regional Commissioner expressed this to us in a letter dated September 3, 1981. The letter stated:

"From my own experience as well as from discussions with my staff who prepare these, there is an unequivocal and unanimous response in the negative. There is no major contribution made by the United States Parole Commission and the agency should not be a part of this process.

"We do review and evaluate the material sent to us from the Bureau of Prisons and with a staff analyst's summarization and Commissioner's final recommendation to the Courts, all materials are sent to the refering Judge. There is no documentation as to any impact, if any, this paper-review and the Commission's recommendation has on the final determination made by the Sentencing Judge.

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

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

* * * * *

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

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

CONCLUSIONS

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

We also found that (1) important policy questions are not being addressed and resolved in a timely fashion because the decentralized structure of the Commission does not enable sufficient time to be devoted to this matter, and (2) the Commission is required by legislation to conduct certain activities, such as regional appeals and statutory interim hearings, that are not productive. Legislative attention to each of these areas offers the potential to improve the operational efficiency of the Parole Commission and the parole decisionmaking process by making more effective use of the resources that are available. In this regard, we believe that centralization of Parole Commissioners needs to be explored as a vehicle for facilitating the formulation of parole policy.

RECOMMENDATIONS

We recommend that the Chairman of the United States Parole Commission seek legislation to:

--Clarify the role of the National Appeals Board so that there will be an understanding among all the Commissioners as to how it will carry out its responsibility.

--Eliminate the requirements for the regional appeals process, statutory interim hearings every 18 or 24 months, and parole consideration and parole supervision for youthful offenders sentenced under the Magistrates Act.

--Terminate the Commission's involvement in study and observation cases committed under the Federal Youth Corrections Act.

We also recommend that the Parole Commission propose legislative changes that will facilitate the formulation of national parole policy. We recognize, however, that prior to implementing this recommendation, the issue of centralization of the Parole Commissioners needs to be more fully explored as well as whether there would need to be any changes in (1) the number of Parole Commissioners required, or (2) the number and location of the Commission's regional offices.

AGENCY COMMENTS AND OUR EVALUATION

The Commission concurred in our recommendations that it seek legislation to (1) clarify the role of the National Appeals Board, (2) eliminate the requirements for the regional appeals process as well as parole consideration and parole supervision for youthful offenders sentenced under the Magistrates Act, (3) terminate its involvement in study and observation cases committed under the Federal Youth Corrections Act, and (4) facilitate the formulation of national parole policy.

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

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

CHAPTER 4

BETTER INFORMATION AND COMMUNICATION COULD IMPROVE THE QUALITY OF PAROLE DECISIONS

The Commission was not always well-informed prior to making parole release decisions because (1) presentence reports did not always contain adequate information, (2) prosecutors rarely furnished important information, (3) judges seldom submitted any data, (4) correctional staff did not regularly make study and observation reports and psychological evaluations available, (5) poor institutional behavior by inmates was not uniformly reported, and (6) other information, such as judgment and commitment orders, indictments, and records of sentencing hearings, were not routinely obtained by the Commission for its consideration.

Better exchange of information and communication is needed between other parts of the Federal criminal justice system and the Commission. The quality of the Commission's parole release determinations can be further enhanced by

--amending the Federal Rules of Criminal Procedure to ensure that (1) defendants are apprised of the information that the Commission will consider in formulating parole decisions, and (2) information contained in presentence reports has been disclosed to defendants prior to sentencing;

--establishing a strategy to eliminate disparity in parole decisions for co-defendants;

--developing procedures to identify offenders ineligible for parole consideration; and

--establishing a system to enable the Attorney General to appeal parole decisions.

BETTER INFORMATION NEEDED FOR PAROLE DECISIONMAKING

The Parole Commission was making many parole release decisions without receiving all the information it needed from other components of the criminal justice system to properly apply its parole release guidelines. We found that

--presentence reports were not always complete,

--prosecutors rarely furnished important data,

--judges seldom communicated any information,

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

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

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

Presentence reports did not always contain enough information

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

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

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

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

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

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

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

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

The Probation Division within the Administrative Office of the United States Courts issued guidance to all judicial districts in January 1978 on the format and content of presentence reports. This guidance stated that a presentence report on each defendant should include several core sections, including details of the offense, prior criminal record, personal and family data, and the probation officer's evaluation and recommendation.

The presentence report is the principal document that the Commission uses to establish the parole guideline range for each offender. Because the Commission relies on the presentence report when establishing an offender's offense severity rating, it should contain comprehensive information describing the nature and circumstances of the offense, the extent of property or monetary loss, and the defendant's role in planning and committing the crime. Also, because the Commission relies upon this report to calculate an offender's salient factor score, it must include information on an offender's prior criminal record, employment history, and any dependence on opiates.

We examined presentence reports from 10 judicial districts for 342 offenders sentenced to a term of imprisonment in excess of 1 year. We determined that 144, or 42 percent, of these reports did not include sufficient details on the nature and circumstances of the offense or offender characteristics for the Commission to accurately establish an offender's offense severity rating or calculate the salient factor score. In such instances, parole decisionmaking is hindered because the Commission must either go through the timeconsuming process of obtaining the information elsewhere, or make a decision without it.

A breakdown by judicial district is shown in the following table.

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

The following cases illustrate the problems we noted.

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

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

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

from the Assistant U.S. Attorney or the local office of the Drug Enforcement Administration.

--Bruce received an 8-year sentence for distribution of controlled substances. To properly establish the offense severity, the Commission's hearing examiners needed to know the weight and purity of the drugs involved in this case. The presentence report did not contain an adequate description of the weight and purity for several types of drugs involved in this case. We found that the probation officer could have obtained detailed information from the Assistant U.S. Attorney or the local office of the Drug Enforcement Administration.

In May 1980, the Commission's research unit prepared a report which identified a number of problems with the quality of information in presentence reports. The report stated:

"One of the most striking observations obtained from reading the presentence reports of the cases included in this study pertains to the wide variation in the specificity of the information provided. Specificity ranged from a very detailed description of the present offense, prior record, and other salient factor score items in some reports to very cursory treatment in others. In several presentence reports, the offense information provided was so scanty as to make assessment of the seriousness of the offense tenuous by any standard. In regard to the salient factor score, definitive information was frequently lacking on recent employment history. The use of the phrase 'verification requested but not received' signifies one problem. Another problem was posed by cases in which the presentence report stated 'subject reports employment during the past three years as a truck driver for Firm X' without any indication of whether verification was sought or obtained. Lack of specificity was not limited to the employment items. Several cases were noted in which it was not clear from the pre-sentence [sic] report how many prior convictions the offender had or whether or not the offender had been on probation/parole at the time of the current offense."

The Chief Probation Officer in the Northern district of Texas established a special unit to prepare presentence reports to improve their quality. At our suggestion, he arranged a meeting with a representative from the Parole Commission's

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

Quality control procedures for review of presentence reports were inadequate

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

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

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

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

juvenile record because this information is used to calculate the individual's salient factor score. Thus, the absence or presence of this information in the presentence report can have a significant impact on the number of months an offender will serve in prison before release. In most judicial districts, probation officers are unable to obtain complete information on offenders' juvenile convictions because the records have either been destroyed or State and local authorities will not release the information. Without complete access to all juvenile records, the Commission cannot consistently calculate salient factor scores for all offenders.

When the Commission's hearing examiners calculate an offender's salient factor score, a juvenile record can adversely affect four of the seven categories. These categories include the number of prior convictions and commitments, age at behavior leading to first commitment, and probation or parole violation. Also, juvenile records can affect 8 of the 11 possible salient factor score points. If information on juvenile records were available, salient factor scores could change from very good to poor and result in the offender being placed in a more severe parole guideline range. For example, consider a simple bank robbery case in which the offender had a serious juvenile record. If the information were not available, the parole guideline range would be 24 to 36 months. If it were, the proper parole guideline range would be 60 to 72 months.

In January 1981, we asked the Probation Division to contact all judicial districts to identify any problems experienced in obtaining access to juvenile records when preparing presentence reports. The results of this survey showed that 58 of the 90 judicial districts reported some problem in obtaining juvenile records. 1/ The two principal problems encountered by probation officers in gaining access to juvenile records are that records are destroyed after certain periods of time, or States and localities have placed prohibitions on releasing this information to anyone. The following examples illustrate some of the problems encountered by probation officers in obtaining access to juvenile records.

--The district of Connecticut reported that probation officers could not obtain access to any juvenile records on individuals who have reached their 21st birthday because all records are destroyed. In those cases where the defendant has pleaded guilty to a felony and is under 21, the probation officer may have access to juvenile records if the defendant signs a release form.

1/The Probation Division obtained responses from 90 of the 94 judicial districts.

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

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

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

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

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

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

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

parole as a juvenile. In October 1978, Ed was given a 10-year regular adult sentence in the Southern district of Ohio for armed bank robbery. The presentence report included information on Ed's juvenile record. Using the presentence report, the Commission's hearing examiners determined the offense severity as very high and his salient factor score as 1. The offense severity of very high and a salient factor score of 1 equates to a parole guidelines range of 60 to 72 months. In the event the probation officer had been unable to obtain access to the juvenile records, Ed's salient factor score would have increased to 8. The parole guidelines range for a very high offense and a salient factor score of 8 calls for 36 to 48 months. Thus, the absence of juvenile records could result in 2 to 3 years' difference in the amount of time served for the same offense.

Several Chief Probation Officers told us that steps should be taken to make juvenile records available to probation officers preparing presentence reports for Federal district courts. One Chief Probation Officer stated:

"It would appear that many or most states have enacted very restrictive and overprotective laws on juvenile records which were intended for the protection of the juvenile who came into conflict with the law by immaturity and poor judgment, and deserve to have a "second chance" without that juvenile incident and record being held against him or her as a handicap in their future life. I doubt that such legislative intent was to conceal and overprotect the juvenile who continues to violate the law and shows no sign of rehabilitation, but that has been one of the unexpected results of such laws. If the state laws would permit exception disclosures to other courts and agencies preparing presentence reports, such as Federal law under Title 18, Section 5038(1) and (2), a more evenhanded administration of justice could be administered for both the protection of the juvenile and society."

He also stated that he had recently testified on this matter before the State legislature in an attempt to get the State law revised.

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

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

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

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

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

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

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

make parole release determinations on the basis of information it considers inadequate.

The Commission is charged under 18 U.S.C. §4206(a) with the responsibility for considering both the nature and circumstances of the offense and the history and characteristics of the prisoner. In making parole release determinations, 18 U.S.C. §4207 provides that the Commission shall consider presentence reports when and if available. The responsibility of the probation officer to supply information to the Commission is set forth in 18 U.S.C. §4205(e) which provides:

> "Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible prisoner or parolee and whenever not incompatible with the public interest, their views and recommendations with respect to any matter within the jurisdiction of the Commission."

We found that the Commission has encountered some difficulty in obtaining adequate presentence and postsentence reports in several judicial districts because probation officers have been instructed to limit the information included in these reports. The most serious situation involves the judicial district of Colorado, where the Commission has experienced problems for several years. This court has adopted a policy which prohibits probation officers from furnishing the Commission a comprehensive presentence report that contains a complete description of the nature and circumstances of the offense behavior, even though the Commission considers such information essential to make responsible parole release decisions. Also, correspondence obtained from the Parole Commission showed that this court has instructed its probation officers not to respond to the Commission's request for postsentence reports pursuant to 18 U.S.C. §4205(e). As a result, the Commission has been forced to delay decisions in some cases while it tried to obtain the information elsewhere. In other cases, the Commission had to make decisions using information that it considered incomplete.

In an effort to obtain better descriptions of offense behavior, the Commission started obtaining additional details from the United States Attorney. However, on June 8, 1981, the Chairman of the Parole Commission wrote the Assistant Attorney General of the Criminal Division and expressed concern that the court was continuing its efforts to restrict the flow of information to the Commission that was urgently needed to make parole release determinations. Also, the letter stated:

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

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

Prosecutors rarely furnished important data to the Commission

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

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

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

attorneys to provide information to the Commission could result in early parole, which would squander the investigative and prosecutive efforts that resulted in the incarceration of the offender.

In May 1979, the Chairman of the Parole Commission notified the Assistant Attorney General of the Criminal Division that he was deeply disturbed to find that U. S. attorneys were only completing form 792s in about 2 percent of the cases. Also, the Chairman asked the Department to make completion of the form 792 a mandatory requirement. The Assistant Attorney General of the Criminal Division advised the Chairman in June 1979 that completion of the form 792 was already considered a mandatory requirement. Also, he advised the Chairman that a reminder would be sent to all U. S. attorneys concerning their responsibility to ensure that a form 792 was completed and furnished to the Commission in all cases where an offender was sentenced to a term of imprisonment in excess of 1 year. Consequently, the July 20, 1979, issue of the United States Attorneys Bulletin contained a reminder of the requirement.

The Assistant Attorney General of the Criminal Division sent a letter to all U.S. attorneys and prosecutors within the Criminal Division in November 1979 emphasizing the importance of preparing form 792s and forwarding them to the Commission. The December 21, 1979 issue of the United States Attorneys Bulletin stated:

> "Completion of the form ensures that the Parole Commission is given a concise, accurate account of the offense behavior which led to the conviction, and of any other circumstance (mitigating or aggravating) which should be made known to the Commission. It is especially important that the commission be apprised of the specific data it needs for decisionmaking under its guidelines (dollar values involved, drug amounts, extent of a conspiracy, etc) * * *."

We examined 342 case files from 10 judicial districts on offenders who were sentenced to a term of imprisonment in excess of 1 year. Our review showed that prosecutors provided form 792s to the Commission in only 53 cases. Twenty-five came from the Eastern district of Kentucky, where prosecutors submitted form 792s in 83 percent of the cases we examined. Five districts had not submitted any.

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

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

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

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

information substantiated a large scale drug operation involving the distribution of heroin in the Philadelphia area. The Regional Commissioner concurred in the recommendation and forwarded the case to the National Commissioners who also agreed. Jim appealed the decision to the full Commission, and the previous decision calling for a 10-year reconsideration hearing in August 1989 was affirmed on February 5, 1980.

--Hugh was sentenced to 13 years in the Southern district of New York for conspiracy to violate narcotics statutes. The Commission conducted an initial parole hearing for Hugh in October 1978. The prosecutor failed to furnish a form 792 to the Commission. The panel of examiners recommended that Hugh's case be designated as original jurisdiction and that his case be reconsidered in October 1982 because the offense involved a conspiracy of international magnitude including large-scale importation and wholesale distribution of great quantities of cocaine and marijuana. The National Commissioners granted Hugh a presumptive parole date of May 15, 1979, which was approximately 4 months after his parole eligibility date of January 3, 1979. The United States Attorney for the Southern district of New York advised the Commission on March 26, 1979, that it did not have available to it, through no fault of its own, all the relevant information necessary to make a well-informed decision concerning Hugh's parole. Also, the U.S. attorney advised the Commission of his intention to ask for a reconsideration of the decision to parole Hugh. The U.S. attorney furnished new adverse information on Hugh's activities to the Commission on May 10, 1979, and the Commission reopened Hugh's case on May 14, 1979, and scheduled a new hearing for June 21, 1979. The hearing examiners recommended and the Commission agreed that Hugh should not be given parole because of the magnitude of the offense and his relative culpability. Hugh is now scheduled to be released in May 1983 instead of May 1979.

--Leo was sentenced to 6 years in the Eastern district of Pennsylvania for conspiracy and distribution of heroin and cocaine. The Commission conducted an initial parole hearing for Leo in February 1978 and decided to parole him on February 12, 1980, after 28 months. In August 1979, the Commission conducted an interim hearing for Leo and decided upon a release date of December 10, 1979, after 26 months. This case was prosecuted by the Philadelphia Strike Force; however, the prosecutor did not furnish a form 792 to the Commission which described the relative culpability of Leo. We found that the Pennsylvania Crime Commission had identified Leo as a member of the Black Mafia which operated a large scale

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

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

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

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

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

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

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

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

because of the absence of procedures requiring its completion. He also told us that most prosecutors believed that the Parole Commission did not consider any comments made on form 792s. The U.S. attorney for the Eastern district of Pennsylvania told us that for some unknown reason his office discontinued preparation of form 792s several years ago. He also told us that he planned to issue instructions to his staff stressing the importance of preparing form 792s for the Parole Commission.

--The First Assistant U.S. attorney in the Western district of Missouri told us that form 792s were not regularly prepared because the U.S. attorney had expressed no interest in furnishing information to the Parole Commission. After our interview, the U.S. attorney wrote a letter to all prosecutors handling criminal cases in this office emphasizing the importance of preparing form 792s and furnishing them to the Parole Commission.

--The Attorney-in-Charge of the Kansas City Strike Force told us that the Department of Justice had not emphasized the preparation of form 792s; therefore, his staff had not completed them. In a letter dated December 30, 1980, which was sent to all prosecutors in this office, the Attorney-in-Charge reemphasized the importance of completing form 792s and forwarding them to the Parole Commission. This letter stated:

> "Our office recently was audited by the General Accounting Office concerning our relationship with the United States Parole Commission and what information we provide them concerning defendants prosecuted by this office. One deficiency noted was our failure to prepare Form 792's in all cases where confinement was imposed. The Section and the Department of Justice require such forms to be submitted. * * * The important points to emphasize is [sic] the organized crime connection of the defendant, the essential nature of the scheme and where applicable the monetary cost of the offense * * *."

The Chairman of the Parole Commission wrote the Assistant Attorney General of the Criminal Division on June 8, 1981, and requested a meeting to resolve a long-standing problem the Commission has experienced in obtaining form 792s from U.S. attorneys. This letter stated:

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

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

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

Judges seldom communicated any information to the Commission

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

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

to correctional agencies anything about the reasons for selection of a sentence that might be of help to those agencies in discharging their responsibilities. One section of the form was designed to obtain the judge's comments and recommendations relative to release on parole. Copies of the form AO-235 were distributed to all United States District Judges in November 1974.

The Parole Commission and Reorganization Act of 1976 provides that the Commission shall, in making a determination relative to release on parole, consider "* * * recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge* * *." In April 1976, the Probation Division within the Administrative Office of the United States Courts furnished a copy of the revised form AO-235 to all United States District Judges. The Probation Division encouraged judges to complete the form for the purpose of assisting the Commission in its deliberations concerning parole release decisions.

The Commission's rules (28 CFR §2.19) provide that it shall consider recommendations regarding an offender's parole made at the time of sentencing by the sentencing judge. In evaluating a recommendation concerning parole, the rules provide that the Commission must consider the degree to which a recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. §4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation should state its underlying factual basis and reasoning. The Commission's rules provide that several matters are appropriate for a judge to communicate to the Commission. These include circumstances where:

--The official version of the criminal conduct, as set forth in the presentence report, is known to be at variance with the facts or is considered unreliable.

--Other information in the presentence report is either incorrect or of doubtful validity.

--The judge has views about the offender's culpability, particularly cases in which the offender's culpability is thought to be less or greater than what might be inferred from the description of the offense behavior in the Commission's guidelines.

--The defendant has cooperated with the prosecution, but this cooperation is not reflected in the presentence report.

In the 342 case files we examined, we found that judges had provided comments to the Commission relative to parole release

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

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

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

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

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

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

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

A Federal judge who wants more information about an adult offender before passing sentence can commit an offender to the custody of the Attorney General for 90 days of study and observation under 18 U.S.C. §4205(c). Under a similar provision in 18 U.S.C. §5010(e), a judge who wants additional information about whether an offender who is less than 26 years old will benefit from treatment under the special provisions of the Youth Corrections Act can commit the offender to the custody of the Attorney General for 60 days of study and observation. In either case, the Bureau's staff prepares a report for the judge to use in sentencing. The report may include information such as medical, psychological, and vocational evaluations, program recommendations, and a sentencing recommendation. Those offenders who are sentenced to a term in excess of 1 year then come under the jurisdiction of the Parole Commission. In these cases, the study and observation reports should be available for use by the Commission's hearing examiners when they formulate parole release decisions.

The Bureau and the Commission do not have adequate procedures to ensure that study and observation reports are automatically made available to the Commission's hearing examiners for their use in parole decisionmaking. Rather, the Bureau's procedures provide that study and observation reports are court documents and cannot be released to the Commission unless specifically authorized on a case-by-case basis by the sentencing court. Also, the Bureau's procedures do not require that its staff initiate contact with the appropriate sentencing court to request authorization for release of the study and observation report to the Commission. In addition, the Commission's procedures manual does not instruct hearing examiners to request access to study and observation reports prior to conducting parole hearings.

We found that the Bureau did not regularly make study and observation reports available to the Commission's hearing examiners. Our review of 14 cases committed for study and observation showed that reports were available for use in making the parole release determination in only eight cases. Several of the Bureau's caseworkers told us that study and observation reports were court documents and they would not automatically request authorization from the courts for release of these reports to the Commission's hearing examiners.

One official from the Bureau's headquarters told us that a telephone survey of caseworkers in several institutions disclosed inconsistencies in the procedures that were followed in the release of study and observation reports to the Commission's hearing examiners. For example, some caseworkers stated that they would automatically request authorization from the sentencing court so the study and observation report could be released to the Commission's hearing examiners, while others stated that

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

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

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

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

Correctional staff did not regularly furnish psychological reports to the Commission

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

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

to the Commission's hearing examiners for their use in making parole release determinations.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4207) provides that in making a determination relative to release on parole, the Commission should consider psychological reports. Also, 18 U.S.C. §4208(b) provides that the offender must be given reasonable access to the information used by the Commission in making the parole release determination. However, certain documents may be excluded under 18 U.S.C. §4208 (c) if they contain diagnostic opinions which, if revealed, might disrupt an offender's institutional program. In the event that the Bureau's staff deems any psychological report to be excludable under these provisions, they are responsible for preparing a summary which can be furnished to the offender. After the summary has been disclosed to the offender, the Commission can review the entire report. In June 1976, the Bureau issued procedures for implementing these provisions.

During our visits to the Bureau's correctional institutions, we found that staff did not regularly furnish psychological reports to the Commission's hearing examiners for their use in making parole release determinations. In some cases, the Bureau's staff did not have a good understanding of the proper procedures to be followed so that psychological reports could be furnished to the Commission. In other cases, staff were of the opinion that the Commission should not be given access to these reports. The following situations illustrate this problem.

--There were about 625 parole hearings conducted by the Commission's hearing examiners at one correctional institution between January 1979 and November 1979. The Psychology Department summarized only three reports for disclosure to inmates so that the complete reports could be furnished to the Commission. The Chief Psychologist told us that psychological evaluations were not routinely summarized unless the Commission's hearing examiners specifically asked for access to these reports. He also stated that no mechanism exists so that the Commission's hearing examiners are routinely made aware that reports are available. Between January 1979 and November 1979, the Chief Psychologist estimated that there were reports available highlighting personality disorders in about 60 cases which the Commission should have known about prior to making parole decisions. Hearing examiners, however, were not aware these reports were available and could not request them.

--The policy at another correctional institution was that psychological reports would not be disclosed to the inmate or furnished to the Commission for use in formulating a parole release determination because it could adversely

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

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

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

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

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

agreement has not been reached between the Bureau and the Commission on the types of institutional behavior which the Bureau should regularly report to the Commission so it can carry out its statutory responsibility. As a result, some institutional misconduct was reported and the Commission considered it in formulating parole release decisions while similar misconduct was not reported and parole decisions were made without the Commission having full knowledge of offenders' institutional behavior.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4206) provides that the Commission shall reach a judgement on the institutional behavior of each prospective parolee. The legislative history states that it is the view of the Conferees that understanding by the prisoner of the importance of institutional behavior is crucial to the maintenance of safe and orderly prisons. Cancelling or delaying a previously established parole date are sanctions employed by the Commission to assist the Bureau in the maintenance of institutional discipline. 1/ These sanctions also uphold the integrity of the condition that release on the established date is contingent upon the prisoner's continued good conduct.

Staff at the Bureau's correctional institutions are responsible for initiating reports in instances where offenders violate institutional rules. These reports are investigated by correctional staff and referred to the Unit Discipline Committee. This Committee, which is comprised of institutional staff, meets with the offender to discuss the misconduct and has limited authority to impose some administrative sanctions. In those instances involving more serious misconduct, the Unit Discipline Committee has been instructed to forward the incident report to the Institution Discipline Committee for review.

The Institution Discipline Committee conducts a hearing where the offender has a right to call witnesses and present evidence. After reviewing all the evidence, the Institution Discipline Committee makes a decision on the offender's guilt or innocence. If the offender is found guilty, the Institution Discipline Committee can impose major sanctions such as forfeiture of good time, disciplinary segregation, suggest a disciplinary transfer, and recommend to the Commission that it cancel or delay parole. 1/ The Commission requires final action on the misconduct by the Institution Discipline Committee before it will take action regarding a parole date. This policy was

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1/A Regional Commissioner may cancel an offender's parole date by scheduling a new hearing due to misconduct. Also, a Regional Commissioner may delay an offender's parole date by up to 60 days for misconduct without a new hearing.

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

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

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

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

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

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

traffic and about assaultive behavior. A goodly amount of the tension and unrest that goes through an institution is directly related to drug traffic and drug misuse * * *."

We examined incident reports at 15 of the Bureau's correctional institutions and found inconsistencies in the administration of discipline for similar offenses. Sometimes serious behavior which would be new criminal conduct if it had occurred outside the institution as well as minor infractions were handled by the Institution Discipline Committee and then referred to the Commission which cancelled or delayed parole dates in some cases. In other cases, similar behavior was resolved by the Unit Discipline Committee or by staff and not referred to the Commission. Examples of such inconsistencies follow.

--Norman was sentenced on December 2, 1977, to 8 years for the importation of marijuana. At his initial hearing, he was given a parole date of February 6, 1980. However, on September 2, 1979, Norman received an incident report for possession of marijuana. The Unit Discipline Committee found Norman guilty. The case was then referred to the Institution Discipline Committee which also found Norman guilty and decided that he should forfeit 60 days statutory good time as well as his camp good time for September 1979. The institution considered the possession of marijuana in a camp setting to be a very serious matter disruptive to the security and orderly running of the institution. A copy of the incident report was furnished to the Commission on September 25, 1979, and the Commission considered the matter serious enough that it conducted a hearing. As a result of this hearing, Norman's parole release date was extended by 60 days.

--James was given a 2-year sentence for a property offense of less than $2,000. At his initial hearing, he was given a parole date of July 1980. On December 28, 1979, James received an incident report for possession and use of marijuana. The Unit Discipline Committee found James guilty and recommended a change in job assignment and extra duty for 2 weeks, but it did not refer the incident to the Institution Discipline Committee. Thus, unlike Norman, the Commission did not take any action affecting parole.

--Ron was sentenced to 30 years for kidnapping. In April 1979, he was given a parole date of March 17, 1980. On November 8, 1979, Ron received an incident report for conspiracy to bring marijuana and other drugs into the institution. The Unit Discipline Committee found Ron

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

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

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

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

were 132 incident reports written for drug charges, but 39 were resolved without referral to the Institution Discipline Committee.

Several Commissioners acknowledged that the Commission could not uniformly consider offender misconduct in its parole decisions until the Bureau eliminated inconsistencies in reporting similar misconduct to the Institution Discipline Committee. They told us that the Commission needs to meet with the Bureau and reach agreement on all infractions which should be referred to the Institution Discipline Committee so the Commission can consider them when making parole decisions. They also told us that until consistent reporting is achieved, the Commission cannot meet the intent of 18 U.S.C. §4206.

Other information was not obtained

Indictments, records of sentencing hearings, and judgment and commitment orders contain information which could be useful to the Commission when making parole release decisions. However, these records are not regularly obtained by the Commission.

The formal accusation which charges the defendant with the commission of a crime is known as the indictment and it is brought by the grand jury. The grand jurors, summoned to hear evidence presented to them by the prosecution, may subpoena witnesses and gather additional information. If they decide that the evidence is sufficient, the grand jury returns an indictment which is a written statement of the essential facts constituting the crime and the particular law which the defendant is alleged to have violated. The indictment has details of the alleged nature and circumstances of the offense which at times could be useful in helping to establish offense severity.

During the sentencing hearing, the defendant and his/her counsel have an opportunity to clarify information in the presentence report and the judge indicates his/her resolution of any disputed matters. Also, the judge can express his/her views at the time of sentencing. The court routinely prepares a record of the sentencing hearing and this record should be obtained by the Commission.

The judgment and commitment order is the legal document issued by the courts setting forth the sentence and ordering the defendant committed to the custody of the Attorney General. A copy of the judgment and commitment order is delivered to the institution with the offender. The judgment and commitment order sets forth the plea, the verdict or findings, and the adjudication and sentence. Also, the sentencing judge has an opportunity to include any recommendations on this order.

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

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

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

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

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

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

First, plea bargains frequently constitute an agreement to plead guilty to a lesser offense in exchange for the dropping of more serious charges. The Commission believes that it must consider the actual offense rather than the behavior for which a guilty plea was obtained to comply with the statutory requirement contained in 18 U.S.C. §4206. Second, concern for public safety underlies the Commission's consideration of the degree to which the offender has shown himself capable of violent or other harmful behavior. Third, the Commission's practice of considering total offense behavior is an effort to treat similarly situated offenders equitably, thus reducing disparity caused by local prosecutorial practices. Several court decisions have held that the Commission may consider information concerning an offender's entire criminal conduct, regardless of whether or not the offender had been convicted of that conduct, or whether or not such charges had been dismissed as a part of a plea bargain. 1/

Rule 11(c) of the Federal Rules of Criminal Procedure requires that the court, before accepting a guilty plea, inform the defendant in open court of the consequences of the plea and insure that certain matters are understood by the defendant, including:

--The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.

--If the defendant is not represented by an attorney, that he or she has the right to be represented by an attorney at every stage of the proceeding and, if necessary, that one will be appointed.

--That he or she has the right to plead not guilty or to persist in that plea if it has already been made, and that he or she has the right to be tried by a jury and at that trial has the right to the assistance of counsel,

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1/Billiteri v. United States Board of Parole, 541 F.2d 938 (2nd Cir. 1976); U.S. ex rel Goldberg v. Warden, 622 F.2d 60 (3d Cir. 1980) (holding that counts of an indictment dismissed "with prejudice" are not for that reason forbidden territory to the Parole Commission); Bistram v. United States Parole Board, 535 F.2d 329, 330 (5th Cir. 1976); Grattan v. Sigler, 525 F.2d 329, 331 (9th Cir. 1975); Lupo v. Norton, 371 F. Supp 156, 159-162 (D. Conn. 1974); Narvaiz v. Day, 444 F. Supp 36, 37-38 (W.D. Okla. 1977); McArthur v. United States, 434 F. Supp 163, 166-167 (S.D. Ind. 1976), affirmed 559 F.2d 1226 (7th Cir. 1977); Foddrell v. Sigler, 418 F. Supp 324, 325-326 (M.D. Pa. 1976); and Manos v. United States Board of Parole, 399 F. Supp 1103, 1105 (M.D. Pa. 1975).

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

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

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

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

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

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

all the information that is being utilized by the Parole Commission. "

Although a judge should not be required to explain the entire parole system to each defendant entering a plea agreement, we believe that he or she should advise the defendant of the Commission's practice of considering not only the offense of conviction, but also other charges dismissed through a plea agreement. Several judges and Parole Commissioners told us that they favored an amendment to Rule 11(c) of the Federal Rules of Criminal Procedure to ensure that defendants were aware of the Commission's practice.

PROCEDURES WHICH ENSURE BETTER DISCLOSURE OF PRESENTENCE REPORTS NEED TO BE DEVELOPED

Offenders convicted of Federal crimes are not being given adequate opportunity prior to the imposition of sentence to review their presentence reports and assess the accuracy of information contained in them. Rule 32(c)(3) of the Federal Rules of Criminal Procedure does not provide for mandatory disclosure of the presentence report to both the defendant and his/her counsel prior to sentencing. Disclosure is required only upon request of the defendant or counsel. Also, this rule gives district court judges great flexibility and considerable discretion in determining the appropriate time, place, and extent of disclosure. This action can have a profound effect on the treatment of the offender throughout the criminal process. The possibility of introducing inaccurate or misleading information into the sentencing decision may have a multiple impact, affecting not only the severity of the sentence, but also the offender's classification in prison and the determination of the parole release date.

The presentence report is the critical document at both the sentencing and the correctional stages of the criminal justice process. The report's primary purpose is to aid the court in determining the appropriate sentence. After sentencing, the presentence report accompanies the offender to the correctional institution and provides background information for the Bureau of Prison's classification process. The presentence report also plays a crucial role in parole release determinations because it serves as the Commission's primary source of information for establishing the offender's offense severity rating and salient factor score.

For many years, both judges and probation officers strongly opposed proposals calling for mandatory disclosure to the defendant of the information contained in presentence reports. On the

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

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

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

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

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

encouraged to review the presentence report with his or her counsel. Rule 32(c)(3) does not provide for automatic disclosure, but only for disclosure upon request. The rule requires that disclosure be made to the defendant or his/her counsel but does not require that disclosure be made to both. When only the defense attorney sees the report, the whole disclosure process may be hampered if he/she does not provide the defendant with an opportunity to confirm or deny factual accuracy of the report. Also, the timing of the release of the report is as important as to whom it is released. If the defendant or his/her counsel are not given adequate time to review the document and check its accuracy, disclosure has little meaning.

To determine the extent of this problem and to assess the merits of the criticisms that have been leveled against disclosure, the Committee on Administration of the Probation System of the Judicial Conference of the United States asked the Federal Judicial Center to study the implementation of Rule 32(c)(3). The study relied upon information gathered through a national field study involving personal interviews with Federal judges and probation officials in 20 judicial districts as well as an analysis of responses to questionnaires sent to randomly selected judges, all chief probation officers, and randomly selected line probation officers.

The study, published in the June 1980 Harvard Law Review, 1/ concluded that district courts have been only partially successful in using disclosure practices that ensure complete factual accuracy of the presentence report. For example, 50 percent of the courts disclosed the report only to the defense counsel. Similarly, one-third of the courts released the report only on the day of sentencing--a time when the defense is least likely to give the report the careful and thorough reading necessary to ensure that the information is reliable. Also, only one-seventh of the courts disclosed the report prior to the day of sentencing in the majority of cases. Furthermore, one-sixth failed to disclose the presentence report even to the defense attorney in an overwhelming majority of their cases, thereby precluding even partial review of the documents accuracy.

During our visits to 10 judicial districts, we found that 7 had a policy of making the presentence report available for review by either the defendant or his or her counsel prior to sentencing; however, the extent of disclosure within the judicial districts varied on the basis of the philosophy of various judges. In one judicial district, judges disclosed only that

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

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

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

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

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

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

STRATEGY NEEDED TO MAKE EQUITABLE PAROLE DECISIONS FOR CO-DEFENDANTS

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

one defendant. Rather, staff in the Commission's offices operate autonomously and make little effort to coordinate case analysis for co-defendants when formulating parole decisions. As a result, the Commission's decisions on co-defendants are not always consistent with offenders' roles and participation in the commission of the crime. This problem is further compounded during the appeals process because the Commission often uses the most favorable decision, even if it was incorrect, made on the defendants as the standard for deciding upon the remaining co-defendants.

The legislative history for the Parole Commission and Reorganization Act of 1976 states that it is the intent of the Conferees that the parole guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Commission has been aware of a serious problem involving unwarranted disparities in paroling co-defendants for several years, but little progress has been made in addressing the problem. To date, its efforts to deal with co-defendant disparity problems have consisted of brief guidance in its procedures manual and the acquisition of an automated data base in 1977 which contains information on parole decisions.

The procedures manual simply requires that information concerning the parole status of all co-defendants should be obtained where possible by the Bureau's staff in correctional institutions so that it can be considered by the Commission. Also, the manual states that information on co-defendants, including guideline data and months to be served, is to be included in the parole hearing summaries. However, the procedures manual does not require the Commission's staff to regularly utilize its own data base as a source of information on co-defendants.

Our observations of 290 parole hearings in 14 Federal correctional institutions showed that the Bureau's staff provided only limited information on co-defendants to the Commission's hearing examiners. Also, we noted that any information on co-defendants that hearing examiners included in the official hearing summary was generally obtained from offenders. This was generally the only co-defendant information available when the hearing examiners formulated the parole recommendation and discussed it with the offender. Furthermore, little effort was made to verify or obtain additional information on the status of other co-defendants before the Regional Commissioners made final decisions on cases. The absence of a strategy for routinely obtaining basic information on co-defendants prior to parole decisions being made fosters unwarranted co-defendant disparity. In a letter dated August 1, 1980, to a Regional Commissioner, one of the Commission's Administrative Hearing Examiners expressed concern over the problem of co-defendant disparity. The letter stated:

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

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

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

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

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

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

its efforts to promote quality control. In my opinion, it is a practice of very questionable legality as well, since it purports to authorize departures from the guideline standard for reasons (e.g., 'co-defendant disparity') that are not necessarily in accord with the explicit parole criteria at 18 U.S.C. § 4206(a)(1) and (2)."

The following cases illustrate the absence of a strategy for making decisions on co-defendant cases and shows how one case can become the standard for making decisions on others.

--George and Don were given 15-year indeterminate sentences for armed bank robbery in the Middle district of Georgia. Hearings for both George and Don were held at the same institution; however, they were about 8 months apart. At George's hearing in August 1979, the panel established an offense severity of very high and a salient factor score of 11. The parole guideline range was 24 to 36 months and the panel recommended parole after 36 months. This recommendation was approved by the Regional Commissioner. George appealed this decision and in December 1979 the Regional Commissioner reduced the time to be served to 33 months. In February 1980, George appealed this decision to the National Appeals Board. In the interim, at Don's initial parole hearing in April 1980, the panel established an offense severity of very high and a salient factor score of 11. The parole guideline range was 24 to 36 months and the panel recommended parole after 27 months. This recommendation was approved by the Regional Commissioner. In April 1980, George amended his appeal to the National Appeals Board to include a claim of co-defendant disparity. The National Appeals Board then changed George's release date to coincide with the date given Don. The National Commissioners cited co-defendant disparity as the reason for the change.

--Bill, Frank, and Steve were co-defendants and sentenced to 7, 10, and 12 years, respectively, in the Southern district of Florida for distribution of narcotics. Bill and Frank had their initial parole hearings in October 1979 in different institutions which were located within the same Parole Commission region. The Regional Commissioner designated these two cases as original jurisdiction and recommended that Bill be denied parole--he would be subject to release in July 1981 after about 64 months--and Frank be paroled in August 1981 after 64 months. Also, the Regional Commissioner stated that Steve should be given a release date far beyond that set for Bill and Frank because he was head of the organization. In April

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

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

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

BETTER GUIDANCE NEEDED FOR THE IDENTIFICATION OF OFFENDERS NOT ELIGIBLE FOR PAROLE CONSIDERATION

Offenders convicted under 21 U.S.C. §848 of engaging in a continuing criminal enterprise for drug trafficking offenses face a mandatory minimum term of imprisonment of 10 years and a maximum of life without the possibility of parole for any sentence imposed. The Bureau of Prisons and the Parole Commission did not have adequate procedures to ensure that offenders convicted under this provision were not (1) made eligible for parole consideration, (2) afforded parole hearings, and (3) released on parole.

Those individuals convicted of engaging in a continuing criminal enterprise under 21 U.S.C. §848 face harsh sentences. The law sets a mandatory minimum term of imprisonment of 10 years and a maximum of life; except that if any person engages in such activity after one or more prior convictions under this section have become final, he/she shall be sentenced to a term of imprisonment which may not be less than 20 years. Sentences imposed under the continuing criminal enterprise statute are made even more severe by 21 U.S.C. §848(c) which states:

> "In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of Title 18 [the general parole statute] and the Act of July 15, 1932 (D.C. Code, secs. 24-203 - 24-207), shall not apply."

When an offender is committed to the custody of the Attorney General, the sentencing court forwards a copy of the judgment and commitment order to the correctional institution designated by the Bureau as the location where the individual will begin serving the sentence. After an offender is committed to an institution, staff in the records office prepare a sentence computation record on the individual. The offender's sentence computation record includes such information as the sentence imposed, the statute of conviction, and the parole eligibility date. This information is then entered in the Bureau's information system.

The Bureau's staff prepares files on those offenders eligible for parole consideration and the Commission uses these files when making parole decisions. A copy of the sentence computation record is included in each offender's file. The calculation of an offender's parole eligibility date is the responsibility of the Bureau of Prison's by statute, and the Commission's hearing examiners do not perform any independent verification of the accuracy of this date. Thus, the sentence computation record is the principal document the Commission relies upon to ensure that

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

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

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

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

adult sentence. The judgment and commitment order and the presentence report clearly showed that 15 years of the sentence had been imposed under 21 U.S.C. §848. The Bureau prepared a sentence computation record for Bruce on April 3, 1979, which incorrectly established a parole eligibility date of September 6, 1986, because it was based upon a 25-year regular adult sentence. The correct parole eligibility date should have been October 2, 1991, on the basis of a 15-year sentence under 21 U.S.C. §848 and a 10-year consecutive regular adult sentence. The Commission gave Bruce an initial parole hearing on July 23, 1979, and established a parole date of September 6, 1986, which was the eligibility date shown on the sentence computation record. Subsequently, the sentencing judge reduced Bruce's sentence on July 17, 1980, to 12 years; however, the conviction was under 21 U.S.C. §848 and thus he was not eligible for parole. This information was furnished to the Commission shortly thereafter. In the interim, Bruce was transferred to the North Dakota State Penitentiary. In September 1980, the Commission found out that Bruce was not eligible for parole consideration because he had been convicted under 21 U.S.C. §848. Instead of notifying Bruce, the Commission's hearing examiners conducted another hearing on December 2, 1980, at the North Dakota State Penitentiary and concluded that the 12-year sentence was under 21 U.S.C. §848 and that he was not eligible for parole consideration. The Commission then advised Bruce of this.

--John was initially sentenced on May 25, 1977, in the Northern district of Florida to 20 years for various violations of narcotics laws, including 21 U.S.C. §848 for engaging in a continuing criminal enterprise. On appeal, part of the sentence was set aside, thus leaving a total term of 15 years. The Bureau of Prisons prepared a sentence computation record on October 11, 1978, which acknowledged that John had been convicted under 21 U.S.C. §848, but incorrectly made him eligible for parole on September 18, 1980, after serving only about 40 months instead of 80 months. The Commission gave John an initial parole hearing on August 17, 1979, at Terminal Island and the decision was made to parole him on September 18, 1980, which was the incorrect eligibility date established by the Bureau. John was paroled to the Southern district of California on September 18, 1980. In April 1981, we brought the fact that John had been illegally released on parole to the attention of the Commission and the Bureau of Prisons. John was subsequently taken into custody on April 22, 1981, and he filed a writ of habeas corpus requesting return to parole supervision pending litigation. Subsequently in July 1981, the United States District Court for the Southern district of California

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

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

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

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

SYSTEM NEEDED SO THAT THE ATTORNEY GENERAL CAN APPEAL PAROLE DECISIONS

The Attorney General may appeal any parole decision of a Regional Commissioner to the National Appeals Board. The Commission, however, does not have a system for routinely furnishing information on its parole release determinations to Federal prosecutors. As a result, prosecutors were not in a position to be aware of parole decisions so that they could advise the Attorney General of cases that they felt should be appealed to the National Appeals Board.

The Parole Commission and Reorganization Act of 1976 (18 U.S.C. §4215(c) provides that the National Appeals Board may review any decision of a Regional Commissioner upon the written request of the Attorney General filed no later than 30 days following the decision. This statute also provides that the National Appeals Board, by a majority vote, shall reaffirm, modify, or reverse the decision within 60 days of the receipt of the Attorney General's request.

We found that the Commission did not have a system to regularly inform prosecutors of parole release determinations. Thus, prosecutors were in no position to be aware of parole decisions so that they could advise the Attorney General of cases that should be appealed to the National Appeals Board. In fact, we found no evidence that the Attorney General has ever appealed a parole decision of a Regional Commissioner to the National Appeals Board. Federal prosecutors in 10 United States Attorneys offices were not familiar with the provisions of 18 U.S.C. §4215(c) which granted the Attorney General authority to appeal a parole decision. They doubted that this provision would ever be exercised until the Commission routinely furnished parole release determinations to prosecutors. Several Assistant U.S. attorneys told us that they would like the Commission to regularly advise them of parole decisions on cases they prosecuted.

We believe there are two approaches which could be used to advise prosecutors of parole decisions. First, a copy of the notice of action form (see appendix XVII) on each case could be provided to the appropriate prosecutor. The form was designed so that several copies could be distributed, and adding the prosecutor to the distribution list could be done easily. Second, the form 792 could be revised by adding a block for the prosecutor to indicate whether he/she wants to be notified of the parole decision in the case. The notice of action would be sent to the prosecutor when requested.

CONCLUSIONS

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

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

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

RECOMMENDATIONS

We recommend that the Chairman of the Parole Commission:

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

information between the Parole Commission and prosecutors, probation officers, judges and correctional staff.

--Work with the Judicial Conference in developing proposed amendments to Rules 11(c) and 32(c)(3) to (1) ensure that defendants are made aware of the information that will be considered by the Parole Commission, and (2) improve disclosure of presentence reports to offenders prior to sentencing so that offenders will have adequate opportunity to correct any inaccuracies contained in them.

--Reevaluate the propriety of using juvenile records to calculate salient factor scores since these records are not available in many places across the country.

--Seek legislation to relieve the Parole Commission of the responsibility for making parole decisions on District of Columbia Code violators incarcerated in Federal institutions.

--Seek the assistance of the Attorney General and the Judicial Conference in obtaining presentence and post-sentence reports from those judicial districts that are refusing to provide them.

--Reach agreement with the Director of the Bureau of Prisons on the types of offender misconduct which should automatically be referred to the Institution Discipline Committee so that the Commission can uniformly consider misconduct when making parole decisions.

--Obtain judgment and commitment orders, indictments, and records of sentencing hearings for use in formulating parole decisions.

--Develop a strategy to improve parole decisionmaking for co-defendants.

--Work with the Director of the Bureau of Prisons to monitor the success of actions being taken to identify offenders not eligible for parole consideration.

--Implement a system to make prosecutors aware of parole decisions. This would provide the basis for enabling the Attorney General to file appeals with the National Appeals Board.

We recommend that the Attorney General require:

--The Director of the Bureau of Prisons to (1) provide releaseable study and observation reports and psychological

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

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

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

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

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

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

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

AGENCY COMMENTS AND OUR EVALUATION

In addition to receiving comments from the Parole Commission, we received comments from the Department of Justice (see app. II), the Administrative Office of the United States Courts 1/ (see app. III), and the chief judges in 9 of the 10 districts in which we performed extensive audit work (see app. IV-XII). The Parole Commission, the Department of Justice, and the Administrative Office of the United States Courts expressed agreement with most of the recommendations contained in this chapter. Overall, the comments of the chief judges were also supportive of the matters we discussed.

Parole Commission

The Commission fully concurred with 8 of the 10 recommendations made to the Chairman of the Parole Commission. The Commission did not agree with our recommendation to reevaluate the propriety of using juvenile records to calculate salient factor scores and only agreed in part with our recommendation to obtain judgment and commitment orders, indictments, and records of sentencing hearings for use in formulating parole release decisions.

Regarding the use of juvenile records, the Commission stated that our draft report failed to recognize that (1) it does not use juvenile records in all cases, but has criteria which limit the use of such records to the more serious instances; (2) certain juvenile behavior is a strong predictor of future recidivism and to ignore this information could be considered a serious breach of the Commission's statutory responsibility to consider the protection of the public; and (3) ignoring all juvenile records would only create disparity among treatment of offenders given the variety of State laws which exist regarding the age at which a person is considered to be a juvenile and the circumstances under which he or she could be referred to an adult court.

We do not disagree with the Commission's position that certain juvenile behavior can be a strong predictor of future recidivism. However, as we pointed out in the draft report, information on juvenile behavior is not uniformly available for all offenders sentenced in Federal courts throughout the country. The absence of such information creates disparities, which is contrary to one of the purposes of the Parole Commission and Reorganization Act of 1976. We realize there is no easy solution to this problem. However, if the Commission chooses not to adopt our recommendation,

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1/The comments from the Administrative Office of the United States Courts were coordinated with the Chairman of the Judicial Conference Committee on the Administration of the Probation System. (See app. XIII.)

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

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

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

Department of Justice

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

Regarding our recommendation that the Bureau of Prisons provide study and observation reports and psychological evaluations to the Parole Commission, the Department stated that the Bureau agreed with the intent of our recommendation, but that it cannot fully comply. The Department pointed out that the Bureau of Prisons was willing to make study and observation reports conducted under 18 U.S.C. §5010(e) automatically available to the Parole Commission. However, the Department stated that study and observation reports prepared under 18 U.S.C. §4205(c) and competency studies prepared under 18 U.S.C. §4244 were both subject to the provisions of the Privacy Act and were the property of the sentencing court. It concluded that although these reports could not be automatically furnished to the Parole Commission, the Bureau had expressed a willingness to have prison officials seek permission from the courts to release these reports to the Commission.

With respect to furnishing psychological evaluation reports to the Parole Commission, the Department stated that greater emphasis and guidance would be given to the Bureau's staff in the implementation of current policy on access to these reports. Also, the Department commented that the decision to restrict the release of the psychological reports must be on a case-by-case basis, with the final determination being made at the discretion of the institution psychologist who wrote the evaluation.

In disagreeing with our recommendation on reporting instances of institutional behavior, the Department stated that it does not believe that poor institutional behavior can be easily categorized into offenses which should or should not be reported to the Parole Commission. It believed such a procedure would be extremely restrictive and would disregard the professional judgement of institutional staff. We believe the problems perceived by the Department can be overcome. The Bureau has already developed a policy on inmate discipline which describes certain categories of poor institutional behavior and the procedures which should be followed in reporting incidents to different levels of prison administration. We believe that this policy could be modified with the concurrence of the Parole Commission to fully comply with the intent of our recommendation. In commenting on this matter, the Parole Commission pointed out that the Bureau of Prisons needs to be more uniform in reporting incidents of poor institutional behavior to the Commission. It stated that it had brought this matter to the attention of the Bureau of Prisons previously.

Administrative Office of the United States Courts

The Administrative Office of the United States Courts commented on a draft of this report by letter dated April 12, 1982. (See app. III.) The Office concurred with our recommendations

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

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

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

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

Chief judges

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

views ought to be considered by the Parole Commission, the Administrative Office of the U.S. Courts, and the Judicial Conference. For example, the chief judge in the Southern district of Ohio stated that he did not use the Form AO-235 because confidentiality could not be maintained, and the chief judge in the Southern district of Indiana proposed an alternative to using that form. He believes that the Commission should obtain a transcript of the sentencing hearing for its use. This procedure is already being followed in the Northern district of California.

Since the ultimate objective is to share information, consideration of these views might result in a better method of achieving this aim. It cannot be disputed that the current use of the AO-235 leaves a great deal of room for improvement.

Another example of a suggestion by a chief judge concerns the disclosure of information contained in presentence reports to defendants prior to sentencing. The chief judge in the Southern district of Texas did not believe it was necessary to amend the Federal Rules of Criminal Procedure to achieve disclosure and sent us a copy of the policy that has been implemented in his district. That policy, which provides for formally notifying the defendant and the defense attorney of the availability of the presentence report for inspection and comment, should be examined by the Administrative Office of the U.S. Courts and the Judicial Conference. They may want to consider recommending it for adoption in other districts.

CHAPTER 5

MAJOR CHANGES NEEDED TO IMPROVE PAROLE SUPERVISION

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

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

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

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

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

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

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

SPECIAL CONDITIONS OF PAROLE NEED TO BE BETTER ADMINISTERED

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

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

services or that those who fail to comply with special conditions will be uniformly disciplined.

The Commission has imposed special conditions of parole requiring that offenders participate in drug, alcohol, and mental health aftercare programs, but neither the Commission nor the Probation Division has adequately defined program requirements or otherwise specified what parolees must do to comply with these conditions. Thus, probation officers have developed their own interpretations of program requirements and violations.

Program requirements should be established

The principal special conditions of parole that are imposed on offenders relate to drug, alcohol, and mental health aftercare. The Commission uses various sources of information to determine the need for special conditions, including (1) presentence reports prepared by probation officers for sentencing judges, (2) progress reports prepared by caseworkers at the Bureau's institutions, (3) recommendations of judges and prosecutors, and (4) information furnished by probation officers supervising parolees and mandatory releasees in the community.

The Commission's procedures manual specifies the wording to be used in establishing special conditions of parole for drug, alcohol, and mental health aftercare services. In cases involving alcohol and mental health aftercare, the offender is required to participate in a program as directed by the probation officer; however, no guidance on program content has been established. The manual prepared by the Probation Division provides no further guidance to probation officers on how to administer these two special conditions of parole.

Regarding drug aftercare, the Commission's procedures manual states that the offender shall participate, as instructed, in a program approved by the Commission for treatment of narcotic addiction or drug dependency which may include testing to determine if the offender has reverted to the use of drugs. However, Commission officials told us that they do not approve specific drug programs. Instead, such decisions are left to the discretion of probation officers. In May 1979, the Probation Division issued draft guidance to all probation officers for use in administering drug aftercare programs. The guidance included information on drug testing, counseling, and the development of a recordkeeping and reporting system. Officials from the Probation Division told us that final guidance had not been issued as of April 1982.

As might be expected, our review of 210 cases under parole supervision enabled us to identify inconsistencies in how probation officers were administering special conditions of parole

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

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

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

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

no further mention of what was done to meet the alcohol aftercare condition between January 1980 and the completion of our fieldwork.

--Steve was sentenced on June 8, 1978, in the Western district of Kentucky to 30 months for interstate transportation of a stolen motor vehicle. He was paroled through a halfway house on February 12, 1980, to the Western district of Kentucky, and the Commission imposed a special condition of parole for alcohol aftercare. Steve participated in Alcoholics Anonymous during his stay at the halfway house. Information in the file indicated that the probation officer decided to monitor Steve's drinking habits, but we found no evidence indicating what was being done.

--Sharon was sentenced on July 25, 1977, in the Northern district of Alabama to an indeterminate sentence under the Federal Youth Corrections Act for mail theft and check forgery. She was paroled on November 29, 1978, to the Northern district of Alabama, and the Commission imposed a special condition of parole for mental health aftercare. Parole supervision was transferred to the Northern district of Georgia on February 20, 1979. In May 1979, Sharon's probation officer enrolled her in an outpatient mental health program. Sharon was terminated from the program in July 1979 for failure to pay for program costs and sporadic attendance. She enrolled in another program in August 1979 and was discharged from this program because of a change in residence. There was no evidence that Sharon was enrolled in mental health aftercare after October 1979.

The 10 probation offices included in our review also approached drug aftercare programming in substantially different fashions. For example, some offices attempted to follow the draft guidance in the probation manual by contracting with community organizations for drug aftercare services. In other offices, drug aftercare services were generally limited to some type of testing by probation officers until there was evidence that the offender had reverted to the use of drugs. The following cases describe these different approaches.

--Dave was sentenced in the Western district of Missouri on May 26, 1978, to 3 years for income tax evasion. He was paroled to the Western district of Missouri on September 21, 1979, and the Commission imposed a special condition of parole that Dave participate in a drug aftercare program. The probation officer decided that Dave could meet his drug aftercare requirement by unscheduled testing of Dave's urine. The probation officer administered the first unscheduled test 5 months after Dave

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

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

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

Specific criteria needed for determining violations of special conditions of parole

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

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

of parole. Some probation officers expressed the opinion that they would not report anything unless they believed the Commission would take some specific action such as issuing a formal reprimand or a warrant for the arrest of the parolee. Others avoided reporting anything when they believed they could work with the parolee. Some probation offices developed quantitative criteria for reporting violations of drug aftercare conditions.

Many probation officers felt that they had been reporting violations of special conditions of parole. The problem, however, is that they all did not perceive the same things as violations. In some cases, probation officers told us that they would report one or two isolated instances of drug usage as violations while other probation officers stated that drug usage would not be reported unless the offender had several consecutive tests confirming drug usage.

Unless probation officers report offenders' noncompliance with special conditions of parole in a consistent manner, the Commission will not be in a position to make well-informed decisions on case supervision. Problems such as those listed below will continue until the Commission and the Probation Division address this issue.

--Maryann was sentenced on March 31, 1978, in the Western district of Missouri to 3-years' probation for possession of checks stolen from the U.S. mail. On April 6, 1979, Maryann's probation was revoked and she was committed under 18 U.S.C. §5010(e) for study and observation. Subsequently, Maryann was reinstated to probation on August 3, 1979. Probation was revoked on January 18, 1980, because Maryann failed to participate in a drug treatment program and she was placed into custody. She was released on parole on June 11, 1980, and the Commission imposed a special condition of parole for drug aftercare. During the initial 4 months of parole supervision, Maryann had two positive tests confirming drug usage and on four other occasions she failed to show up for drug testing. None of this information was reported to the Commission.

--John was convicted of possession with intent to distribute marijuana and heroin in the Western district of Texas. He was given a 7-year regular adult sentence. Subsequently, he received an additional 13-month sentence for escape from a Federal prison. On October 3, 1979, he was paroled to the District of Colorado with a special condition of parole for drug aftercare. Parole supervision was formally transferred to the Western district of Missouri on November 13, 1979. All drug tests administered by the probation officer were negative; however, John admitted on two occasions that he smoked marijuana.

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

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

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

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

BETTER PROCEDURES NEEDED FOR REPORTING PAROLE VIOLATIONS

The Commission and the Probation Division have not established time frames for reporting different types of parole violations or developed specific criteria for probation officers to use in requesting warrants for arresting parole violators. As a result, there were inconsistencies among probation offices in the time frames for reporting violations and what circumstances were necessary to justify a warrant request.

More specific timeframes required for reporting parole violations

The Commission requires probation officers to report new criminal offenses and certain technical violations "immediately." Immediate reporting is also required for violation patterns if,

> "* * * in the opinion of the probation officer, the violation behavior is part of a continuing pattern of infractions or is indicative of serious adjustment problems likely to culminate in criminal activities."

However, the Commission has not defined the timeframe meant by "immediately" and there are differing opinions on the matter.

In order to determine how probation officers interpreted the Commission's requirement for immediate reporting of certain violations, we asked for the criteria used in reporting violations at the 10 probation offices we visited. We found that the Western district of Missouri requires that all criminal offenses and technical violations be reported to the Commission within 3 days. The Eastern district of Pennsylvania requires major criminal offenses to be reported within 10 days after arrest, but it has a 15-day requirement for misdemeanors and violations of special conditions of parole. The other eight offices did not have any criteria.

Our review of the 358 cases under active parole supervision as of June 30, 1980, showed that there were wide variances in the amount of time that elapsed before violations requiring immediate notification were reported to the Commission. The following cases illustrate this problem.

--Donna was sentenced on July 31, 1975, in the Southern district of Indiana to an indeterminate sentence under the Federal Youth Corrections Act for bank robbery. She was paroled on October 28, 1977, to the Southern district of Indiana. Donna was shot at a police roadblock while riding a stolen motorcycle on July 15, 1978. Her probation officer learned about the incident on July 21, 1978,

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

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

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

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

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

but did not report them to the Commission until February 25, 1980, in the annual supervision report. Clark was again arrested on July 24, 1980, for armed robbery and aggravated assault. The probation officer learned about this arrest at least by September 18, 1980; however, it was not reported to the Commission until October 6, 1980.

More specific criteria needed for requesting warrants for the arrest of parole violators

The probation manual does not provide any specific guidance to probation officers on when to request a warrant from the Commission for a parole violation. On the other hand, the Commission has established some general criteria but we found it to be inadequate because it did not (1) clearly differentiate between major and minor law offenses, (2) define what constituted substantial infractions of the conditions of release, and (3) specify circumstances which justify warrants for administrative violations.

The Parole Commission's procedures manual states that a warrant

- --may be issued for a violation of any general or special condition of parole;
- --shall be issued in cases where there is a new criminal conviction (other than for a minor offense), unless the Regional Commissioner finds good cause for nonissuance of the warrant and gives appropriate reasons; and
- --should be issued when the parolee's continuance on parole is incompatible with the welfare of society or promotes disrespect for the parole system.

Also, the Commission's procedures manual states that requests for warrants should be limited to convictions and administrative charges which, if sustained, indicate a substantial infraction of the conditions of release. It further provides that if a parolee is alleged to have committed a crime of violence and there appears to be a risk of future violent crime, the warrant shall be issued with instructions for immediate custody.

At the 10 probation offices we visited, we obtained the criteria used in requesting warrants. Each office had its own criteria for requesting a warrant for some categories of violations, and there were inconsistencies in the criteria adopted by the offices. For other categories of violations, the offices had not developed specific criteria and the matter was left to the discretion of the individual probation officers. For

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

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

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

Inconsistencies in requesting warrants when parolee's whereabouts were unknown

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

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

Length of time before warrant requested	Number of cases					
	Parole Commission Region					
	South east	North east	South- Central	North- Central	Western	Total
Less than 30 days	7	2	0	1	6	16
31 to 60 days	5	1	2	0	1	9
61 to 90 days	2	0	6	1	3	12
91 to 120 days	0	3	4	0	0	7
121 to 150 days	1	1	8	1	1	12
151 to 180 days	0	1	0	2	1	4
more than 180 days	0	1	1	0	0	2
Total	15	9	21	5	12	62

Although neither the Commission nor probation officers can prevent parolees from absconding, we believe that timely reporting of these incidents increases the likelihood of returning such offenders to custody. The following cases illustrate a lack of timeliness on the part of probation officers in requesting warrants when parolees' whereabouts were unknown.

--Terry was paroled on July 17, 1978, by the Commission's Southeastern Region to the Western district of Louisiana. The probation officer requested a warrant on November 13, 1978, because Terry's whereabouts were unknown between July 18, 1978, and November 13, 1978. The Commission's South-Central Region issued a warrant for Terry on November 15, 1978. As of December 1980, Terry was still a fugitive.

--Leo was paroled on June 19, 1975, by the Commission's Northeast Region to the District of Columbia. Leo was last seen by his probation officer on May 24, 1978. Several attempts were made to contact the parolee by mail through November 1978. In March 1979 the probation officer attempted to locate Leo at his last known place of employment and learned that Leo had been fired in November 1978. The probation officer then visited Leo's last known address and found that he had moved in January 1979. On March 6, 1979, the probation officer requested a warrant because he had been out of contact with Leo for about 9 months. The Commission's Northeastern Region issued a warrant for Leo on March 13, 1979. As of May 1981, Leo was in State custody in Maryland.

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

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

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

Inconsistencies in requesting warrants for technical violations

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

Number of incidents	Number of cases: Parole Commission Region: North east	South east	South- Central	North- Central	Western	Total
5 or less	2	3	1	0	2	8
6 to 10	1	6	2	0	5	14
11 to 15	1	0	5	1	2	9
16 to 20	1	0	3	0	0	4
More than 20	4	0	9	6	0	19
Total	9	9	20	7	9	54

The following cases illustrate the inconsistencies we found.

--Amy was mandatorily released on August 31, 1979, to the District of Columbia. Between September 28, 1979, and January 23, 1980, Amy tested positive 17 times for drug usage. Also, between September 1979 and February 1980, Amy missed 24 appointments for drug testing and counseling. On February 21, 1980, the probation officer requested a warrant because Amy had violated her drug aftercare condition of parole. The Commission advised the probation officer that a warrant could not be issued because the violations were reported after Amy's regular parole date had terminated. Amy began a special parole term on January 22, 1980. 1/ During the first 4 months under the special parole term, Amy missed 45 appointments for drug testing, tested positive on 7 occasions for drug usage, and skipped 10 drug counseling sessions. The probation officer requested a warrant on May 30, 1980, and the Commission's Northeast Region issued the warrant on June 12, 1980. Amy's parole was revoked on September 18, 1980.

--Larry was paroled on August 24, 1977, by the Commission's South-Central Region to the district of New Mexico.

1/The Drug Abuse Prevention and Control Act (21 U.S.C. §801 et seq.) provides that on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which commences upon completion of any period on parole or mandatory release supervision from the regular sentence. If the prisoner is released without supervision, the special parole term commences upon release.

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

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

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

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

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

probation officer requested a warrant on December 4, 1979, because Margie failed to participate in a drug aftercare program, and she had been arrested for theft and burglary. The Commission's Western Region issued a warrant on December 13, 1979, citing that Margie had failed to participate in a drug aftercare program. Margie's parole was revoked on April 11, 1980.

--Octavia was reparoled to the Southern district of Georgia on October 10, 1978, by the Commission's Southeastern Region. The probation officer requested a warrant on June 25, 1979, because Octavia had failed to work since April 1979, and had not reported to the probation office on two occasions in June 1979. The Commission's Southeastern Region issued a warrant on June 28, 1979, and Octavia's parole was revoked in November 1979.

Probation officers and Commission officials told us that as long as parolees remain crime free, warrants are usually not requested for isolated violations of general or special conditions of parole. Rather, probation officers wait to see whether parolees develop patterns of violations before requesting that warrants be issued. Probation officers stated that for parolees having special aftercare requirements, they try to use all available community resources to rehabilitate parolees before requesting warrants. Each case, though, is considered on an individual basis, and the decision to request a warrant is based on the probation officer's assessment of the parolee's overall behavior while on parole.

We do not disagree with the need to make decisions on a case-by-case basis; but we believe that more specific criteria is needed to assure equitable and consistent treatment for violators. The criteria should place emphasis on the number, frequency, and seriousness of the violations as well as the parolee's past record.

Decisions to delay execution of warrants should be given closer scrutiny

The Commission's procedures manual states that as a general policy, the execution of a warrant may be delayed pending the disposition of new criminal charges against a parolee. However, the manual provides that a warrant should be issued in the event the parolee (1) is alleged to have committed a crime of violence and there appears to be a risk of future violent crimes, or (2) if other factors indicate that the parolee is a particularly poor risk for continued release.

In our review of the 187 cases, we identified 10 cases where the Commission delayed issuing a warrant pending the outcome of

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

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

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

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

have an opportunity to contest the new criminal charges in court. Although we understand this position and agree it is often applicable, we believe that the Commission should more closely analyze each case to ensure that those individuals who represent a threat to public safety or who are particularly poor risks for continued release are identified and removed from the streets before they commit additional crimes.

BETTER ADMINISTRATION OF THE PAROLE TERMINATION PROCESS IS REQUIRED

The Commission and the Probation Division need to work together to better administer the parole termination process. Specifically, they need to

--clarify procedures used to determine when a parolee's supervision in the community should be terminated, and

--establish a system to ensure that annual reviews for determining the continued need for supervision are made.

Unless these issues are addressed, the Commission cannot make well-informed decisions concerning the early termination of parole supervision.

Procedures need to be clarified

The Commission has been vested with the authority under 18 U.S.C. §4211 to terminate parole supervision at any time before expiration of the Commission's jurisdiction. Procedures have been adopted by the Commission for early termination of parole; however, they do not clearly delineate the conditions under which the Commission will grant early termination. The procedures established by the Commission are presented below.

CRITERIA FOR EARLY TERMINATION

Less Than 5 Years of Supervision

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

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

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

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

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

officers told us they use in formulating their recommendations are:

--Nature of the original offense.

--Length of the sentence imposed and the portion yet to be served.

--Stability of employment.

--Stability of family.

--Physical problems, such as a heart condition.

--Payment of court imposed fines.

--Lack of personal knowledge of parolees because of infrequent contacts or recent case transfers.

The Commission must decide to terminate or continue supervision on the basis of probation officers' recommendations and other data in its files. The Commission's staff does not have any specifics to guide its judgment of individual cases, nor does it have a listing of the general factors considered by probation officers.

From our review of 175 cases in which parole was terminated in the 10 judicial districts we visited, we obtained enough data to determine whether they were terminated in accordance with the 24- or 36-month criteria for 151 cases. Factors other than salient factor score and time under supervision were involved in the termination/continuation decision for 118 of these cases. The following cases illustrate the obvious confusion that can result when several individuals use their best judgment without reasonably specific guidance.

--John, a bank robber with a salient factor score of 8, completed 3 years of supervision in July 1978. The supervision progress reports for the third year indicated no parole violations and only one problem concerning child support. The probation officer recommended continued supervision without explanation; and the Commission concurred. During his fourth year of supervision John changed jobs three times and was self-employed at the end of the reporting period. We could find no evidence of parole or law violations. The probation officer summarized that John would most probably remain free of law violation as indicated by his arrest-free time on parole, but recommended continued supervision because of an unpaid fine. The Commission's post release analyst recommended terminating supervision because an unpaid fine was not a legal basis to continue supervision. The Regional Commissioner

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

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

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

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

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

parole supervision, Dave had a few traffic violations, but no other law violations, and had a reasonably stable supervision period. The Commission agreed with the recommendation and continued supervision.

--Linda had been under supervision 24 months in September 1979 at which time her probation officer recommended early termination. The Commission responded with a letter advising the probation officer that it had insufficient information to make a well reasoned decision, and asked for "* * * a more thorough summary of the subject's overall adjustment." The probation officer complied with this request emphasizing Linda's employment, residential, and personal stability; and concluding that her "* * * overall adjustment had been excellent to date." The Regional Commissioner then decided to continue supervision due to Linda's prior record indicating a pattern of repetitive criminal behavior. In April 1980, the probation officer submitted another supervision progress report covering a 7-month period and emphasized Linda's successful employment as demonstrated by a letter from the employer. He again recommended termination because of continued excellent adjustment. The Regional Commissioner again decided to continue supervision "* * * because subject's failure to adjust to a previous period of probation and prior record indicated a pattern of repetitive criminal behavior."

The following case is one in which both the probation officer and the Regional Commissioner believed continued supervision was required for at least 6 years even though the parolee's adjustment in the community was excellent. The consensus in this case appears to be the result of the offense; however, the offense does not appear to be included in the criteria for determining whether to terminate or continue supervison.

--Rich completed 5 years of supervision in February 1978. Neither the probation officer nor the Regional Commissioner included reasons for continuing the case to that date. Rich waived a 5-year hearing and was continued under supervision. After 6 years of supervision, the probation officer recommended termination, but the Regional Commissioner decided to continue supervision because of the severity of the offense and the parolee's prior record of assaultive behavior. After 7 years of supervision, Rich again waived a hearing and was further continued. The parolee had no law violations and no reported parole violations during the entire period. He also maintained the same job and had a stable family life. The controlling factor in the length of supervision in this case appears to be the original offense, second degree murder. The crime was the rather brutal beating

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

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

System needed to ensure that annual supervision reports are completed

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

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

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

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

Judicial district	Number of cases reviewed	Number of cases where supervision report missing	Total reports missing	Number of reports late
Eastern Pennsylvania	75	22	24	42
Northern Georgia	49	6	6	7
Eastern Kentucky	17	6	6	7
Western Kentucky	37	17	25	25
Southern Ohio	29	3	3	8
Southern Indiana	38	8	9	16
Northern Texas	41	14	16	11
Southern Texas	36	10	10	31
Western Missouri	28	2	2	5
Northern California	49	13	19	32
Total	399	101	120	184

Commission employees at each of the five regions told us that they had no system for ensuring that progress reports were received. They also told us that the required reviews of early termination potential were not made unless the probation officer submitted annual supervision reports.

SOME PAROLEES ARE NOT SUPERVISED

The Commission and the Probation Division need to work with (1) the United States Marshals Service to develop procedures for the supervision of parolees released to the Witness Security Program, and (2) the Immigration and Naturalization Service (INS) to establish procedures for the supervision of alien parolees awaiting the outcome of their deportation proceedings. Without adequate procedures, the Commission does not know the status of these individuals or whether they comply with their conditions of parole.

The Commission releases some parolees to the Witness Security Program administered by the United States Marshals Service. These parolees are generally given a new identity and relocated to other parts of the country. These individuals are not supervised by probation officers as is the case for other parolees in the community. Once an offender is released to the

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

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

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

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

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

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

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

that required for security purposes, nor have its employees been adequately trained in the responsibilities of probation officers.

Although supervision is not given to parolees, the Probation Division supervises probationers in the Witness Security Program under procedures developed by the Marshals Service and the Probation Division in August 1978. Also, the Probation Division has taken the position that it favors the supervision of parolees in the Witness Security Program. The consensus seems to be that parolees in the Witness Security Program should be supervised by probation officers. The Commission expressed this view in a July 24, 1980, resolution in which it directed the Chairman to develop a policy in cooperation with the Office of Enforcement Operations, the Marshals Service, and the Probation Division to provide for supervision of parolees. The total number of parolees released to the Witness Security Program who should be supervised by the Probation Division is unknown.

Some progress has been achieved toward supervising parolees, but as of March 1982 procedures still had not been finalized. Active supervision of parolees in the program will not commence until the Commission and the Marshals Service finalize an agreement on this issue. The Marshals Service has declined to furnish the Commission any information on protected witnesses who were paroled until an agreement has been finalized between these two agencies. Without this information, the Commission cannot begin to supervise these cases.

A Memorandum of Understanding between the Marshals Service and the Commission cannot be completed until the Commission decides whether it will handle files for Witness Security cases in the regions or at headquarters. We believe the Commission should continue to work on this problem to enhance continued negotiations with the other affected agencies so that all parolees in the Witness Security Program are brought under active parole supervision.

Some alien parolees are not supervised

Aliens paroled to the custody of INS pending deportation hearings may be released to the community without any supervision from INS or probation officers. In most instances, the Commission does not learn about the final deportation decision and, therefore, does not know whether to close the file or leave it open. Better coordination among the Bureau of Prisons, the Commission, the Probation Division and INS is necessary to improve the accountability over alien parolees.

A significant number of offenders are released to INS detainers. In fiscal year 1980, over 25 percent of all offenders

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

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

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

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

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

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

Some immigration judges currently conduct immigration hearings over the telephone. The judge's final order is tape recorded and later formally prepared. An immigration judge in Washington, D.C., who used this mechanism regularly, believes it is particularly convenient to save time and travel expenses. She cautioned that some cases may be too complicated to handle over the telephone. It is not known to what extent this procedure is used throughout the country, but judges could be encouraged to conduct hearings over the telephone wherever practical.

Until recently an immigration judge in Denver, Colorado regularly conducted deportation hearings at the Federal and State institutions in his jurisdiction. This procedure eliminated the additional detention and supervision costs expended while the alien parolee awaited a deportation hearing after release. This judge stopped making these trips when other elements of his caseload increased significantly on an emergency basis. He felt this procedure was very productive and would be willing to again visit institutions. This could be particularly useful at institutions with large alien inmate populations.

To improve accountability over alien parolees at the time of the final deportation decision, INS and the Probation Division have suggested a formal notification be sent by INS to the probation office. This could be accomplished by developing a simple form or modifying an existing INS form to include the necessary information. This would not provide the Commission with a control over whether it received notification in all cases; however, it should provide more confidence than is now possible.

THE COMMISSION SHOULD RESOLVE THE CONTROVERSY OVER SEARCH AND SEIZURE

The Commission should resolve the controversy over whether warrantless search and seizure authority should be granted to probation officers for their use in supervising parolees. The Commission's staff studied the issue and obtained the views of 88 probation offices. Approximately 70 percent of these offices favored some change in the Commission's present policy which completely prohibits the use of search and seizure in the supervision of parolees. Nevertheless, the Commission failed to resolve the issue and deferred action for another year.

Probation officers have similar supervisory responsibility for probationers and parolees. These officers have express statutory authority to make warrantless arrests of probationers. Implicit in this statutory authorization is the authority, in limited circumstances, to make warrantless searches and seizures of evidence from probationers incident to arrest. In October 1977, we reported on the problems encountered by probation officers in the supervision of parolees because they lacked

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

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

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

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

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

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

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

2. The second alternative was the same as number 1, i.e., full search authority with respect to any crime, but would provide for seizure only of contraband in plain sight, e.g., guns, drugs, etc.

3. The third alternative was the same as number 2, i.e., full search authority for any crime, but would authorize seizure only of narcotics or other unauthorized substances in plain sight.

4. The fourth alternative applied only to narcotics offenses and included the broad search and seizure of number 1.

5. The fifth alternative was the same as number 4, but permitted seizure only of narcotics or unauthorized substances in plain sight.

Responses to the Commission's questionnaire were received from 88 probation offices. About half of the offices preferred the broad search and seizure authority in alternative number 1; many wanted to apply it to all parolees. About 30 percent wanted no change in the Commission's policy which prohibited search and seizure authority. The remainder were somewhere in between the two possible extremes, favoring more limited search and seizure and/or requesting definitive Commission guidance on when and to what extent the authority could be used.

The following examples of some of the offices' responses show that the primary differences in their positions evolve from differing concepts of the nature and purpose of parole supervision. Although probation officers seem to clearly understand that they have to protect society and to help the parolee, the split occurs in their concepts of how best to blend these two roles.

--"I feel that in order to provide adequate protection to the community and to my officers, in the administration of their duties, they should have the search and seizure power as outlined in alternative No. 1. I would carry this one step further and require that all not just selective parolees, be subject to the search and seizure policies. We are definitely hindered in the area of supervision and surveillance of all parolees due to the absence of these powers."

--"I would like to answer this section by giving my personal opinion that the U.S. Probation Officer should not and does not have a need for authorization to search or seize property. Such a procedure may indeed jeopardize not only the life of the officer but most certainly the working relationship between the officer and the parolee

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

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

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

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

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

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

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

substances in plain view was discussed. The Commission decided to study the issue further. In September 1980, another status report was presented on the search and seizure issue at the Commission's meeting. This status report addressed the proposed plain view rule which was circulated to all Chief Probation Officers and sent to the Department of Justice's Criminal Division for comment. Only one response to the proposed plain view rule was received. This letter expressed the view of eight probation officers in the Eastern district of Pennsylvania. The letter stated

> "* * * Although parole should not become a law enforcement dominated profession, its primary mandate remains the protection of the community. Obviously I do not agree with the position the Commission has taken, nor do I feel that much will be gained from their weak-handed approach to a pivotal question of parole supervision. The higher courts have consistently ruled in favor of such searches by parole officers, on the correct assumption that the parolee continues, in a legal sense, to retain the status of a prisoner. Unfortunately, the Commission does not wish to use this tool and prefers to let the local authorities handle their problems. No thought is given to the fact that the probation officer may be in a better position to stop criminal activity before more harm is done to the community. Maybe such a tool will undermine the 'helping' role of the officer as the Commission claims; most probably it will not. We are not 'helping' anyone by allowing criminal activity to continue. Such an argument loses force on close inspection by the fact that a search should not be a usual, a routine, or a casual affair. It must be done for specific reasons and with prior approval and planning. I also severely doubt that my 'helping' role will not be affected if I turn to local authorities to conduct a search. In that situation, especially in a metropolitan area, a probation officer may not even be notified as to when the event will take place. I personally feel that any relationship with the client would have a better chance of survival if the probation officer accepted the responsibility for the search, performed it himself, and provided the client with the rationale for it. Furthermore, the search, since it is planned, would be constructed to decrease any chance of violence. Several probation officers and usually local police would assist."

The Criminal Division within the Department of Justice expressed the opinion that the proposed rule appeared to be a proper exercise of the Commission's authority and it was difficult to see how any real difficulty could ensue in the prosecution of criminal cases as a result of the rule.

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

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

BETTER STANDARDS NEEDED FOR DETERMINING THE LEVEL OF PAROLE SUPERVISION REQUIRED

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

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

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

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

In 1979, the Probation Division began to seek a better system to provide greater uniformity in classification and greater likelihood that offenders would be supervised properly. After considerable study by the Federal Judicial Center, the Probation Division recommended to the Commission in September 1980 the use of the salient factor score in determining the initial level of parole supervision. Also, the Probation Division pointed out that the use of the salient factor score and a more structured supervision planning process would enable all parties to better assess the adequacy of parole supervision. The Commission adopted this recommendation at its October 1980 business meeting with some minor modifications. In March 1981, the Probation Division furnished all probation offices with guidance for implementing the new system.

The system also included a number of "overrides" which would provide for increased supervision for some individuals (organized crime figures, large scale drug traffickers, and persons who committed crimes of violence) who would not receive a great deal of supervision if only the salient factor score were used. (These individuals usually have relatively high salient factor scores because of a good employment history and the absence of a prior record.)

The new classification system will require extensive cooperation between the Probation Division and the Commission because probation officers must have information on the parolees' salient factor scores as well as other information to determine the level of supervision and whether any override circumstances exist. This open exchange of information has not always taken place. In many cases probation officers have not received information on the salient factor scores for parolees from the Commission.

In February 1981, the Probation Division informed the Commission that information on salient factor scores was not available on 30 to 50 percent of the cases under supervision. Our review of parole cases under supervision in 10 judicial districts showed that the salient factor score was not always available. Information available at the Commission showed that it was considering a suggestion that the salient factor score be included on the parole certificates, because these are received regularly at the probation offices.

Officials from the Probation Division told us that new procedures implemented in March 1981 should go a long way toward solving the problem of disparity in supervision levels for parolees in the community. They also told us that the new guidelines should enable supervisors and the Commission to better assess the adequacy of supervison for parolees. Furthermore, Commission and Probation Division officials stated steps would be taken to ensure that salient factor scores were

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

CONCLUSIONS

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

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

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

RECOMMENDATIONS

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

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

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

officers to use in requesting warrants for the arrest of parole violators.

--Clarify procedures to be followed to terminate parole supervision and establish a system to ensure that annual reviews for establishing the continued need for supervision are made.

--Resolve the controversy over whether probation officers need search and seizure authority to supervise parolees.

--Finalize a procedure for furnishing salient factor scores to probation officers.

We recommend that the Attorney General require the Director of the Marshals Service and the Assistant Director of the Criminal Division to work with the Chairman of the Parole Commission and the Chief of the Probation Division in developing procedures for parole supervision of offenders released to the Witness Security Program.

We also recommend that the Attorney General require the Director of the Bureau of Prisons and the Commissioner of INS to work with the Chairman of the Parole Commission and the Chief of the Probation Division to develop a system for reporting the status of alien parolees released to the community pending deportation proceedings so that these individuals can be supervised. Also, we recommend that the Attorney General require the Director of the Bureau of Prisons and the Commissioner of INS to develop procedures which, to the extent possible, will result in scheduling deportation proceedings before aliens are released from prison.

AGENCY COMMENTS AND OUR EVALUATION

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

Parole Commission

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

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

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

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

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

Department of Justice

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

Commission to develop a formal plan for reporting the status of alien parolees. The Department also stated that procedures will be developed to implement our recommendation that immigration hearings be scheduled before aliens are released from prison.

Administrative Office of the United States Courts

The Administrative Office of the United States Courts concurred with all but one of the recommendations made to it in this chapter.

The Administrative Office stated that it does not believe that the Parole Commission is in a position to prescribe specific treatment programs for offenders with special conditions of parole. This was not the intent of our recommendation. We found that the Parole Commission requires participation in aftercare programs without specifying any criteria as to what these programs should contain. We do not believe that the Parole Commission should prescribe specific treatment programs, but we do believe it should provide some guidance as to what it considers the essential elements of an acceptable aftercare program to be. In addition to assisting probation officers in making aftercare program selections, such guidance would also provide the officers with some basis for determining when a special condition of parole has been violated.

The Administrative Office identified several actions that it either has taken or will take to implement the recommendations in this chapter, including:

--Establishing specific timeframes for reporting parole violations and developing specific guidelines for probation officers to use in requesting warrants for the arrest of parole violators.*

--Clarifying procedures to be followed to terminate parole supervision and establishing a system to ensure that annual reviews for establishing the continued need for supervision are made.

--Finalizing a procedure for furnishing salient factor scores to probation officers.

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

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

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

Chief judges

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

CHAPTER 6

SCOPE OF REVIEW AND METHODOLOGY

We conducted our review between June 1979 and March 1981 at the Parole Commission and the Bureau of Prisons headquarters in Washington, D.C.; all five Parole Commission and Bureau of Prisons' regional offices in Philadelphia, Atlanta, Dallas, Kansas City, and Burlingame; Department of Justice's Criminal Division in Washington, D.C.; Probation Division within the Administrative Office of the United States Courts in Washington, D.C.; headquarters of the United States Marshals Service in Tysons Corner, Virginia; Federal district courts, probation offices, and United States Attorneys offices in 10 judicial districts (Eastern district of Pennsylvania, Northern district of Georgia, Eastern district of Kentucky, Western district of Kentucky, Southern district of Ohio, Southern district of Indiana, Southern district of Texas, Northern district of Texas, Western district of Missouri, and Northern district of California); Organized Crime Strike Force offices in Kansas City and Philadelphia; and 15 Federal correctional institutions (Lewisburg, Allenwood, Alderson, Ashland, Lexington, Atlanta, Tallahassee, Terre Haute, Springfield, Leavenworth, El Reno, Fort Worth, Seagoville, Lompoc, and Pleasanton). We also conducted some limited work at the Immigration and Naturalization Service (INS) headquarters in Washington, D.C., and in two of its field offices. At these locations, we examined policies and procedures, interviewed agency officials, reviewed records, and analyzed about 1,800 cases involving parole decisions. Although the examples are actual cases, the names have been changed to protect the individuals. The judicial districts, Organized Crime Strike Force offices, correctional institutions, and INS officials were selected on the basis of their geographic location and are not considered better or worse than those we did not visit.

Our work included:

--Determining the adequacy of the criteria used by the Commission to make parole decisions.

--Examining the quality of case analysis performed by hearing examiners.

--Reviewing the adequacy of quality control practices over parole decisions.

--Analyzing the degree of Commission compliance with statutory requirements for making parole decisions.

--Identifying legislative changes that need to be made to streamline the operation of the Commission.

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

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

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

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

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

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

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

decisions, we used the 342 cases which were discussed above. For regional and national appeals, we selected 118 and 200 cases, respectively, without any prior knowledge of processing time, and analyzed the number of days it took to make decisions on these appeals. Also, in the case of national appeals we examined the Commission's docket sheets at headquarters for 2,988 appeals processed during calendar year 1980. We also reviewed the applicable statutes, policies, and procedures, and interviewed Commissioners and staff.

To determine the procedures followed in making parole decisions for co-defendants, we reviewed policies and procedures, interviewed Commissioners and staff, observed parole hearings at 14 correctional institutions, and analyzed the parole decisions for co-defendant cases.

To determine the extent of coordination between the Parole Commission and the Federal Probation System for supervision of parolees, we examined the (1) administration of special conditions of parole, (2) procedures for reporting parole violations, (3) policies followed in termination of parole supervision, and (4) criteria for supervision of parolees, including those in the Witness Security Program and alien parolees released to the community awaiting the outcome of deportation proceedings. We reviewed policies and procedures, interviewed Parole Commissioners and staff members, probation officers and officials of other agencies involved. We obtained lists from the 10 judicial districts of parolees who had (1) special conditions of parole, (2) been under active supervision for over 2 years, and (3) supervision terminated in 1979. We used these in examining 609 case files at probation offices and at the Commission's offices. We also analyzed 187 case files where probation officers had requested parole violator warrants from the Commission's five regional offices.

The cases we examined were considered sufficient to demonstrate the existence of serious problems in the parole decision-making process, but we do not consider them sufficient to make any statistical projections across the country.

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U.S. Department of Justice
United States Parole Commission

Office of the Chairman

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

March 19, 1982

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

Dear Mr. Anderson:

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

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

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

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In a number of places, the Report uses a December 1981 date to refer to the period covered by the Report for actions taken or not taken by the Commission (e.g., page 67). To be fair and consistent this date should be used throughout; it is not. In several instances, the Report fails to note actions taken by the Commission during 1981. Specifics will be given below.

For your convenience, a Chapter by Chapter analysis follows.

CHAPTER ONE

(1) The Report (page 3) states --

> "Based on experience with the pilot project, the board decentralized its decision-making to five regions and adopted the parole guidelines for use in making all Federal parole decisions. In response to continued criticism of Federal parole practices, the Congress passed the Parole Commission and Reorganization Act of 1976." [emphasis added]

This statement implies incorrectly that the Congress was dissatisfied with the Board of Parole's experimental efforts.[1/] Contrast this with the statement of the Conference Report of the PCRA (Joint Explanatory Statement of the Committee of Conference):

> "Following the appointment of Maurice H. Sigler as Chairman of the U.S. Board of Parole in 1972, a working relationship developed between the Board and the two Subcommittees. As a result of this relationship, and with the support of two Subcommittee Chairmen, the Parole Board began reorganization in 1973 along the lines of the legislation presented here.
>
> The organization of parole decision-making along regional lines, the use of hearing examiners to prepare recommendations for action and, most importantly, the promulgation of guidelines to make parole less disparate and more understandable has met with such success that this legislation incorporates the system into the statute, removes doubt as to the legality of changes implemented by administrative reorganization, and makes the improvements permanent."

1/This matter has been clarified in the final report.

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CHAPTER TWO

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

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

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

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

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

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

Comments from Commission field staff are illustrative:

... "It is my feeling and the feeling of the hearing examiners in this region that the 30 cases were in no way randomly selected. I made this observation known personally to the GAO people in our office who really didn't respond to my suggestion that the cases were somewhat purposefully selected. We had some diverse thoughts concerning the selection of cases for the study and I believe it was our general feeling that the cases were selected because they posed some difficulty in computing salient factor scores and severity. We obviously did not have "run of the mill" cases wherein salient factor scores and severity are obvious."

... "The files themselves were not of the best quality. They seemed to be incomplete, occasionally hard to read, due to poor reproduction, confusing and lacked clarity due to the fact that the names were blocked out and alphabetical characters were assigned in place of a name. This would create confusion in some of the cases when one attempted to keep the subject and co-defendants straight as to their culpability and role in the offense."

... "Each of the cases that I recall had a uniqueness about it in terms of the salient factor score, offense severity, or culpability, etc."

... "The cases used for study were, for the most part, generated prior to the new PSI format, hence, much pertinent information is missing, e.g., total value of loss; amounts and percentages of drugs; etc. We are not being provided the basic information in the study cases that we now receive since the implementation of the revised PSI outline. Had the sample cases' PSI's been prepared after the implementation of the new PSI format, we would not have the number of cases demanding more information."

At this point I might add that at the time of the study I was one of the field hearing examiners participating. It is simply not credible to believe that the 30 cases selected by the GAO personnel for this study represented the 'run of the mill' cases seen by the Commission.

Second, there is statistical evidence that the sample was not representative. The distribution of severity rating and salient factor score responses for the sample cases does not match the distribution of severity ratings and salient factor scores seen by the

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

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

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

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Fifth, there appear to be internal computational errors in the Report's Tables (pages 16-21). The Regional Tables (pages 17-21) do not always add up to the Summary Table (page 16). 1/

Sixth, the Report fails to note a number of substantial improvements that the Commission has initiated to enhance guideline reliability. One, the Commission revised the salient factor score as the result of an extensive research project (set out for public comment 12/10/80; effective 8/31/81) eliminating two of the more difficult to score items and modifying several others. Second, the Commission amended its hearing summary format (effective nationwide in April 1981), in conjunction with the pre-hearing review process, requiring greater specificity in recording the underlying severity/ salient factor score data. This should increase reliability by reducing error and facilitating regional and appellate review. Third, the Commission, in 1980, requested its Research Unit to develop a more comprehensive severity scale for Commission use. A draft was presented to the Commission in October 1981.

Seventh, the Report (pages 13-15) notes what it believes to be a number of unclear issues in the Commission's guideline application (procedures) manual. The second example is not correct - the manual is clear. 2/ The Report should indicate that third, fourth, fifth, and seventh examples are no longer relevant, given the above noted revision in the salient factor score. A revised Commission procedure manual also provides guidance on the issues in examples eight and twelve.

Eighth, the Report correctly notes that the parole guidelines do not and probably cannot cover every conceivable situation, and that adequate information may not be available in every single case.

1/Computation errors have been corrected.
2/The procedures manual was clarified in March 1982.

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

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

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The statement (page 24) that 40% of the cases included in this monitoring project during the first six months of the rule had no reasons given for superior program achievement, I believe, refers to the requirement of the new rule that specific reasons be given in a specific format. Our research did not find that the examiners were ignoring the procedure, but that during the first six months of implementation they were not as precise as required about the format of the summary and reasons. I am pleased to report that after feedback to the examiners, following this initial "shakedown period", more recent monitoring has demonstrated compliance with the appropriate procedures.

(4) The Report (page 24) notes that several Commissioners expressed dissatisfaction with the concept of superior program achievement. The GAO then quotes part of a memorandum prepared by a Commissioner for a Commission meeting about the Commissioner's recollection of part of a statement made by a staff person pertaining to this issue. Inclusion of this quote seems inappropriate; it would have been more appropriate for the GAO to ask the staff person directly. Furthermore, since the quote is from a memo prepared for a Commission meeting, it seems inappropriate that the Report did not note the results of that meeting: that the Commission (12/81) considered the issue of superior program achievement, made a minor change to the procedure, and, without dissent, reaffirmed the concept with the recommendation that training and research be continued to refine it.

(5) The Report (page 24) notes that hearing examiners should have "adequate time to review case files". I most certainly concur; and this is what the pre-hearing review process, noted elsewhere by the

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

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

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

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

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the decision. For example, it would be a waste of limited government resources to argue with the offender about a salient factor score item or severity rating item when it would not in any way affect the decision (e.g., in the case of an offender who is to be mandatorily released below the guideline range calculated when given the benefit of the doubt on this item). To be useful, assessment of guideline ratings must be made in the context of the entire decision process. It is not clear by what process the Report concludes that the recommendations were erroneous.

(9) While quality control has been limited by budgetary constraints, the statement (page 39) that quality control applies only to application of the guidelines is misleading and, in fact, is contradicted elsewhere in the Report (page 40). In addition, the following statement in the Report (page 40) is not correct:

> "A systematic review of case files has not been utilized because the Commission expressed the view it would lead to comparisons of how well the different regions were doing. Such comparisons are considered to be organizationally disfunctional by the Commission. We do not agree."

In fact, the Report (Chapter Four) quotes from a May 1980 Commission Research Report which used a systematic review of case files from all regions [a similar Report was done in 1981, and one is planned this year].

(10) The Report (pages 44-51) notes that the Commission frequently exceeds the statutory 21, 30, and 60 day time limits for rendering decisions. This is obviously an important concern. I believe, that in analyzing the reasons for this deficiency the Report should note that the 21 day time limit was based on the Commission's (then Board

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

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

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CHAPTER TWO RECOMMENDATIONS

(12) Chapter Two makes seven recommendations. Although I have extremely serious objections to the GAO analysis in several sections of this chapter as noted above, I do concur with each of the recommendations. I believe, however, that legislative reconsideration of the time frames may be necessary (see my response to Chapter Three) in addition to improved administrative controls.

CHAPTER THREE

(13) The Report (pages 53-63) advocates that the role of the National Appeals Board should be clarified (page 53), cites what appears to the GAO as a high rate of modifications (page 56), and notes that the Commission has repeatedly discussed this issue and has amended its rules to require three votes in certain cases. The Report does not credit these discussions with any impact on Commission policy. However, examination of figures for FY 81 shows clearly that the percent of decisions modified has declined (to 17 percent overall). Furthermore, the percent of decisions modified by more than one year was 3 percent in FY 81, 5 percent in FY 80, and 7 percent in FY 79. These figures should be noted in the Report to give a more representative picture of the issue.

(14) The Report (page 71) correctly points out that the Commission recommended to the Subcommittee on Criminal Justice, House Committee on the Judiciary that regional appeals be eliminated. The Report fails to note (but should have) that the Commission at the same time recommended that the statutory requirement for five regions be eliminated and that the statutory provision for a three member National Appeals Board be revised to a requirement for at least three members.

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

(15) The Report (page 57) states:

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

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

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

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(17) In reference to the dispute concerning the role of the National Appeals Board, the Report quotes a number of excerpts from memoranda prepared by Regional Commissioners (e.g., page 54) on this issue. Some of these statements are rather intemperate, and it is believed that quoting such statements without having given other Regional Commissioners or the National Appeals Board Commissioners an opportunity to respond to the statements in context is inappropriate.

(18) The Report (page 63) correctly points out the problems with having a decentralized operation including five regions. The Report does not clearly point out that the requirement for five regions is a statutory one (18 U.S.C. 4202).[1/] The Report also fails to note (but should have) that the Commission has previously recommended to the Congress that the Commission be given authority to reduce the extent of its regionalization.

(19) The Report (pages 67-68) advocates a system by which initial decision authority would be given to an employee of the Commission, (Regional Director) rather than a Commissioner. The Report fails to note (but should have) that a similar procedure was recommended by the then Board of Parole to the Congress during consideration of the Parole Commission and Reorganization Act of 1976 but that the Congress specifically rejected this approach by requiring a Commissioner to review initial decisions.

(20) The Report (page 65) states that "Regional Commissioners attended Commission meetings only 14 percent of the time." This statement is inaccurate.[2/] It apparently means that all Regional Commissioners

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1/The report has been clarified to show that 18 U.S.C. §4203 requires five regions.

2/The report has been clarified.

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

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

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

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

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

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

participation were prerequisites to implementation of this rule. Furthermore, the Report does not note that the issue of Superior Program Achievement was discussed on the December 1981 agenda and that the Commission expressed approval of the implementation of the rule after the initial shakedown period, and made only one minor modification proposed by staff as a result of experience with the rule.

(e) The Report (pages 66-67) discusses a Southeast experimental project involving liaison with probation officers. It is not clear what this example has to do with timeliness. The Commission's general policy was followed in the North Central Region. The Report notes (page 66) that the different procedure in the Southeast Region was an "experiment". This was not an unresolved policy difference. The reason for the difference was simply that the Southeast Region, with the permission of the Chairman, was exploring an innovation on a limited basis.

(22) The Report (page 69) refers to --

> "Another common scenario occurring in original jurisdiction cases is that the National Commissioners vote for a more lenient decision than the one recommended by the Regional Commissioner."

The Report offers no statistical evidence on this point nor gives any indication upon what it bases this rather broad (and implicitly critical) statement. 1/

(23) The Report (page 75) discusses Parole Commission involvement in YCA study and observation reports. The Report fails to note (but should have) that the Commission had recommended to the Congress as far back as 1976 (during enactment of the PCRA) that this participation be eliminated, but that Congress chose not to do so.

1/This point has been clarified in the report.

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CHAPTER THREE RECOMMENDATIONS

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

CHAPTER FOUR

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

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

required estimation of guideline range. [Even so, the Commission's publication from which the GAO study extracted the referenced quotation found that only six cases out of the 100 examined contained inadequate information to permit correct calculation of the guideline range]. Nonetheless, in some districts, and in selected areas of reporting requirements, it is recognized that better training of probation officers is required for preparation of pre-sentence reports.

(27) The Report's conclusions (page 87) seem accurate concerning inadequacies of the pre-sentence reports of the District of Columbia probation service.

(28) The Report (page 84) discusses the issue of juvenile records. It fails to note that the Commission does not use all juvenile records, but has criteria which limit such consideration to the more serious instances. Thus the issue does not involve all juvenile records but only a specific subpart. Moreover, certain juvenile behavior, particularly violent behavior, and behavior serious enough to result in commitment, is a strong predictor of future recidivism. To ignore this information could be considered a serious breach of the Commission's statutory responsibility to consider the protection of the public (18 U.S.C. 4206). Furthermore, ignoring all "juvenile" records would only create disparity among offenders given the variety of state laws which exist regarding juvenile age and circumstances of waiver to adult courts. The statement (page 85) that juvenile records can affect 8 out of 11 points and the analysis of cases (page 86) on the salient factor score is based on a version of the salient factor score that has since been revised.

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

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

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

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

(33) Regarding the suggestion for advising the U.S. Attorney of the parole decision to ensure an opportunity for the Attorney General to appeal the decision to the Commission's National Appeals Board, as provided in 18 U.S.C. §4215, the Report does not note that a revised Form 792 provides for a request for notification of the date and place of the parole hearing to permit the U.S. Attorney to send a representative, and also for requesting notification of the parole decision.

CHAPTER FOUR RECOMMENDATIONS

(34) Chapter Four contains ten recommendations to the Chairman of the Parole Commission, I agree with recommendations 1, 2, 4, 5, 6, 8, and 9. I do not agree with recommendation 3 for the reasons stated above; I agree in part with recommendation 7. The Report fails to note that the Commission has already acted on the issue raised by recommendation 10. Chapter Four contains 4 recommendations to the Attorney General; I agree with each recommendation. Chapter Four also contains two recommendations to the Administrative Office of the United States Courts; I concur with each of these recommendations. Finally, Chapter Four makes 2 recommendations to the Judicial Conference; I believe each of these has merit.

CHAPTER FIVE

(35) The Report (page 127) indicates that special conditions of parole -- in particular, drug, alcohol, and mental health aftercare programs -- need to be better defined. Since these kinds of programs must be tailored to the individual needs of each parolee, it would be neither possible nor wise to attempt to establish program requirements which would be applicable nationwide. For example, one individual's

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

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

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

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(37) Inconsistencies in reporting to the Commission that parolee's whereabouts are unknown (page 136). Commission procedures, §2.40-01 (d)(B), require probation officers to report immediately to the Commission if a releasee's whereabouts are unknown for more than thirty (30) days.

(38) The Report (page 142) indicates that the Commission prefers to defer issuing warrants until convictions have been obtained on new criminal charges. This is not correct.[1/] Commission procedures, §2.44-04 (page 62 of the Rules and Procedures Manual), state that the execution of the warrant may be delayed pending disposition of local criminal charges, except when the parolee is alleged to have committed a crime of violence and there appears to be a risk of future violent crime. In the latter cases, the warrant is issued with instructions for immediate arrest as soon as the parolee is released from local custody. These instructions also apply when other factors indicate that the parolee is a particularly poor risk for continued release.

(39) Criteria for Early Termination: The Report (pages 143-147) states that the Commission's rule does not provide guidance for evaluating factors which indicate continued supervision is needed to protect the public welfare. This is not correct.[2/] 28 C.F.R. §2.43(e) contains clear examples of the factors which the Commission considers in such cases. Furthermore, the Report fails to note that the Commission revised its supervision form (Form F-3) to provide better communication between probation officers and the Commission in the application of the termination guidelines.

1/Report has been changed to show that this was the preferred method of operation of the Commission's regional offices.

2/Change was not made until March 1, 1982.

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

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

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

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(42) The Report (page 151) accurately states that some alien parolees are not supervised. This problem has been discussed numerous times at the Quarterly Interagency meetings of the Bureau of Prisons, the Probation Division, and the Commission. It was decided at the December 1981 meeting that the Probation Division would meet with representatives of the Immigration and Naturalization Service to develop a procedure to alert Probation Offices of aliens who are released after an INS hearing. On December 21, 1981, a representative of the INS met with representatives of the Administrative Office of the Courts. A procedure was developed which requires INS to contact the nearest probation office when an immigration detainee is being released pending deportation so that efforts can be made by the Probation Service to supervise the releasee should he or she fail to report as required. This procedure is being refined by the Administrative Office and will be presented at the April Interagency meeting for adoption.

(43) The Report (page 159) indicates that the Commission was considering a suggestion that salient factor scores be included on parole certificates (page 159). Effective August 31, 1981, Commission policy requires that the most recently calculated salient factor score risk category be included on all parole certificates. Additionally, the Bureau of Prisons, which prepares mandatory release certificates, has adopted a policy to include such information on each mandatory release certificate. In addition, the Report fails to acknowledge that the Commission has revised the F-3 Form to reflect the classification of cases required by the supervision guidelines. This revision encourages both the Commission and the Probation Division to focus on the supervision guidelines.

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CHAPTER FIVE RECOMMENDATIONS

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

CHAPTER SIX

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

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

Sincerely,

Benjamin F. Baer
Acting Chairman

U.S. Department of Justice

APR 16 1982

Washington, D.C. 20530

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

Dear Mr. Anderson:

This is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "Better Management and Legislative Changes Are Needed to Improve Federal Parole Practices."

The draft report focuses primarily on the activities of the United States Parole Commission (Commission) and offers recommendations to improve its operations, as well as suggest legislative changes that could be made to improve the parole decisionmaking process. Since the transmittal letter accompanying the draft report states that the Commission has been asked to provide a separate response to GAO we defer comment on the above matters to the Commission. The Department's comments discuss the proposed revision of the Federal Criminal Code (S.1630) in terms of its impact on the parole decisionmaking process and address those portions of the report involving the exchange of information between the Commission and component organizations of the Department.

Proposed Revision of the Federal Criminal Code (S.1630)

The Department has supported for several years legislation that would totally revise the Federal sentencing system, including a provision that would abolish the Commission entirely. These provisions are contained in the proposed revision of the Federal Criminal Code (S.1630), which is expected to be considered by the full Senate at an early date. Under that bill, a sentencing guideline agency in the judicial branch would promulgate sentencing guidelines, somewhat similar to the existing parole guidelines but more thorough and sophisticated, that would recommend an appropriate sentence for each combination of offense and offender characteristics. The probation service would be required to include specific information in the presentence report as to how the offense and offender characteristics in the sentencing guidelines applied in the particular case. Before imposing sentence, the judge would assure that both the United States Attorney and the defense counsel received a copy of the presentence report. By making the sentence report available to the attorneys before the sentencing hearing, the sentencing hearing would concentrate on the accuracy of the presentence report, particularly with regard to the statement as to the applicable sentencing guidelines. The judge would be required to state general reasons for the sentence that he imposed, and, if the sentence was outside the sentencing guidelines, would be required to state specific reasons for the sentence imposed. The clerk of court would be required to

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

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

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

Executive Office for United States Attorneys (EOUSA)

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

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The Parole Commission and Reorganization Act of 1976 (18 U.S.C. 4205-4207) grants the Commission authority to obtain and consider information for parole decision-making from various Government agencies on any offenders eligible for parole. Section 2.19 of the Commission's rules, dated September 1, 1981, also allows consideration of such information. Two common sources of such information are, information the prosecutor brings to the court's attention before sentencing, and Form USA-792 (Report on Convicted Prisoner By United States Attorney).

The GAO report notes that the Chairman of the Commission wrote the Assistant Attorney General of the Criminal Division on June 8, 1981, concerning ". . . a long-standing problem the Commission has experienced in obtaining Form USA-792s from United States Attorneys." The report also notes that the Assistant Attorney General responded on June 11, 1981, stating that steps would be taken to resolve the matter (p. 95).

In July 1981, the EOUSA prepared a letter for the signature of Associate Attorney General Rudolph W. Giuliani to all United States Attorneys specifically reminding them of their responsibility to insure Form USA-792 is completed in accordance with the United States Attorneys' Manual. The letter also pointed out that the Attorney General has directed that the responsibility of the Department's prosecutors as sentencing advocates be reemphasized in accordance with Recommendation 14 of the Attorney General's Task Force on Violent Crime. The prosecutor's presentation of relevant information to the court before sentencing will help insure that judges have a complete picture of the defendant's past conduct before imposing sentence. It will also make another source of useful information readily available to the Commission when making its parole determination.

The EOUSA has also sent a series of teletypes to the United States Attorneys highlighting the necessity for compliance with United States Attorneys' Manual Title 9-34.220 and 9-34.221 concerning Form USA-792. In addition, the United States Attorneys' Bulletin has carried several items on the need to submit the completed Form USA-792.

The EOUSA is already working closely with the Commission concerning matters of importance to the various United States Attorneys. Therefore, the recommendation of GAO (p. 124) that the Attorney General require the EOUSA to work with the Commission in developing a system for routinely advising United States Attorneys of parole decisions is being complied with.

We think GAO's recommendation to amend the Federal Rules of Criminal Procedure (Rule 32) to provide for mandatory disclosure of presentence reports is one which the Department would want to carefully consider. Pending an in-depth analysis and possible survey of United States Attorneys' Offices, we would be opposed to such a change in the context of current law.

Bureau of Prisons (BoP)

The draft report makes several recommendations to BoP focusing on the need for a better exchange of information and communication between BoP and the Commission to improve the quality of parole release decisions.

GAO recommends that BoP staffs at correctional institutions make study and observation reports automatically available to the Commission's hearing examiners. BoP

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

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

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

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

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

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

concur with the recommendation. Although training has been provided in this area, BoP will renew its efforts to emphasize the importance of identifying such offenders and making this information available to the Commission.

With respect to the interchange of information between BoP and the Commission, we believe the report tends to generally distort the good working relationship which has historically existed. We refer, for example, to the statement on page 100 of the draft report that BoP "did not regularly furnish psychological reports to the Commission's hearing examiners." While this is true, the Commission did not routinely request the material. When specific requests are made, BoP attempts to assist the Commission to the extent possible under the guidelines of the Privacy Act. We have enjoyed and will continue to strive to maintain good communication with the Commission, although the report infers this cooperation does not exist.

United States Marshals Service (USMS) and Criminal Division

The report recommends that the USMS and Criminal Division work with the Commission and the Probation Division of the Administrative Office of the U.S. Courts in developing procedures for parole supervision of offenders released to the Witness Security Program.

An updated draft of the Commission's proposed procedural statement for parole supervision of offenders who have entered the Witness Security Program has been distributed for comment to the USMS, Criminal Division and Probation Division. Included in the statement are descriptions of the responsibilities of the USMS, Criminal Division, Probation Division and Commission as they relate to cases under the jurisdiction of the Commission.

In general, the proposal provides that the Commission, through use of its supervising agents, will supervise all prisoners or parolees who have entered the Witness Security Program and are subject to the Commission's jurisdiction, unless such supervision is deemed by the Commission to be dangerous to the life of the witness. The Commission will process its records and implement its procedures with due regard for the safety of the witness and the security of the records. Procedures for recordkeeping of witness security cases will be administered only by those authorized to do so on a need-to-know or right-to-know basis. Generally, the Commission will prohibit the use of witness security persons as informants. However, in exceptional cases the Commission will coordinate with the Criminal Division in permitting exceptions to the general rule.

The USMS and the Commission have been actively pursuing the supervision of parolees that are Witness Security Program participants. This cooperative effort began during the month of October 1981, and since that time approximately 80 percent of all concerned parole cases have been identified.

Immigration and Naturalization Service (INS)

The Department agrees that INS and BoP should work with the Commission and the Probation Division to develop a system for reporting the status of alien parolees released to the community pending deportation proceedings so they can be appropriately supervised. Presently, to ensure that INS is made aware of the fact that the Probation Division and the Commission are interested in an alien parolee, BoP notifies INS, at the time they take custody of an inmate, of the inmate's parole status. INS is now working with the Probation Division and the Commission to develop a formal plan for reporting the status of alien parolees.

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

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

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

Sincerely,

Kevin D. Rooney

Kevin D. Rooney
Assistant Attorney General
for Administration

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

April 12, 1982

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

Dear Mr. Anderson:

Thank you for your letter of February 18 forwarding copies of the proposed report to Senator Sam Nunn entitled, Better Management and Legislative Changes are Needed to Improve Federal Parole Practices.

We find the report generally helpful and we will use--or are already using--the findings to make changes in policy, procedures, and training programs for probation personnel. We are pleased the report recognizes actions already taken by the Judicial Conference and Administrative Office in dealing with problem areas, many of which we were addressing at the time the study was made. Taken as a whole the report reflects the complexity of administering a system that is so dependent on the cooperation of many independent parts. The report also acknowledges the conflicts that arise in a parole guidelines scheme that aims to be equitable, fair, and reasonable while retaining relevance to individual case circumstances. In general we agree with the conclusions and recommendations.

On page 125 the report recommends that the Judicial Conference develop amendments to Rules 11(c) and 32(c)(3), Federal Rules of Criminal Procedure, (1) to ensure that defendants are made aware of the information that will be considered by the Parole Commission when making parole decisions, and (2) to provide mandatory disclosure of presentence reports to offenders.

In 1981 the Advisory Committee on Criminal Rules of the Judicial Conference considered a recommendation by the Probation Committee requiring that the trial judge specifically advise the defendant of the subsequent uses of the presentence report at later stages in the correctional process. The Committee concluded the following:

> Though it is thus important that the defendant be aware now of all these potential uses, the Advisory Committee has considered

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

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

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

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

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

The report, on page 125, recommends that the Director of the Administrative Office require the Chief of the Probation Division to stress the importance of providing presentence reports which contain the information necessary to compute the Salient Factor Score and Offense Severity Rating. Since 1978 our Publication 105, The Presentence Investigation Report, has required that this information be contained in the presentence report, and furthermore has required that the probation officer include an estimate of the Salient Factor Score and Offense Severity Rating. This should ensure that the information needed to compute the above items is included in the presentence report. We agree that emphasis should be placed on the importance of this information. The topic has been stressed in previous training programs and will be so again. Specific concerns, e.g., the weight and purity of drugs that are seized, have been addressed through memoranda to all probation officers (April 13, 1979, and March 16, 1982) and changes in the U.S. Probation Officers Manual. (Section 2115).

Also on page 125 the report recommends that the Chief of the Division of Probation establish procedures for routine quality control reviews of presentence reports. We agree with the recommendation and will take steps to implement it. Supervisory training already planned for fiscal year 1982 will focus on this subject. The Probation Division will consider developing guidelines for supervisors in reviewing presentence investigation reports and review Publication 105 for appropriate amendment. Regional Probation Administrators from the Probation Division have been instructed to determine that districts have quality control review procedures. The report notes that in the past 4 years Regional Probation Administrators had visited only half of the judicial districts included in this survey. Limitations in travel funds and personnel resources have impacted on our ability to maintain close contact with field offices. Recognition of this problem lead us to emphasize supervisory training as noted above.

Chapter 5 of the report, "Major Changes Needed to Improve Parole Supervision," sets forth recommendations which will receive our thorough consideration. The recommendations commence on page 160. The first is that the Administrative Office work with the Chairman of the Parole Commission to develop clear definitions of requirements for special conditions of parole and specific criteria for determining what constitutes a violation of a special condition. It is clear from the text that the specific reference is to participation in drug, alcohol, and mental health aftercare programs. We are convinced the Commission should continue to require treatment for mental health, drug or alcohol problems as they have in the past. Contrary to the recommendation in the report we do not believe the Commission is in a position to prescribe specific treatment programs. The availability of local treatment resources changes constantly. Case by case decisions by the probation officer are the only practical way to match the needs and problems of the offender to

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

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

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

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

chiefs, supervisors, and probation officers in their day to day administrative and case management responsibilities.

In our judgment the Parole Commission has set forth adequate guidance for probation officers in terminating parole supervision (see Section 2.43, Rules and Procedures Manual, U.S. Parole Commission, March 1, 1982).

On page 161 the report recommends that the Commission resolve the controversy over whether probation officers need search and seizure authority to supervise parolees. The matter should be considered by the Commission and we will be willing to assist them in making their decision. If the decision is to establish such authority, you should be aware that this is a complicated legal issue that so far has defied any simple solution. A number of legal and administrative safeguards must be provided if the current policy is changed to allow search and seizure. Carrying out searches and seizures is simpler in probation than it is in parole. In probation, the U. S. District Court is readily available to resolve legal issues promptly. In parole, the concerns must be worked out through the mail and over the telephone, and it is more difficult for the subject of the search to get an in-person hearing with a decisionmaking authority who can rule promptly on the validity of the search.

Next the report recommends on page 161 that the Administrative Office and Commission finalize procedures for furnishing Commission established Salient Factor Scores to probation officers so appropriate supervision levels can be established. The procedure was developed by the Parole Commission and put into effect August 31, 1981.

The report also recommends on page 161 that procedures be developed for establishing parole supervision of offenders released to the Witness Security Program. This has been accomplished. As administrative issues arise on Witness Security problems they are addressed in regular meetings between the Probation Division, U.S. Marshals Service, Parole Commission, Office of Enforcement Operations of the Department of Justice, and the Bureau of Prisons.

The report recommends on page 161 the development of a system for reporting the status of alien parolees released to the community pending deportation proceedings so that these individuals can be supervised. The Immigration and Naturalization Service has agreed to notify the U. S. Probation System of the address at the time of release of aliens who are on parole. Specific reporting procedures have yet to be developed that will meet the requirements of the Bureau of Prisons, Immigration and Naturalization Service, Parole Commission, and the Probation System.

On pages 73-75, the report finds that youthful offenders sentenced under the Magistrates Act do not warrant parole

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

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

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

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

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

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

1/This matter has been clarified in the report.

APPENDIX III

On March 18, 1982, Judge Gerald B. Tjoflat, Chairman of the Judicial Conference Committee on the Administration of the Probation System, advised you that he would coordinate his response to the report with ours. Judge Tjoflat wants you to know he joins without reservation in this response.

Sincerely,

William E. Foley

cc: Judge Tjoflat

APPENDIX IV

United States District Court
Eastern District of Kentucky

February 23, 1982

Chambers of
Bernard T. Moynahan, Jr.
Chief Judge

Federal Building
Lexington, Kentucky 40501

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

Dear Mr. Anderson:

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

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

Very truly yours,

Bernard T. Moynahan, Jr.
Chief Judge

BTM:mbf

APPENDIX V

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH S. LORD, III
CHIEF JUDGE

17614 UNITED STATES COURTHOUSE
INDEPENDENCE MALL WEST
601 MARKET STREET
PHILADELPHIA, PA. 19106

(215) 597-4361

February 24, 1982

William J. Anderson, Director
General Accounting Office
General Government Division
Washington, DC 20548

Dear Mr. Anderson:

In view of the numerous opinions of the Supreme Court, the Court of Appeals and my own court which I am required to read, in addition to doing research and writing for my own opinions, I regret that I will simply not have the time to read the 164 page draft with the 6 appendices which you submitted to me.

Very truly yours,

Joseph S. Lord, III
Chief Judge

JSL:el

APPENDIX VI

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

Chambers of
Carl B. Rubin
Chief Judge

March 3, 1982

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

Dear Mr. Anderson:

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

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

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

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

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that anything stated in an AO-235 will be communicated to the prisoner in a very brief time. I did not note that reason stated in your draft but I will assure you that many judges have had the same experience. If you will reflect upon it for a moment, it will become obvious why AO-235 is not confidential and cannot be confidential despite any efforts of the Parole Commission. Information on AO-235 is important to a prisoner. Any information that is important in a prison context is a commodity that can be sold. The reality is that no prison can guarantee confidentiality and in the absence of confidentiality, I am unwilling to make any specific comments.

The procedures of the Parole Commission places a sentencing judge in an unpleasant dilemma. While I can be sure that any sentence up to one year will be served out, I have no equal assurance of any sentence beyond a year. If it is my judgment that a prisoner should serve two years, I must sentence him to six. When I do so, it is possible that he may serve his full term which may be more than I believe the circumstances to warrant. I must balance then my belief as to the minimum he should serve without subjecting him to an excessive maximum.

I doubt that the philosophy of sentencing is within your inquiry. Unfortunately, it underlies any consideration of the activities of the Parole Commission. I would be equally content with either of the following conditions: Give me full power to determine how long a prisoner will serve or take the sentencing power away from me completely. In the first instance, if I believe a prisoner should serve two years, I could sentence him to two years. In the second instance, the Parole Commissioner or any other similar body could have full and complete authority to determine how long a prisoner should serve. What I consider to be the worst of both worlds, is the present situation, where I share the determination with the Parole Commission. It is true that I do not see the offender in prison circumstances, but it is equally true that they do not see the victims of his crimes nor the impact that he may have had upon the local community.

I appreciate the opportunity to read the draft report and to comment thereon.

Very sincerely yours,

Carl B. Rubin, Chief Judge
United States District Court

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

Chambers of
William E. Steckler
Chief Judge

March 9, 1982

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

Dear Mr. Anderson:

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

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

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

APPENDIX VII

My personal view is that the optimum practice would require the production of a transcript of the disposition proceedings so that not only the Probation Office, which is usually represented at the disposition proceedings, but the Bureau of Prisons and the Parole Commission likewise would have the benefit of all that was said before, at, and following the "moment of decision."

A disposition proceedings is often an emotion-filled experience. Any attempt to capsulize the feelings of the United States Attorney, the prosecuting agencies, the defendant and his counsel, and the judge in a form such as the AO-235 is virtually an impossible task. In my view, the idea of having the sentencing judge express the information sought in the AO-235 was either adopted prematurely or was not based on a sufficient consideration of the numerous factors militating against the use of the form.

It is felt that the AO-235 is an area of the subject matter of your study that needs greater and in depth consideration.

One final word is that I compliment you and your staff on the study and the draft report that has been made. I predict the report will bring forth benefits inasmuch as it ventilates areas of concern to all of us confronted with the problems of criminal justice.

Sincerely,

William E. Stockler

Chief Judge

cc: Honorable Cale J. Holder
Honorable S. Hugh Dillin
Honorable James E. Noland
Honorable Gene E. Brooks
Mr. David H. Sutherlin, Chief U. S. Probation Officer

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

UNITED STATES GOVERNMENT

Memorandum

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

DATE: March 5, 1982

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

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

Your Honor:

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

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

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

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

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

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

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the Bureau of Prisons. The Parole Commission has no staff to make direct observation of these offenders; therefore, they should not be in a position to make final comments as to their disposition.

Presentence reports did not contain complete details of the nature and circumstances of the offense and characteristics of the offender. (page 81)

Their study was quite revealing to show that this is an obvious problem. Fortunately, our district was better than most of those studied in having adequate reports, but still we feel leaves a great deal to be desired. Our officers are instructed to confer with the Assistant U. S. Attorney and the Case Agent involved to obtain all the facts surrounding the crime; to include the financial loss, the type and amount of drugs involved, or each individual's culpability in the conspiracy or organization. However, sometimes we are forced to omit items from the prosecution version of our reports because of the plea agreement between the U. S. Attorney's Office and the defendant, that certain information will not be brought to the attention of the court.

Quality control procedures for review of presentence reports were inadequate. (page 84)

Overall, we feel that in recent months, or since I have taken over as Chief, we have made definite steps to insure quality control with our presentences, and in fact, have shown improvement.

Probation officers frequently experienced problems in gaining access to offenders' juvenile records. (page 84)

In most cases our office has not had problems with this, in that the Marion County Juvenile Court System and the Indiana Boys' School make their records readily available. However, in some outlying counties in our district, these juvenile records are destroyed. However, I fail to see how we have any control over this matter. We feel that if the juvenile court records can be found, they should definitely be made a part of the presentence report.

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

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

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

Other information was not obtained. (page 106)

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

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

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

The Honorable William E. Steckler
Re: Proposed report to Senator Nunn
Page: 4

PROCEDURES WHICH ENSURE BETTER DISCLOSURE OF PRESENTENCE REPORTS NEED TO BE DEVELOPED (page 110)

In our district we follow the instructions of each individual judge as far as disclosure is concerned. Although there are some differences in this operation within our five judges, we feel that in each case the defendant and his counsul have adequate time to review the report. Overall, we do not feel that this is a problem in our district.

SPECIAL CONDITIONS OF PAROLE NEED TO BE BETTER ADMINISTERED (page 126)

In making this statement, the report focused on the problem of the disparity of the parolees participating in drug, alcohol, or mental health aftercare as ordered by a special condition of their release. In these cases, the condition reads that the offender shall be required to participate in a program as directed by the probation officer. The report indicates that no guidance,as to the program content, is given to the supervising probation officer, thus, disparity occurs. It is our strong feeling that the Parole Commission cannot possibly establish regulations pertaining to each individual who is released with such a special condition. The probation officer, with his skill and analyzation of the individual needs,and his knowledge of community resources, is in a much better position to place the parolee in a required program dealing with alcoholism, drug abuse or mental illness. For example, some offenders with drug aftercare may live in a rural community where no resources are available, and due to limited travel funds the U. S. Probation Officer cannot travel to his area to take urinalyses on a constant basis. However, in our office we now have one officer who is responsible for all the drug aftercare parolees released to the Marion County area. He provides individual counseling and urinalysis, and thus far the method appears to be successful in insuring compliance with this special condition. Under this same heading, the report noted that specific criteria was needed for determining violations of special conditions of parole. We agree with this recommendation, noting that presently the Procedures Manual does not provide any guidance in this area. However, whatever guidelines are developed, they should still be broad enough to allow the probation officer to use some discretion in assessing the parolee's overall adjustment.

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

BETTER PROCEDURES NEEDED FOR REPORTING PAROLE VIOLATIONS (page 133)

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

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

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

SOME PAROLEES ARE NOT SUPERVISED (page 149)

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

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

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

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The Honorable William E. Steckler
Re: Proposed report to Senator Nunn
Page: 6

instructions that the probation officer never conducts such an operation by himself. However, it is felt that if the parolees are aware that the supervising probation officer has such authority, that it will add more effectiveness to the overall supervision process. In addition, it is felt that the probation officer should have the authority to also seize any weapons, narcotics, or stolen merchandise as a result of such a search, or which may be in obvious view at the time of a non-search contact.

Although it was not mentioned in the report, we are of the opinion that the Parole Commission should revise their criteria for granting reparole after a parolee has been returned as parole violator. Frequently a recent violator is returned on parole in less than six months after being violated. Even if the violations are of a technical nature, the parolee has demonstrated his inability to adjust in the community. We believe, except in the case of extensively long sentences, an inmate should be granted only one parole and should be aware that parole violation will mean that he will serve the remainder of his sentence. At the time of violation many parolees have boasted to us that they will be returned in less than six months. More often than not, they are correct. We have no statistics to cite, but many parolees have been returned twice. As an example, we are currently in receipt of a warrant for parole violation on a man who was placed on probation in 1973 after being in an institution for study and observation. He was later sentenced as a probation violator, paroled, and returned to the institution as a parole violator, and had his reparole retarded after he failed to adjust at a community treatment center in Indianapolis. In addition, on two occasions during this same time period, he was returned to federal custody after having served time in state institutions for local convictions. We would not be surprised if he is not paroled again before his expiration date of July 16, 1982.

Mr. Gahl, any of the probation officers, or myself, will be willing to discuss this report in greater detail at Your Honor's earliest convenience.

Respectfully submitted,

D. H. Sutherlin, Chief
U. S. Probation Officer

DHS/fd

APPENDIX VIII

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

Halbert O. Woodward
Chief Judge

March 9, 1982

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

Dear Sir:

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

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

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

Yours very truly,

HALBERT O. WOODWARD
Chief Judge
Northern District of Texas

Attachment

REVIEW OF DRAFT COPY OF GAO STUDY OF U. S. PAROLE COMMISSION

Violations - Arrests and Technical Violations

The auditors state that time frames are needed for the reporting of parole violations and specific criteria are needed for requesting warrants for the arrest of parole violators. They further ask for "specific criteria for determining what constitutes a violation of special conditions of parole." I will discuss these issues separately.

I agree that the time frames for the reporting of arrests should be agreed upon between the commission and the probation divison. In practice, however, probation officers are well aware that the commission seldom issues a warrant until final adjudication of the crime resulting in the arrest. Since this is a slow process the probation officer feels no urgency to report minor arrests (or even more serious arrests where the parolee denies his guilt). This should be changed, however, and time frames established for the reporting of arrests.

The other two issues, developing specific criteria for probation officers' use in requesting warrants and specific criteria for determining what constitutes a violation of special conditions of parole cannot be as clearly defined as GAO auditors would like. It is up to the supervisors in the probation offices to determine through regular audits (a minimum of once per six months under our present system of biannual case reviews) that probation officers have properly reported violations of special conditions or have requested warrants in those cases where it is indicated. The work of a probation officer is not an exact science. It is not possible to write rules which cover every human situation in the "parade of terribles" the auditors use to illustrate failure to report violations of special conditions.

Most of the cases cited as bad examples are drug cases. The supervision of drug addicts in the aftercare program is again not an exact science. In one case auditors complained that a client had missed nine appointments at the drug aftercare center during a ten-month period. They obviously considered this a violation of the special condition to participate in a drug aftercare program. The fact of the matter is, if the individual was on a reporting schedule of one visit per week, she actually made 32 visits to the drug clinic during that ten months. If a clean urinalysis was obtained at each of those visits, the probation officer may have been entirely correct in recommending release from the program. If a probation officer chose to have a warrant issued for all the technical violations of the persons in our drug aftercare programs, there would be no one in the drug aftercare programs. These are manipulative persons with a long history of drug addiction, in most instances, and the probation officer must call upon his experience, the experience

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

Witness Protection Cases

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

Early Parole Release For Superior Program Achievement

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

Adequacy Of Presentence Information

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

APPENDIX VIII

previously or was a relatively new requirement. As soon as a request came from the Parole Commission that this information be included, it was done, at least in this district. By choosing to study the year 1979, cases analyzed were not a fair sample.

Two factors can be used to judge the adequacy of the presentence reports in this district for use by the Parole Commission. One is the frequency of their request for additional information and the second is their direct comments regarding our presentence reports. We receive very few requests for additional information in this district. Comments from commission officials to this officer have been that we produce the best reports in the region. The auditors take note of the fact that in the Dallas Division we have a specialized presentence unit and are meeting on a regular basis (twice annually) with commission officials to discuss inadequacies or problems related to presentence reports. This open communication as well as the ease in training a smaller group of officers to write presentence reports has improved the quality of the presentence reports in the Dallas Division of the Northern District of Texas.

Record Of Sentencing Hearings

Auditors indicate a need for a record of sentencing hearings to be transmitted to the Parole Commission. After 17 years of attending sentencing hearings, I cannot agree with this recommendation, even though some district courts are beginning to do so. The judge adequately informs the Parole Commission of what he thought of the facts brought out in these sentencing hearings by the sentence that he gives. The AO-235 allows the judge to transmit any other information which he chooses to transmit. For commission personnel to take the tremendous amount of time it would take to read all of the transcript from the sentencing hearing would, in my judgment, be a waste of time.

In this distirct the prosecutor makes no presentation at the sentencing hearing in 95 percent of the cases. Most of the testimony at the sentencing hearing comes from character witnesses and relatives. An inmate could present the Parole Commission letters of character reference and a letter or two from his relatives and serve just as important a function, in my opinion, as a transcript of the testimony of these character witnesses at sentencing.

Corrections In The Presentence Report

Auditors suggest that the court on the AO-235 should make a reference to errors in the presentence report which are challenged by the client or the attorney at sentencing. The commission would be better served if the practice in this district were followed wherein any factual errors in the presentence report are corrected in writing. This occurs very

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

Specificity In Parole Matters

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

Search And Seizure

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

APPENDIX IX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
75 SPRING STREET, S. W.
ATLANTA, GEORGIA 30303

CHARLES A. MOYE, JR.
CHIEF JUDGE

March 10, 1982

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

Dear Mr. Anderson:

In order to obviate the problem of maintaining the document, I am returning, without comment, the draft of a proposed report concerning "Better Management and Legislative Changes are Needed to Improve Federal Parole Practices." Its contents have been noted by the judges of this Court.

Very truly yours,

Charles A. Moye, Jr.

Enclosure

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

CHAMBERS OF
JOHN V. SINGLETON
CHIEF JUDGE

March 15, 1982

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

Dear Mr. Anderson:

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

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

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

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

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

APPENDIX X

this rule could be improved to ensure the defendant is thoroughly informed. I am not familiar with what information is considered by the Parole Commission and I am not at all certain that that is a function of the federal judge. Rule 32(c)(3) is mandatory in that it states that the probation service of the court shall make a presentence investigation and that before imposing the sentence the court shall upon request permit the defendant or his counsel to read the report, etc. Certainly, in this district, as you will note from our Chief Probation Officer's report to Mr. Green, we have a district-wide order requiring that the defendant be made aware of this right before sentence is imposed. I am certainly not aware that any judicial district refuses to supply presentence investigation reports upon request in the face of the mandatory requirement of Rule 32(c)(3).

4. I concur in the recommendation contained on pages 160 and 161.

Thank you for giving me the opportunity to comment upon the draft of the proposed report.

Very truly yours,

John V. Singleton

APPENDIX X

POST OFFICE BOX 308
BROWNSVILLE 78520

POST OFFICE BOX 2623
CORPUS CHRISTI 78403

POST OFFICE BOX 547
LAREDO 78040

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

POST OFFICE BOX 52
RIO GRANDE CITY 78582

POST OFFICE BOX 474
BAYTOWN 77520

SUITE 305 3307 W DAVIS
CONROE 77304

PLEASE REPLY TO
Houston

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

PROBATION OFFICE

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

March 3, 1982

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

Dear Mr. Cohan:

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

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

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

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

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

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

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

APPENDIX X

I do not take exception to the balance of the GAO Report. However, I am confident that our operation in the Southern District of Texas has improved since the 1980 review by GAO. Several areas identified by GAO as needing improvement will be looked into for purpose of correcting same.

Please instruct me if I may be of further service regarding this or other matters of mutual concern.

Yours truly,

Louis G. Brewster
Chief U. S. Probation Officer

Enclosure

APPENDIX X

POST OFFICE BOX 308
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POST OFFICE BOX 2623
CORPUS CHRISTI 78403

POST OFFICE BOX 547
LAREDO 78040

POST OFFICE BOX 2670
GALVESTON 77550

118 FED. BLDG., 320 N. MAIN
McALLEN 78501

POST OFFICE BOX 52
RIO GRANDE CITY 78582

POST OFFICE BOX 474
BAYTOWN 77520

SUITE 305, 3307 W. DAVIS
CONROE 77304

PLEASE REPLY TO:

HOUSTON

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

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

August 7, 1981

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

Re: COURT POLICY FOR DISCLOSURE
OF PRESENTENCE REPORT

Dear Judge Singleton:

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

Formal Notice to Defense

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

Place of Disclosure

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

APPENDIX X

Reproduction of Report

The defense will not be allowed to reproduce part or all of the report, unless the Court so explicitly orders. However, the defense may take notes, but not to the extent that substantial portions of the report are copied verbatim. Prior to the defense review of the report, the defense will be made aware that reproduction of the report may result in a contempt of court order.

Respectfully submitted,

Louis G. Brewster
Chief U. S. Probation Officer

LGB/nl

Approved by:

Honorable John V. Singleton, Jr.

APPENDIX X

UNITED STATES GOVERNMENT

memorandum

DISTRICT POLICY STATEMENT No. 81-4

DATE: August 10, 1981

REPLY TO ATTN OF: CUSPO Louis G. Brewster

SUBJECT: PROCEDURE FOR DISCLOSURE OF PRESENTENCE REPORT PRIOR TO SENTENCING

TO: All SUSPO's

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

FORMAL NOTICE TO DEFENSE

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

PLACE OF DISCLOSURE

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

RESPONSE TO NOTICE

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

APPENDIX X

FORMAL CHALLENGES TO REPORT

We should encourage the defense to make us aware of any challenge alleging an inaccuracy or shortcoming in the report in order that we may research the defense claim prior to sentencing. A supplemental report to the Court would be in order should we subsequently determine some merit to a defense challenge.

REPRODUCTION OF REPORT

Although the defense cannot reproduce the report, unless authorized by the Court, the defense may take notes, but not to the extent that substantial portions of the report are copies verbatim. Violations of the court policy should be staffed with a SUSPO and thereafter reported to the appropriate Court.

LGB/nl

APPENDIX X

POST OFFICE BOX 308
BROWNSVILLE 78520

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118 FED. BLDG., 320 N. MAIN
McALLEN 78501

POST OFFICE BOX 52
RIO GRANDE CITY 78582

POST OFFICE BOX 474
BAYTOWN 77520

SUITE 305, 3307 W. DAVIS
CONROE 77304

PLEASE REPLY TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

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

Formal Notice of PSI Availability to Defense

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

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

Dear:

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

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

Yours truly,

U. S. Probation Officer

APPENDIX X

POST OFFICE BOX 308
BROWNSVILLE 78520
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RIO GRANDE CITY 78582
POST OFFICE BOX 474
BAYTOWN 77520
SUITE 305, 3307 W. DAVIS
CONROE 77304
PLEASE REPLY TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

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

'ormal Notice of PSI Availability to Defense

:efendant in Jail - Letter addressed to defense attorney with copy to defendant

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

Dear:

Please be advised that the presentence report on your client has been completed and submitted to the Court. The Court wishes to encourage you and your client to review the report, pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, in the U. S. Probation Office. Our office is open Monday - Friday, 8:30 a.m. to 5 p.m. Although an appointment is not necessary, it is recommended that you notify my office, phone No. _____, as to when you plan to inspect the report in order that either my supervisor or I may be available to answer any questions you may have. Should your client be in custody, you may check out a copy of the report at our office and hand carry same to your client in jail, provided that you agree to maintain possession of the report yourself, agree not to show or give the copy of the report to anyone else, and agree to return the report to our office by 5 p.m. on the same date.

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

Yours truly,

U. S. Probation Officer

APPENDIX X

POST OFFICE BOX 508
BROWNSVILLE 78520

POST OFFICE BOX 2623
CORPUS CHRISTI 78403

POST OFFICE BOX 547
LAREDO 78040

POST OFFICE BOX 2670
GALVESTON 77550

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POST OFFICE BOX 52
RIO GRANDE CITY 78582

POST OFFICE BOX 474
BAYTOWN 77520

SUITE 305, 3307 W. DAVIS
CONROE 77304

PLEASE REPLY TO:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
PROBATION OFFICE

LOUIS G. BREWSTER
CHIEF PROBATION OFFICER

POST OFFICE BOX 61207
HOUSTON 77208

Formal Notice of PSI Availability to Defense

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

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

Dear:

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

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

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

Yours truly,

U. S. Probation Officer

APPENDIX X

>py to U. S. Attorney once form
s signed by defendant or defense attorney.

ACKNOWLEDGMENT BEFORE READING PRESENTENCE REPORT

Being aware of my right to read the presentence report of _____(Criminal No. _____), pursuant to Rule 32(c) and subject to its reservations, I acknowledge by my signature herewith that:

1. I may read the report in the Probation Office.

2. As defense attorney with my client in jail, I may borrow a copy of the report from the Probation Office to review same with my client. I will not give or show the copy of the report to anyone else. I will personally maintain possession of the report until I return same to the Probation Office, no later than 5 p.m. on the same date that I borrowed the report.

3. I am not allowed to reproduce part or all of the report, unless the Court so explicitly orders. However, I may take notes, but not to the extent that substantial portions of the report are copies verbatim. I am aware that reproduction of this official court document may result in a contempt of court order.

4. I understand that any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

Report Disclosed
by:

_____ USPO	_____ Defendant	_____ Date
_____ USPO	_____ Defendant's Attorney	_____ Date
_____ USPO	_____ Assistant U. S. Attorney	_____ Date

*The above-mentioned presentence report was returned to probation staff member _____at _____(a.m. or p.m.)

APPENDIX XI

UNITED STATES DISTRICT COURT

CHAMBERS OF
CHARLES M. ALLEN
CHIEF JUDGE

FOR THE
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE, KENTUCKY 40202

April 23, 1982

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

RE: Federal Parole Practices

Dear Mr. Anderson:

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

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

Sincerely yours,

Charles M. Allen
Chief Judge

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

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

Mr. James L. Hurd
Chief Probation Officer

APPENDIX XII

United States District Court
Northern District of California
San Francisco, California 94102

Chambers of
Robert F. Peckham
Chief Judge

May 7, 1982

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

Dear Mr. Anderson:

I have reviewed the GAO Report on the U.S. Parole Commission and am responding at your request to applicable sections that apply to the court's functions. I will refer to specific sections in making my comments.

I. Judges Seldom Communicated any Information to the Commission. (p. 96)

While it is understood that the Commission welcomes the court's recommendations, and the Administrative Office Form 235 is the appropriate vehicle for providing perceptions and information that may influence Commission decisions, its use is best left to the discretion of the individual judge. If a transcript of the sentencing proceedings is forwarded to the Parole Commission as recommended in the discussion in the next section, the judge's views about the defendant and his offense will in most instances be obtained. In our district, the form does, however, accompany all presentence reports submitted to the court except where judges have specifically directed otherwise.

II. Other Information was not Obtained. (p. 106)

As noted in the report, this court sends copies of the sentencing transcripts to the Commission when the defendant has received a prison sentence of two years or more. We encourage tne adoption of this procedure on a nation-wide basis, and we strongly urge the Committee on the Administration of the Probation System of the Judicial Conference to recommend the necessary rule changes to mandate this practice.

III. Assurance is Needed that Defendants will be Apprised of the Information that will be Considered by the Commission. (p. 107)

Rule 11(c) of the Federal Rules of Criminal Procedure should not be amended to require judges to advise the defendants

APPENDIX XII

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

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

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

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

APPENDIX XII

We do not support the provisions of House Bill 6915, which would require furnishing a copy of the presentence to defendant and counsel at least five days prior to sentence. The general practice in this district is to allow four weeks for the preparation of a presentence report. Extending this period to accommodate the five-day rule requirement would delay sentencing for an additional week and penalize defendants in custody. The practice of requiring that the report be available without providing additional time for preparation would result in overly expedited investigations which would affect the completeness of the report, the Probation Officer's ability to verify information used in the report and the amount of time available for the defendant to evaluate the report's accuracy. Traditionally, our courts have permitted sentencing dates to be continued, upon defendant's request, to allow for in-depth challenges to the presentence report.

Where there are allegations of factual inaccuracy in a presentence report, it is the general policy of this district, whenever possible, to correct identifiable errors prior to the sentencing hearing. In any event, prior to or subsequent to sentencing, a corrected page or pages will be substituted in the presentence report and the Probation Officer will assure that the corrected report only will reach the Bureau of Prisons and the Commission. We have required by local rule that the corrected page or pages be substituted before the presentence report is forwarded to the Bureau of Prisons and the Commission.

I appreciate having the opportunity to make these comments.

Sincerely,

ROBERT F. PECKHAM
Chief Judge

ojm

Copy: Mr. Mike Murphy

APPENDIX XIII

United States Court of Appeals
Eleventh Judicial Circuit

Gerald Bard Tjoflat
Circuit Judge
Jacksonville, Florida 32201

March 18, 1982

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

Dear Mr. Anderson:

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

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

Sincerely,

Gerald Bard Tjoflat

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

APPENDIX XIV

GUIDELINES FOR DECISION-MAKING

[Guidelines for Decision-Making, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW				
Alcohol or Cigarette law violations, including tax evasion (amount of tax evaded less than $2,000)[1]		ADULT RANGE		
Gambling law violations (no managerial or proprietary interest)	<=6 months	6-9 months	9-12 months	12-16 months
Illicit drugs, simple possession				
Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)]		(YOUTH RANGE)		
	(<=6) months	(6-9) months	(9-12) months	(12-16) months
Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000				
LOW MODERATE				
Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000]				
Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)]		ADULT RANGE		
	<=8 months	8-12 months	12-16 months	16-22 months
Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana / 1-4.9 lbs. of hashish / .01-.04 liters of hash oil)]				
Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)]				
Gambling law violations - managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)]		(YOUTH RANGE)		
	(<=8) months	(8-12) months	(12-16) months	(16-20) months
Immigration law violations				
Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000				
MODERATE				
Automobile theft (3 cars or less involved and total value does not exceed $19,999)[2]		ADULT RANGE		
Counterfeit currency or other medium of exchange [(passing/possession) $2,000 - $19,999]	10-14 months	14-18 months	18-24 months	24-32 months
Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)]		(YOUTH RANGE)		
Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana / 5-19.9 lbs. of hashish / .05-.19 liters of hash oil)]	(8-12) months	(12-16) months	(16-20) months	(20-26) months

APPENDIX XIV

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

	Very Good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
HIGH (continued)				
Mann Act (no force - commercial purposes)		ADULT RANGE		
Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000 - $100,000	14-20 months	20-26 months	26-34 months	34-44 months
		(YOUTH RANGE)		
Threatening communications (e.g., mail/phone) - not for purposes of extortion and no other overt act	(12-16) months	(16-20) months	(20-26) months	(26-32) months
VERY HIGH				
Robbery (1 or 2 instances)				
Breaking and entering - armory with intent to steal weapons				
Breaking and entering/burglary - residence; or breaking and entering of other premises with hostile confrontation with victim				
Counterfeit currency or other medium of exchange [(passing/possession/ manufacturing) - amount more than $100,000 but not exceeding $500,000]		ADULT RANGE		
	24-36 months	36-48 months	48-60 months	60-72 months
Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I]				
Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana / 200 lbs. or more of hashish / 2 liters or more of hash oil)]				
Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I]				
Opiates, possession with intent to distribute/sale [medium scale or more (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) except as described in Greatest I]		(YOUTH RANGE)		
Extortion [threat of physical harm (to person or property)]	(20-26) months	(26-32) months	(32-40) months	(40-48) months
Explosives, possession/transportation				
Property offenses (theft/forgery/ fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000				
GREATEST I				
Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention)		ADULT RANGE		
	40-52 months	52-64 months	64-78 months	78-100 months
Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied) - no serious injury occurred]		(YOUTH RANGE)		
	(30-40) months	(40-50) months	(50-60) months	(60-76) months

APPENDIX XIV

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

GENERAL NOTES

A. These guidelines are predicated upon good institutional conduct and program performance.

B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

D. If an offense behavior involved multiple separate offenses, the severity level may be increased.

E. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

OTHER OFFENSES

(1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.

(2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to $2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.

(3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.

(4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than $20,000 in value); and shall be rated as no less than high severity in any other case. In the case of a bribe/demand with a value in excess of $100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

(5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.

(6) Misprision of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

(7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

APPENDIX XIV

REFERENCED NOTES

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

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

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

DEFINITIONS

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

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

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

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

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

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

APPENDIX XIV

SALIENT FACTOR SCORE

Register Number_____ Name_____

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

Item B---------- ☐
- No prior commitments (adult or juvenile) = 2
- One or two prior commitments = 1
- Three or more prior commitments = 0

Item C---------- ☐
- Age at behavior leading to first commitment (adult or juvenile):
  - 26 or older = 2
  - 18-25 = 1
  - 17 or younger = 0

*Item D---------- ☐ ____
- Commitment offense did not involve auto theft or check(s) (forgery/larceny) = 1
- Commitment offense involved auto theft [X], or check(s) [Y], or both [Z] = 0

*Item E---------- ☐ ____
- Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1
- Has had parole revoked or been committed for a new offense while on parole [X], or is a probation violator this time [Y], or both [Z] = 0

Item F---------- ☐
- No history of heroin or opiate dependence = 1
- Otherwise = 0

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

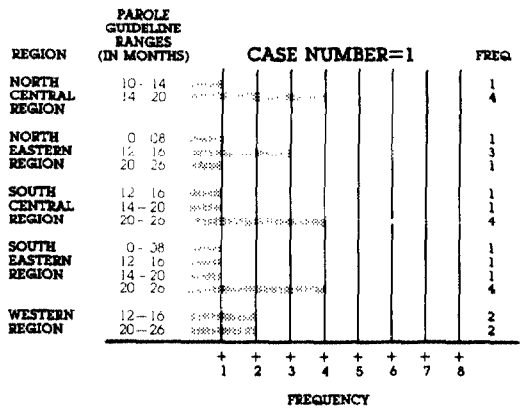
TOTAL SCORE---------- ☐

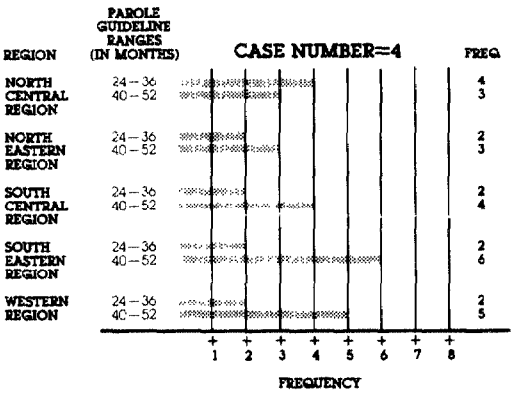
NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as if a conviction, even if a conviction is not formally entered.

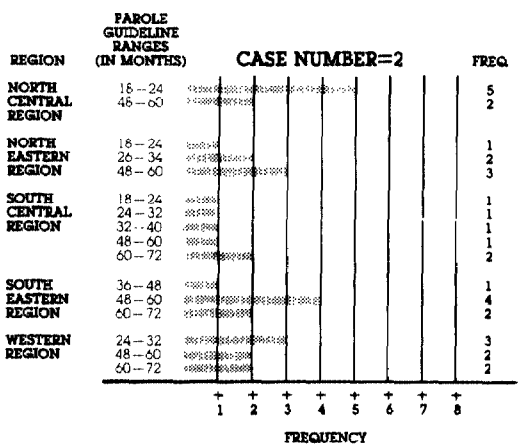
*NOTE TO EXAMINERS:
If Item D and/or E is scored 0, place the appropriate letter (X, Y or Z) on the line to the right of the box.

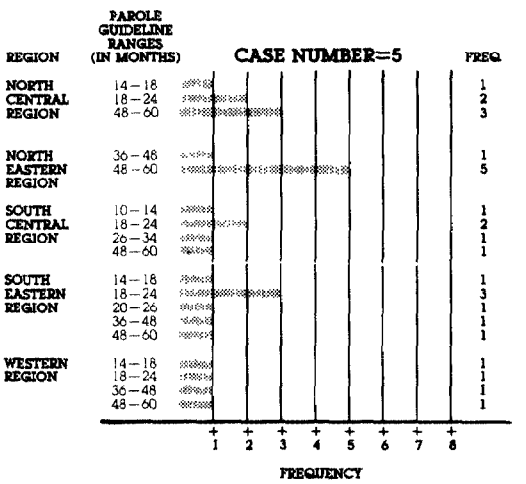
APPENDIX XV

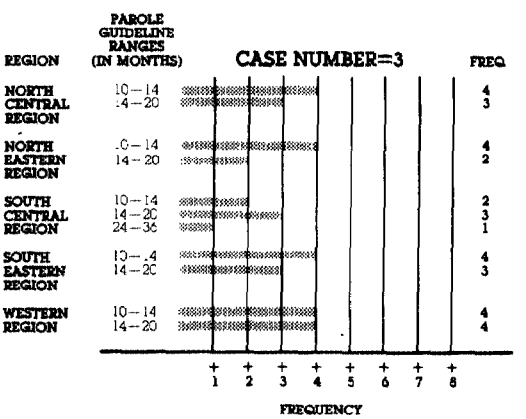
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE

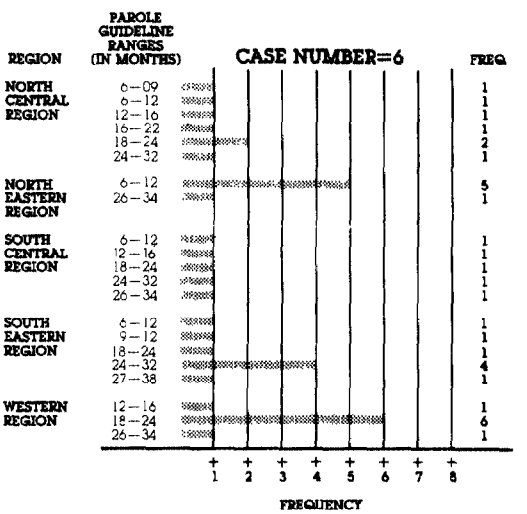






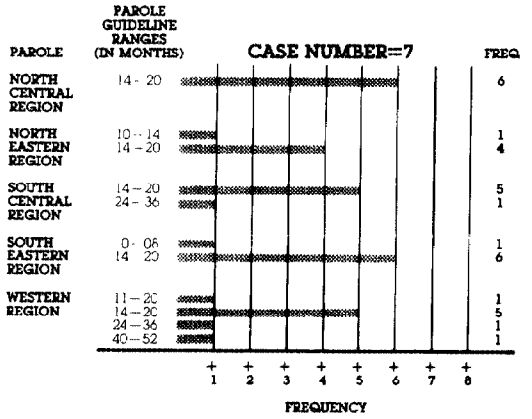


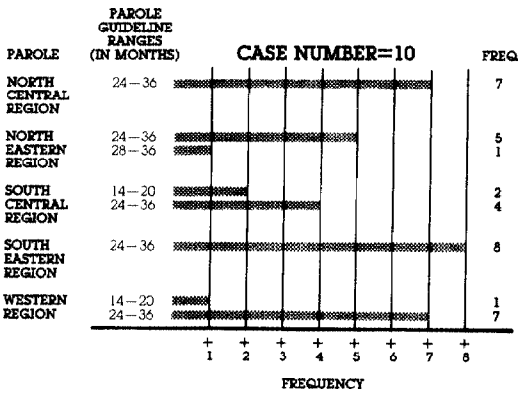


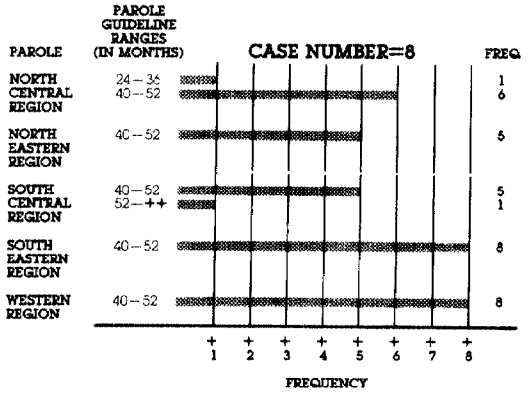


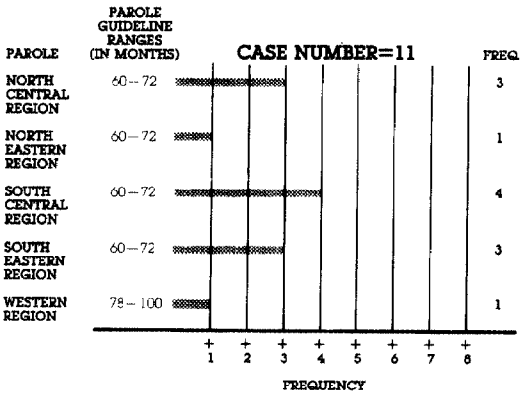
APPENDIX XV

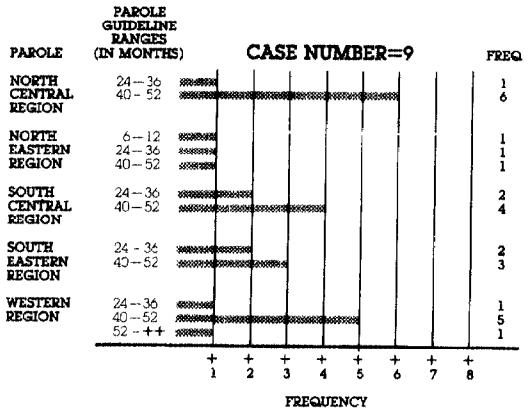
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

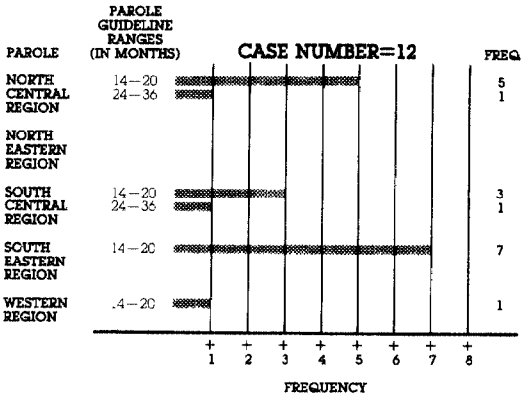






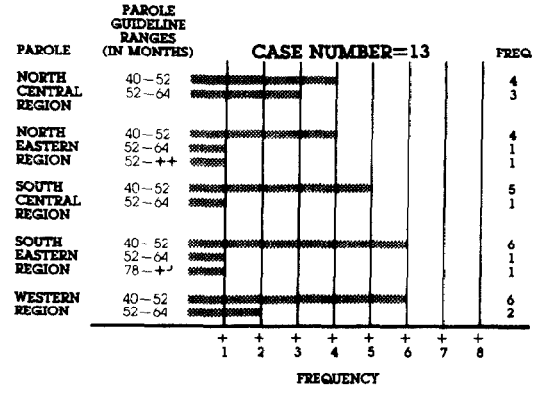


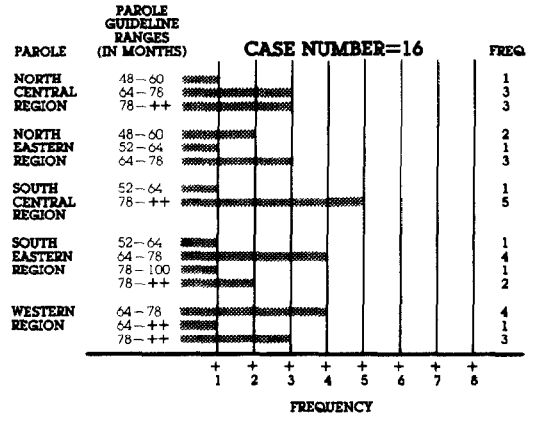


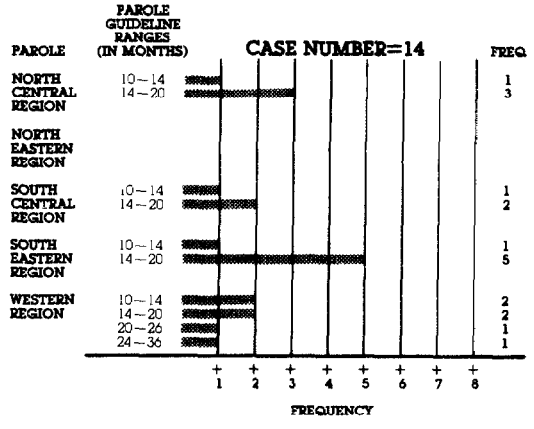


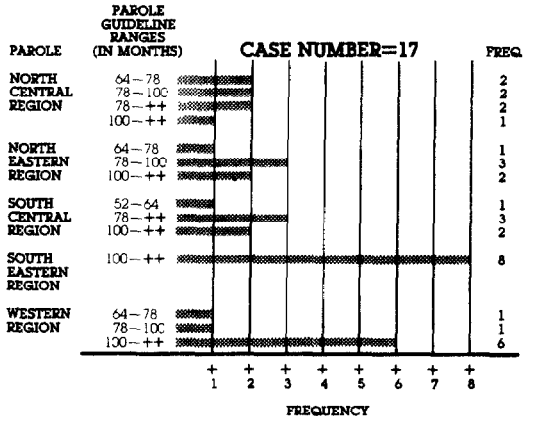
APPENDIX XV

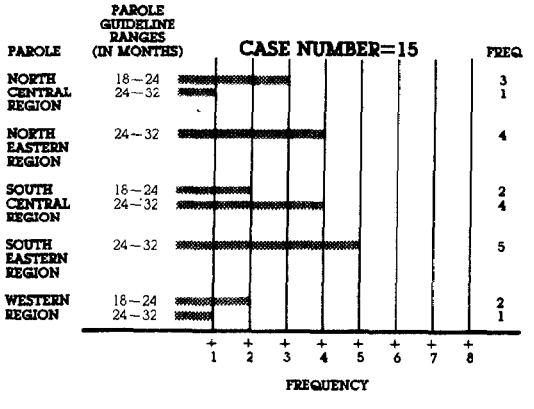
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

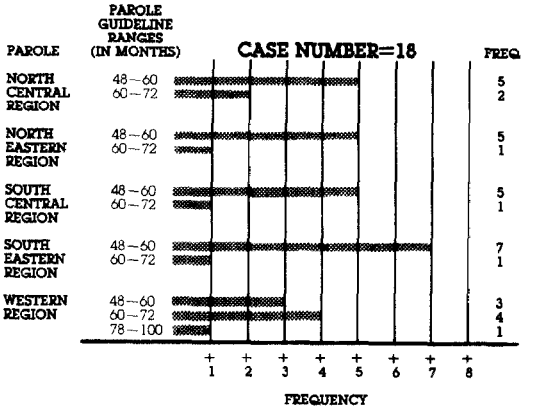






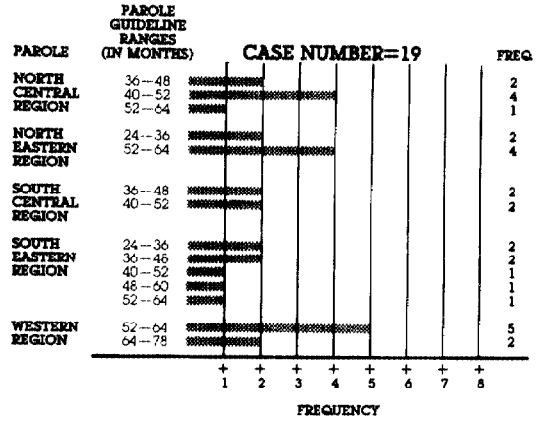


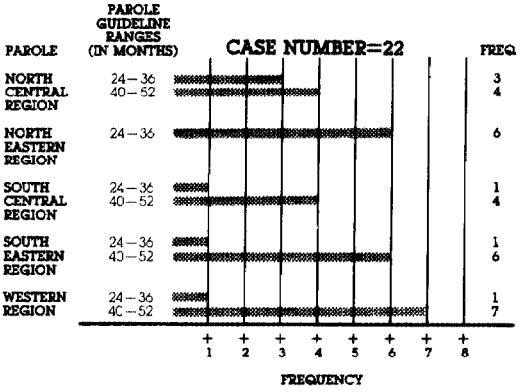


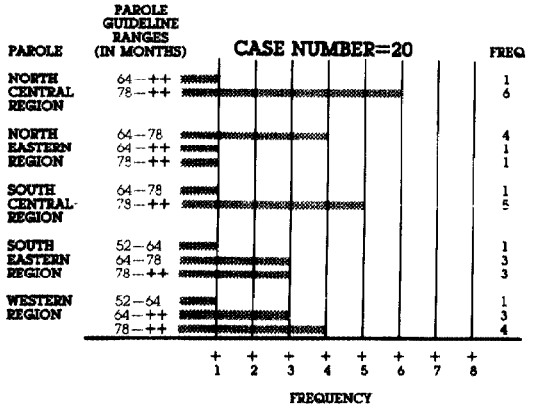


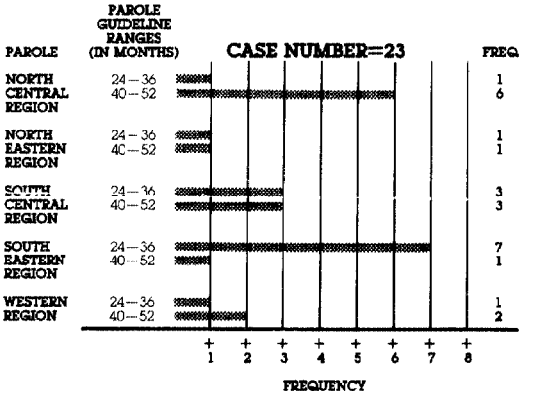
APPENDIX XV

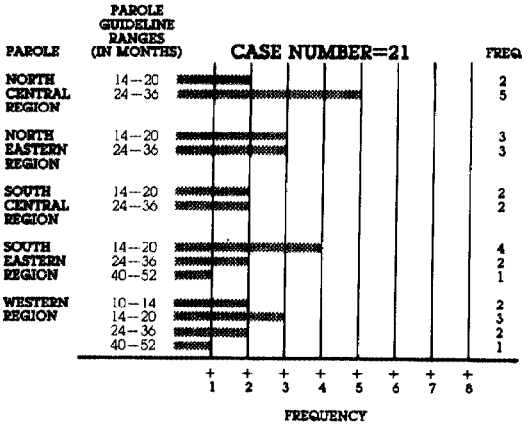
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

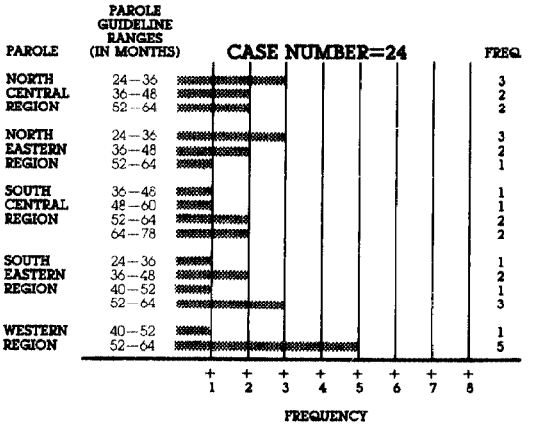






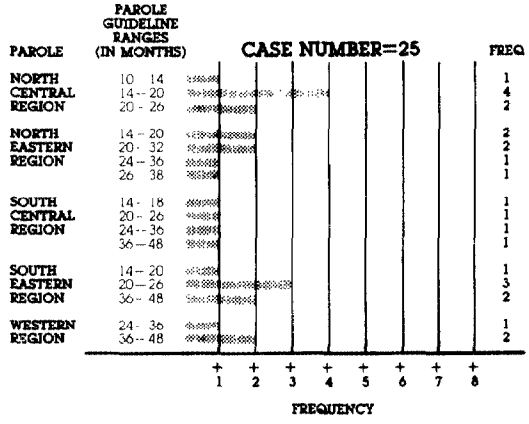


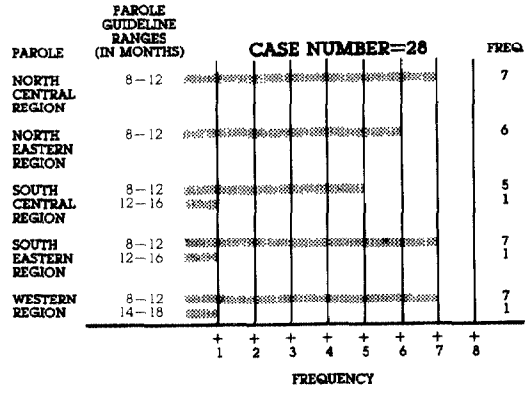


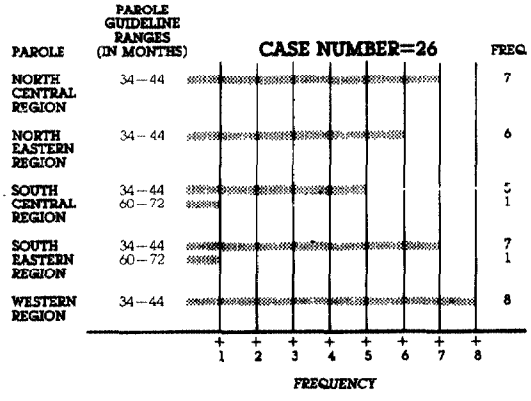


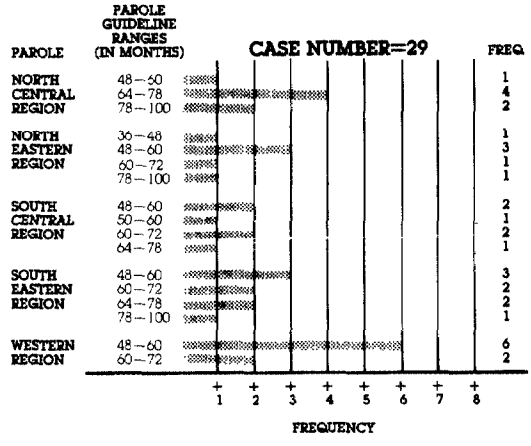
APPENDIX XV

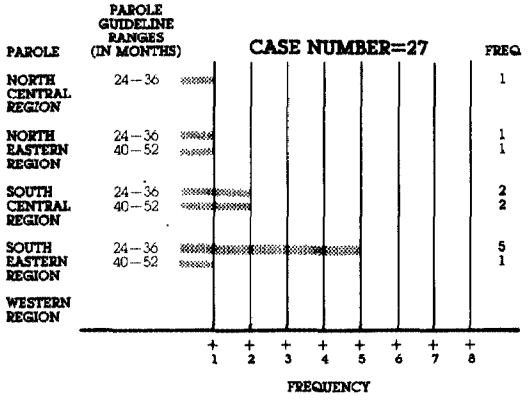
VARIANCE AMONG REGIONS IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGE (Continued)

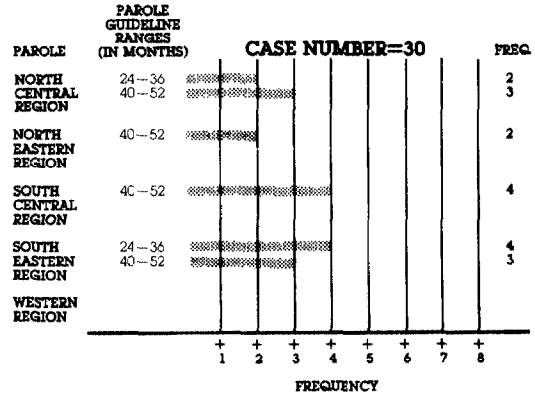






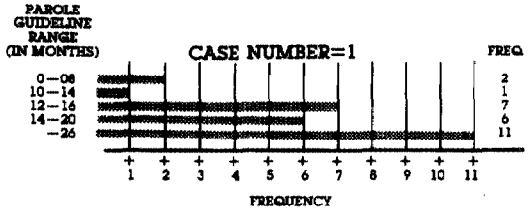


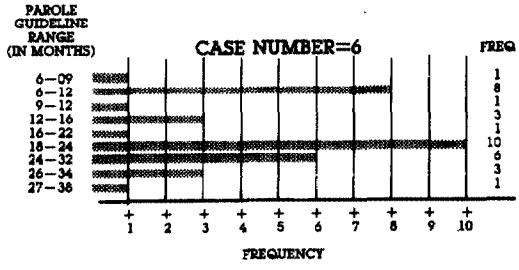


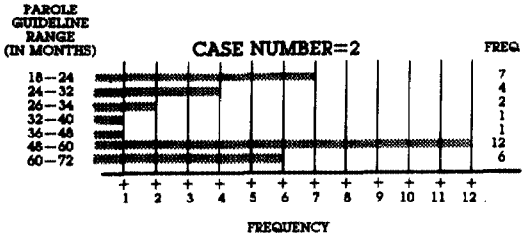


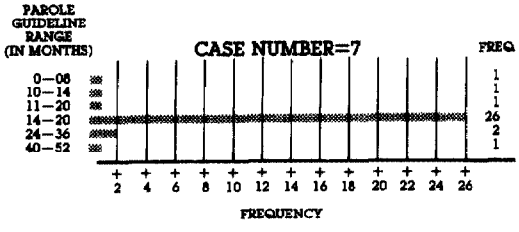
APPENDIX XV

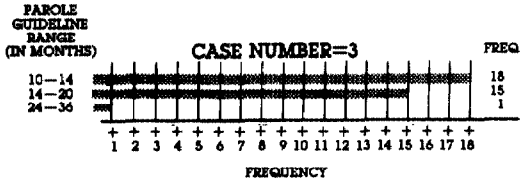
VARIANCE IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGES (Continued)

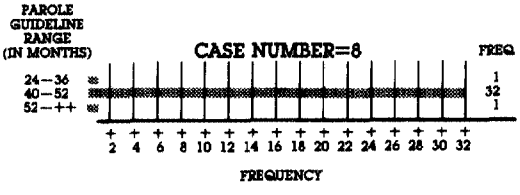


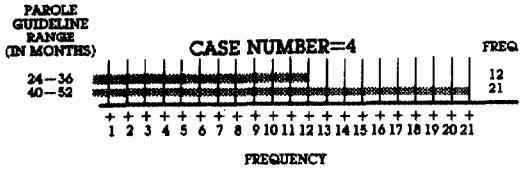


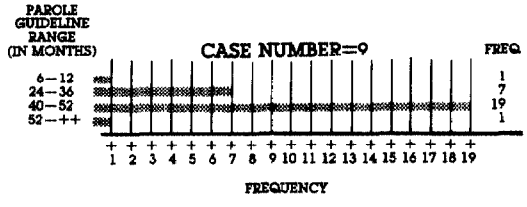


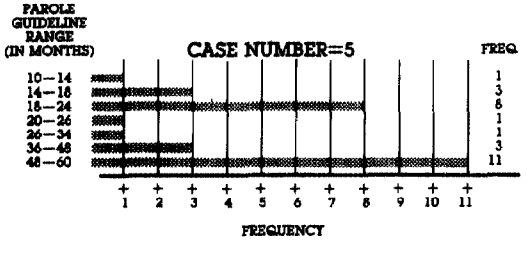


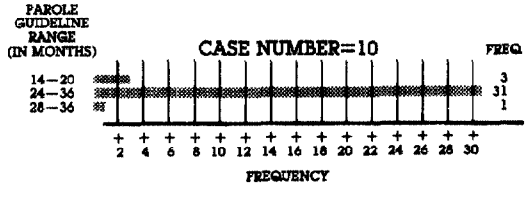






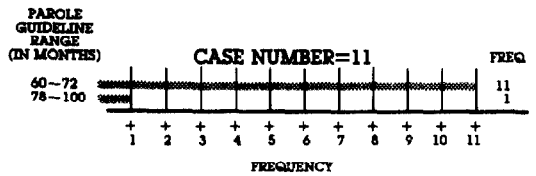


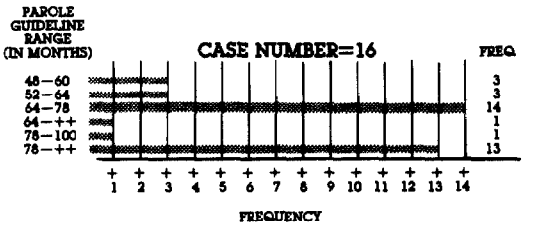


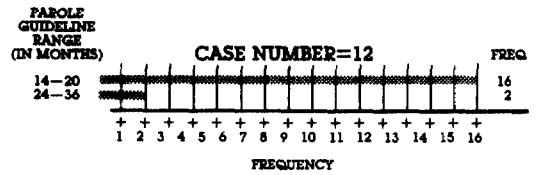


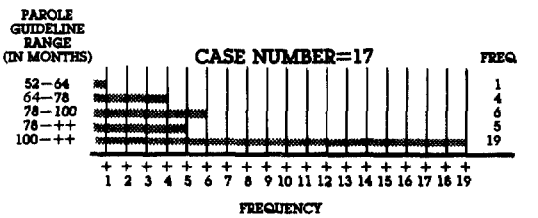
APPENDIX XV

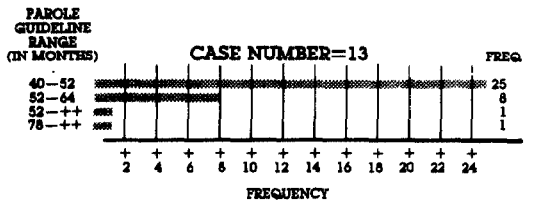
VARIANCE IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGES (Continued)

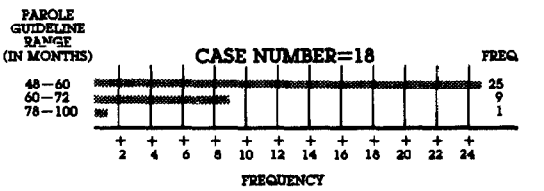


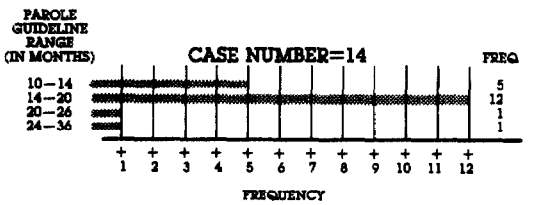


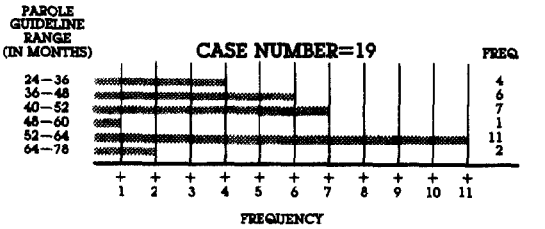


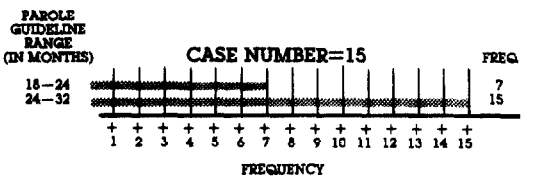


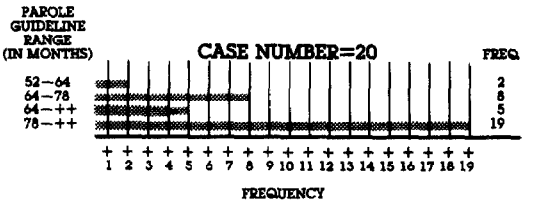






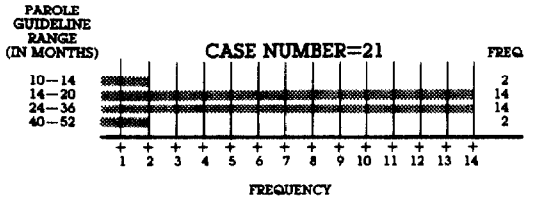


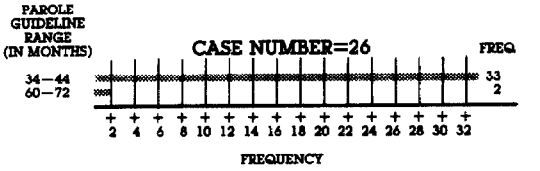


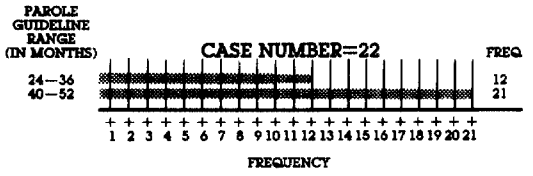


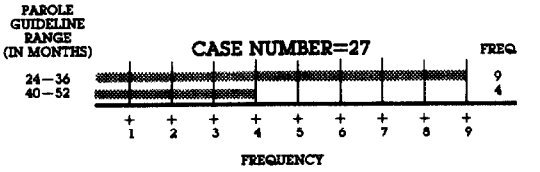
APPENDIX XV

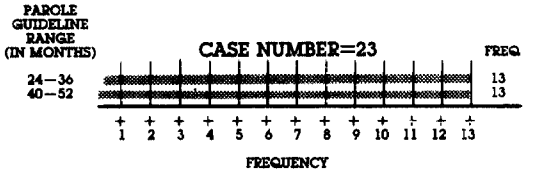
VARIANCE IN HEARING EXAMINERS ASSESSMENTS IN PAROLE GUIDELINE RANGES (Continued)

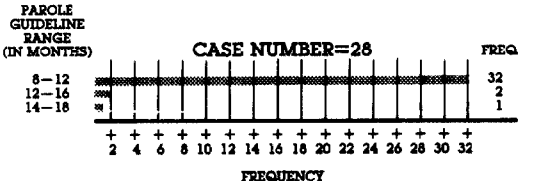


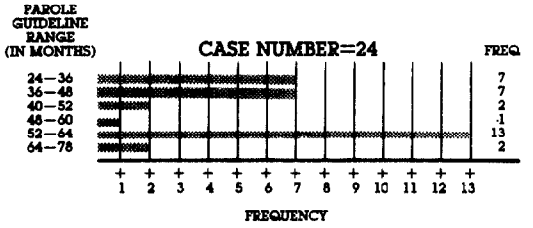


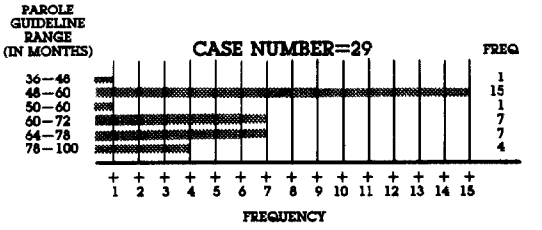


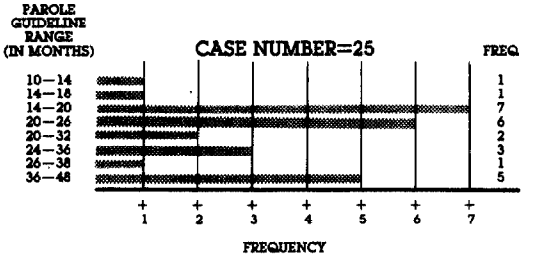


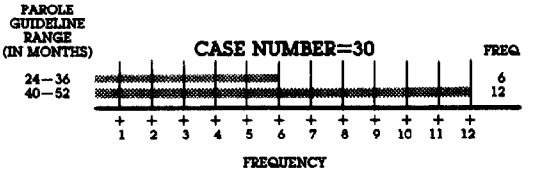




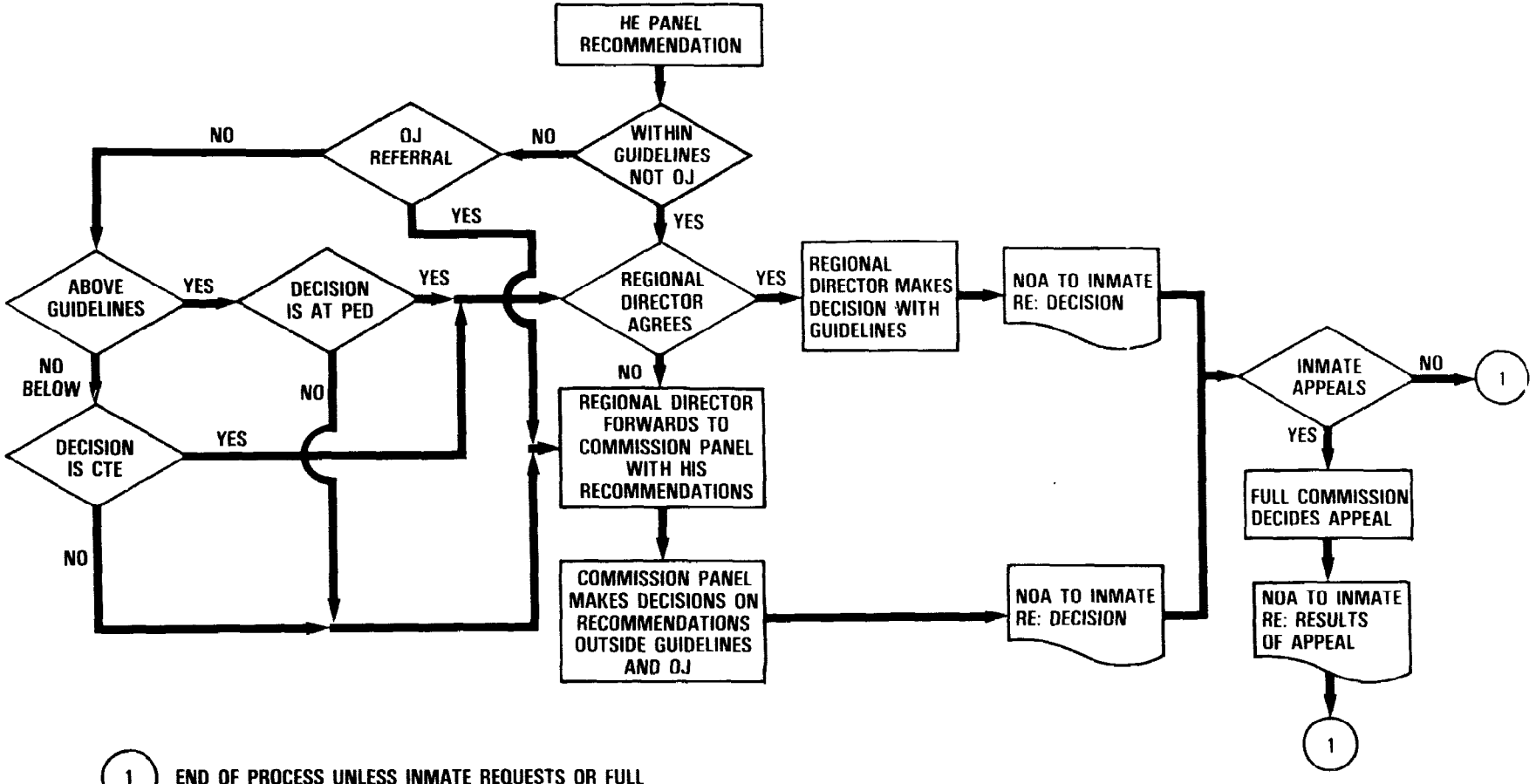








ALTERNATIVE NATIONAL PAROLE DECISIONMAKING PROCESS



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

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

APPENDIX XVI

PROPOSED NATIONAL PAROLE DECISION MAKING PROCESS

Position	Responsibility	Authority	Comment
Hearing Examiner Panel	No change	No change	
Administrative Hearing Examiner	No change	No change	
Regional Director	Ensure national parole policy is followed in all decisions which are within guideline range	To make parole decision -within guideline if HE panel recommendation was within -below guideline if decision is CTE and was recommended by HE panel -above guideline if decision is at PED and was recommended by HE panel	Inmate may appeal any parole decision of Regional Director to Full Commission, except a decision at PED
Commission Panel (3 members selected from Full Commission on a rotating basis)	Ensure national parole policy is followed in all decisions which are outside the guideline range and in OJ cases	To make parole decision in all cases where the recommended decision by the HE Panel or Regional Director is outside the guidelines or OJ consideration	Inmate may appeal any parole decision of Commission Panel to Full Commission except an OJ decision at PED
Full Commission	Ensure appeals of parole decisions are decided in a manner consistent with the National Parole Policy which they establish	To decide appeals of parole decisions made by the Regional Directors and Commission Panel	Only information considered in decision by the Regional Director or Commission Panel may be considered in Appeal Appeal decisions more adverse to parole than the decision by Regional Director or Commission which resulted from an error are permissible

APPENDIX XVI

APPENDIX XVII

Parole Form H-7
(Rev. April 1978)

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

NOTICE OF ACTION

Name _____

Register Number _____ ***Institution*** _____

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

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

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

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

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

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

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

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

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

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

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

COMMISSION COPY

FPI MAR—1' 9 78 7 700 SETS 1089

APPENDIX XVIII

Parole Form H-8
(Rev. Oct. 1978)

The United States Parole Commission

Washington, D.C. 20537

Certificate of Parole

Know all Men by these Presents:

It having been made to appear to the United States Parole Commission that _____, Register No. _____, a prisoner in the _____, is eligible to be PAROLED, and in that he has substantially observed the rules of the institution, and in the opinion of the Commission his release would not depreciate the seriousness of this offense or promote disrespect for the law, and would not jeopardize the public welfare, it is ORDERED by the said United States Parole Commission that he be PAROLED on _____, 19____, and that he remain within the limits of _____ until _____, 19____;

Given under the hands and the seal of the United States Parole Commission this _____ day of _____, nineteen hundred and _____

UNITED STATES PAROLE COMMISSION,

By _____

[SEAL]

Adviser (if any) _____

Probation Officer _____

This CERTIFICATE OF PAROLE will become effective on the date of release shown on the reverse side. If the parolee fails to comply with any of the conditions listed on the reverse side, he may be summoned to a hearing or retaken on a warrant issued by a Member of the Parole Commission, and reimprisoned pending a hearing to determine if the parole should be revoked.

Disclosure of any reasonably necessary information concerning the release may be authorized by the Commission to prevent possible harm or loss of personal property to any person or persons with whom the releasee may come in contact.

FILE COPY

APPENDIX XVIII

CONDITIONS OF PAROLE

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

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

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

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

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

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

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

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

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

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

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

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

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

WITNESSED . . . . . .

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

UNITED STATES PAROLE COMMISSION:

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

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

(182640)

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