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This Issue in Brief

Restitution As Innovation or Unfilled Promise?—Author Burt Galaway discusses what we have learned about restitution since the establishment of the Minnesota Restitution Center in 1972 and in light of the early theory and work of Stephen Schafer. Noting that restitution meets both retributive and utilitarian goals for punishment, the author finds considerable public and victim support for restitution, including using restitution in place of more restrictive penalties. He cautions, however, that we must clarify the difference between restitution and community service sentencing and discusses challenges which exist for future restitution programming.

Parole and the Public: A Look at Attitudes in California.—Describing recent events in California, Author Walter L. Barkdull stresses the need for parole authorities to develop community support for the concept of parole. Public attitudes hostile to parole have been crystalized by the release of several notorious offenders at the end of determinate sentences. Community groups have discovered the power of organized action to thwart the state's ability to locate facilities and place parolees. Resulting court decisions have provided both the public and parole authorities with new rights, while legislation has imposed severe operating limitations.

Long-Term Inmates: Special Needs and Management Considerations.—Society's response to crime has contributed to a number of trends which have resulted in longer terms of incarceration for convicted felons. Determinant sentencing, modifications in parole eligibility criteria, enhanced sentences for repeat offenders, and longer terms for violent offenders have resulted in an increase in time served and a subsequent increase in the proportion of long-term inmates in state facilities. The incarceration of greater numbers of long-term inmates brings a number of programmatic and management concerns to correctional administrators which must be addressed. Using data on Kentucky inmates incarcerated as "persistent felony offenders," authors Deborah G. Wilson and Gennaro F. Vito identify the programmatic and management needs of long-term inmates and delineate some possible strategies to address this "special needs" group.

The Use of Counsel Substitutes: Prison Discipline in Texas.—Although prison discipline has changed significantly through internally and externally initiated reforms, it remains a critical aspect

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Parole and the Public: A Look at Attitudes in California

By Walter L. Barkdull*

Current anti-parole attitudes in California, crystalized by the release of several notorious determinately sentenced offenders, demand that parole authorities get much more involved in community affairs. Parole authorities must match the public relations and organizational skills of the citizenry of the communities in which they operate if they are to carry out their mission successfully.

Neighborhood leaders have learned that by the use of the political process they can often prevent the location of community release facilities and parole offices and even the placement of individual parolees. Their efforts have also resulted in court decisions establishing significant new rights for both parole authorities and the public as well as legislation imposing severe limitations and elaborate notice procedures on parole operations. Circulation of petitions by community activists, mass meetings complete with signs and banners prepared in advance, and orchestrated campaigns resulting in hundreds of telephone calls and letters to local and state officials have proved to be effective. These actions put pressure all the way up the political ladder—on city councils, mayors, supervisors, legislators, and, finally, the governor.

Although legitimate, the community process has also demonstrated that the emotional pitch provoked can spill over into lynch mob action. Paradoxically, this new phenomenon of spontaneous, but well-organized, citizen uprising may ultimately defeat its own objectives of preventing the placement of persons released from prison in their neighborhood, city, or even county.

Without a system of formal parole supervision there can be no control over where prison releasees place themselves. That fact must be brought home to the public.

Community Support Needed

Parole authorities up and down the line must develop community support for the very concept of parole supervision. Parole is still thought of as leniency even though in California parole does not reduce prison time for determinately sentenced prisoners; it is an added period of control.

The benefits of parole supervision need to be explained over and over not only to the general public, but even more so to special publics like other law enforcement agencies, local governing bodies, and news media. Support should be built before there is a crisis; afterwards it is much more difficult to be effective. But when a crisis does occur, parole representatives should be at least as well prepared to get their side across as groups in the community are.

Crises can be avoided. Parole authorities must be cognizant of public opinion, carefully assess its impact, analyze the steps that can be taken to minimize adverse effects, and make an intelligent decision. Then stick with it. When there are repeated demonstrations that parolees can be "run out of town," it becomes increasingly difficult to place anyone anywhere.

"Fair Share" Legislation Enacted

The chain of events began in the late 1970's when the chief of police in California's capital, Sacramento, blamed rising crime rates on parolees and complained that the number of parolees his city was getting was greater than the number of offenders it was sending to prison. He was right. The number of parolees placed in Sacramento County significantly exceeded the number of felony commitments from the county, perhaps because the California State Prison at Folsom is in the county. The same imbalance prevailed in several other counties with prisons, though not in all of them.[1] In the same period, the chief complained that he didn't know who the parolees and furloughees in his community were. He contended some crimes would have been solved had his officers known particular criminals had been released as parolees or furloughees in his city.

Legislators representing Sacramento introduced "fair share" legislation that would have required originally that all prisoners be paroled only to the county from which they were committed to prison. Department of Corrections officials and others pointed

*Mr. Barkdull is retired assistant deputy director for research and support services, California Department of Corrections.

[1] California Department of Corrections, Offender Information Services Branch, *County and Area of Commitment and Parole 1979 through 1982*. Sacramento, CA, 1983.

out that in many situations such placement would be inappropriate.[2] This view prevailed. As enacted in 1982, Penal Code Section 3003 required the placement of a parolee in the county of commitment, but permitted exceptions where it would be in the "best interests of the public and of the parolee." The statute provided the following factors, among others, could be considered in making an exception:

1. The need to protect the life or safety of a victim, the parolee, a witness, or any other person.
2. Public concern that would reduce the chance that the inmate's parole would be successfully completed.
3. The verified existence of a work offer or an educational or vocational training program.
4. The last legal residence of the inmate having been in another county.
5. The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

A sixth factor, added later in conjunction with another law, specified the lack of programs for parolees required to receive outpatient treatment from the Department of Mental Health for a severe mental disorder associated with a crime in which he or she used force or violence or caused serious bodily injury.

The law also permitted parole to another state.

The legislation overlooked the occasional need to move a trial to another county in order to provide a fair hearing.

Companion legislation (PC 3058.5) enacted in 1981 required the Department of Corrections to provide, within 10 days, information concerning parolees or furloughees residing or temporarily domiciled within the jurisdiction to any chief of police or sheriff who requested it. The information included fingerprints and photos. Other laws required the department to give notice to cities or counties that a halfway house or community center was proposed at a particular site and another notice if its size or character was later changed.[3]

Mandatory Release Results Mixed

California's determinate sentence provides three penalties for each of hundreds of felonies. Murder and kidnaping for ransom remain indeterminate. The basic determinate sentence may be increased by specific increments of time for such elements as use of a firearm or infliction of injury. Where there is more than one offense, consecutive sentences are mandatory under some circumstances, and under others they may be imposed. The result is a judicially fixed, specific sentence which cannot be exceeded but may be reduced by work credits earned at a scheduled rate.

There had been concerns about the mandatory release of some determinately sentenced prisoners even as that sentencing law was adopted in 1976.[4] Later there was a statewide flareup of public interest with the release in 1984 of Dan White, who killed the mayor of San Francisco and an avowedly homosexual county supervisor. His 7-year sentence caused a riot when it was imposed, and his later release was protested by a march of 4,000 gays in San Francisco. That case led to the lengthening of the penalty for manslaughter and the abolition in California of the diminished capacity defense.[5]

Although White had to be hidden in Southern California, no highly publicized objections were raised there about his parole placement. A few years later, placement of a San Francisco rapist in a county 50 miles south brought an outcry from local residents and led to the introduction of legislation to strengthen notice requirements. However, amid the glare of TV coverage, a notorious murderer and rapist, once sentenced to death, was successfully placed in a small town where he had no connections. A highly visible kidnaper and child molester was placed in another area without more than a few days of protest.

But when Lawrence Singleton was nearing release, a state-wide firestorm began. As serious as they were, the commitment offenses of attempted murder, rape, oral copulation, and sodomy by force failed to convey the full horror of the crime in which the 15-year-old victim's arms were hacked off, and she was left to die in a culvert.

The offender, a merchant seaman with no definitive address, committed the crime in a rural Central Valley county that he and his victim were traversing. His trial was transferred to San Diego, hundreds of miles away, to ensure its fairness. He was sentenced to 14 years and 4 months, the maximum possible under the sentence structure as it then existed. The prison sentence was ultimately cut almost in half by credits that he earned. The prison sentence was to be followed by 1 year of parole supervision.

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[2]California State Senate, *Judiciary Committee Analysis of AB 2564*, 1981-82 session.

[3]Calif. Penal Code Section 6250.

[4]W. L. Barkdull, "The Determinate Sentence and the Violent Offender: What Happens When the Time Runs Out?," *Federal Probation*, 1980, 44(2), pp. 18-24.

[5]Sen. David Roberti. Press release on the introduction of SB 54, Dec. 5, 1980.

Public reaction to what was perceived as a light sentence contributed to the passage of legislation that imposed full consecutive sentences for violent sex offenses on multiple victims and permitted them for multiple offenses on the same victim.[6] By the time of Singleton's release, an offender convicted of like crimes could have received a sentence exceeding 50 years.[7]

Media interest grew intense as the date for Singleton's release neared. Parole officials knew he could not be returned to the county where the crime was committed—an area where he had no roots and whose prosecutor he had threatened. Recognizing he was tried in San Diego on a change of venue and had no connections there, parole officials did not consider returning him to that county.[8] States where he had relatives rejected compact placement. Therefore, parole officials decided to place him in the small Contra Costa County town of Antioch near where he had once lived. (A couple of hot cases had been placed there without problems over the years.) Parole officers met confidentially with local law enforcement officials more than a month in advance to smooth the way. This, good idea that it was, helped, but not enough.

Adverse Public Reaction

When news of the placement was published (it was confirmed by the area parole administrator in response to a direct question by a reporter),[9] adverse public reaction was swift. The fact—fully reported by the media in initial and subsequent stories—that Singleton was subject to extraordinary parole conditions that prohibited drinking, required daily testing for alcohol consumption and attendance at an out-patient psychiatric clinic, and imposed a curfew apparently made little difference to the public.[10]

"I would prefer no parolees came to Antioch," the police chief was quoted in the media, "particularly parolees convicted of violent crimes." But he went on to say that a particularly notorious parolee had earlier spent 2 months in the city with no problems, publicity, or outcry.[11] The state legislator representing the area wrote the Director of Corrections that he could be "assured there will be vigorous opposition to releasing such a notorious person in this small community" and urged him to reconsider the action "before it becomes a major public embarrassment."[12]

Citizens began circulating petitions charging that Singleton "will present a danger both to the women and minor children of our community and to Mr. Singleton himself who will rapidly become a known object of scorn and revulsion."[13] Many residents had clipped his picture from the newspapers so they would be sure to recognize him.

Suits Filed to Prevent Placement

The mayor wrote that the publicity had triggered an "understandably hostile reaction from citizens" and urged reconsideration. He questioned whether Singleton could be protected from angry citizens.[14] The City Council decided to take legal action to prevent the placement. Petition circulation continued.

As the mayor was about to descend on Sacramento with petitions signed by 10,000 persons—about half the adult population of Antioch—Corrections capitulated. It agreed he could not be paroled there "because of continuing opposition." But the Department did not rule out a placement elsewhere in Contra Costa County.[15] Privately some parole personnel argue that if the administration had persisted, the placement could have been made and opposition would have died as it had in other cases elsewhere.

Antioch withdrew its suit. But the Contra Costa County Board of Supervisors (the governing body), joined by four other cities, filed suit in the county's superior court (whose budget it approves) to prevent his placement anywhere in the county. A change of venue requested by the state was refused.

The supervisors cited the storm of protest, claimed that disturbances and violence would result, that such action would impose an unprecedented drain on the sheriff's office, that Singleton lacked support, and challenged his prior residency. Not surprisingly, the court promptly issued a temporary restraining order the day before Singleton's mandatory release forbidding the state from placing him in the county.[16]

Parole agents who picked him up early the next morning at the California Men's Colony near San Luis Obispo, some 250 miles to the south, had no permanent parole location to which to take him. Thus began a 36-day more-or-less secret odyssey with parole agents escorting Singleton from place to place while state officials sought to find him a permanent

[6]Sen. H. L. Richardson. Press release on SB 13, July 5, 1979.

[7]*McCarthy v. The Superior Court*, 191 Cal. App 3d 1023, 236 Cal. Rptr. 833 (1987). Footnote 1 (typed).

[8]Supra, p. 9.

[9]Jerry Cornfield, *Antioch Ledger* reporter, personal conversation.

[10]"Convicted Rapist, Kidnaper to be Freed in Antioch," *Contra Costa Times*, April 3, 1987, p. 1.

[11]Ibid.

[12]Ibid.

[13]"Hostile Reaction in Antioch Over Parole for Rapist," *Contra Costa Times*, April 4, 1987, p. 1.

[14]Ibid.

[15]"Singleton's Antioch Parole Cancelled," *Contra Costa Times*, April 21, 1987, p. 1.

[16]Superior Court, Case Number 300046, Contra Costa County, April 24, 1987.

home and local officials tried to prevent it.

When the chief of police of San Francisco informed the mayor that Singleton was about to be placed there, she reacted angrily. "San Francisco is not a dumping ground," she said. "We will not accept him." She ordered the city attorney to seek a restraining order. The Superior Court of San Francisco obligingly issued the order declaring that Singleton was "a clear and present danger" to San Franciscans. This inhospitality was in sharp contrast to the city's delight when the man who killed its mayor was placed in distant Los Angeles County.[17]

With no jurisdiction certain where Singleton would be placed, other counties initiated legal actions or passed resolutions declaring him persona non grata. Los Angeles County resolved he shouldn't be placed anywhere in Southern California. San Diego County, beginning to be concerned that his trial was held there, tried to join with Contra Costa and San Francisco in rejecting him.

Placement Bars Overturned

The state appealed the various court orders. "The fundamental issue at stake in this case is the supremacy of the state's laws over local opposition," the attorney general's deputy said. "No single city or county should be permitted to immunize themselves from the statewide burden of receiving parolees released from prison," he argued.

The appellate court agreed and its ruling was later endorsed by the state Supreme Court without comment. In setting aside the restraining orders issued by the Contra Costa and San Francisco courts, the appellate court noted that parole is a statutory right under the determinate sentence "no matter how despicable the underlying crime or reprehensible the malefactor."[18]

Placement of a parolee cannot be prohibited in advance, the court held, but ruled it could subsequently be reviewed for abuse of discretion. ". . . (S)tate parole officials are statutorily authorized to return a released parolee to the county from which the parolee was committed, i.e., committed to prison, or to such other county as would serve the best interests of the public and the parolee," the court said in its decision of what it called "novel issues of statewide importance."[19]

"The exercise of such statutory authority by state parole officials may not be enjoined but is subject to judicial review for any palpable abuse of discretion," the decision continued.[20]

The Civil Code, the court noted, provides that injunctive relief will not lie to prevent the execution of a public statute by officers of the law for the public benefit. "To allow a challenge by a complaint for injunctive relief . . . would eviscerate the statutory mandate by directing the board to exercise its discretion in a particular manner," the court said.[21] "If local jurisdictions or agencies were indiscriminately permitted to obtain injunctive relief . . . to prevent the return of undesirable parolees to their respective jurisdictions, then the legislative purpose underlying enactment of Section 3003 would be seriously undermined," the court concluded.[22]

The court held that San Diego was clearly the county of commitment even though the case was tried there on a change of venue. It denied the county's request to appear in the case to protest Singleton's possible release there. The court said whether he could be placed elsewhere turned on the statutory criteria. The court also settled another change of venue issue. The temporary restraining order (TRO) won by San Francisco County was granted by its superior court. The Contra Costa Superior Court granted the TRO requested by that county's supervisors. The appellate decision held that since the state officials who made the decision did not reside in either county, they had an absolute right to the change of venue they had requested.

"(W)here . . . the underlying action is brought by a county or other local agency against a non-resident, the action must—upon request—be transferred for trial to a neutral county, or alternatively heard as a nonjury case by a disinterested judge from another county," the court ruled.[23]

Contra Costa County's subsequent move for a writ of mandate to bar Singleton was dismissed as moot since, as it turned out, he wasn't placed there. Thus, there was no test as to whether the proposed placement was an abuse of discretion.

Practical Problems Remain

With the immediate legal issues decided, political and practical problems remained. Singleton and his armed, 24-hour-a-day parole officer supervisors were still dodging from motel to motel at a cost of about $3,776 a day.[24] Instead of convincing citizens they were being protected, the cost angered them.

Contra Costa County remained the placement of choice, but its citizens were in a mood that disturbed

[17] "Judge Bars Singleton from S.F.," *Contra Costa Times*, April 29, 1987, p. 1.
[18] *McCarthy v. The Superior Court*, op. cit., p. 4.
[19] Supra, p. 2.
[20] Ibid.
[21] Supra, p. 11.
[22] Supra, p. 12.
[23] Supra, p. 2.
[24] California Department of Corrections, Parole and Community Services Division.

local law enforcement officials. One was quoted as saying the level of hysteria that had been generated had become more of a public danger than the parolee.

Rumors swept through a county town of 8,500 on a Saturday that Singleton was there. By Sunday a group gathered outside an apartment building where he was thought to be (and was). Monday the crowd grew to 700. Hundreds of banners were displayed reading "Drop Dead, Larry" and "Get the Maniac Out." Leaflets were distributed. A vendor sold hotdogs. One of the county supervisors and the mayor of the largest city entered and tried to persuade Singleton to leave, but he told them that much as he would like to, he couldn't. On leaving the supervisor appealed to the crowd to maintain order. But it did not, and police, sheriff's deputies, and highway patrolmen quickly moved in to rescue Singleton and hustle him away to safety.[25] A crowd gathered around a motel to which he was rumored to have been moved and would not disperse until the manager led a representative group through the establishment to prove that he was not there.[26]

"Mob rule has no place in our society," said Governor George Deukmejian as he called upon "all public officers" to "set a good example." Soon afterwards he announced on his regular Saturday radio address that at his request Singleton had been placed on the grounds of San Quentin Prison early that morning (5:46 a.m.) under 24-hour surveillance. That curbed the outcry. But the legislative mills continued to grind.

Law Requires More Notice

The law governing placement of parolees was amended to make it clear that the county of commitment is the county in which the crime was committed, thus eliminating the inadvertent penalty on counties where trial is held on a change of venue. At the same time, existing law requiring the Department of Corrections to provide local law enforcement agencies on request with photographs and fingerprints of all parolees released to their jurisdiction was made even more sweeping.[27] Under new law the state must give 15 days notice to the local jurisdiction, even if the jurisdiction had not requested it, of the impending release of any person convicted of specified violent felonies who is being returned to the county of commitment.[28] If the return is to another county, notice is required 45 days prior to release. The notified agency has 15 days from receipt of the notice to send written comments to the Department (for determinately sentenced offenders) or to the Board of Prison Terms (for indeterminately sentenced offenders). The Department or Board is required to consider the comments and *may* change the location of the placement as a result. If it does, the new jurisdiction must be notified when the decision is made. The statute is silent as to whether the second-choice jurisdiction is able to protest formally.

The point of the notice was blunted by the court decision holding that counties cannot obtain temporary restraining orders to block the placement of parolees in advance, but its requirements remain in effect.

Additional administrative burdens and operational restraints are significant in a state that released more than 26,000 adult felons on their first parole in 1987 and re-released another 21,000.[29]

Although the law has been in effect only 3 months at this writing, there have been several protests filed over what would ordinarily have been routine placements.

Conclusion

Public attitudes opposed to parole have been fanned by the release of several notorious offenders at the end of a determinate sentence. Community groups have developed a new awareness of the power of organized community action and education to influence the political process as a means of limiting the state's ability to locate facilities and parolees in particular communities.

Parole authorities must recognize the role of public opinion and act to shape it. This includes the need for operational fairness, the development of sound placements, as well as the education of various publics of the benefits to them of parole supervision.

Operational fairness provides a strong, continuing base for public acceptance of parole. The foremost factor of operational fairness is the equitable distribution of parolees on a rational basis. Citizens can understand, even though they may not like it, when parolees are returned to where they came from. They can accept taking some from other areas when they know that other areas take some of theirs. Operational fairness means not overloading seemingly tolerant communities with high visibility cases. It means placement of parole offices, halfway houses, and other facilities in locations central to parolees served and

[25] "Rodeo Riot: 700 Converge on Residence," *Oakland (CA) Tribune*, May 26, 1987, p. 1.

[26] "100 Picket Concord Motel," *Oakland Tribune*, May 28, 1987, p. 1.

[27] Assembly Bill 1728 (Areias) 1987.

[28] The specified violent felonies are: murder, voluntary manslaughter, mayhem, rape, sodomy, or oral copulation by force, lewd acts on a child under 14, any other felony in which the defendant is proven to have inflicted great bodily injury on other than an accomplice, or is proved to have used a firearm, and any robbery of an inhabited building when the defendant personally used a deadly or dangerous weapon.

[29] California Department of Corrections, Offender Information Services Branch communication to author.

with great regard for the location of schools, churches, concentrations of homes for the developmentally disabled and the mentally ill, and the installations of other criminal justice agencies.

Operational fairness requires keeping local law enforcement agencies informed as to parole activities and cases. Local public officials (and in most instances, state legislators as well) must be told about plans for opening offices or community facilities well in advance (they don't like surprises), and their response must be listened to attentively. It may appear easier to sneak in, but it seldom pays in the long run.

In educational efforts, emphasis may be different for different publics. For all, however, the main benefit afforded by parole supervision is greater public protection, both short– and long–range.

Even though parole is a statutory right for determinately sentenced prisoners in California, general and specific conditions may be enforced governing where the parolee may reside, places to which he or she may travel, persons with whom he or she may associate, the use of intoxicants, and many other aspects of life.[30] Mandatory testing to detect drug use, attendance at psychiatric out-patient clinics, and the taking of prescribed medication may be required. Warrantless searches may be made.

These conditions, alertly supervised, provide the parolee with a deterrent to crime and his supervisor with the ability to intervene at an early stage before serious misconduct. If necessary, the parolee may be returned to confinement.

Parole supervision also provides an organized focus by trained personnel to assist the parolee to get help from other state and local agencies in finding employment, getting financial assistance, securing an education, and solving personal problems. Thus, the stage is set for long-range successful integration into the community to the benefit of both the parolee and the public.

Failure to develop a continuing, operational recognition of the need for broad based public support can result in legal decisions and legislative restraints that can hamstring parole operations.

[30] *People v. Burgener* (1986) 41 Cal.3d 505, 531. See also Penal Code Sections 3053 and 3053.5.