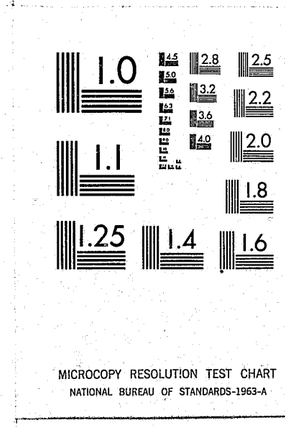

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SOLICITOR GENERAL'S STUDY OF CONDITIONAL RELEASE

Report of the Working Group, March 1981

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Hon. Bob Kaplan, P.C., M.P.,
Solicitor General of Canada

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March 13, 1981

The Honourable Bob Kaplan,
Solicitor General of Canada

Dear Mr. Kaplan:

We, the members of the Steering Committee, are pleased to submit for your approval the final report of the Release Study. This study, which was carried out consistent with your instructions, covers the full spectrum of release. It is, we believe, the most comprehensive study of the subject ever carried out in this country.

The only constraints you placed on the study were those of time and resources. You specified that you would like it completed by the end of 1980, and that it should be conducted entirely by Ministry personnel. In fact, all the substantive work was completed well within the time-frame but the preparation of the final report took somewhat longer.

With regard to resources, the study was carried out under the aegis of a Steering Committee composed of officials from the Ministry Secretariat, the National Parole Board and The Correctional Service of Canada. Similarly, the Working Group was composed of personnel from the same organizations, as listed at the end of the first section of Chapter I.

In our opinion, the Working Group has completely fulfilled the terms of its mandate, and we would like to thank all the members for an outstanding job and for the long hours they devoted to it. We believe the effort was well invested. The report should bring about an improved understanding of the various release programs and their inter-relationships and should form the basis for progressive improvements in the programs for several years to come.

Alan R. Needham (Chairman),
Director, Policy (Corrections),
Secretariat for the Ministry
of the Solicitor General.

Roger Labelle,
Vice Chairman,
National Parole Board.

Gordon Pinder,
Deputy Commissioner (Offender Programs),
The Correctional Service of Canada.

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le 6 juillet 1981

L'HON. BOB KAPLAN, C.P., DÉPUTÉ, SOLLICITEUR GÉNÉRAL DU CANADA, DÉPOSE LE RAPPORT DU GROUPE DE TRAVAIL SUR LA MISE EN LIBERTÉ SOUS CONDITION

SOLICITOR GENERAL OF CANADA

SOLLICITEUR GÉNÉRAL DU CANADA

Canada

OTTAWA--The Hon. Bob Kaplan, P.C., M.P., Solicitor General of Canada, today tabled in the House of Commons the 210 page report of a Ministry study into all forms of conditional release from federal penitentiaries. The programs dealt with in the report are: temporary absence, day parole, full parole, earned remission and mandatory supervision.

"The Release Study was one of the first studies I asked for on being appointed Solicitor General, due to public concern about some of the release programs," Mr. Kaplan said. "I felt, however, that instead of reviewing problems arising from individual incidents or programs, we needed to go back to first principles and examine what we are trying to achieve when we release inmates early and to what extent such releases are consistent with the purposes of the sentence."

OTTAWA - L'hon. Bob Kaplan, C.P., député, Solliciteur général du Canada, a déposé aujourd'hui à la Chambre des communes un rapport de 256 pages faisant suite à l'étude du Ministère sur toutes les formes de mise en liberté sous condition accordées à des détenus de pénitenciers fédéraux. Les programmes dont traite ce rapport sont: l'absence temporaire, la libération conditionnelle de jour, la libération conditionnelle totale, la remise méritée de peine et la libération sous surveillance obligatoire.

"L'étude sur la mise en liberté sous condition est l'une des premières études que j'ai demandées lorsque j'ai été nommé Solliciteur général, en raison des préoccupations que créaient chez le public certains des programmes de libération, a dit M. Kaplan. J'ai jugé, toutefois, qu'au lieu de passer en revue des problèmes découlant d'incidents ou de programmes particuliers, nous devions remonter aux premiers principes et examiner ce que nous essayons de réaliser quand nous libérons des détenus de façon anticipée et dans quelle mesure

The report should not be regarded as the views of the Minister. "I visualize a process of consultation on this report by my officials before making any far-reaching changes to the system." The report, which is probably the most comprehensive treatment of the subject ever undertaken in Canada, supports the principle of early release, including release by remission, but the members of the study team were unable to agree on the question of mandatory supervision of non-paroled offenders.

Taken as a whole the goals of the release system are, the report says, vague, outdated, difficult to measure and possibly of less importance than other functions and consequences of release which are not formally recognized. The objectives need to be re-ordered

ces mises en liberté sont en accord avec les objectifs de la peine imposée".

Ce rapport ne doit pas être considéré comme reflétant les opinions du Ministre. "J'entrevois, dit M. Kaplan, une consultation de mes fonctionnaires sur la question avant d'apporter des changements au régime de mise en liberté." Le rapport, qui représente probablement l'étude la plus exhaustive du sujet qui ait jamais été réalisée au Canada, appuie le principe d'une mise en liberté anticipée, ce qui comprend la libération par la remise de peine. Les membres du groupe de travail, toutefois, n'ont pu se mettre d'accord sur la question de la surveillance obligatoire des détenus qui ne bénéficient pas d'une libération conditionnelle.

Les objectifs du système de mise en liberté, pris dans leur ensemble, sont jugés vagues, démodés, difficiles à mesurer et d'une moindre importance, peut-être, que d'autres fonctions et conséquences de la mise en liberté qui ne sont pas

and more specific criteria developed.

Of the report's 73 recommendations, one says that, although violence is engaged in by only a small percentage of offenders on release programs, much more needs to be done to identify potentially violent persons and situations, and to prevent violent outcomes.

The study team, Mr. Kaplan said, consisted of professional members of the Ministry Secretariat, The Correctional Service of Canada and the National Parole Board. "No constraints of any sort were placed on the team members," he said, "except that of time. I was anxious to have the study completed within a year, but otherwise they were free to make whatever recommendations or comments they considered appropriate. The result is a very thoughtful and objective report

officiellement reconnues. Il convient de les réaménager et d'élaborer des critères plus précis.

Une des 73 recommandations du rapport précise que bien qu'un faible pourcentage seulement de détenus mis en liberté commettent des actes violents de récidive, il convient de faire bien davantage pour identifier les personnes éventuellement violentes et les situations qui risquent de devenir dangereuses, afin d'empêcher des dénouements tragiques.

L'équipe chargée de l'étude, a précisé M. Kaplan, était formée de spécialistes du Secrétariat du Ministère, du Service correctionnel du Canada et de la Commission nationale des libérations conditionnelles. "Aucune contrainte n'a été imposée aux membres de l'équipe, à l'exception des délais. Je souhaitais vivement que l'étude fût réalisée dans l'espace d'un an, mais autrement les membres étaient libres de faire toute recommandation ou observation qu'ils jugeaient appropriée. Le résultat est un

which will stimulate considerable public interest."

In making the report public, Mr. Kaplan stressed that he hopes to have public reaction during the summer and fall. "I want all interested groups and individuals to have an opportunity to comment before any major changes in the system are made," he said.

rapport extrêmement objectif et bien pensé qui ne manquera pas d'attiser l'intérêt du public."

Au moment où il publie ce rapport, M. Kaplan espère encourager une réaction du public au cours de l'été et de l'automne. "Je veux que tous les groupes et les personnes intéressés aient l'occasion de faire des observations avant que soient apportés des changements d'envergure."

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FINDINGS AND RECOMMENDATIONS

I. RELEASE OBJECTIVES

The study found the objectives of release to be of concern, for various reasons. The statutory criteria for parole are vague and, in two instances, do not appear to be in keeping with modern correctional theory and evidence. There is some question whether the formal objectives of release are effectively pursued. Various other functions of release, which are not recognized as objectives (or not by all key actors), are strongly in evidence and may be at least as important to consider as the formal objectives. There are conflicts between release functions which may be of key interest to one agency, and those functions which are of interest more to another agency.

SPECIFIC RECOMMENDATIONS

1. All three statutory criteria need to be re-examined on a ministry level and interdepartmentally as part of the Criminal Code Review process. On a more immediate level, there is a need for the objectives, effects and principles of release to be re-examined on a ministry level in order to determine whether they should be reformulated (p. 46).

2. The statutory criteria in the Act should be amended to remove the requirements that a parole be based on maximum benefit from imprisonment and that parole will aid the offender's reform. In fact, there is some merit in rewriting the statute to reflect reasons for denial rather than granting (p. 64).

3. The available large "models" for reform of release should continue to be studied and monitored, especially in the light of any re-ordering of priorities and objectives which may occur as a result of the Study's first recommendation (p. 154).

4. Any parole policy will have costs of various kinds. The balance drawn between costs and benefits should be better understood (i.e., measured) in order that it can be better controlled (p. 65).

II. RELEASE DECISION-MAKING

The Study identified various concerns about decision-making and decisions in release. Some of these are adressed under specific program headings below. On a more general level, however, the Study expressed concerns about virtually all programs and stages in release, along a few common dimensions. First, concern was expressed over the lack of concrete policy direction and specific decision criteria to guide release decision-makers, case preparation

personnel, offenders, judges, and the public. The danger and apparent existence of disparities in various release decisions were identified. The rates of granting of certain types of release may be too low, if overall success rates are taken as indicative of selection policy. The decision-making system also suffers from a lack of timely, specific and relevant feedback on its decisions, with which to guide and against which to monitor its decisions. Finally, the Study identified the need for a better review process through which certain decisions may be appealed.

SPECIFIC RECOMMENDATIONS

5. NPB must provide more specific criteria in law to guide its decisions and provide notice of its policies (p. 64).

6. There should be an extensive study of actual NPB decisions. The purpose of this study would be twofold. First, it would determine the level of "unexplained variance" (disparities which cannot be accounted for) in parole decisions. Second, the findings about what patterns of "explainable" variation are observable will allow policy-makers to make decisions about (1) how desirable these influences are; (2) whether they should be changed; and (3) whether they be formalized in order to guide future decisions in a more definitive way, in order to avoid future disparity (p. 67-8).

7. All Parole Board Members and REO's, Wardens, CO's, PO's and regional CSC Offender Programs Managers should be automatically provided with a standard format description of the decisions made about conditional release in their own and all other regions every month. On a quarterly basis, all concerned officials should receive information on the outcomes of releases granted either in that quarter or in the equivalent quarter of the previous year (p. 122-3).

8. We were struck by the paucity of systematic efforts in the Ministry to study violent and other recidivism and develop more consistent, objectifiable systems for predicting possible future violent and other offences. A statistical prediction scoring system for violence should be developed, validated and calculated for each federal offender at the time of admission, should be made available to CSC and NPB decision-makers on every file, and should be placed, along with statistical scores for general recidivism, on the Ministry data system (p. 108-9).

9. Some NPB appointments are of a quasi-political nature, and this is undesirable because it serves to damage the credibility of the entire Board and it may inhibit the Board's ability to control policy and the individual exercise of it.

The study group was unable to agree on a system which could strike a proper balance between independence of hiring and the need to maintain some (undefined) standard of qualifications. Study should be made of the options available, including the use of nomination/screening bodies, and of civil service merit hiring (p. 70).

10. The possibility of moving to the use of hearing examiners should be explored as an alternative to further expansion of NPB (p. 62).

11. We are not in a position to specify what types of training are needed for Board Members, but it is self evident that sufficient time must be given to newly appointed Members to learn policy, procedures and something of how they work in practice. No new Member should participate in case decisions until he has been familiarized with the system (p. 71).

12. The NPB Internal Review process should be strengthened. Specifically, the Internal Review Committee should be created as a separate body within NPB and not made up through overlapping membership with other NPB panel Members. Internal Review should be empowered to reverse a decision when it disagrees with it substantively. Internal Review should hold hearings, establish time limits for the scheduling of hearings and notification of decisions to an inmate, and should establish a procedure for written sharing with all NPB Members of any significant precedents of decisions. Consideration should be given to allowing CSC to appeal the grant of parole or day parole to Internal Review where it disagrees with its substance, but caution must be taken to ensure this does not delay final parole decisions for other than very brief periods (p. 72).

13. Once a more vigorous and effective Internal Review mechanism has been established, the Solicitor General should enter into discussions with the Correctional Investigator in order to determine whether it would be feasible, given existing and potential resources, to have complaints about parole referred to the Correctional Investigator (p. 72).

14. There should be as full as possible a disclosure to the offender of the information which will form the basis for a release decision, prior to the making of that decision (p. 73).

III. TEMPORARY ABSENCES

A number of problems with TA's were found by the Study. The number of TA's granted annually has decreased markedly in recent years, largely because of the limit of 72 hours per quarter placed on "rehabilitative" unescorted TA's. Many penitentiary and parole staff consulted felt that the TA system is no longer

very responsive to institutional and offender needs. Strict limits on unescorted TA's have increased escort costs and prevented some TA's because of the unavailability of escorts. Most TA's are escorted, though unescorted TA's are a better (though by no means reliable) "test" of readiness for further releases.

SPECIFIC RECOMMENDATIONS

15. There appears to be inadequate provision for the granting of UTA's designed to offset the debilitating effects of incarceration, to provide a "break" from imprisonment, and to reduce overall levels of institutional tension. NPB and CSC procedures manuals should be amended to allow for 3-day humanitarian UTA's in the discretion of the Warden, where no "undue risk" is involved, but not requiring any specific "rehabilitative" plan from the inmate other than that he supply an address at which he can be reached, obey the law, and return on time. NPB would, however, retain authority over persons serving 5 years or over, at least for the first TA (p. 51-2).

16. The limit on unescorted "rehabilitative" TA's should be extended to 72 hours per month (p. 53).

17. The TA program should not be limited to penitentiaries of lower security status (p. 52).

18. A greater use of civilian and volunteer escorts should be made, on approval by Wardens, subject to NPB approval on cases under NPB authority (non-delegated cases) (p. 53).

19. Travel time should not be counted against the maximum limits placed on TA duration, though the hour of return should be fixed on the permit (p. 55).

20. A feasibility study should be done, including of the resource implications, of automatic review for UTA at eligibility; in the case of delegated UTA's, CSC could approve any UTA at that time but denials, and all non-delegated decisions, would be reviewed also by NPB upon appeal by the inmate. Reasons would be given in writing for denial (p. 55).

21. It is essential that the Ministry develop a better capacity for evaluating the effects of TA's on an offender's ultimate chances of success. Proper evaluation will necessitate "control for" other case factors which may influence both the chances of receiving a TA and the chances of ultimately succeeding after release (p. 24).

IV. DAY PAROLE AND CCC/CRC

The Study found that the fluidity and flexibility of the day parole concept has also led to some confusion about the overall concept and purpose of the program. There is some perceived danger that day parole has become almost a prerequisite for full parole, and that it may have decreased the granting of full parole, or extended the average time served until full parole. The effectiveness of day parole as a "test" of readiness for full parole is noted as a concern. Many of the persons consulted felt that day parole, especially with a requirement of CCC or CRC residence, may be "overused". As suggested under "TA's", there is concern in the penitentiaries that "limited day parole" may not be adequately filling the need left by the limits placed on TA's.

22. The Working Group shares the view that the objectives of day parole need to be more precisely articulated as to the criteria for granting (p. 60).

23. A policy is needed as to whether day parole should be used in cases of relatively good risks or should be oriented more towards risky cases, and whether day parole prior to the expiration of one third of the sentence is appropriate on grounds of justice and humaneness (p. 60).

24. Though in practice the reasons for day parole denial are typically communicated to the inmate, the Parole Regulations should be amended to mandate the written provisions of reasons for parole denial (p. 62).

25. NPB also needs to come to grips with those regional disparities in the approach to and use of day parole which are not (as many are) a product of differences on available resources (p. 60).

26. Our overall view is that day parole with CCC or CRC residence should be used more where there is a real need for resources or a perceived need for short-term extra structure of "surveillance" before full parole or MS. It is not necessary that day parole be used as prerequisite for full parole, nor should it be permitted to delay full parole release in large numbers of cases (p. 60).

27. Study should be made of the practicability of automatic review of all inmates for day parole at the time of eligibility (p. 149).

28. There is an apparent inconsistency in granting post-suspension hearings to full parolees prior to revocation decisions, but not necessarily granting hearings to day parolees whose release has been terminated. There are or may be, however, resource limitations within NPB which would make prompt hearings in all such cases impossible. A workload feasibility study should be made of allowing hearings prior to day parole termination in all cases where the offender requests it. The possibility of moving to the use of hearing examiners at this and other stages should be explored as an alternative to further expansion of NPB (p. 62).

29. Persons successfully completing day parole and being "released" on full parole or MS must go through a procedure of official release, including a medical examination, at a "penitentiary". CSC should examine the feasibility of using parole district offices and CCC's for this purpose. CSC should also enter into negotiations with provincial facilities, through exchange of service agreements, to permit the necessary procedures to be done, on a fee-for-service basis, by the usually more conveniently located provincial jails. (The ground for this kind of arrangement is already laid in federal-provincial Exchange of Services Agreements.) (p. 62)

30. There was a need expressed for more CCC and CRC bed-space, except in certain instances of available bedspace in a large city. There is also a distinct lack of CCC or CRC facilities in remote areas and small towns (p. 61).

31. We find the per diem fee paid by CSC for CRC use to be too low to enable these facilities to operate competitively, to fulfill security requirements imposed on them by the Ministry, to pay their staff an adequate and equitable wage, and to offer sufficient services to their residents (p. 61).

32. Because, legally, day parolees are "inmates", CCC and CRC residents sometimes experience difficulties in obtaining provincial health insurance, even though CCC's are too small to include medical staff and indigent inmates may have to travel to the penitentiary from which they were transferred in order to obtain medical care. CSC should enter into negotiations with provincial authorities to ensure that all released persons are registered with the provincial health insurance scheme at the time of their release, and are therefore covered and assigned a coverage number from the day of release.

33. Better communication is needed to give inmates a more accurate picture of what is expected from CCC or CRC residents (p. 149).

34. CCC residents just released from penitentiary be given a couple of weeks to adjust to the transition and to re-acquaint themselves with the free world, before the staff pressure to obtain work and meet other goals begins in earnest. While in many instances this adjustment period is already provided, its legitimacy should be more fully recognized (p. 62).

V. COMMUNITY SUPERVISION

The Study found that the evaluative evidence on the effectiveness of community supervision is not definitive. Both greater support (in terms of training, staff development, innovative programming, discretionary funds, etc.) for and greater in-depth research on community supervision are needed. There should be experimental pilot projects to test out more fully the "brokerage" and "team" concepts of supervision, including their implications for purchase of services, staff development, and maintenance of supervision standards. Greater diversification of services to offenders should be provided through the private sector and other government departments. Various concerns have been raised about the suspension and revocation processes and their impact on the appearnace and reality of justice and humaneness. Virtually no agreement was reached on Mandatory Supervision or any of its aspects.

SPECIFIC RECOMMENDATIONS

35. A more serious commitment needs to be made to developing and evaluating the community programs of corrections, and to identifying those aspects of community corrections, if any, which will be effective with various types of offenders (p. 21).

36. The Ministry should conduct detailed research on supervision including M.S., which would allow it to make an assessment of whether the treatment of M.S. cases in service delivery, nature of surveillance, activities, use of suspension and revocation, etc., differ from the handling of parole cases, and if so, whether the idfferences are attributable solely to differences in M.S. case needs and behaviour (p. 93).

37. The federal Solicitor General should look more closely into adapting the team/brokerage model to its operations. Commitment to the brokerage model must be more active if it is to be effective, however. Cash funds should be made

available to District Parole Directors for flexible use to purchase training, psychiatric help, work tools, marriage counselling, or whatever services are felt to be needed in individual cases. Closer relations, on the level of senior management, need to be established with certain key agencies which provide services relevant to corrections. Standard arrangements for reserving seats in training courses need to be made. Serious attention must be given to assisting parole officers, who are often trained in and selected for casework skills, in adapting to the different orientation that the brokerage model implies (p. 77).

38. More effective use also needs to be made of the private aftercare agencies in Canada, through block funding of diversified and specialized services for offenders. One real strength of the private sector, its potential for diversification, is not being tapped properly; if anything, the trend is towards standardization of the private sector, similar to that in government (p. 77-8).

39. The standard conditions of parole should be reduced to the following:

- to proceed directly to the area specified in the parole agreement and report upon arrival
- to remain under the authority of the District Director or other designated representative
- to remain in a designated area (individually determined and specified on each agreement) and not to leave this area without obtaining permission beforehand from the designated authority
- to obtain permission from the designated representative to purchase or carry a firearm
- to notify the designated representative of a change of address or employment status.

All other conditions can be required as "special" conditions by NPB or "special instructions" of the parole officer if they are necessary or appropriate (p. 80-1)

40. Review of the "restitution" policy and its legality should be made by NPB. Such a requirement should at any rate only be made in cases of clear ability to pay where the restitution requirement will not create undue pressure on the parolee (p. 81).

41. Parole Supervision staff morale is low, though we could make few specific recommendations to improve it. The problem seems to be tied to a loss of a sense of "mission" in community corrections, which is tied to the above-noted apparent lack of commitment to the community and of CSC. Other contributory factors appear to be a perceived emphasis on "quantity control", minimum standards, paperwork, and having to serve both CSC and NPB "masters". These problems should be carefully monitored to determine whether they can be remedied in the future (p. 151).

42. Every effort should be made to reduce paperwork through the use of short-form reporting and reliance as much as possible on the parole officer's log book rather than on reports written from it. In particular, quarterly supervision reports on active cases could be reduced to a short form which would be supplemented with a descriptive report only on an as-needed basis (p. 78).

43. Effective parole supervision should also involve rational allocation of resources to those cases who most need it, and less so to those cases who need it less. More scope should be made for the relaxation of supervision "minimum standards" for cases which are the better risks, and not cooperative to the idea of being supervised (p. 78).

44. CSC Headquarters should encourage volunteer supervision programs as part of its policy on citizen involvement (p. 78).

45. CSC man-year formulas should allow for parole officer activities which are directed towards the development of resources in the community, often the most time-consuming activity initially, but having valuable potential pay-offs (p. 78).

SUSPENSION/REVOCATION

46. Research is needed into the ground of actual suspensions and revocations to address complaints that revocation is over-used in non-criminal circumstances (p. 151).

47. Revocation should not be permitted on grounds of "prevention" of a breach of conditions (p. 81).

48. Suspension notice should include all alleged violations, together with a descriptive account of the behaviour which constituted the violation (p. 81).

49. Parolees and MS cases may be held in custody beyond their warrant expiry date because a strict interpretation is placed on Section 20(1) of the Parole Act, which requires an inmate, upon revocation of his parole, to be "recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, or to the corresponding place of confinement for the territorial division within which he was apprehended". A compounded problem occurs when the offender is facing new criminal charges. To remedy the problems involved in such situations, it was recommended that:

- Section 20 of the Parole Act should be amended so as not to require recommitment to the original releasing penitentiary
- negotiations could be undertaken, and in fact were begun some years ago, to have local jails, parole offices and CCC's designated as "penitentiaries" for the purpose of recommitment and revocation decisions, especially in brief "turnaround" cases
- parole officers should inform the suspended offender of his option (NPB Policy and procedures, 106-2(1-2)) to consent to his revocation and thereby waive these proceedings, which he may wish to do if little time is remaining before his warrant expiry or mandatory re-release date
- the offender should be informed as soon as possible of his next mandatory release date. Parole officers should have available a standard way of obtaining an accurate estimate in these cases: the Working Group recommends that, as a possible method, greater care be given to the accuracy and details of entries on Penitentiary 208 (Release) forms, and that a copy of this form always be available for the parole officer to consult
- Section 457 of the Criminal Code should be amended to make it clear that suspended parolees have a right to a bail hearing (pp. 82-3).

50. Even where there has been no suspension, a hearing as to revocation of parole should normally occur at the offender's request unless he has absconded and is unavailable (p. 84).

51. The Parole Act should be amended to require that the post-suspension hearing occur within 2 months of the parolee's request for it, and that "reserved decisions" as to revocation not prolong the ultimate decision beyond two months unless it is inavoidable (p. 83).

52. Every effort should be made to correct any delays or defects which may contribute to a low rate of request for hearings as to revocation of parole, since it is essential that the appearance and reality of justice be maintained in a process which materially affects loss of remission, potential time to be served and the presence of a revocation on the offender's record (p. 83).

VI. REMISSION

The Study found that, while it was unlikely that remission operates as a system of positive incentive to above-average penitentiary adjustment, it may reinforce the penitentiary discipline and employment systems. It also serves the function of reducing the initial imprisonment time of non-paroled offenders and controlling penitentiary populations. There appear to be wide variations in the earning or loss of remission in various penitentiaries, especially for "program participation".

On the whole, there was little support for the elimination of remission, but the inspecificity of earning criteria and the conflict between the "formal" and the actual practice of remission create the possibility of improper or disparate usage of remission.

SPECIFIC RECOMMENDATIONS

53. It would be preferable for remission to operate as a system which punishes serious misconduct in penitentiary, and is not geared towards encouraging or evaluating program participation (p. 86-7).

54. If this recommendation to use remission only to punish misconduct is rejected, we recommend that CSC institute a system for more specific criteria for the evaluation of program participation (p. 87).

55. Guidelines are needed to help "independent chairpersons" and CSC disciplinary chairpersons to decide when to take away remission as a punishment and in what amount (p. 87).

56. Federal inmates should be given the right to appeal the loss of remission to the NPB in Ottawa for an independent review of whether the circumstances of their loss of remission fit the criteria specified by CSC (p. 87).

57. An offender on parole or mandatory supervision loses the remission standing to his credit if he is revoked to penitentiary. The amount of remission he has accumulated (and will lose) is determined by the amount of time he served in penitentiary prior to release, not by the seriousness of the behaviour which caused the revocation.

The criteria for the recrediting of remission (which should remain with NPB) should be expanded to include a principle of commensurate punishment for violations committed while on parole, and a more generous notion of fostering equitable outcomes for similar circumstances (p. 88).

58. The term "earned" should be eliminated from earned remission (p. 151).

VII. VIOLENCE AND OTHER CRIMINAL VIOLATIONS

The Study found that the level of violence committed by persons under release tends to be exaggerated. It is not presently within our capability to predict who will be violent after release, and under what circumstances, but more systematic efforts are needed in the study of potentially dangerous situations and persons.

SPECIFIC RECOMMENDATIONS

59. The Working Group found little systematic attention devoted to either predicting violence or providing treatment for potentially violent offenders in penitentiary. There is a need for both, on a continuing basis (p. 152).

60. The Working Group recommends that a CSC/NPB committee be established to review all the proposals made in two recent audits of release failures, evaluate their soundness, ensure that those which are valid but not yet accepted are implemented, and monitor the implementation and results of those which are approved. This committee should report to the CSC/NPB Interlinkages Committee on the progress of this implementation one year hence.

VIII. CONFLICTS WITH SENTENCING

The Study found that release systems are not well understood by the judiciary, and this can lead to disparities and to offenders serving more or less time in penitentiary prior to release, than was intended by the judge. Judges appear to rely heavily on the existence of release, however, to determine the precise duration of punishment, assess risk, and mitigate sentences set during the high pressure and visibility of the court process. Release also appears to serve sentence equalization ends which would be difficult to achieve through the courts. Many judges have, or claim to have, more faith in prison treatment than do prison officials.

SPECIFIC RECOMMENDATIONS

61. An annual publication should be prepared and mailed to all criminal court judges, explaining not only the formal workings of the system, but summarizing (in far more detail than is available, for example, in current Annual Reports of the Ministry) the numbers of eligible persons who did and did not receive an early release in the year (including rates of remission loss), the average amoung of time served prior to release and the average percentage of the sentence served, the length of the release (particularly for TA's and day paroles), some of the characteristics of those released and not released, and the outcomes of the most recent available "cohorts" of releases. Also to be included in this publication would be the more specific criteria for release and revocation which we recommended be developed by NPB and CSC. Finally, a brief factual description should be included of the types of programs available in every federal penitentiary, together with a statement of the number of inmates who can be accommodated in these programs. This should very definitely not be a "public relations" exercise, but a precise statement of what are very real and very tight limits upon the resources available for such programs as psychiatric and psychological assistance and industrial employment programs (p. 112).

62. These publications should be supplemented by seminars and conferences attended by judges and parole officers (p. 113).

63. We would urge that the Canadian judiciary recognize and take action to reduce unexplained and unwarranted inequities in sentences, including the initial decision whether or not to imprison the defendant (p. 113).

64. We recommend that as part of the federal government's Criminal Law Review exercise, serious study be made of numerical sentencing guidelines, projects and presumptive sentencing in California (p. 113).

X. ELIGIBILITY FOR RELEASE

The Study found various arguments supporting and opposing the use of statutorily fixed minimum terms which must be served prior to eligibility for various forms of release. Without resolving the overall question of the desirability of such terms, the Study made some recommendations for less major changes.

SPECIFIC RECOMMENDATIONS

65. Every effort should be made to avoid adding any further complexities to parole eligibility rules (p. 116).

66. The provision requiring inmates identified as "violent" to serve one-half of their sentences prior to full parole eligibility is unacceptable (p. 69).

67. The parole by exception power should be restored to apply to any inmate whose special circumstances indicate that release prior to one third would be in the interests of humaneness, equity or justice (p. 69).

68. More liberal use should be made of parole by exception to enable women to be moved closer to their home communities under federal correctional supervision (p. 117).

69. All minimum terms should be subject to judicial review and possible reduction after ten years in prison, under the procedures established for the present provision for review of cases of first and second degree murder after fifteen years (p. 119).

XI. OTHER RECOMMENDATIONS

70. Funds should be made available to finance conditional releases, particularly TA's for pre-release planning for federal female offenders from areas distant from Kingston (p. 117).

71. Funds should be made available for the Ministry to hire (either directly or through a private agency) for federal female offenders a special caseworker who would be assigned full-time to participate in the case management team, to liaise with private aftercare and community service agencies who may be dealing with the female offender before or after release, and generally to ensure more meaningful release and pre-release planning for women.

72. We recommend that the Solicitor General's recently constituted study group on Native Offenders and the criminal justice system give special attention to the release question during their initial six month survey of the problems faced by Natives (p. 118).

73. A particular concern should be coordination of standards, procedures and programs for TA and DP in the federal and provincial jurisdictions, and the question of federal offenders on MS being supervised, through exchange of services agreements, by provincial authorities. An ongoing NPB project to study proposals for improving services to the provinces should continue to be given strong support (p. 122).

CONCLUSIONS ET RECOMMANDATIONS

Ce qui suit est un résumé très succinct des conclusions de l'Étude du Solliciteur général sur la mise en liberté sous condition (1981). Il ne peut évidemment saisir l'ensemble des arguments présentés dans l'étude même, à laquelle nous renvoyons le lecteur. D'une façon générale, l'étude appuie en principe la mise en liberté anticipée, et constate que les infractions violentes et les autres actes de récidive commis par des détenus en liberté semblent être moins fréquents qu'on ne le croit.

I. OBJECTIFS DE LA MISE EN LIBERTÉ

Les objectifs de la mise en liberté ont soulevé diverses préoccupations pour divers motifs. Les objectifs officiels de la libération conditionnelle (du moins tels qu'ils sont exprimés dans la Loi) sont vagues et, dans deux cas particuliers, ne semblent pas conformes à la théorie et à la pratique modernes en matière de correction. On peut se demander si les objectifs officiels de la mise en liberté sont effectivement poursuivis. Diverses autres fonctions de la mise en liberté qui ne sont pas reconnues comme des objectifs (ou du moins ne le sont pas par tous les acteurs principaux) sont extrêmement manifestes et pourraient être au moins tout aussi importantes à considérer que les objectifs officiels. Il existe des conflits entre les fonctions de mise en liberté qui peuvent intéresser un organisme et celles qui présentent davantage d'intérêt pour un autre organisme.

RECOMMANDATIONS SPÉCIFIQUES

1. Les trois dispositions de la Loi relatives à la libération conditionnelle totale ont besoin d'être réexaminées, aux niveaux ministériel et interministériel, dans le cadre de la révision du Code criminel. D'une façon plus immédiate, il est nécessaire de réexaminer les objectifs, les effets et les principes de la mise en liberté à un niveau ministériel faisant intervenir tous les organismes, afin de déterminer s'il convient de les reformuler (p. 59).

2. Les critères que renferme la Loi doivent être modifiés de manière à éliminer l'exigence du "plus grand avantage possible de l'emprisonnement" et celle d'une contribution de la libération conditionnelle à l'amendement de l'individu. Au cours de ce processus, on devrait envisager de rédiger de nouveau la Loi afin d'exprimer les raisons du refus d'accorder la libération conditionnelle plutôt que les raisons de l'octroi (p. 82).

3. Les modèles dont on dispose pour apporter des changements fondamentaux au régime de libération doivent continuer

d'être étudiés et contrôlés, particulièrement à la lumière de tout réaménagement des priorités et des objectifs qui pourrait découler de la première recommandation de l'Étude (p. 192).

4. Toute politique des libérations conditionnelles s'accompagnera de coûts et d'avantages de divers genres. L'équilibre entre les coûts et les avantages doit être mieux compris (c.-à-d. mesuré) afin de pouvoir être mieux contrôlé (p. 83).

II. PRISE DE DÉCISIONS CONCERNANT LA MISE EN LIBERTÉ

L'Étude a dégagé diverses préoccupations auxquelles donnent lieu la prise de décision et les décisions mêmes touchant la mise en liberté. Certaines sont examinées plus loin sous les rubriques des divers programmes. A un niveau plus général, toutefois, l'Étude a énoncé les préoccupations les plus répandues touchant les diverses formes de mise en liberté sous condition. En premier lieu, on s'est inquiété de l'absence de principes concrets et de critères particuliers de décision devant guider les responsables en matière de mise en liberté, le personnel de la préparation des cas, les détenus, les juges et le public. On a pris également conscience du danger et de l'existence apparente d'écarts prononcés entre diverses décisions de mise en liberté. Certaines personnes consultées estimaient que les taux d'octroi de certains types de libération sont peut-être trop faibles, si on prend les taux globaux de réussite comme indicateurs de la politique de sélection. Le système de prise de décision souffre également d'un manque de rétroaction opportune et pertinente, rétroaction qui servirait de point de repère pour la prise de décisions. Enfin, l'étude a défini le besoin d'un meilleur processus de révision qui permettrait d'en appeler de certaines décisions.

RECOMMANDATIONS SPÉCIFIQUES

5. La CNLC doit prévoir l'existence, dans la Loi, de critères plus précis pour guider ses décisions et faire connaître ses politiques (p. 82).

6. On devrait procéder à une étude poussée des décisions de la CNLC, étude qui aurait un double objet. En premier lieu, elle permettrait de déterminer le niveau d'écarts inexpliqués (écarts dont on ne peut rendre compte) dans les décisions relatives à la libération conditionnelle. Deuxièmement, les constatations sur les tendances observées du point de vue des écarts explicables permettront aux définisseurs de politique de déterminer 1) dans quelle mesure ces influences sont souhaitables; 2) s'il convient de les changer; 3) s'il faut leur donner une forme précise afin de guider les décisions futures de façon plus marquée et d'éviter ainsi les disparités à l'avenir (p. 86).

7. Une préoccupation majeure a trait à l'absence complète d'un système viable et utile de rétroinformation qui apporterait aux décisionnaires des données à jour et détaillées sur le nombre et les types de détenus à qui on accorde et refuse chaque mois les diverses formes de libération. Tous les membres de la Commission des libérations conditionnelles, les agents exécutifs régionaux, les directeurs d'établissement, les agents de classement, les agents de libération conditionnelle et les administrateurs régionaux des programmes pour les détenus du SCC devraient obtenir automatiquement un énoncé normalisé des décisions qui ont été prises chaque mois en matière de libération sous condition dans leur région et dans toutes les autres régions. Chaque trimestre, tous les fonctionnaires intéressés devraient recevoir de l'information sur l'issue des libérations accordées au cours de ce trimestre ou au cours du trimestre correspondant de l'année précédente (p. 153).

8. Nous avons été frappés par l'insuffisance d'efforts systématiques déployés au Ministère pour l'étude de la récidive accompagnée ou non de violence, et pour l'élaboration de systèmes objectifs bien définis en matière de prédiction de la criminalité violente. Une échelle de prédiction du comportement violent devrait être établie pour chaque détenu sous juridiction fédérale au moment de l'admission; elle devrait être mise à la disposition des décisionnaires du SCC et de la CNLC pour chaque dossier et être placée, avec d'autres tables statistiques concernant la récidive en général,dans le système de données du Ministère (p. 136).

9. Certaines nominations de la CNLC ont un caractère quasi politique, et c'est là un phénomène peu souhaitable, susceptible de nuire à la crédibilité de l'ensemble de la Commission et de gêner sa capacité de contrôler la politique et son application particulière par chacun des intéressés. Le Groupe de travail n'a pu s'entendre sur un système propre à créer un juste équilibre entre l'indépendance du recrutement et la nécessité de maintenir une norme (non définie) de qualifications. Il faudrait étudier les options disponibles, y compris le recours à des organismes de sélection et l'application du principe du mérite en matière de recrutement dans la Fonction publique (p. 89).

10. La possibilité d'avoir recours à des personnes chargées d'entendre les détenus doit être envisagée comme solution de rechange à l'expansion de la CNLC (p. 79).

11. Nous ne sommes pas en mesure d'indiquer quel genre de formation doit être donnée aux membres de la Commission, mais il va de soi qu'il faut accorder suffisamment de temps aux commissaires nouvellement nommés pour les mettre au courant de la politique, des procédures et de

la façon dont celles-ci sont appliquées. Aucun membre qui vient d'être nommé ne devrait participer à des décisions touchant les cas tant qu'il ne s'est pas bien familiarisé avec le système (p. 90).

12. Il convient de renforcer le Comité de révision interne de la CNLC. De façon plus précise, il devrait exister en tant qu'organisme distinct à l'intérieur de la CNLC et ne devrait pas comprendre, parmi les membres, des personnes appartenant à d'autres jurys de la CNLC. Ce comité devait être habilité à infirmer une décision s'il la désapprouve quant au fond. Il devrait tenir des audiences, établir des délais pour l'audition de cas précis et la notification des décisions aux détenus, et fixer une procédure pour la communication par écrit, à tous les membres de la CNLC, de tous les précédents ou décisions d'importance. On devrait envisager de permettre au SCC de contester l'octroi d'une libération conditionnelle ou d'une libération conditionnelle de jour devant le Comité de révision interne quand il n'en approuve pas le motif, mais il faudra veiller à ce que cela ne retarde pas, sauf pour de courtes périodes, les décisions finales touchant la libération conditionnelle (p. 92).

13. Une fois établi un mécanisme plus énergique et plus efficace de révision interne, le Solliciteur général devrait engager des discussions avec l'Enquêteur correctionnel afin de déterminer s'il serait possible, compte tenu des ressources actuelles et futures, que ce dernier soit saisi des plaintes relatives à la libération conditionnelle (p. 92).

14. On devrait révéler dans toute la mesure du possible aux détenus les renseignements sur lesquels s'appuyera une décision de mise en liberté, avant que cette décision ne soit prise (p. 93).

III. ABSENCES TEMPORAIRES

L'étude a cerné divers problèmes relatifs aux absences temporaires. Le nombre d'AT accordé chaque année a diminué de façon marquée ces dernières années, ce qui semble être dû en grande partie à la limite de 72 heures par trimestre dont font l'objet les AT sous escorte à des fins de "réadaptation sociale". De l'avis de nombreuses personnes consultées au sein du personnel des pénitenciers et des libérations conditionnelles, le système des AT ne correspond plus très bien aux besoins des établissements et des détenus. Les limites rigides imposées à l'égard des AT sans escorte ont augmenté les coûts d'escorte et ont empêché certaines AT d'avoir lieu parce qu'il n'y avait pas d'agents pour accompagner le détenu. La plupart des AT sont avec escorte, bien que les AT sans escorte soient un meilleur moyen (sans être fiable cependant) de déterminer si le détenu est prêt pour d'autres mises en liberté.

RECOMMANDATIONS SPÉCIFIQUES

15. Il ne semble pas exister de dispositions suffisantes pour l'octroi d'absences temporaires sans escorte afin de compenser les effets débilitants de l'incarcération, de donner au détenu un "répit" pendant son emprisonnement et de réduire le niveau global des tensions carcérales. Il faudrait modifier les guides de procédures de la CNLC et du SCC afin de permettre des ATSE de trois jours pour des raisons humanitaires selon le jugement du directeur d'établissement, lorsqu'il n'y a pas de "risques indus"; aucun autre programme particulier de "réadaptation sociale" ne serait imposé au détenu, si ce n'est de fournir une adresse à laquelle on peut le rejoindre, de respecter la loi et de rentrer à temps. La CNLC, toutefois, demeurerait compétente à l'égard des personnes qui purgent des peines de 5 ans ou plus, du moins pour la première AT (p. 66).

16. La limite relative aux AT sans escorte à des fins de "réadaptation sociale" devrait être portée à 72 heures par mois (p. 67).

17. Le programme d'AT ne devrait pas être limité aux pénitenciers soumis à un régime de sécurité moins rigoureux (p. 67).

18. On devrait avoir davantage recours à des civils et à des bénévoles pour assurer une escorte, dans les cas approuvés par le directeur de l'établissement, sous réserve également de l'approbation de la CNLC dans les cas placés sous son autorité (cas non délégués) (p. 68).

19. La durée de déplacement ne doit pas être comprise dans les limites maximales imposées à la durée d'une AT, mais l'heure du retour doit être indiquée sur le permis (p. 70).

20. Si la CNLC continue d'utiliser les AT comme élément d'un système de "test" et de "libération graduelle", il se pose alors le problème de l'absence d'une date fixe à laquelle le cas du détenu sera automatiquement examiné en vue de l'AT ou de la libération conditionnelle de jour. On devrait effectuer une étude de faisabilité de l'examen automatique en vue d'ATSE au moment de l'admissibilité, ce qui comprendrait une étude des ressources nécessaires; dans le cas des ATSE déléguées, le SCC pourrait approuver toute ATSE à ce moment-là, mais la CNLC examinerait les cas de refus, et toutes les décisions non déléguées, en cas d'appel interjeté par le détenu. Les raisons d'un refus seraient communiquées par écrit (p. 70).

21. Il est indispensable que le Ministère élabore de meilleurs moyens pour évaluer les effets des AT sur les

éventuelles chances de réussite d'un détenu. Une juste évaluation nécessitera une surveillance d'autres facteurs qui peuvent influencer tant les chances d'obtenir une AT que les chances de réussir après la mise en liberté (p. 30).

IV. LA LIBÉRATION CONDITIONNELLE DE JOUR ET LES CCC/CRC

Le Groupe a constaté que la fluidité et la souplesse de la notion de libération conditionnelle de jour avaient également entraîné une certaine confusion au sujet de la conception globale et du but du programme. On perçoit le danger que la libération conditionnelle de jour soit devenue presque une condition préalable indispensable de la libération conditionnelle totale, et qu'elle ait peut-être fait baisser l'octroi de cette dernière ou augmenter la période moyenne de à purger avant la libération conditionnelle totale. Une préoccupation a trait à l'efficacité de la libération conditionnelle de jour en tant que mise à l'épreuve en vue de la libération conditionnelle totale. De l'avis de beaucoup de personnes consultées, on a peut-être trop recours à la libération conditionnelle de jour, particulièrement lorsqu'elle comporte l'obligation d'habiter dans un CCC ou CRC. Comme il a été mentionné dans le cadre des AT, on s'inquiète, dans les pénitenciers, du fait que la "libération conditionnelle de jour restreinte" ne comble peut-être pas le besoin créé par les limites imposées à l'égard des absences temporaires.

22. Le Groupe de travail est d'avis que les objectifs de la libération conditionnelle de jour ont besoin d'être énoncés avec encore plus de précision que les critères relatifs à l'octroi (p. 76).

23. Il faudrait déterminer si la libération conditionnelle de jour doit être employée dans les cas présentant relativement peu de risques ou si elle devrait être axée davantage sur les cas "risqués" et s'il convient, du point de vue de la justice et de la commisération, d'accorder à un détenu une libération conditionnelle de jour (plutôt qu'une "libération conditionnelle par exception") avant qu'il n'ait purgé le tiers de sa peine (p. 76).

24. Même si, en pratique, les motifs d'un refus de libération conditionnelle de jour sont ordinairement communiqués aux détenus, le Règlement sur la libération conditionnelle devrait être modifié de façon à ce qu'il soit obligatoire de fournir à l'intéressé les raisons d'un refus de libération conditionnelle de jour (p. 79).

25. La CNLC devrait également s'occuper sérieusement des disparités régionales dont font l'objet la conception et l'emploi de la libération conditionnelle de jour, qui,

contrairement à bon nombre de disparités, ne sont pas produites par des différences dans la disponibilité des ressources (p. 77).

26. Nous estimons, d'une façon générale, qu'il faudrait recourir davantage à la libération conditionnelle de jour avec résidence dans les CCC ou les CRC s'il existe un besoin réel de ressources ou si l'on constate la nécessité d'une structure additionnelle à court terme ou d'une "surveillance" avant la libération conditionnelle ou sous surveillance obligatoire. Il n'est pas nécessaire que la libération conditionnelle de jour serve de condition préalable à la libération conditionnelle totale, non plus qu'il devrait être permis dans un grand nombre de cas, de retarder la libération conditionnelle totale (p. 77).

27. On devrait étudier la possiblité d'un examen automatique du cas de chaque détenu en vue de la libération conditionnelle de jour, au moment où le détenu y est admissible (p. 186).

28. Il semble y avoir contradiction dans le fait qu'on accorde aux détenus dont la libération conditionnelle totale a été suspendue une audience postérieure à la suspension avant toute décision sur une éventuelle révocation, sans qu'on en accorde automatiquement une aux détenus en liberté conditionnelle de jour dont la libération a été interrompue. Il existe ou il peut exister, à la CNLC, des limitations de ressources de nature à rendre impossible une prompte audition de tous les cas de ce genre. Il faudra accomplir une étude de faisabilité sur la charge de travail qu'entraîneraient des audiences accordées aux détenus avant l'interruption de la libération conditionnelle de jour si le détenu en demandait une. La possibilité de recourir aux services de personnes qui seraient chargées d'entendre les détenus, à ce stade et à d'autres, devrait être étudiée en tant que solution de remplacement à une nouvelle expansion de la CNLC (p. 79).

29. Les détenus qui réussissent leur stage de liberté de jour et à qui est accordée une libération conditionnelle totale ou une libération sous surveillance obligatoire doivent se soumettre à une procédure de libération officielle, y compris un examen médical dans un "pénitencier". Le SCC devrait étudier la possibilité d'utiliser les bureaux de district des libérations conditionnelles ou les CCC à cette fin. Le SCC devrait aussi entamer des négociations avec des organismes provinciaux, par l'entremise d'accords sur les échanges de services, pour permettre que les procédures nécessaires soient exécutées, contre rémunération, par les prisons provinciales ordinairement plus commodément

situées. (La base de ce genre d'entente est déjà formulée dans des accords fédéraux-provinciaux portant sur les échanges de services.) (p. 80)

30. On a exprimé le besoin d'un plus grand nombre de places dans les CCC et les CRC, sauf dans certaines grandes villes où des places étaient disponibles dans les CCC. Il y a également une nette pénurie de CCC ou de CRC dans les petites villes et les endroits reculés (p. 77).

31. Nous trouvons que l'indemnité journalière versée par le SCC pour les services fournis par les CRC est trop faible pour permettre à ces installations de fonctionner de façon compétitive, de répondre aux exigences de sécurité que leur a imposées le Ministère, de verser à leur personnel des salaires équitables et d'offrir des services suffisants à leurs pensionnaires (p. 78).

32. Comme les libérés conditionnels de jour sont légalement des "détenus", les pensionnaires des CCC et des CRC ont parfois des difficultés à être admis aux régimes d'assurance-maladie provinciaux; les CCC sont trop petits pour être dotés de personnel médical et les détenus indigents doivent se rendre au pénitencier d'où ils proviennent pour recevoir des soins médicaux. Le SCC devrait entamer des négociations avec les autorités provinciales afin que toutes les personnes mises en liberté soient inscrites au régime d'assurance-maladie de la province au moment de leur libération, et soient ainsi protégées et dotées d'un numéro d'assurance à partir du jour de leur mise en liberté (p. 78).

33. De meilleures communications sont nécessaires pour donner aux détenus une idée plus exacte de ce que l'on attend des pensionnaires des CCC ou des CRC (p. 79).

34. Les pensionnaires des CCC qui viennent d'être libérés des pénitenciers devraient avoir un délai de deux ou trois semaines pour s'adapter à la transition et pour se familiariser de nouveau au monde libre, avant que s'exercent sérieusement les pressions du personnel pour qu'ils obtiennent du travail et atteignent d'autres objectifs. Cette période d'adaptation est déjà prévue dans bien des cas, mais il faudrait reconnaître davantage son caractère légitime(p. 79).

V. SURVEILLANCE COMMUNAUTAIRE

Le Groupe a constaté que les preuves évaluatives concernant l'efficacité de la surveillance communautaire ne sont pas concluantes. Il faut un plus grand appui (du point de vue de la formation, du perfectionnement du personnel, des programmes

de caractère innovateur, des fonds discrétionnaires, etc.) ainsi que plus de recherches approfondies sur la surveillance communautaire. Il faudrait mettre en oeuvre des projets pilotes de caractère expérimental pour "tester" plus complètement les notions de "médiation" et "d'équipe" dans la surveillance, et pour déterminer leurs incidences relativement à l'achat des services, au perfectionnement du personnel et au maintien des normes de surveillance. Il faudrait assurer une plus grande diversité de services aux détenus par l'intermédiaire du secteur privé et d'autres ministères gouvernementaux. Les processus de suspension et de révocation ont donné lieu à certaines préoccupations, de même que l'effet exercé sur l'apparence et la réalité de la justice et de l'idéal d'humanité. On n'est guère parvenu à une entente sur la surveillance obligatoire ou sur l'un quelconque de ses aspects.

RECOMMANDATIONS SPÉCIFIQUES

35. On a pu constater que le Ministère accordait peu d'importance à l'évaluation des techniques de surveillance. Il faudrait s'engager plus sérieusement à élaborer et à évaluer les programmes correctionnels communautaires, ainsi qu'à déterminer quels éléments de ces programmes, s'il y en a, permettraient d'obtenir de bons résultats auprès des différents genres de détenus (p. 27).

36. Le Ministère devrait effectuer des recherches détaillées sur la surveillance, y compris la surveillance obligatoire, pour qu'il puisse évaluer si la façon dont sont traités les détenus sous surveillance obligatoire quant à la prestation des services, à la nature des activités de surveillance, à l'emploi de la suspension et de la révocation, etc., diffère du traitement accordé aux détenus en liberté conditionnelle et, dans l'affirmative,si cette différence tient uniquement à des différences dans les besoins et la condition des détenus libérés sous surveillance obligatoire (p. 118).

37. Le ministère fédéral du Solliciteur général devrait étudier de plus près la possibilité d'adapter à ses activités le modèle "équipe/médiation". Mais, pour être efficaces, les efforts en vue d'appliquer le modèle de médiation doivent être plus actifs. Il faudra que soient mis à la disposition des directeurs de district de la libération conditionnelle des fonds qu'ils pourront affecter avec flexibilité à la formation, aux soins psychiatriques, à l'achat d'outils, à la consultation de conseillers matrimoniaux ou à n'importe quels services jugés nécessaires dans un cas donné. Il faudra établir des relations plus étroites, au niveau des cadres supérieurs, avec certains organismes clés qui fournissent des services intéressant l'activité correctionnelle.

L'application du modèle exige aussi des ententes types permettant de réserver des places dans les organismes de formation professionnelle. Le modèle exige qu'on s'applique grandement à aider les agents de libération conditionnelle, qui sont souvent formés en vue de l'assistance individualisée et affectés à ce genre de travail, à s'adapter à l'orientation nouvelle que comporte le modèle de la médiation (p. 98).

38. Il pourrait être fait un usage plus efficace du secteur privé par l'entremise d'un financement global de services diversifiés et spécialisés offerts aux détenus. L'un des atouts réels du secteur privé, c'est-à-dire ses possibilités en matière de diversification, n'est pas exploité suffisamment; la tendance est tout au plus à l'uniformisation du secteur privé, similaire à celle qui existe dans le secteur gouvernemental (p. 99).

39. Les conditions générales de la libération conditionnelle devraient être ramenées aux suivantes:
- que le détenu se rende directement dans le secteur mentionné dans l'entente de libération conditionnelle et fasse acte de présence à son arrivée;
- qu'il reste sous la surveillance du directeur du district ou de son représentant désigné;
- qu'il reste dans une zone désignée (déterminée dans chaque cas et mentionnée dans l'entente de libération conditionnelle) et qu'il ne quitte pas cette zone sans permission préalable de l'autorité désignée;
- qu'il obtienne la permission du représentant désigné, s'il veut acheter ou transporter une arme à feu;
- qu'il informe le représentant désigné d'un changement d'adresse ou de situation d'emploi.

Toutes les autres conditions pourraient être posées à titre de condition "spéciale" par la CNLC ou à titre de "directives spéciales" de l'agent de libération conditionnelle, si elles sont nécessaires ou opportunes (pp. 101-102).

40. La CNLC devrait examiner l'emploi du "dédommagement"comme condition de la libération conditionnelle et bien déterminer sa légalité. De toute manière, cette condition ne devra être posée que dans le cas où le détenu est nettement en mesure de payer sans que l'obligation de dédommager ne crée un pression indue sur lui (p. 103).

41. Le moral du personnel de surveillance des libérations conditionnelles est bas, et nous pourrions faire quelques recommandations précises pour l'améliorer. Le problème semble lié à la perte d'un sentiment de "mission à accomplir" dans l'activité correctionnelle communautaire, perte elle-même liée à la nette absence d'engagement du SCC en faveur de l'activité correctionnelle

exercée dans la communauté, que nous avons mentionnée déjà. Parmi les autres facteurs qui semblent contribuer à la situation, citons l'importance manifestement accordée au "contrôle de la quantité", les normes minimales, les travaux d'écritures administratives et le fait d'avoir à servir deux "maîtres", le SCC et la CNLC. Il faudrait suivre de très près ces problèmes pour déterminer s'il serait possible d'y remédier (p. 189).

42. On devrait s'efforcer de réduire le fardeau du travail administratif en ayant recours à de courtes formules pour les rapports et en s'appuyant le plus possible sur le registre de l'agent de libération conditionnelle plutôt que sur les rapports rédigés d'après ce livre. En particulier, les rapports trimestriels de surveillance des cas pourraient être réduits à une brève formule que l'on compléterait seulement selon les besoins par un rapport narratif (p. 100).

43. La surveillance efficace de la liberté conditionnelle doit aussi comporter une répartition rationnelle des ressources en faveur des cas qui en ont le plus besoin et diminuer celles qui sont affectées aux cas moins pressants. Il faudrait permettre davantage d'élargir les "normes minimales" de surveillance dans le cas des détenus qui présentent le moins de risques et qui n'aiment pas l'idée d'être surveillés (p. 99).

44. La direction du SCC devrait encourager les programmes de surveillance bénévole dans le cadre de sa politique en matière de participation des citoyens (p. 99).

45. Le système des années-personnes du SCC devrait permettre à l'agent de libération conditionnelle d'exercer des activités axées sur l'expansion des ressources dans la collectivité, souvent l'activité qui exige le plus de temps au début, mais qui promet énormément d'avantages éventuels (p. 99).

SUSPENSION/RÉVOCATION

46. Il y a lieu de faire des recherches sur les motifs des suspensions et des révocations imposées, pour répondre aux plaintes selon lesquelles il est fait un usage excessif de la révocation dans des circonstances ne comportant rien de criminel (p. 188).

47. Il devrait être interdit de décider une révocation aux fins de "prévenir" une violation des conditions (p. 103).

48. Les avis de suspension devraient mentionner toutes les violations alléguées et contenir un exposé descriptif du comportement qui a constitué la violation (p. 103).

49. Les détenus en liberté conditionnelle ou sous surveillance obligatoire peuvent être gardés en détention au-delà de la date d'expiration du mandat d'incarcération à cause d'une interprétation stricte de l'article 20(1) de la Loi sur la libération conditionnelle de détenus qui stipule que les détenus, dont la libération conditionnelle est révoquée, doivent être "incarcérés soit au lieu de détention d'où ils avaient été libérés lorsqu'elle leur avait été accordée, soit au lieu qui lui correspond dans la division territoriale où ils sont arrêtés". Le problème se complique si le détenu doit répondre à de nouvelles accusations criminelles. Afin de remédier aux problèmes que comportent les situations de ce genre, on a fait les recommandations suivantes:

- il faudrait modifier l'article 20 de la Loi sur la libération conditionnelle de détenus de façon à ce que la Loi n'exige pas le renvoi du détenu au pénitencier d'où il avait été libéré à l'origine (à l'exclusion des autres établissements);

- des négociations pourraient être entamées et, en fait, ont commencé il y a quelques années pour que des prisons locales, des bureaux de libération conditionnelle et des CCC soient désignés comme "pénitencier" aux fins de la remise en détention et des décisions de révocation, spécialement en ce qui concerne les détenus qui seront rapidement relibérés. Les agents de libération conditionnelle devraient informer le détenu dont la libération est suspendue de l'option qui lui est offerte (Politiques et Procédures de la CNLC, 106-2 (1-2)) de consentir à la révocation de sa liberté conditionnelle et de renoncer, de ce fait, à ces procédures, ce qu'il voudra peut-être faire s'il reste peu de temps avant l'expiration du mandat d'incarcération ou la date de remise en liberté obligatoire;

- le détenu devrait être informé le plus tôt possible de la date de sa prochaine remise en liberté obligatoire. Il faudrait que les agents de libération conditionnelle disposent d'un moyen défini d'obtenir une estimation juste dans ces cas-là: le Groupe de travail recommande qu'on apporte plus de soin à l'exactitude et au détail des inscriptions portées sur les formules (libération) 208 des pénitenciers, et qu'une copie de cette formule soit toujours à la disposition de l'agent de libération conditionnelle;

- il faudrait modifier l'article 457 du Code criminel de façon à ce qu'il soit clairement stipulé que les détenus en liberté conditionnelle ont droit à une audience de requête en cautionnement (p. 105).

50. La tenue d'une audience avant la révocation de la libération conditionnelle totale n'est obligatoire que pour les cas où la libération conditionnelle a été suspendue par l'agent de libération conditionnelle. Même s'il n'y a pas eu de suspension, une audience devrait normalement être tenue sur demande du détenu, à moins qu'il ne se soit soustrait à la justice et ne soit pas accessible (p. 106).

51. Il n'y a pas de délai défini pour la tenue d'une audience consécutive à une suspension. La Loi sur la libération conditionnelle de détenus devrait être modifiée de façon à stipuler que l'audience consécutive à une suspension n'ait pas lieu plus de deux mois après la demande d'audience de l'intéressé et que les "décisions réservées" relatives à une révocation ne retardent pas la décision finale de plus de deux mois, sauf empêchement inévitable (p. 105).

52. Il faudrait ne ménager aucun effort pour remédier aux retards ou aux lacunes de nature à produire un faible taux de demandes d'audience, car il importe au plus haut point de préserver la justice, tant sa réalité que l'image qu'elle projette, dans un processus qui a un effet important sur la perte de la remise de peine, la durée éventuelle de la peine à purger et l'inscription d'une révocation dans le casier judiciaire du détenu (p. 106).

VI. LA REMISE DE PEINE

Le Groupe a trouvé que la remise de peine peut renforcer la discipline pénitentiaire et le système d'emploi, bien qu'elle n'ait guère de chances de constituer dans la pratique un encouragement positif assurant une adaptation plus que moyenne du détenu à la vie carcérale. Elle remplit aussi une autre fonction: réduire la durée d'incarcération initiale des détenus qui ne bénéficient pas d'une libération conditionnelle, et circonscrire l'effectif des populations pénitentiaires. Il semble exister de grands écarts entre les pénitenciers en ce qui concerne le gain ou la perte de la remise de peine, notamment du point de vue de la participation aux programmes.

Dans l'ensemble, il s'est manifesté peu d'appui pour l'élimination de la remise de peine, mais l'imprécision des critères de gain et le conflit entre la pratique "officielle" et réelle dans ce domaine créent la possibilité d'une application impropre ou disparate de la remise de peine.

RECOMMANDATIONS SPÉCIFIQUES

53. Il serait préférable que le système des remises de peine fonctionne de façon à punir la mauvaise conduite grave

dans les pénitenciers et non qu'il soit axé sur l'encouragement ou l'évaluation de la participation aux programmes (p. 110).

54. Si cette recommandation de n'utiliser la perte des jours de remise de peine que pour punir la mauvaise conduite est rejetée, nous recommandons que le SCC institue un système comportant des critères beaucoup plus précis pour l'évaluation de la participation aux programmes (p.110).

55. Des directives sont nécessaires pour aider les présidents de comités disciplinaires, "indépendants" ou appartenant au SCC, à déterminer quand il y a lieu d'enlever au détenu des jours de remise de peine à titre de punition et dans quelle mesure (p. 110).

56. Les détenus des pénitenciers fédéraux devraient avoir le droit de se pourvoir en appel, dans le cas de la perte de jours de remise de peine, à la CNLC à Ottawa, pour qu'elle procède à un réexamen indépendant du cas afin de juger si les circonstances de la perte correspondent aux critères fixés par le SCC (p. 110).

57. Le détenu en liberté conditionnelle ou sous surveillance obligatoire perd le nombre de jours de remise de peine qui reste à son actif s'il est renvoyé au pénitencier. Le nombre de jours de remise qu'il a accumulés (et qu'il perdra) est déterminé par la peine passée au pénitencier avant sa libération, et non par la gravité du comportement qui a causé la révocation. Les critères présidant à la réattribution (fonction qui, selon nous, devrait rester la prérogative de la CNLC) devraient être élargis de façon à appliquer le principe de la punition proportionnelle à la violation commise pendant la libération conditionnelle et à comprendre une façon plus généreuse d'encourager une issue équitable dans les cas qui comportent des circonstances similaires (p. 111).

58. Le terme "méritée" devrait être éliminé de l'expression remise de peine méritée (p. 111).

VII VIOLENCE ET AUTRES ACTES CRIMINELS

Le Groupe a constaté que l'on a tendance à exagérer le niveau de violence commise par des personnes mises en liberté. Il n'entre pas actuellement dans nos moyens de prédire qui fera preuve de violence après la mise en liberté, et dans quelles circonstances, mais il faut déployer des efforts plus systématiques pour l'étude des situations et des personnes éventuellement dangereuses.

RECOMMANDATIONS SPÉCIFIQUES

59. Le Groupe de travail a constaté que l'on accordait peu d'attention systématique à la prédiction de la violence

où à la prestation, dans les pénitenciers, d'un traitement aux détenus potentiellement violents. Il y a besoin des deux, de façon permanente (p. 190).

60. Le Groupe de travail recommande la création d'un comité SCC/CNLC qui aurait pour mandat: d'examiner toutes les propositions faites à l'occasion de deux analyses récentes des échecs de la mise en liberté, d'en évaluer le bien-fondé, d'assurer la mise en oeuvre de celles qui sont valables mais qui n'ont pas encore été acceptées, et de suivre l'application et les résultats de celles qui ont été approuvées. Ce comité devrait rendre compte au Comité de liaison SCC/CNLC sur les progrès de cette mise en oeuvre au bout d'un an (p. 133).

VIII CONFLITS AVEC LE PROCESSUS DE DÉTERMINATION DES PEINES

Selon les constatations de l'étude, les systèmes de mise en liberté ne sont pas bien compris par la magistrature, et cela peut entraîner des disparités et des périodes d'incarcération plus longues ou plus courtes que ce n'était l'intention du juge. Les juges, toutefois, semblent s'appuyer lourdement sur l'existence de la mise en liberté pour déterminer la durée précise de la sanction, évaluer le risque et mitiger des sentences rendues dans l'atmosphère de haute pression et de transparence qui entoure le processus judiciaire. La mise en liberté semble également servir des fins d'égalisation des peines qui seraient difficiles à atteindre par l'intermédiaire des tribunaux. Beaucoup de juges croient davantage au traitement pénitentiaire que les autorités des prisons, ou prétendent y croire davantage.

RECOMMANDATIONS SPÉCIFIQUES

61. Il conviendrait de préparer et d'envoyer à tous les juges de cour de juridiction criminelle une publication annuelle expliquant non seulement les rouages officiels du système, mais indiquant aussi (avec beaucoup plus détails que n'en renferment par exemple les rapports annuels du Ministère) le nombre de personnes admissibles qui ont ou n'ont pas obtenu une libération anticipée au cours de l'année (y compris les taux de perte de remise de peine), la durée moyenne de l'incarcération avant la mise en liberté et le pourcentage moyen de la peine purgée, la durée de la mise en liberté (particulièrement dans le cas des AT et des libérations conditionnelles de jour), certaines des caractéristiques des personnes mises en liberté et de celles qui ne l'ont pas été, et l'issue des "cohortes" de mises en liberté les plus récentes. Figureraient également dans cette publication des critères plus précis de mise en liberté et de révocation dont nous recommandions la mise au point par la CNLC et le SCC. Enfin, il y aurait une brève description factuelle des types de programmes offerts dans chaque

pénitencier fédéral, avec une indication du nombre de détenus qui peuvent participer à ces programmes. Il ne s'agirait aucunement d'un exercice de "relations publiques", mais d'un énoncé précis des limites très réelles et très rigides placées sur les ressources disponibles pour des programmes comme l'aide psychiatrique et psychologique et les programmes d'emploi industriel (p. 141).

62. Ces publications devraient être complétées par des séminaires et des conférences auxquels assisteraient les juges et les agents de libération conditionnelle (p.141).

63. L'appareil judiciaire canadien devrait reconnaître les injustices inexplicables qui se produisent dans le prononcé des peines, y compris la décision initiale d'emprisonner ou non l'accusé, et il devrait prendre des mesures afin de réduire ces disparités (p. 142).

64. Nous recommandons que dans le cadre de la révision du Code criminel menée par le gouvernement fédéral, on examine sérieusement les études sur les données directrices en matière de sentencing et sur les sentences par présomption prononcées en Californie et dans d'autres États américains (p. 142).

X. ADMISSIBILITÉ À LA LIBÉRATION

On a présenté divers arguments pour et contre les périodes minimales d'incarcération fixées par la Loi qui doivent être purgées avant l'admissibilité à diverses formes de libération. Sans résoudre la question générale du caractère souhaitable ou non de ces périodes, l'étude a fait certaines recommandations en vue de changements moins importants.

RECOMMANDATIONS SPÉCIFIQUES

65. Tous les efforts doivent être faits pour éviter de compliquer davantage les règles d'admissibilité à la libération conditionnelle (p. 146).

66. La disposition exigeant que les détenus reconnus comme "violents" purgent la moitié de leur peine avant d'être admissibles à la libération conditionnelle totale est inacceptable. La vaste majorité des juges qui prononcent les peines ne sont pas au courant de cette disposition, et la CNLC est entièrement capable de faire toute distinction nécessaire entre ces personnes et les autres détenus sans devoir adhérer à une règle inflexible de la sorte (pp. 87-88).

67. Il n'existe plus de disposition prévoyant la libération conditionnelle totale d'un détenu avant qu'il n'ait purgé

le tiers de sa peine. On devrait rétablir le pouvoir d'accorder la "libération conditionnelle par exception" pour qu'il s'applique à tout détenu dans des circonstances particulières où la mise en liberté avant la fin du tiers de la peine répondrait à des besoins d'humanité, d'équité et de justice (p. 88).

68. On devrait avoir plus libéralement recours à la "libération conditionnelle par exception" afin de permettre aux détenues sous juridiction fédérale de se trouver plus près de leur foyer (p. 147).

69. Dans le cas des détenus condamnés à l'emprisonnement à vie, les périodes minimales à purger avant l'admissibilité à la libération conditionnelle totale devraient faire l'objet d'un réexamen judiciaire et d'une réduction possible après dix ans de détention, suivant les procédures établies pour le réexamen des cas de meurtre au premier et au deuxième degré après quinze ans (p. 149).

II. AUTRES RECOMMANDATIONS

70. Des fonds devraient être fournis pour financer les libérations conditionnelles, particulièrement les AT de préparation à la mise en liberté, pour les détenues sous juridiction fédérale qui viennent de régions situées loin de Kingston (p. 147).

71. L'éloignement du foyer, le degré de sécurité imposé et la différence dans les types de programmes offerts à la détenue sous juridiction fédérale rendent plus difficiles et moins intéressantes, pour elle, la planification d'un programme individuel et la préparation de la mise en liberté. Le Ministère devrait obtenir des fonds pour engager (directement ou par l'intermédiaire d'une agence privée) un travailleur social qui serait affecté à plein temps à l'équipe de gestion des cas et qui assurerait la liaison avec les organismes privés d'assistance postpénale et de services communautaires qui s'occupent des détenues avant ou après la mise en liberté; d'une façon générale, il s'agirait d'assurer uneplanification plus efficace de la libération et de la pré-libération des détenues (p. 147).

72. Les détenus autochtones ont un taux de libération conditionnelle totale plus faible et un taux de révocation plus élevé que l'ensemble de la population, mais les causes de ce phénomène ne sont pas claires.

Nous recommandons que le Groupe d'étude sur les criminels autochtones et le système de justice pénale qui a été récemment créé au Ministère du Solliciteur général, accorde une attention particulière à la question de la mise en liberté durant les six mois de son enquête sur les problèmes auxquels font face les autochtones (p. 148).

73. L'étude en cours, au sein de la CNLC, de propositions visant à améliorer les services aux provinces devrait être considérée comme une priorité du Ministère. On devrait se soucier particulièrement de la coordination des normes, procédures et programmes d'AT et de libération conditionnelle de jour dans les juridictions fédérale et provinciales, et de la question des détenus sous juridiction fédérale placés sous le régime de la surveillance obligatoire et surveillés par les services provinciaux en vertu d'ententes d'échange de services (pp. 152, 153).

CHAPTER I
SECTION I

MANDATE AND ACTIVITIES OF THE RELEASE STUDY

In March, 1980, the Solicitor General of Canada ordered a full internal study into all forms of conditional release from federal penitentiaries, asking that it be conducted entirely with resources from within the Ministry and that it report within six months on its findings.

The Study of Conditional Release, or Release Study, was to encompass three broad aspects of release programs. First, it was to examine the incidence of violent and other violations of conditional release by federal offenders to determine the seriousness of violent recidivism and whether anything could be done to predict or prevent such violence in future. Second, the Study was to examine the current concerns, issues and operational problems in conditional release in order to determine whether any changes to present procedures or operations should be made to improve the system. And finally, the Study was to examine release from "first principles": what is release trying to accomplish, how effectively does it do so, and are the current objectives realistic and achievable? If the current objectives are at issue, are there other objectives which should be pursued?

The Release Study Steering Committee, made up of representatives from the Correctional Service of Canada (CSC), the National Parole Board (NPB) and the Ministry Secretariat, was duly formed in order to approve a mandate and workplan, but various problems intervened to delay the formation and commencement of the tasks of the Working Group until July, 1980. The Working Group, like the Steering Committee, included representation from the CSC, NPB, and Secretariat, including field staff, research, statistics, policy and management consulting.

In order to fulfill its triple mandate, the Working Group was obliged to perform a wide variety of tasks. We reviewed a great volume of research and other writing on release, imprisonment and sentencing. We also consulted with penitentiary and parole staff, Parole Board representatives and inmates in all five regions in the county, visiting at least one medium, maximum and minimum security penitentiary and two parole offices in each region. We asked a wide variety of questions, and received an enormous amount of very helpful feedback from these persons, for which we would like to thank them once again. (Summaries of what they said appear in Appendix C.)

We also contacted a number of groups and individuals by letter, asking them to submit briefs on conditional release. The persons and bodies contacted included private aftercare agencies, provincial and territorial authorities, police groups, judges and criminal lawyers' associations, civil liberties groups and academics. We received a disappointingly small number of briefs, but a great deal of thought and effort clearly went into those which we did receive, for which we are grateful. The briefs are reproduced in a companion volume to this Report.

We examined all the most significant and pressing concerns or problems which were brought to our attention, and collected information and opinion on a wide variety of options and models for changing release. These have been studied carefully, and we offer recommendations for responding to the issues and problems, but have not opted for any one of the major "models" which are available for release, though we have commented on each.

A major source of information we used was an integrated data base created specially for the Study by our statistical representative. This data base is made up of all information available on all releases for which machine-readable data have been collected in the Ministry data banks. All these data banks have been combined for the first time to provide an integrated picture of the correctional decisions made about each individual offender entering federal penitentiary in the years under study. Though it is quite inadequate, the statistical information provided in this report is by far the most extensive information available on federal release. Unless otherwise noted, the figures used in this Report are drawn from our integrated data base.

The Working Group completed its tasks in just over seven months, a time period which is barely adequate for performing the kind of analysis needed, though clearly not sufficient to examine all the issues and processes in the detail that they deserve. We are pleased to submit the following Report, through our Steering Committee, to the Solicitor General of Canada.

Joan Nuffield, Secretariat Policy Branch (Chair)
Line Audet, National Parole Board
Gilles Bédard, Correctional Service of Canada/Parole
Jody Gomber, Secretariat Research Division
Cheung Kwing Hung, Secretariat Statistics Division
Réjean Lefebvre, Management Studies
Terry Mahoney, Correctional Service of Canada/Parole
Ford Wong, National Parole Board

SECTION II

INTRODUCTION TO THE RELEASE PROGRAMS

In this study, we deal with five programs in release:

- temporary absence,
- day parole,
- full parole selection and supervision,
- earned remission, and
- mandatory supervision.

To define our terms and describe the programs a little, we present the following capsule summaries of the nature of each program.

TEMPORARY ABSENCE (TA) describes a program of short-term absences (rarely more than 15 days and usually much less) which may be granted to an inmate. TA's where the inmate is accompanied by a penitentiary service escort (ETA's) are usually granted under the authority of CSC, generally by the Warden. An ETA may be granted at any time after commencement of the sentence.

TA's where the inmate is not accompanied by an escort (UTA's) are granted by NPB under the authority of the Penitentiary Act, but in practice NPB has delegated UTA decision-making to CSC for inmates serving less than 5 years, and may do so for any inmate's second or subsequent UTA.

An inmate must serve six months from pronouncement of sentence, or one-sixth of the sentence (whichever is longer) before becoming eligible for an unescorted TA. Lifers cannot normally receive a UTA until three years before parole eligibility.

TA's, both escorted and unescorted, are of four general types.

Medical TA's allow emergency medical care or treatment not available at the penitentiary.

Humanitarian TA's allow releases for reasons which "may include" attendance at family funerals or special occasions, cases of serious illness or other undue hardship, and attendance of an inmate in court where no order for his appearance has been issued (typically divorce and child custody actions). Escorted humanitarian TA's may be granted by the Warden for up to 5 days

and by the Commissioner for up to 15 days. Unescorted humanitarian TA's are granted by NPB for up to 15 days and by the Warden, in "delegated" cases, for up to 72 hours. The major criterion for a humanitarian TA is that the release not constitute an undue risk to society. Escorted humanitarian TA's require also that the inmate has demonstrated good conduct and a desire for self improvement, that the release would aid his reintegration, and that the release would not upset or cause a hardship for the family.

Rehabilitative TA's are intended to help the inmate reintegrate into the community, and may include a wide variety of specific plans, such as home visits, job or housing interviews, community service projects and recreational or cultural events. Escorted rehabilitative TA's may be granted by the Warden for up to 5 days or by the Commissioner for up to 15 days. Unescorted rehabilitative TA's may be granted by NPB or in "delegated" cases by the Warden, for up to 72 hours per quarter, usable all at once as well as in segments. NPB may approve a "series" of UTA's for rehabilitation, which are then administered by CSC, though sometimes the first of the series carries the condition of providing an escort. The criteria for granting rehabilitative ETA's are the same as for humanitarian ETA's; for rehabilitative UTA's, NPB requires that the release not constitute an undue risk to society, that the reform and rehabilitation of the inmate may be aided by the release, and that the inmate be of good conduct.

Administrative TA's are granted to inmates whose parole or MS release date is to fall on a weekend, in order to allow the administrative processing of the full release to occur on a preceding weekday. They may also include pre-parole or -MS interviews or evaluations. NPB grants these for 5 days, the Warden for up to 72 hours.

About 50,000 TA's are granted in most calendar years. Our TA data base, which begins in July 1976, when individual TA statistics began to be collected for OIS (Operational Information Services), contains information on over 216,000 TA's granted from federal penitentiaries from 1976 to 1980. Fifty-five percent of these were "group" TA's, involving two or more inmates in sports or other group activities. It is important to note that 10 inmates going out together on a single occasion will add 10 "group TA's" to the annual count of TA's.

About half the inmates in or entering penitentiary in any given year will receive one or more TA's at some time during that year. Of those who receive TA's, the most common number of TA's received is one per year, the next most common number is two per year, and so on.

About three-quarters of all TA's are escorted. This figure reflects the large numbers of inmates going out on escorted sports or recreational group TA's under the supervision of a penitentiary officer.

About three-quarters of all TA's (76.9%) are classified "rehabilitative". Out of all these "rehabilitative" TA's,

- 22.8% are for sports activities;
- 20.5% are for community service projects or work release;
- 19.5% are for visits to family or friends;
- 9.3% are to provide a "transition to the community";
- 2.0% are for administrative and pre-release absences;
- 1.0% are for job-seeking;
- 1.0% are for education;
- 23.9% are classified as "other", and no information is available on them.

About a fifth of all TA's in a given year, or 21.9% in our five-year data base, are granted for medical reasons. Of these medical TA's, fewer than three percent are for psychiatric diagnosis or treatment; the rest are for dental or other medical treatment or diagnosis.

The remainder of all TA's, or about two percent, are classified as "humanitarian". Out of all these humanitarian TA's,

- 68.8% are granted on the occasion of family death or serious illness;
- 5.0% are granted on the occasion of a family marriage;
- 26.2% are classified as "other", and no information is available on them.

Of the TA's granted and implemented in our five-year data base, 87.7% returned to penitentiary on time, while 5.4% were late but granted an extension and 5.1% were late without an extension. Less than half of one percent are what we would call "failures": they failed to return at all and were declared unlawfully at large, were detained by the police (about 15 cases a year), or were terminated for unacceptable behaviour. Pre-release administrative TA'S account for the rest.

Tables relating to TA's are contained in Appendix A, from A-2 to A-11, and at A-15 to A-17.

DAY PAROLE is a very flexible release form which can mean anything from residence in a minimum or even (though less frequently) medium or maximum security penitentiary with occasional

releases for specific purposes, to living in private accommodation in the community, with a requirement to report to a penitentiary "from time to time" or after a "specified period". "Limited day parole" is a term used to refer to day paroles for community service work or other irregular, less extensive plans. Unless otherwise specified, a day parole plan will last for four months, renewable if appropriate; but, as a guideline, the NPB Policy and Procedures state that normally a day parole (other than "limited" day parole) will not last longer than a year.

Inmates are generally eligible for day parole after serving six months from date of sentence, or one-half the time to full parole eligibility (thus, normally one-sixth of the sentence). Day parole is used to provide access to resources and programs in the community, as a means of "testing" inmates' readiness for full parole, and to reintegrate the inmate more gradually into society. To a limited extent, it can also be used as mitigation of unduly long sentences, since it can be invoked prior to normal full parole eligibility, but it is not official NPB policy to use it in that way.

There is no automatic review for day parole at the (usual) one-sixth eligibility date though all inmates are informed of their day parole eligibility date shortly after admission. Instead, inmates set the day parole decision process in motion (if they wish to) by applying to NPB through CSC case management staff. It takes about five months for a day parole application to reach a decision, or five to twelve weeks for a "limited day parole" decision.

Very little is known, in qualitative terms, about the use of day parole, though an NPB/CSC project is currently underway to obtain better statistics. About 2,500 day paroles, including "limited day paroles", are granted annually, but no systematic information is available on their length, conditions, or the point in the sentence at which they occur. By matching our day parole data to other data sources, we were able to tell that about half the day paroles led to full parole (but by what interval we cannot tell), while the other half were followed after some interval by mandatory supervision (see below).

Of the approximately 15,000 day paroles in our five-year data base, most (82%) were what we would call successes: they were allowed to expire when a finite project or plan ended, were continued and are still active, or ended in a full release to parole or mandatory supervision. The rest (18%) were revoked or "forfeited", or terminated before expiry for reasons related to the offender's behaviour, rather than to the coming to an end of a special project or program.

Tables relating to day parole are contained in Appendix A, from A-12 to A-17.

FULL PAROLE is a process of selection of inmates for early release and for supervision in the community, usually under less intensive controls than day parolees, though there are cases of residence at a private halfway facility being required as a condition of full parole.

Numerous methods exist for calculating the "parole rate"; some are more problematic than others. We prefer the method used by the Historical Reporting System (HRS) data base for the Ministry's penitentiary population simulation model, namely, the percentage of offenders falling eligible in a given year who eventually receive parole at some time in their sentence. By this calculation, the 1979-80 fiscal year today's parole rate was about 33% (CSC Spring 1981 Offender Population Forecasting Project, "Key rates: Canada, Estimated past values and future judgments"); it has been lower in recent years, and peaked at about 57% in 1970. Most inmates are eligible for full parole at one-third of their sentence, and paroled inmates serve an average of about 40% of their sentences in penitentiary before parole. Most persons paroled spend between one and two years in penitentiary before release, and serve the remainder of their sentence under supervision in the community.

Numerous methods also exist for calculating the "parole return rate"; we prefer the HRS method of follow-up of release "cohorts" in a given year to see if they eventually return to penitentiary, with or without a new criminal conviction, during the parole supervision period. "Parole return rates" decrease (and have been decreasing) as parole release rates decrease since an increasingly "select" population is being chosen for parole. The return rate for full paroles granted in 1973-5 (of which almost all have now been completed) averaged 26% (including 16% for new criminal convictions). An additional about 4-5% of parolees later return to penitentiary on a new criminal charge after the expiration of the parole supervision period and the current warrant.

Persons paroled by NPB are subject to supervision by officers of CSC until the expiry of the warrant. While the exact nature and style of this supervision will vary with the individual case and parole officer, all parolees are subject to certain standard conditions. These require that the parolee report immediately after release to the parole office designated on his parole certificate, and that he follow the instructions of the parole officer assigned to his case. Monthly reporting to the police is also required, except in certain areas where police have opted out of this program. Unless they receive

permission, parolees are not permitted to leave the area designated by the parole office to which they report, nor to buy a car, incur debts, carry or own a firearm, or assume additional responsibilities such as marrying. Parolees are required to endeavour to maintain steady employment, and to report immediately any change of employment status or address, or any contact with the police. Finally, parolees are obliged to "fulfill all legal and social responsibilities". NPB may also impose any special conditions deemed appropriate in individual cases.

Supervision is governed by certain "minimum standards" for contact between the parole officer and the offender. According to the CSC Case Management Manual, normally, all persons are placed on "intensive" supervision for the first four to six months after release; this means a minimum of one interview every 15 days will take place between officer and parolee. Intensive supervision will be followed by "active" supervision for three to six months, meaning contact at least once a month. Finally, cases where "risk is minimal" and more active supervision would not be of benefit, may be placed on "periodic" supervision, involving a minimum of one interview every three months. After three years under successful supervision, a parolee may be placed on "parole reduced" status, which involves once-yearly written contact, and notification of any change of address. The actual level of supervision given is thought to exceed "minimum standards" in most cases, though no real data are available on this question.

Most parole periods last between one and two years. About 1,500 to 2,000 persons leave penitentiary annually under parole, and about 3,000 persons are on parole supervision at any given time.

A parolee may be suspended and re-imprisoned for breaking a condition of his release, to prevent such a breach, or to "protect society" (Parole Act, 16(1)). Suspension is mandatory in cases of a new criminal charge being laid against the parolee, where the parole officer feels that the evidence is "strongly indicative of criminal involvement" (NPB Policy and Procedures Manual, 106-1(3.2)). A suspension may be cancelled by the person issuing it (generally the parole office manager), but if no cancellation has occurred within 14 days, the case must be referred to NPB for a decision about whether or not to "revoke" the parole. The parolee is entitled to a "post-suspension hearing", usually held at the releasing penitentiary, before NPB makes a revocation decision. Parole (including day parole and mandatory supervision) revocation results in return to penitentiary and loss of statutory remission and earned remission credits previously accumulated for good behaviour in penitentiary.

Tables relating to full parole are contained in Appendix A, from A-17 to A-27.

EARNED REMISSION is a program of reduction of sentences through the earning of time "credits" for acceptable behaviour within penitentiary. Remission is earned at a maximum possible rate of 15 days a month, which can effectively reduce the portion of the sentence to be served in penitentiary by up to one-third. Accumulated remission credits must be served under "mandatory supervision" in the community (see below).

Inmate behaviour is assessed monthly for purposes of awarding remission and inmates are notified quarterly of any failure to earn credits. Ten out of fifteen days are awarded for participation in programs, and five for acceptable conduct. The accumulation of "caution slips" (or "performance notices" for unsatisfactory program participation) can result in loss of up to the maximum fifteen days' remission monthly; one "performance notice" may (but need not) result in the loss of one day's remission. Conviction for a minor disciplinary offence may result in a loss of two days' remission for the month in which the offence took place; conviction for a "serious or flagrant" offence may result in loss of up to 15 days of remission for the month in which the offence took place. Inmates in punitive dissociation (solitary confinement) can only earn five days a month remission, since they participate in no "program". Inmates in "administrative dissociation" (segregated "for the good order of the penitentiary") earn remission under the same rules as the general population. Offenders under correctional supervision in the community (full parole or mandatory) are not eligible to earn remission, except when under suspension.

In practice, most inmates earn all their remission in a given quarter, and the rest earn most of it. Eighty-three percent of offenders released have lost a total of no more than 10 days on their entire stay. Calculated on a quarterly basis, over 90% of inmates earn all their remission in each evaluation period.

Tables relating to earned remission are contained in Appendix A, from A-28 to A-31.

MANDATORY SUPERVISION (MS) is the other form, besides full parole, of what will be called "full release" in this report in order to distinguish it from "partial release" forms like temporary absence and day parole. MS is created through earned remission: that is, it results in inmates serving their remission credits on the street under supervision, unless they choose to stay in penitentiary. About 2,500 people are released annually from federal penitentiaries on MS, or 60-65% of all

full releases. Most leave after serving in prison between one and three years, or about 66% of their sentence, and they serve average post-release supervision periods of about nine months, briefer than the average parole period. Persons released to MS are subject to the same conditions and supervised by the same parole officers as are parolees. About 1,800 to 2,000 persons are in the community under MS at any given time.

Figures for MS releases in the years 1976-1978 (most of which are now completed) show an average return rate of 39.3%, including an average 19.4% returns with a new conviction. Despite decreases in the parole rate (which will normally decrease MS return rates), the MS return rate has held reasonably steady over the decade. This is largely because rates of revocation for reason of a new criminal conviction have decreased, while there have been compensating increases in the rate of MS return for "technical" reasons. An additional 9% of MS cases later return to penitentiary on a new criminal charge after warrant expiry.

Tables relating to mandatory supervision are contained in Appendix A, from A-17 to A-27.

CHAPTER II

OBJECTIVES AND EFFECTS OF RELEASE

The original and fundamental purpose of this study is to examine release from "first principles": what is release trying to accomplish?

In this chapter, we will discuss the objectives and "effects" of release, as well as some of the constraints or principles under which the release and criminal justice systems claim to operate. We draw a distinction between "objectives" and "effects" here because discussions of release so often seem to concentrate on the formal, stated "objectives" of release, and pay insufficient attention to those less obvious, visible or even unintended "effects" which release fulfills. Finally, some of what could be called the "principles" or constraints (such as natural justice) which the release and correctional systems purport to operate under can also be called corporate objectives; they appear, as will be discussed below, in documents dealing with official Ministry intentions, such as the Minister's speech for the Main Estimates (Solicitor General, 1980). In the following discussion, we will make no distinction between "objectives", "effects", and "principles", however, because they are all both important and to some extent unavoidable. This may be offensive to terminologies used in classical management theory, but we believe this approach suits our purposes best. It is also the simplest approach, and does not require an a priori (and possibly incorrect) categorization of goal types.

We believe that it is impossible to discuss release fully or accurately without situating it in the context of the sentence of imprisonment from which it occurs. Most obviously, of course, we are discussing release from federal penitentiaries, which house persons convicted and sentenced to a term of imprisonment of two years or more. But, more generally, to understand release it is necessary to understand the purposes towards which a sentence of imprisonment is and ought to be directed, to examine the nature and purposes of the penitentiary and community supervision systems, and to know something of how the sentencing and corrections processes work. The approach taken below to the objectives of release reflects this need to consider the objectives of the criminal justice system at large.

The overriding concern of the Ministry of the Solicitor General - as indeed of the criminal justice system generally - is broadly articulated as "protection of the public", or, as

the 1977 Ministry Workshop put it, "to participate in the protection of all members of Canadian society from criminal conduct and the effects of crime". Indeed, most of the various sub-objectives pursued by the Ministry agencies are aspects of, or in some way reflect, concerns about protection of society. However, it is necessary to analyse this broad mandate in its component aspects, and to include the other objectives and principles which the system articulates for itself. These will be discussed under the following headings:

Punishment (denunication) One of the principal intended and apparent funtions of criminal justice and corrections is to punish unacceptable behaviour, for purely retributive ends and to "denounce" violations of the social contract ("denunication" is the term favoured by the Law Reform Commission for punishment or retribution).

General deterrence Although, conceptually, it is very difficult to separate from punishment, general deterrence involves state action which is intended to deter potential offenders from committing crimes or non-criminal violations in the future.

Incapacitation (separation) Incapacitation seeks to block the offender from the opportunity or capability of offending in the future. Though there are many ways of incapacitating crime (antabuse substances may effectively prevent alcohol abuse, for example), for the purposes of this study incapacitation is seen principally as incarceration: keeping the offender who presents a potential risk away from potential victims in society through physical separation.

Risk reduction This rather general term has been used to encompass all the various decisions which are made and programs which are implemented in order to have some impact on the likelihood that an individual offender will re-offend, or on the seriousness of the re-offending behaviour.

Management and control of penitentiaries and community corrections Under this heading have been grouped a large number of objectives and effects in the "handling" of offenders in institutions and in the community under correctional control. These include such things as the need to minimize tension within penitentiaries; motivation of inmates into work and other programs as well as into good behaviour; and the need to reduce penitentiary overcrowding. Because many of these are formal objectives of the penitentiary system but are only side-effects of or functions secondarily caused by the release system, there is room for conflict in this area, between penitentiaries and the release process.

Restraint and cost-effectiveness One of the "three main concerns" guiding the initiatives of the Ministry, according to the Solicitor General's Statement (to the Justice and Legal Affairs Committee) on the Main Estimates, June 18, 1980, was the escalating costs of criminal justice services. "Restraint" in spending has therefore become an important Ministry, as well as an overall government, priority, as has the need to make the most cost-efficient use of existing resources.

Justice and humaneness A "just and humane" system was the second "main concern" noted in the Main Estimates speech. These two rather broad objectives include (to cite the Ministry "Strategic Overview 1981-82") such dimensions as concern for equity, mitigation of deprivation and suffering, the protection of offender rights through procedural safeguards in parole and other means, and the principle of restraint or "minimal interference" with citizens' behaviour, consonant with public protection.

Accountability and openness The third of the three "main concerns" is accountability, which is generally seen as being of two types (cost-effectiveness, and justice and humanity) and as having three main objects: accountability to the public, to the offender, and to the system itself.

In the discussion which follows, we will address the above objectives, effects and principles along three general lines. First, taking each area separately, we will look at what release does to meet the objective, or how it has the unintended side-effect. Second, in the same discussion, we will arrive at some mostly rather tentative and general conclusions about how effectively release meets its objectives. (To some extent, more detailed questions of effectiveness will also be addressed in the next chapter, under each of the "primary processes".) Finally, in a separate discussion, we will talk about some of the conflicts between objectives, and the problems these conflicts cause.

PUNISHMENT

It is fairly common to see release processes as being in opposition to retributive aims; parole release does have the effect of reducing the individual offender's maximum initial stay in penitentiary, and parole's humanitarian function of mitigating punishment is probably among its most important roles though it may not be formally recognized. On the other hand, it would be misleading to assume that releasing authorities do not consider retributive dimensions when making release decisions though punishment is clearly not a formal NPB

objective. The decision when to grant parole, for example, directly determines the time that is to be served in a more punishing environment (penitentiary) before the first release into a less secure setting. Though other considerations may be of more importance in making the parole decision, there is no question that concern for denunciation can affect parole. Most obviously, the legal requirement that one-third of the sentence be served prior to full parole eligibility and one-sixth prior to day parole and most temporary absences is a largely denunciatory provision. The statutory eligibility date serves as a kind of barometer of the minimum punishment required from the sentence.

But beyond basic legal requirements, the seriousness of an offence (or of an offender's record taken as a whole) can prolong his release beyond the one-third date even where parole might otherwise be granted. Parole will sometimes be denied for the reason that it would "depreciate the seriousness of the offence," for example. By the same token, a less serious offender with an unusually long sentence may be more likely to receive an early release. However, apparently largely out of concern for the appearance and reality of respect for denunciation, the NPB's former power to effect full paroles earlier than the one-third date for exceptionally deserving cases (parole by exception) has been virtually eliminated. Some NPB personnel question whether day paroles, which legally can be granted after one-sixth, should occur before the full-parole eligibility date, for denunciatory reasons. Parole authorities in general may support the continuation of mandatory periods to be served prior to parole eligibility, to give them (among other things) a punishment standard to work against.

Other punitive functions also occur in release. Suspension, termination and revocation of releases punish criminal and technical violations of the release agreement, though they may also be used for "preventive" purposes, to prevent a violation or crime from occurring while the offender is still under warrant.

How effectively do we punish? To answer that question, we would need to know in a given circumstance how much punishment is enough, but not too much: a question to which there is clearly no "answer" (or at least no single correct answer).* How much "time" is a given offence of break and enter "worth"? There is no question that the amount of time it will actually receive can vary enormously from country to country, region to region, and individual decision-maker to individual decision-

* At this point, we are not discussing any of the utilitarian functions of time spent in prison (such as incapacitation), but merely what these offenders may "deserve".

maker. There is no accepted "standard" for the level of punishment which should be maintained, either in terms of the number of persons sent to jail, or in terms of how long, on average, they should stay there.

In the Canadian federal system, most offenders serve between one and three years before their first full release (on parole or MS), though there is enormous variation around the average. Our data showed that in 1978 and 1979, break and enter, robbery, frauds and other thefts netted an average time served of about 19, 28, 20 and 17 months, respectively (see table A-21). Whether these averages represent "sufficient" punishment or insufficient is largely a matter of individual judgment. (Whether release ought, in the first instance, to have the power to mitigate the maximum punishment in selected cases is another issue, discussed in Chapters IV and V.

Whether the revocation of a release and return to penitentiary (with consequent implications for the time to be served after revocation) is a "sufficiently" or insufficiently used sanction for persons under supervision or other types of release is also a complex question. About half the offenders returned to penitentiary from full parole or mandatory supervision are returned for technical violations, though the technical violation may mask a known or suspected but unproven criminal offence. Other technical violations and even criminal convictions, however, may not result in revocation of the parole or mandatory release, and there is no means of determining the numbers of such cases in the system in an average year. (We believe that cases of new criminal convictions not followed by revocation are quite rare, however.) There is really no comprehensive or descriptive data on the circumstances of release terminations in Canada, though NPSIS data on the reasons given for revocation come the closest.

Despite the difficulty of defining appropriate levels of punishment, there is little question that punishment is a key purpose of imprisonment, and that regulations pertaining to release reflect concern for maintaining a minimum level of punishment prior to release eligibility. In fact, punishment as an objective has taken on increased prominence in recent years as a result of criticisms of the fairness and effectiveness of other correctional aims such as rehabilitation. In 1976, the Law Reform Commisison formulated the three acceptable rationales for the imposition of a prison sentence as denunciation, separation, and willful default on a community-based sentence: it specifically rejected treatment as a sufficient rationale in itself for imprisonment. The 1977 Federal Corrections Agency Task Force reflects to some extent the re-emergence of the punishment philosophy in emphasizing notions.

of the individual responsibility of the offender for his act, and in endorsing Morris' (1975) formulation that "rehabilitation, whatever it means and whatever the programs that give it meaning, must cease to be a purpose of the prison sanction".

The Working Group agrees with this formulation in the sense that prisons are primarily places of punishment, though other activities may go on inside them. Punishment is an element in any decision to send an offender to federal penitentiary, and punishment is what corrections does demonstrably best. Release both reflects punishment aims by determining time served in penitentiary within statutory constraints, and mitigates punishment by the early release of inmates not considered an undue risk.

GENERAL DETERRENCE

What the imprisonment and release systems do to punish criminals and what they do to deter other potential criminals are largely the same in kind: the manifest punishing of some individuals is assumed to deter other individuals. However, considerations of general deterrence may be directly and consciously present in only some cases; sentencing judges often speak of the use of harsh sentences during an apparent increase in a certain type of crime in a given area. However, belief in the deterrent effect of sentences of imprisonment generally is widespread among the judiciary and members of the public, and may underline much of the philosophy or rationale behind prison sentences. Release reflects deterrent philosophies in the same sense as it reflects punishment, in setting the minimum time which must be served prior to release eligibility and in determining the actual time served.

How effective is general deterrence? Valid measurement of the general deterrent effect of various sentences of imprisonment and accompanying release practices is not possible (Zimring and Hawkins, 1973; Brody, 1976). However, "common sense" belief in the deterrent effect of punishment (especially if it is severe, certain, and applied soon after the offence) is as strong as the reasonable evidence of its existence is scarce. Cross-cultural studies of wide variation in the use of imprisonment and sentence length, for example, do not demonstrate any relationship between punishment levels and crime levels; crime levels (as well as punishment levels) are thought to be determined more by larger and largely unchangeable social and cultural factors within different environments. Critics of the "common sense" of deterrence also argue that the principle of avoidance of pain/maximization of pleasure is a very simplistic model for a very complex and variant phenomenon, crime causation.

Despite our lack of specific knowledge about the conditions under which it might work, general deterrence remains an actively pursued objective and a prominent consideration in the imprisonment and release process. In fact, one of the major "models" for release which will be discussed in Chapter V, so-called "flat sentencing" (parole abolition), is often premised on the basis (among others) of a belief that parole detracts from the general deterrent effect of the judge's sentence. To advocates of "flat sentences", parole is thought to reduce the "certainty" of the judge's sentence; more importantly to many critics, however, parole means a reduction in the length of imprisonment, which is thought to reduce general deterrence.

INCAPACITATION

Imprisonment, and to some extent community supervision, incapacitate the individual by separating him from potential victims, or some potential victims, in society. One of the principal functions of release is to attempt to predict which inmates will and will not victimize society if released, and to hold or release them accordingly. To ensure the incapacitation of "risky" offenders until the release date set by law and the sentence would in fact appear to be NPB's most prominent formal objective: consideration of "undue risk" is one of only three criteria mentioned in the Parole Act, and reference to "risk" appears everywhere in NPB information handbooks and public information booklets (National Parole Board, 1979).

To some extent, the releasing authority's decision to hold or release the inmate will depend not just on how likely a risk he is thought to be, but on what type of violation he is thought likely to commit: someone likely to commit a serious act of violence in future, for example, will be incapacitated through denial of release until the legal requirement of it. An inmate thought likely to have difficulty adjusting to being under supervision, but unlikely to commit a criminal act, may be a more probable candidate for release.

How effective are our incapacitation policies? Releasing authorities make two types of incapacitation decisions: decisions to release and decisions not to release. Though there is a certian risk involved in any decision, persons who are released are considered to be acceptable risks, while those who may be held may be considered poor risks. There will therefore be two kinds of "errors"* that will result from any

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* Throughout the following discussion, we use the traditional terms "type one error" and "type two error". This is not necessarily to imply a mistake in judgement, however, since numerous other factors may dictate a parole decision. The choice of a balance between "type one" and "type two" errors is of an almost philosophical or political nature.

discretionary decision-making, assuming that the objective (or one objective) is to incapacitate those considered an "undue risk" (by not paroling them) and releasing all (or almost all) others.* First, an inmate released early can re-offend (in some way) before his warrant expires: this is considered the most serious type of "error" made by parole boards. Second, an inmate can be refused early release who would have succeeded if released. Information (though not very good information) is available on parolees who "fail" on parole; for information on the second type of error, resort is usually had to the rate of success of inmates released later, on mandatory supervision. The MS success rate is considered a measure of "type two" error because MS cases have in some way been considered unsuitable parole material, yet many do not fail on Mandatory Supervision.

A six-year NPB follow-up of parole and mandatory supervision cases released in 1974 (when the parole grant rate was 33%, or very close to today's) shows that about one-quarter (27.1%) of the persons granted parole had been revoked from the community and about a third (37.2%) of the mandatory supervision cases had been revoked.** That is, about a quarter of the decisions to parole turned out to be "errors" (defined as revocations), and about two-thirds of the decisions not to parole turned out to be "errors" (defined as non-revocations). Recognizing that this is a simplistic "model" of the incapacitation/risk selection process, and that other factors may be influencing these figures, it is startling to see what this means in "pure" incapacitative terms for a hypothetical 999 cases released in the 1974 group under study. The parole rate that year was about a third; this would mean 666 persons released on MS, 248 of whom return and 418 of whom do not, or 248 persons "correctly" incapacitated (by a refusal of parole) and 418 "incorrectly" incapacitated. Of our 999 cases, 333 are released on parole, of whom 90 return: they were "incorrectly" not incapacitated until their MS date. This makes for a total of 508 "incorrect" incapacitation decisions out of 999. (Fewer "errors" - 338 - would be made, in fact, by releasing all inmates on parole. But these would all be of the first type - failures granted early release - which are generally considered

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* The Parole Act 10(1) does also specify as criteria for a grant of parole that the inmate have "derived the maximum benefit from imprisonment" and that "the reform and rehabilitation of the inmate will be aided by the grant of parole". For reasons discussed below, however, these two criteria are largely unhelpful in making release decisions.

** The "ultimate" parole success rate of the group studied could turn out to be anywhere from 65.9% to 70.8% since 4.9% of the cases were still under parole supervision at the six-year follow-up mark, and could conceivably still be revoked. All the MS cases had reached warrant expiry.

more serious.) Another way of looking at this is that if the 33% parole rate were achieved "randomly" - that is, by paroling every third inmate regardless of the case factors involved, only 46 more "errors" would occur: 23 of the first type and 23 of the second.

Of course, this analysis need not imply that NPB's assessments of risk are of the accuracy of a coin flip. Many other case factors under consideration may weigh against making the decision purely on "risk selection" criteria. Also, there are other influences on how differences in parole and MS success rates can be defined and interpreted. Somewhat more of the MS cases are revoked with a new criminal conviction (as opposed to a technical violation) than among the parole cases. Some of the persons we consulted felt that the suspension and revocation policy for MS cases could be less stringent than for parolees, though others said the reverse, and still others claimed there was no difference. Because parolees are under supervision longer than MS cases, they have more time to come to the attention of the parole authorities or police than do MS cases. However, data from the Historical Reporting System (Hann, 1980) suggest that MS cases tend to be revoked, if they are, fairly quickly: they serve a mean of about 6 months in the community before revocation. Parolees, on the other hand, average about 12 months before revocation. It may be, therefore, that incapacitation policies cannot be seen as simply as the above arithmetic simulation would suggest.

There is an entirely different view of incapacitation which suggests that complete protection is available through a policy of holding all inmates until the legal limit, namely, warrant expiry date. Some critics would in fact abolish both parole and remission altogether for this reason. This viewpoint argues that the only important incapacitation "errors" are errors of releasing offenders who turn out to be re-offenders. The crimes prevented through holding the inmate longer are, the argument continues, not only worth the costs, but are probably a lot more numerous than the figures on detected failure might suggest.

Seen from this view, effectiveness is measured in terms of estimates of the numbers of crimes which might have been committed had the offender not been in penitentiary. This view does not, therefore, attach much importance to "type two" errors, of non-recidivists held in prison. As will be seen, however, from the discussion below of some of the other objectives of corrections and release, the prominent view is that other considerations, such as the suffering and waste to be saved by releasing offenders who are unlikely to re-offend, will also enter into release decisions. Incapacitation models will be explored further in Chapter V.

RISK REDUCTION

Risk reduction is the term we are using to cover any correctional program or decision made to try to prevent, deter or discourage the individual from re-offending when released. For the purposes of our discussion of release, the functions the release system (or "models" it operates from) performs towards the end of risk reduction, and the "effects" it may inadvertently have, seem to be the following:

- the provision of parole supervision and mandatory supervision.

- the granting of occasional temporary absences to offset "institutionalization" (debilitation of inmates through the prison régime), to reduce the interruption of social ties, and to reduce inmate bitterness and tension, all of which could affect eventual success or failure.

- the use of a gradual program of releases on temporary absence and day parole to "decompress" the inmate from a highly secure environment to increasingly less secure ones, rather than directly to the street.

- selection of the point at which the inmate's attitude is positive and he is ready for release (before or after which would be too soon, or would embitter him).

- manipulation of the time to be served by an inmate in order to affect his risk: as will be seen, the relative time served by offenders can have an apparent impact on recidivism.

- encouragement (though earned remission and the possibility of TA's or parole) of the inmate to participate in programs of the penitentiary which may increase his chances of succeeding after release.

Community supervision

Community supervision is not only a program of release in itself, but it directly affects (or could affect) the parole selection process as well. The Parole Act 10(1) sets as a criterion for parole that the "reform and rehabilitation" of the offender would be aided by parole, presumably meaning parole supervision (though it could mean access to the community and its resources, or that the act of granting parole would have a self-fulfilling prophecy effect). This criterion reflects the belief in the rehabilitative ideal which was

prevalent at the time of its drafting (1957) a belief which has been severely shaken since the early 1970's.

A large body of empirical research which has been extensively assessed (Martinson, 1974; Axon, 1980) has shown a lack of evidence (or of consistent evidence) of positive effects on recidivism from any correctional program, either in (or of) prison, or in the community. The Release Study was, of course, in no position to evaluate the effectiveness of parole supervision during the six months we worked; even were six months enough time to do an evaluation of any merit, it would only be one more study of many (though few Canadian), and its findings would be subject to interpretation in many different ways. The existant literature on supervision effectiveness is, in fact, interpreted in many different ways. Some argue that the lack of evidence is so consistent that it suggests the types of programs we pursue will never make much difference to whether an offender becomes involved in criminal situations again. Others argue that the available research is an inadequate basis for making conclusions about rehabilitative effectiveness: that overall results mask individual effects which still need to be studied in detail. Many critics also feel that the measures of "recidivism" used are not sufficiently detailed or sensitive to show changes in the offender.

The Working Group does not believe that there is at this time a "definitive" view as to whether community supervision is effective, though, as the MS Committee Report (1981) puts it, "the available research on the subject does not speak for complacency". It is quite certain that there are no supervision activities or techniques of which we can say that we are reasonably certain a positive effect (however measured) will result if the technique is applied to certain types of offenders under certain types of conditions. (Some possible promising new directions for community supervision will, however, be discussed in the next chapter.)

We have found a marked lack of evaluation of supervision techniques within the Ministry. We find this disturbing for two reasons. First and most obviously, the lack of effective self-monitoring is unacceptable in a service delivery system which is accountable to the public (see "Accountability", below). Second, in an era where resources are going to be increasingly scarce, it is essential to concentrate resources in the most productive areas (or the most cost-effective areas). Community supervision is manifestly much less expensive than penitentiary. (see "Restraint and Cost-effectiveness", below). It is probably also less harmful to those it harms, and more helpful to those it helps, than is prison, simply because it operates within the community. A more serious

commitment needs to be made to developing and evaluating the community programs of corrections, and to identifying those aspects of community corrections, if any, which will be effective with various types of offenders.

Temporary absences to reduce risk

Very little at all is known about the risk reduction effects of granting temporary absences to prisoners from time to time during their incarceration. Massachusetts (1979) studies have found that, even controlling for selection factors, inmates who had received at least one furlough had slightly lower rates of recidivism (defined as a return to any jail for more than 30 days within one year or release). In the Canadian federal system, the Study's data base show some interesting effects, though there are problems with the data. No temporary absence data are available before 1976. We looked at all those released on full parole or MS from January, 1978 to June, 1980 to see if receiving a TA sometime between July, 1976 and full release date made any difference in the success rate on parole or MS. As it turned out, the majority (78%) of the 10,112 offenders in that group had in fact received a TA of some sort; a total of 12,417 UTAs and ETAs were granted to the group.

Table 1 shows the success rates on full release of persons not granted a TA prior to full release, and of persons who fail and succeed on a TA of any kind.* Paroled offenders with a successful TA in their records do somewhat better (88% success) than do parolees not granted a TA (83% success) or parolees with a TA failure (73% success, based on only 30 such cases however, since parole appears to be a rare occurrence for those who fail on TA). For MS cases, there is no difference in MS success between those who failed on TA and those who succeeded (73% and 74% success rates). However, offenders who receive MS without having received a TA do somewhat worse: 67% success.

* The success rates are skewed high, especially for the parole cases, in this table because many in the group have only recently been released to supervision, and have not yet had "time" to fail. The rates should be read for their relative interpretation only.

TABLE 1: RATE OF SUCCESS ON FULL RELEASE AMONG PERSONS GRANTED AND NOT GRANTED A PRIOR TA, AND AMONG TA SUCCESSES AND FAILURES, FULL RELEASES FROM JANUARY 1978 TO JUNE 1980

TA PARTICIPATION 1976 - DATE OF RELEASE	RATE OF SUCCESS*** ON FULL RELEASE					
	ALL RE-LEASES	NUMBER OF CASES	PAROLE	NUMBER OF CASES	MS	NUMBER OF CASES
NO TA PARTICIPATION	.71	(2198)	.83	(559)	.67	(1639)
ANY RECORD OF TA SUCCESS (UTA OR ETA)****	.79	(7881)	.88	(3252)	.74	(4629)
ANY RECORD OF TA FAILURE (UTA OR ETA)	.73	(244)	.73*	(30)	.73	(214)
TOTAL**	.77	(10112)**	.87		.72	

* Note: based on only 30 cases of persons paroled after any TA failure.

** Does not add to the sum of columns because some inmates who have a record of both TA success and TA failure will appear more than once in the table.

*** "Success" on parole or MS is defined as completion of the supervision period without a revocation, or continuation on supervision without a revocation to date (these latter cases skew the overall success rates rather high).

**** "Success" on TA is defined as a return on time or with an approved extension.

Looking more closely at TA type, it can be seen that escorted TA's do not appear to "make a difference", while unescorted TA's make some difference. Table 2 shows that those who do and do not receive a successful escorted TA, (and no UTA) succeed at virtually the same rate on parole or MS. Inmates granted unescorted TA's, however, do a little (5-10% relative difference) better on full release than do those not given unescorted TA's, regardless of whether an escorted TA was also granted. This may be somewhat troubling, inasmuch as we have seen that three-quarters of all TA's are escorted.

Interpretation of these statistics is difficult. They do not necessarily indicate that granting a UTA prior to full release will reduce the risk of recidivism by 5-10% on full release; they may simply reflect the fact that persons refused (or not granted) UTA's are worse risks for full release. Perception of that risk is probably why they were in fact refused TA's. Nor do they suggest that a TA failure is a useful sign that the offender will fail on full release: the majority (73% in these unnaturally high success rates, but presumably a majority of "ultimate" outcomes) of the TA failures still eventuate in a success on full release. To the extent that the data may indicate a "TA effect" on full release success, the effect is not strong, though because of the large numbers of cases in our data base, the "effect" is "statistically significant" in all instances.

It is essential that the Ministry develop a better capacity for evaluating the effects of TA's on an offender's ultimate chances of success. Proper evaluation will necessitate "control for" other case factors which may influence both the chances of receiving a TA and the chances of ultimately succeeding after release. The use of a statistical prediction score as a control or "base expectancy" measure would be extremely useful to this type of evaluation, and we recommend its inclusion in Ministry data bases (see Chapter IV).

TABLE 2: RATE OF SUCCESS* ON FULL RELEASE AMONG PERSONS GRANTED AND NOT GRANTED ESCORTED TA AND UNESCORTED TA, FULL RELEASES FROM JANUARY 1978 TO JUNE 1980

TA PARTICIPATION	RATE OF SUCCESS ON FULL RELEASE	
	FULL PAROLE	MS
NO TA PARTICIPATION	.83	.67
ETA PARTICIPATION (SUCCESSFUL)* ONLY	.86	.69
UTA PARTICIPATION (SUCCESSFUL)* ONLY	.89	.74
ETA AND UTA PARTICIPATION (SUCCESSFUL)*	.89	.77

* "Success" on temporary absence is defined as return without early termination, being detailed by the police, or being declared unlawfully at large.

Gradual release as risk reduction

The use of TA's as a "risk reduction" technique is, of course, part of the more general NPB notion of "gradual release" of inmates from higher to lower to minimal security and supervision. "Gradual release" implies two concepts: the first, that step-by-step "decompression" of inmates is preferable to sudden release; and the second, that partial or temporary release forms serve as a useful "test" of whether the offender is "ready" for a more liberal form of release.* The classical graduated release would involve the testing of the inmate through one or a series of escorted and unescorted temporary absences, a day parole (perhaps with a requirement to live in a community facility), and on to full parole. We will therefore examine this "model" with day paroles as we did partially above with TA's.

Our group of 10,113 offenders given full (parole or MS) release from January 1978 to June 1980 participated in a wide variety of releasing patterns. Analysis requires us to simplify these patterns into simply whether or not (and not how many, at what point in the sentence or in what order) there occurred an escorted or unescorted TA, day parole, full parole or mandatory release, and whether it had succeeded or failed by June 1980 (although our problem above - these success rates are skewed too high for full release - is still present, the results nonetheless permit relative analysis if not absolute statements about success rates).

Of the total group,

- about two-thirds (68%) received an escorted TA at some time in their sentence; of these TA's, 99.6% succeeded;
- about half (56%) received an unescorted TA at some time in their sentence; of these TA's 96% succeeded;
- about two-fifths (42%) received a day parole; of these day paroles, 87% succeeded;
- about a third (37%) received full parole; of these full paroles 87% had not been revoked by June, 1980;**
- about two-thirds (63%) were mandatorily released; of these, 72% had not been revoked by June, 1980.**

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* This latter aspect is, of course, also part of the incapacitation function, since it is hoped that "testing" inmates through partial releases will improve the prediction of the risk for, and thus decisions made about, full release.

** These two rates are, as we have noted, not final success rates. Though both are skewed high, the MS success figure is probably closer to its eventual "final" value than is the parole success figure since, as we have seen, MS cases are revoked much more quickly than are parole cases.

As these figures suggest, the "gradual release" model is not used in all cases: only about half the cases get an unescorted TA, and a third get a day parole, even though success rates on escorted TA's and unescorted TA's are consistently extremely high. (This is not necessarily an indication of policy or intent, but can of course reflect perceptions about limited community resources, travel costs and distances, and other practical problems).

Is successful completion of one or more "gradual" releases before full release associated with higher rates of success on full release? As Table 3 shows, there is not a great deal of variation in full parole and MS success rates according to successful, unsuccessful or non-participation in partial release forms. The 10,113 cases as a whole had a parole success rate as of June, 1980 of 87%, and an MS success rate of 72%; this varies by no more - and usually by much less - than 11% (absolute) depending on participation in TA's and day paroles, though because of the large numbers of cases involved, all differences are "statistically significant".

However, participation in TA's and day paroles does make a great deal of difference in the probability of receiving a full parole. A successful day parole raises the chances of full parole from 37% for the group as a whole to over 60%, even though the full parole outcome is not much different. Inmates who have both a successful ETA and a successful UTA have virtually the same ultimate success rate, but only about half the chance of getting full parole, as do successful day parole cases. Even the failed UTA's and day paroles who are then mandatorily released do reasonably well.

What does this say about the use of "gradual release" as a method of "testing" candidates for full parole, and as a means of risk reduction? As for risk reduction, it is impossible to conclude from our data that the small but observable differences in eventual success are necessarily attributable to participation in the early partial release, and not to a risk selection process which originally picked the better risks for the early partial release. That is, the differences in outcome may be attributable to program selection, not to the program itself. (It will be recalled that a Massachusetts study "controlled for" the original risk of the offenders who participated in TA's, and still found ultimate differences in outcome, however.)

As for the usefulness of partial release outcomes as a predictor of or "test" for full release outcome, it would appear that successes and failures on TA and day parole are somewhat over-rated as factors which distinguish among offenders who will and will not eventually succeed on either full parole or MS.

TABLE 3
OUTCOME (TO JUNE 1980*) OF ALL FULL PAROLE AND M.S. RELEASES FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND FULL RELEASED FROM JANUARY 1978 TO JUNE 1980 BY PARTICIPATION IN PRIOR PARTIAL RELEASES

Partial Release Participation**	No. of Cases	Percentage Granted Full Parole	Percentage Successes* on Full Parole	Percentage Successes* on M.S.
Group as a whole	10,112	37	87	72
Cases granted ETA, UTA and DP	2,579	56	90	78
Cases granted no ETA, UTA or DP	1,751	18	85	68
Cases successful at ETA, UTA and DP	2,196	64	90	80
Cases failing at ETA, UTA and DP	0	N/A	N/A	N/A
Successful ETA (and no other release types)	1,468	26	83	69
Successful UTA (and no other release types)	687	21	88	73
Successful DP (and no other release types)	389	60	83	64
Failure on ETA (and no other release types)	12	8	-***	-***
Failure on UTA (and no other release types)	11	0	-***	-***
Failure on DP (and no other release types)	58	16	-***	65
Successful ETA and UTA (no DP)	1,786	33	87	75
Successful ETA and DP (no UTA)	749	61	87	74
Successful UTA and DP (no ETA)	321	61	89	76
No TA granted	2,198	25	83	67
ETA success	6,808	43	88	74
No ETA	3,264	28	85	70
ETA failure	40	10	-***	-***
UTA success	5,364	44	89	76
No UTA	4,454	32	85	68
UTA failure	205	12	76	73
DP success	3,729	62	89	76
No DP	5,853	25	85	71
DP failure	531	11	79	73

* Full paroles and MS cases registered as "successes" may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed high. The Table should be read for internal comparisons not as absolutes.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorted temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

The majority of offenders succeed on supervision anyway, and no identifiable partial release outcome suggests a considerably higher or considerably lower chance of succeeding ultimatey on full release.

Optimum release date

Another effect in terms of risk reduction is the "optimum release date" notion. Under this model, release authorities select the inmate's release date based (among other things) on the progress over time of his attitude and participation in the penitentiary, such that he is released (other things being equal) at a time when he is "ready", attitudinally and otherwise. It is virtually impossible to test whether this effect is present in release decisions, or to test the related notion of the effect on an offender of merely being granted a release. However, the "optimum release" notion is predicated on the idea of a "peak" in the prison experience (related to risk) which may be true only of certain types of coping or acceptance experiences in longer-term inmates (Hood and Sparks, 1970). It may also be very difficult for an observer, or even the inmate himself, to detect any "peak" which may occur in his prison experience. Penitentiary officials consulted in the Study also frequently pointed out the remoteness of case management and releasing authorities from the individual inmate and his "adjustment".

Time served and risk reduction

Numerous official inquiries and reports (Fauteux, 1956; Ouimet, 1969; Law Reform Commission, 1973) have recommended a decrease in prison sentence lengths in Canada, in part on grounds of cost-effectiveness, but also in part based on a belief that the damaging effects of lengthier stays increase the eventual risk of reoffending. There is, in fact, a considerable amount of American research which suggests that, even controlling for certain risk-related factors, persons released after serving a shorter time are somewhat more likely to succeed after release than are those serving longer periods (Jaman and Dickover, 1969; Mueller, 1965; Gottfredson et al., 1973; 1977).

To the extent, therefore, that NPB shortens the time served in prison for those it places on parole, whatever reduction in risk results from the shortening of time served automatically obtains in these cases. It would be productive to do original research on this effect in Canadian federal corrections. As is true in many other processes, the availability of a statistical risk prediction score on the

automated data base of the Ministry would permit some controls for risk-related factors in studies of this type.

Encouragement of program participation

There is some evidence that inmates do engage in prison programs partly in hopes of increasing their chances of early release. (When, for example, the United States Parole Commission clearly and demonstrably removed participation in prison programs as an element in parole criteria, program participation in penitentiaries declined.) Some models of parole, such as "contract" parole, are actually premised on giving early release in exchange for performance in programs and for good behaviour. During our consultation with CSC field staff, in fact, there was some support for encouraging NPB to commit itself early in the sentence to releasing an inmate who conforms to the specifications in the "individual program plan" drawn up shortly after admission. Some NPB members seem extremely cool to this notion because, at least in part, there are some reservations about the value of penitentiary programs and little sympathy for explicitly allowing institutional adjustment to determine release decisions.

There is no way to measure precisely the degree to which inmates' expectation of release considerations may encourage them to participate in penitentiary programs. Moreover, and more importantly, any risk reduction that results from program participation has yet to be demonstrated, as our earlier discussion of parole supervision effectiveness suggested.

Risk reduction is, in sum, one of the most significant objectives to be addressed in any analysis of release and the assumptions or criteria on which it is based; yet little is known about the operation of risk reduction or its interaction with the release process.

MANAGEMENT AND CONTROL OF PENITIENTIARIES AND COMMUNITY CORRECTIONS

Far more immediate and meaningful to the line correctional worker than objectives on a level like "risk reduction" are concerns about management and control of case-loads inside and outside the walls. Nevertheless, institutional management is clearly not an objective of release, except to the indirect extent that, for example, an inmate must be of good conduct in penitentiary in order to receive certain types of TA and remission. For the purposes of our discussion, the objectives pursued or effects inadvertently caused by release under this heading will be restricted to:

- earned remission as a means of controlling the size of penitentiary populations (by reducing time served in penitentiary)

- full parole, and some day paroles, as a function which (however unintended) affects the size of penitentiary populations (by reducing time served in penitentary)

- earned remission as a means of motivating inmates to behave acceptably and to participate in work and other programs

- temporary absences as a means of reducing institutional tension and motivating inmates

Controlling penitentiary populations

Earned remission is the only release form controlled directly by CSC.* The award of remission is based on behaviour within the penitentiary and its effect is to allow the earned days (up to one-third of the sentence) to be served not in penitentiary but on the street under mandatory supervision. Therefore, quite apart from any effects of remission on prisoners' behaviour, it has significant effects on penitentiary crowding and costs and on the relative punitiveness (in prison or outside it) of the last one-third of the sentence.

It is next to impossible to estimate, however, what the effect on penitentiary populations would be if remission were abolished, since judicial sentences would probably decrease - at least among some judges. (This would depend also on any other changes accompanying the abolition of remission - in parole eligibility dates, if any, and the existence of post-release supervision.) But whether they would decrease in a way which would keep penitentiary populations at their present level, or in ways which would marginally or seriously affect populations is not known. Simulations of remission abolition done through the Ministry's penitentiary population prediction model (FCSM) yield different scenarios, depending on the assumptions fed into them about what accompanying changes would occur in related factors such as sentence length and the parole rate.

Let us suppose, for example, that remission were abolished and initial parole eligibility were set at one-third of the sentence, as now. Any offender not paroled leaves penitentiary without supervision at the expiration of the warrant. Suppose that Judge A is accustomed, under our present

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* Except for "recrediting" of lost remission credits, which is done by NPB in cases of "undue hardship". See under Remission, Chapter III.

system, to giving three years to robbery offenders who use no direct force or violence. After the change, Judge A may reason that under the former system, his three-year sentence would mean that the defendant would serve no more than two years in normal circumstances; he might therefore give two years under the new system in order to approximate the two-year limit which he had in mind under the old system. On the other hand, he may reason that the parole board will have a strong interest in seeing the defendant serve the last portion of his sentence under supervision in the community, and would therefore be likely to parole this defendant at the two-year mark of a three-year sentence. If they do not parole him at two years, he may reason, they probably will have justification for not doing so. He may therefore feel that a three-year sentence would be closest to the former system, and award three years.

Different judges and different appellate courts would react differently to the change. Some would not understand its full implications, some would ignore it and operate on their own tariffs, and very few would fully appreciate the effects and side-effects which the change and their reaction to it would have. Perhaps the uncertainty of predicting judicial change is part of the continuing reluctance of prison officials (e.g. as recommended at CSC's Wardens' Conference, September 1980) to give up one "known" source (remission) of controlling population size for an "unknown" over which no control or influence is possible. More will be said about these issues in Chapter V.

Parole also has unintended effects in reducing penitentiary populations, although the NPB view is that considerations of control of population levels cannot be a part of parole decisions. Nonetheless, parole unquestionably has an effect on populations, since it reduces the time served in penitentiary to something less than the maximum sentence. In fact, in those American states which have abolished parole, fears about increases in prison populations have been the most visible result of the change. Many American parole boards directly respond to crisis-level overcrowding situations - such as have been experienced lately in numerous U.S. jurisdictions - with unusual releasing policies, such as a temporary lessening of the minimum time administratively required for prisoners to serve before release. (Gettinger, 1976).

Though parole does cut, by a potential one-third, the penitentiary portion of the sentence, it has been argued (Mandel, 1975) that the ultimate overall effect on time spent in prison is actually rather small, when revocations and loss of remission after release are considered*. Mandel estimated,

* It should be noted that forfeiture of release was in effect at the time of Mandel's estimates, and his conclusions should be read accordingly.

based on eligibility and other rules of parole and remission, that parole reduces the overall time served in penitentiary by about 10% while also creating a compensating increase in judicial sentences. The FCSM (computer model for predicting penitentiary populations) estimates that for every 5% change in the parole rate, there will be a 1% difference in the population, largely because so many offenders eventually return to penitentiary after warrant expiry (Memorandum, 1977).

Parole's ultimate impact on time served is, like remission, confused by judicial accommodation in sentencing. Some magistrates - though by no means all - will candidly admit to an additive process in sentencing, of setting an "imprisonment" term, doubling it "for remission", then tripling it "for rehabilitation". Some critics argue, therefore, that parole results in no real reduction (if not in an increase) in the time served by offenders generally and has no real impact on prison populations. These issues too will be explored later under major new directions for release (Chapter V).

Motivating inmates and reducing tension

Earned remission, by virtue of its name, would appear to be directed towards motivating inmates to do - or not to do - something in order to earn imprisonment time* off their sentence. In fact, if there is any one issue on which all field staff and previous studies can agree, it is that earned remission is not actually "earned" in the sense that an inmate need normally do any thing beyond stay out of trouble in order to receive full remission. In fact, shortly after the 1977 Penitentiary Act amendment which converted "statutory" and "earned" remission into a single "earned" system, senior CSC officials concluded that the resources necessary to perform the surveillance, evaluation and recording needed to make the system truly earned were not available. Remission would operate as a system of loss for negative conduct, rather than gain for positive conduct above the norm.** (This "negative" operation of remission is in fact typical throughout the jurisdictions we surveyed, except in cases of special remission awards for giving blood or performing other extraordinary services.)

Remission does, indeed, operate on that negative basis, as the rate of accumulation of remission indisputably shows.

* It is important to bear in mind that remission does not result in time "free and clear" off the sentence; remission credits must be "served" on the street under mandatory supervision (MS).

** Formal CSC policy, as reflected in the Case Management Policy and Procedures Manual, is still that remission operates as a positive earned system, however.

Our data for the years 1974-1980 indicate in the vast majority of cases (83%) the offender lost fewer than eleven days of remission on each sentence (See Table A-29). The evidence is overwhelming that remission does not motivate inmates to exceptional conduct or participation, though it may discourage inmate unemployment (since work, if available, is requisite to earning of remission) and misconduct (since remission can be lost for misconduct and cannot be earned to the maximum in punitive dissociation). Line staff confirm that the pressures of the penitentiary environment make a truly earned system virtually impossible.

Remission has the potential to run into conflicts with other release processes and objectives. One of these conflicts -remission's result in "automatic" release at two-thirds of the sentence- is a complaint of those who feel the discretionary releasing authority should have the power to maintain the incapacitation of the offender in prison until warrant expiry. There is no doubt that paroling authorities tend to be blamed for the failures of offenders released through remission, and they chafe at being unable to prevent the "early" release of persons whom they consider dangerous.

Remission can also run afoul of release if used in different ways. One suggestion, that remission should determine parole eligibility dates, would in effect mean that institutional adjustment would determine the time to be served until the first consideration for release. It is a model which most releasing authorities oppose, and which the Working Group would reject on grounds of being an inappropriately high weighting in the release equation of considerations of penitentiary control and programming - considerations which are not necessarily related or are inconsistently related to community risk, for example.

One of the reasons that remission does not run into more open conflicts with release is that it is administered in a fairly consistent, automatic and predictable fashion. However, a remission system which became "truly" earned or which in any other way ultimately resulted in longer time in penitentiary prior to mandatory release, might affect parole in that increased pressure might be placed on paroling authorities to consider penitentiary populations and management in making parole decisions. Abolition of remission could have the same effect. The Working Group does not believe that remission can ever really operate on a "truly earned" basis in the kinds of institutions run by CSC or with the kinds of manpower resources made available to CSC.* Nor do we think there would be much ultimate

* Though there is some feeling that if remission were closely integrated with other penitentiary incentive systems such as work assignments and pay scales, it could be more effective.

benefit to such a system even if it were practicable, and its introduction would cause enormous undesirable side-effects on institutional tension, among other things. Coupled with the conflicts and complications they would cause with release, any changes in remission based on a perceived need to use it "positively" are undesirable.

Temporary absences have increasingly taken on a more prominent role in inmate motivation and the reduction of institutional tension. Most penitentiary staff we consulted claimed TA's were actually their most powerful motivator, or had been until the 1977 legislation which restricted the Warden's TA power (see Chapter III). Inmates confirm that TA's are indeed a powerful "carrot".

TA's are in fact used and do operate to reward positive behaviour by inmates. Since being "of good conduct" is a condition of all but medical TA's, they would appear at least not to reward inmates who behave badly. Many of the "rehabilitative" TA's granted would appear to be essentially programs of relatively pleasant activity granted to inmates who have shown themselves in various ways to be deserving, trustworthy and safe. Penitentiary staff suggest, based on their experience, that TA's can also have the broader effect of relieving institutional tension and increasing institutional incentives, and that this is in fact CSC's chief interest and activity in the TA program. However, Wardens claim that the 1977 changes have so limited the number of TA's and the responsiveness of the TA process to immediate behaviours in the penitentiary that TA's are no longer working effectively as motivators or reducers of tension. The Working Group has concluded there is some reason to believe this is the case though day parole may be filling some of the gaps, and in the next Chapter we make recommendations to relieve some of the problems.

JUSTICE AND HUMANENESS

These two broad terms encompass a wide range of values and aspects, of which we will discuss only a few in regard to release. As a Ministry concern, justice and humaneness have probably risen in priority over the last few years. The 1977 Report of the Parliamentary Sub-committee on the Penitentiary System (MacGuigan) was probably the strongest recent statement of the need for "justice behind the walls", and their recommendations included a study of parole to reduce its "arbitrary aspects". Increasing Ministry involvement in international human rights and prisoner rights issues, through the U.N. Congresses on Crime and through our signature to the UN International U.N. Covenant on Civil and Political Rights, has

focused attention on human rights concerns in corrections which can affect such release issues as the granting of credit for time spent under supervision in the community. Another major theme of the Ministry, based primarily on humanitarian but also cost-effectiveness grounds, is the need to reduce the use and length of imprisonment in Canada (Kaplan, 1980; Blais, 1978). This theme has actually been prominent since the Ouimet (1969) Canadian Committee on Corrections recommended that imprisonment be reserved for the dangerous criminals and the most serious offences. Ouimet also recommended an increase in the use of parole, during a year when the parole rate was about 60% (as opposed to its present approximate 33%). Finally, the increasing involvement of the federal courts in administrative correctional practices (Martineau, 1980; Solosky, 1980) has also helped to make justice concerns a higher priority.

Justice and humaneness objectives and "unintended by-products" will be discussesd under five general areas: mitigation and equalization of sentences, minimal intervention, release assistance, natural justice, and the provision of "hope".

Mitigation and equalization of sentences

Under "punishment", we discussed the ways in which release authorities reflect the punishment aspects of sentencing and effects (within constraints) the precise determination of the punishment time to be served prior to release. Release, by its very nature, also has the "effect" of mitigating the maximum possible severity of the sentence by letting some people out earlier than they would have had to be released by law, although sentence mitigation is very clearly not a formal objective of release.

NPB paroles about 33% of federal offenders right now, though rates fluctuate. About half the parolees in our sample were released after serving between 30 and 40% of their sentence (or around the one-third date of first parole eligibility). About a quarter were released after serving over 50% of their sentence.

Which offenders are more likely to have their imprisonment time mitigated? There is some apparent association between the seriousness of the offence and the parole rate. Table 4 shows the rate of parole and MS for several groups of offenders who obtained full release in 1978 or 1979. The offence categories are arranged in the table in the order of their seriousness, as reflected in the length of their average sentence. Looking only at offence type and not sentence length, it is seen, curiously, that the more serious crimes like homicide*, rape and robbery have a parole rate around 40-50%, while some (but not all) of the "less serious" offences, such as break and enter, thefts and fraud, have parole rates around 20-30%. The offence groups of manslaughter, narcotics, sexual assaults and escape do not fall within this pattern. Distinctions between offence categories are not particularly marked, however, other than between the 40-50% group as a whole and the 20-30% group as a whole, which suggests that perhaps it is not really the crime's seriousness which causes the distinction which is observed.

* Murderers are, of course, excluded from the following analysis because all murderers who leave penitentiary (other than by death or transfer) do so on parole.

TABLE 4
PAROLE RATE FOR ADMISSION OFFENCE GROUPS, FULL RELEASED IN 1978 and 1979

ADMISSION OFFENCE*	PAROLE RATE**	NUMBER PAROLED	NUMBER RELEASED ON MS
Attempted murder	49.2	34	35
Manslaughter	56.3	182	141
Kidnapping	40.7	31	45
Rape	44.3	157	197
Narcotics Trafficking & Importing	67.0	702	346
Robbery	41.1	968	1385
Other crimes against the person	38.5	103	167
Sexual assault	15.5	16	87
Assault and Wounding	22.2	80	279
Fraud and Forgery	27.0	132	357
Negligent homicide and infanticide	54.1	13	9
Break and Enter	24.0	463	1459
Thefts	20.9	177	667
Narcotics Possession	46.2	25	29
Escape and Unlawfully at large	6.9	5	67

* Ordered according to the length of the average sentence given for the offence group. Lifers are excluded from the table.

** Note that this is a different "parole rate" than that used by the Historical Reporting System (referred to elsewhere in this Report). This "parole rate" is the proportion of persons released in these years who were released on parole.

Table 5 suggests that it may be the length of sentence which is more important to the parole rate. Of course, all lifers who leave penitentiary do so on parole, and the longer average sentences associated with some crimes seem to be reflected in the parole rate. But more particularly, the Table shows the consistent and substantial difference between the average sentence length of those paroled, and the average sentence length of those not paroled, "controlling for" offence: parolees have considerably longer sentences, on average, for the same offences, than do Mandatory Supervision cases. This suggests that parole has a rather marked effect in evening out differences which might otherwise have occurred in time served as a result of variations in sentencing.

Table 5 also shows the actual effect that these parole decisions have on the time served by persons paroled, especially compared to those not paroled. For most crimes, the parole decision brings the average time served by parolees closer to that served MS cases, despite the wide differences in average sentences for the two groups. Parolees do not necessarily serve shorter periods than non-parolees, though, which may again suggest that parole is more involved with longer sentences which (because of eligibility rules) can only be mitigated so far. This appears to "explain" why, as was observed in Table 4, it is the more serious crimes which have the higher parole rates: they have higher sentences.

Both sentence mitigation and sentence equalization, then, clearly appear to be effects of parole, despite the very firm NPB position that they are not objectives and could not be formally implemented (though they may be a by-product). This NPB reticence about formally entering into the world of re-examining sentences of the court may be justified. However, it has to be recognized that if the validity of the parole function is accepted, the fact of sentence alteration by parole (however unintended) must also be accepted: parole necessarily changes the conditions of sentence. Further, though some members of the public and judiciary feel that parole is an illegitimate interference with sentencing, there is no question that judges are roughly aware of the possible effect of parole and remission, and some acknowledge accommodating their sentencing to the existence of them. The mitigating effect of release is understood, then, but it is not understood well, and its application to any given individual is not predictable at the time of sentencing. This creates conflicts, mixed messages, inequities (since a judge may increase his sentence in anticipation of a parole which is never granted) and inconsistencies between sentencing and parole, a subject discussed more fully in a later chapter.

TABLE 5
AVERAGE SENTENCE AND AVERAGE TIME SERVED BEFORE PAROLE AND MS, FULL RELEASES IN 1978 & 1979

ADMISSION OFFENCE	AVERAGE SENTENCE (months)		TIME SERVED (months)	
	PAROLEES	MS	PAROLEES	MS
Attempted murder	111	67	51	46
Manslaughter	81	59	33	40
Kidnapping	76	38	30	26
Rape	54	50	24	34
Narcotics Trafficking and Importing	55	45	22	30
Robbery	62	42	28	29
Other Crimes against the person	42	33	18	22
Sexual Assault	45	31	26	21
Assault and wounding	42	32	18	22
Fraud and forgery	41	30	20	20
Negligent homicide	36	29	16	21
Break and Enter	38	29	18	20
Thefts	37	25	18	17
Narcotics Possession	35	21	14	13
Escape and Unlawfully at large	38	19	18	14

Partial releases, temporary absences and day parole, also serve to mitigate punishment. Though the TA's which are called "humanitarian" are very few (500 a year), many of the "rehabilitative" ones, even if they are justified on grounds of reforming the inmate, also clearly serve humane ends, in that virtually any absence from a prison will be a relative pleasure. This humane function of TA's is not, of course, universally applied to all inmates: only half of inmates receive a TA in any given year, and two-thirds of the inmates who do receive a TA receive four or less (usually escorted) in a calendar year. TA's may therefore represent only a limited measure of humaneness. Day paroles mitigate punishment to the extent that they can reduce the security status of the institution involved (though, as will be seen, many inmates find CCC residence more difficult than traditional penitentiaries). They also allow for absence from the institution - for hours or days at a time. We have no precise measure for how much.

Finally, remission mitigates punishment by permitting approximately the last third of the sentence to be served in the community under MS.

Minimal intervention

Minimal intervention in the lives of offenders has been a theme for some time (Ouimet, 1969; Solicitor General, 1975; Law Reform Commission, 1976). It is both a human rights principle (the least restrictive alternative, compelling state interest) and a utilitarian finding (there is some evidence that lesser interventions by the criminal justice system are more effective than heavier ones). Less intrusive measures are also, in the main, less expensive.

What would constitute "minimal intervention" in corrections is hard to say. It would probably be fair to say however, that the release system is not presently operating in a "minimalist" fashion. The parole rate is among the lowest of the last ten years. Day paroles are increasing, but there is some criticism that they may be delaying or even replacing some full paroles; while less of an intervention than traditional incarceration, this would be more of an intervention than full parole.

Post-Release assistance

The inmates contacted by the Solicitor General's Committee on MS said that community supervision, if it had any value at all, sometimes helped with immediate practical assistance: cash from the parolee loan fund, help with finding housing, and so on (Solicitor General, 1981). No quantitative information is

available on the frequency with which the various types of practical assistance are offered and given, though it is clear that most parole officers are strongly motivated to be of help to offenders who ask for it.

Natural justice and equity

In January, 1980, the Supreme Court of Canada delivered a ruling in a penitentiary discipline case (Martineau) which found that there was a "duty to act fairly" in the administrative process of disciplining inmates. This is an extremely significant ruling, the first Supreme Court case to rule that an administrative correctional process, not created in law, would be subject to rules of natural justice.

By contrast, the full parole granting process has placed in law the requirements that all federal inmates who fall eligible for full parole must be granted a hearing before a panel of two members, and must be given the reasons in writing for a negative decision. Inmates who feel that these procedural safeguards have not been protected, or that NPB has proceeded in an unfair manner, may seek redress through a review by the federal court. The same safeguards are not guaranteed for TA decisions, however, nor for provincial inmates (whose cases are decided on a "paper review"), or for termination of day parole, though the offender will have personal contact with the case management staff or parole officer involved in his case. A number of other criticisms have been made of the natural justice safeguards at various stages in release. These include: the lack of prior disclosure of case file information* and the denial of legal or other assistance at full parole hearings (procedures to correct both these two areas may soon be implemented, though the precise form they will take remains to be seen); the lack of prior "notice" of the policy basis for decisions, except for the three Parole Act criteria and except for that which is contained in policy manuals (including a list of factors considered in parole); the re-incarceration of revoked offenders for non-criminal violations; and the participation in "multiple vote" cases by NPB members not present at the hearing.

The natural justice safeguards applicable to release (such as hearings, notice, legal counsel, information disclosure) are still evolving and will continue to do so as a result of such things as evolving administrative case law, government policy as a whole, and international human rights agreements.

Equity is a particularly important goal in release because release deals with large numbers of sometimes widely varying sentencing decisions. It has been argued in defense of

* An inmate may however receive, fairly quickly, an update of his case file information if he has previously applied for and received his file under the Canadian Human Rights Act.

parole (von Hirsch and Hanrahan, 1978) that it would be infinitely harder to get the criminal court judges from a given region to agree upon specific guidelines for equalizing sentences than it is to persuade and monitor a parole board to do the same thing. Release authorities thus may seek sentence equity as an objective, or the NPB may achieve it indirectly as an unsought "effect" (as we saw above under sentence mitigation). Release certainly seeks to be consistent within itself, and within the context of its other decisions as to TA and day parole. How well equity is achieved by release is difficult to say, though strong fluctuations in annual parole rates and regional variations would suggest the possibility of disparities in parole granting. Empirical studies of NPB decisions are not able to describe or "explain" well how various factors contribute to the parole decision. This will be discussed in more detail under Chapter III.

Hope

A final "humanitarian" objective of release is said to be providing the offender with the hope that he may get out of prison before the end of his sentence. Release does indeed provide that hope, but for those with longer sentences (and especially long mandatory minimum periods to serve until parole eligibility) it will also bring a greater period of uncertainty, wondering when release may come. Some evidence from U.S. states which have abolished parole suggests that, from the inmate's viewpont, it may actually be preferable not to live in hope of early release but to know exactly the date on which release will come. (Note, 1978).

RESTRAINT AND COST-EFFECTIVENESS

Though spending in criminal justice and corrections has increased enormously over the last ten years, it is expected that there will be a levelling off of resources for social services generally. At the same time, caseloads are expected to increase in absolute numbers, with the result that greater cost-efficiency is becoming a priority. We must use existing resources as effectively and allocate them as rationally as possible.

Release represents a cost-savings in the sense that it is a great deal cheaper to release an offender conditionally and supervise him in the community (about $2000 average yearly cost*) than in penitentiary (about $25,000 average yearly cost*). If conditional release were abolished (including

* The "average cost" is obtained by dividing the total penitentiaries budget or the total community supervision and case preparation budget by the total number of offenders held in each mode at any given time.

remission) and judicial sentences did not decrease to compensate, there would be an enormous capital outlay necessary to construct the penitentiaries needed to hold the approximately 5,000 persons under full parole and MS supervision at any given time, and to hire the personnel to staff these penitentiaries. Federal staff-inmate ratios in penitentiary are about 1:1, while community staff-offender ratios are about 1:10, including all management and support staff.

On the other hand, it has been argued that it is not realistic to make these direct cost-savings comparisons, since judicial sentences do compensate to allow for the existence of parole and remission. Mandel (1975) has in fact argued that the costs of community supervision must be added to those of incarceration for that reason. Nevertheless, within the present federal sentence structure, releasing any given individual prior to his mandatory release date represents a cost savings in terms of that individual.

Conflicts can and do arise between release and imprisonment in considerations of cost. At times, penitentiary budget considerations may influence whether a release can occur, or what form a release may take: an escorted TA may not occur if no funds are available to pay an escort, and a day parole may be affected by the availability of halfway facility beds in a given area. At times when there is a high demand for inmate labour, such as at harvest, penitentiary officials may have an interest in seeing fewer persons released who might otherwise be available for work programs.

In general, however, penitentiaries have a strong interest in seeing as many full releases as possible occur, in order to save costs. The more persons at any given time who are under community supervision rather than in penitentiary, the better able CSC is to meet budgetary restraints and avoid new capital construction of institutions. Cautious release policies may in fact be a major source of conflict between high-priority CSC objectives of restraint and cost control, and NPB priorities of holding until the mandatory release date those persons who may violate their community supervision when released.

ACCOUNTABILITY AND OPENNESS

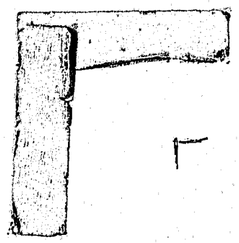
Stressed by MacGuigan (1977) and the Auditor General (1978), "openness and accountability" have become a major concern of the Ministry. Release can or should be held accountable in many different ways and to different bodies. It is accountable to taxpayers and to central expenditure review agencies for the way in which it spends (or saves) money.

Release can also be accountable to independant bodies such as the courts for the manner in which it makes its decisions. It can be accountable to the offender in the sense that authorities are obliged by law to give reasons for refusing a full or day parole, and for suspending and revoking a release Finally, release is accountable to the public for its policies and its individual decisions.

To achieve full accountability in most of the respects described above, it is a virtual necessity to engage in systematic, detailed self-analysis. It will already be becoming clear that very little in the way of empirical self-evaluation actually goes on in terms of major goals of the system. Ministry dat sources are plainly inadequate, and do not serve as a managemen system for ongoing decision being made. As will be seen shortly, the formal criteria for various release types are very inspecific, and more detailed policies are not systematically established. Release is so prone to administration and analysis on a "case-by-case" basis that regular data feedback on overall patterns has been neglected up until now. As a result of the inadequacy of existing data, public information about parole is also scarce. Review by independent bodies of case decisions is available (in the federal court) to ensure conformity to procedural safeguards in the regulations, but does not include the possibility of appeal of the substantive merits of case decisions, so it rarely results in useful precedent or review. (There is a prevalent view that even substantive judicial review would yield little useful precedent anyway.)

Often, "accountability" in release takes the form of fluctuations in the release rate according to the level of public reaction to sensational failures. In this sense, releasing authorities often are held accountable and take the blame for offender failures on behalf of the entire sentencing and imprisonment system. For example, one argument in the "flat sentencing" debate for retaining parole is that parole is needed to reduce sentences because if judges were wholly responsible for determining the exact length of incarceration they would tend to respond to public pressure by increasing sentences. Parole is thus a less visible, administrative means of reducing punishment. However, because of this, it is blamed for the failures of people it lets out and at the same time is criticized because it keeps too many people in.

Many of these accountability issues will be explored in detail in later sections.



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1 OF 3

DISCUSSION

We have seen that the formal, stated objectives of release are sometimes not what would appear to be the most strongly felt of release's effects. These objectives of full parole which are reflected in the Parole Act 10(1) criteria, for example, are problematic. The apparently most important parole criterion, to detain persons whose release would constitute an "undue risk to society", does not appear to be as effectively felt in decisions of NPB as might be expected. The other two criteria in the Parole Act are either apparently unrrelated to modern correctional theory (even correctional authorities rarely claim any more that people are or should be sent to penitentiary to "derive benefit from imprisonment") or unsupported (though not disproven) by available evidence (of any effect, for example, caused by "gradual release" and supervision on the "reform and rehabilitation of the inmate"). The latter two statutory parole criteria are extremely difficult to evaluate in any meaningful way. All three statutory criteria need to be re-examined on a Ministry level, and interdepartmentally as part of the Criminal Code Review Process.

On the other hand, many secondary effects (or "unintended by-products") of release seem to be much more markedly felt, and some are closer to the practical realities of sentence and prison administration. Though punishment of offenders does not appear to be an official objective of NPB, for example, release decisions directly determine the precise duration of imprisonment time served by federal offenders. We have also discovered that parole has a strong effect in mitigating and lessening apparent disparities which might otherwise have occurred in time served as a result of variations in sentences. Release processes like remission and community supervision may also play an important role in achieving restraint, both in terms of fiscal costs and in terms of the degree and duration of control exercised by corrections over the offender. Temporary absences also serve secondary effects or unintended effects (such as relieving institutional tension, and providing the individual inmate with short-term relief from institutional life) much more directly or effectively than they fulfill primary objectives such as "reintegration".

Compounding the above confusion is the conflict between competing objectives or functions, and between the agencies to which different objectives are of differing importance. The need to punish or the concern for punishment may conflict with the needs of justice or equity in certain cases; the need for caution in deciding who should be incapacitated as long as possible may conflict with the penitentiaries' needs to contain costs and populations within existing and future limits; the

need to effect a "gradual release" may conflict with penitentiary security concerns.

In Chapter V, we will discuss alternative "models" of release, some of which explicitly reject certain traditional objectives such as rehabilitation, and some of which are based on a greater concern for certain secondary objectives or functions which have traditionally been rejected by releasing authorities. These models provide examples of how an imprisonment and release system might look if it pursued certain sets of objectives almost to an extreme.

We recommend in Chapter V that further study and monitoring of the jurisdictions using alternate "models" be undertaken. On a more immediate level, however, there is a need for the objectives, effects and principles of release to be re-examined on a Ministry level in order to determine whether they should be reformulated. In order for such a review to be effective, it would need to involve all parts of the Ministry, and must move from broad goal statements to a more detailed examination of how particular programs within the agencies should and do interact with each other and with overall objectives. This series of "objectives workshops" would, of course, need to be informed by the applicable activities of the Criminal Code Review project.

CHAPTER III
ISSUES, PROBLEMS AND CONCERNS

In this chapter, we will discuss a wide range of issues, concerns and problems which have been raised in connection with each of the programs of release. This was the second major purpose of the study - to catalogue any unresolved or perceived problems in the current operation of the programs, and suggest follow-up where appropriate.

A number of common themes will be found in the following discussion of each program in turn. Some of these have already been alluded to above; the stated objectives of the program are in themselves an issue, for example, as our earlier discussion above might suggest.

TEMPORARY ABSENCE

It is important, though not always easy, to distinguish temporary absences (TA) from day parole, especially "limited day parole" (see below). Temporary absences, an older program than day parole, began in the early 1960's as an administrative measure designed to decentralize decision-making in cases where a temporary leave from the institution was deemed justified by special and unforeseen circumstances (Landreville and Carrière, 1979). TA's were under CSC (then CPS) authority, and there were no limitations on the frequency with which the Warden could grant the 3-day pass, provided the inmate was eligible. Eventually there developed a practice known as "back-to-back TA's", which in essence permitted the inmate to be out working or under some other program in the community six days a week. The exact number of "back-to-back TA's" are not known, but they created conflict with NPB, which saw some TA programs as indistinguishable from parole or day parole, and actually operating to circumvent the effect of a denial of parole. The Hugessen Task Force (1972) concluded that there should be no TA's for "rehabilitative reasons"; these should be a program of the NPB, known as "temporary paroles" (a term which would also include day paroles). Although the Hugessen recommendations were not fully adopted, the need to place additional controls on TA granting was recognized, and the CSC power to grant back-to-back TA's was duly removed in 1973.

Day paroles, a program of only 300 grants annually at the time of Hugessen's report, grew to over 1,000 grants in 1973, presumably absorbing many of the cases previously under CSC's TA authority. TA power was further constrained in 1977 under Bill C-51, by which inmates were required to serve six months or one-sixth of their sentence (whichever is longer) prior to UTA eligibility, and NPB was given final authority over all

unescorted and some escorted TA's. Simultaneously, an administrative limit of 72 hours per quarter was placed on unescorted rehabilitative TA's. The rationale for the change appears to be that any release form which represents more than a few unescorted hours out of penitentiary in a year, is part of a significant gradual release plan, and should be under the control of the authority making the eventual full-release decision. Also, the one-sixth/six months eligibility limits appear, like the adding of another decision level (NPB), to have been intended to reassure the public about the respecting of denunciatory intentions and the "tightening up" of criminal justice controls generally.*

NPB authority (which presumably would be better attuned to considerations of risk to the community) over unescorted TA's was immediately delegated back to the Wardens, however, in all cases of inmates serving less than five years. (These cases make up half the penitentiary population, and three-quarters of the new admissions annually.) Second and subsequent UTA's may also be delegated to Wardens even in over-5-year cases. The reason for the immediate delegation of TA power back to the Wardens in under 5-year cases appears to have been simple resource limitations within NPB. NPB's role in the direct imposition of controls in TA's (i.e., review of applications) is thus somewhat limited, but constraints on UTA eligibility, limits and duration are still administered under NPB authority.

TA's are thus to be distinguished from day paroles in that any unescorted leave or leaves (for other than medical and humanitarian purposes) of greater than 72 hours in each quarter must be through a day parole program of NPB; if a Warden wishes to give a TA or a series of TA's which would exceed 72 hours per quarter, he must provide an escort.

The first and most obvious issue we encountered in temporary absence was a series of problems attributed by CSC officials to the 1977 legislation respecting the authority, eligibility, and limits on the TA power. These problems included such matters as case management staff's confusion over who has authority to grant what, as well as the principal complaint that TA's have decreased significantly, that their role in institutional rewards and controls has decreased, and that not enough TA's are being awarded for good behaviour, to provide a break from incarceration, to reduce institutional tension, and to aid Wardens in the running of institutions. We will discuss these problems as "authority" problems, though more is involved than simple authority change.

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* Bill C-51, which creased these changes and was known as the "Peace and Security Package", was a series of amendments most of which were designed to increase government controls on or appear to be generally "tightening up" on crime and criminals. These new controls accompanied the bill to abolish capital punishment.

Authority for UTA's

The Working Group found a great many arguments available on both sides of the dispute over UTA power. The CSC argument for regaining some of its TA power is based on perceived problems since the actual transfer of UTA power on March 31, 1978:

- unescorted TA's have dropped markedly since 1978, as in fact intended by the law change. UTA's dropped from an average of 4,000-5,000 per quarter prior to March 1978, to an average of 1,000-2,000 per quarter since. The number of inmates receiving more than four UTA's a year has also dropped considerably. (Though not disappeared-an inmate may receive several UTA's in a quarter, provided the total hours away do not exceed 72 in any quarter. An inmate could, say, have nine eight-hour absences in a quarter.)

- escorted TA's have gone up as a result of the restrictions on unescorted absences, and this has meant an increase in problems of freeing staff and paying overtime for additional escorts. Many penitentiary staff consulted said that TA's were frequently cancelled because of the unavailability of an escort, though we cannot tell the precise number of such cases.

- wardens claim the day parole power, or the way it is used, is not adequately filling the need left by the 1977 amendments. In particular, they complain there is insufficient scope for wardens to release an inmate temporarily (or spontaneously) because he has been of exceptionally good conduct, and special work projects which may arise suddenly are delayed by and may not occur as a result of the case case preparation time required for day parole. (The limited day parole program, discussed below, was created in part to respond to complaints about the five-month case preparation time for regular day parole.)

- institutional staff claim to know the inmate best, and are not influenced, they claim, as much by national occurrences of failures on release. They can, they argue, therefore

judge best which inmates are most deserving of a TA, which will be most likely to succeed, and what impact the TA has had on the inmate and the institution.

- the removal of the formal TA authority from CSC is said to have influenced staff's interests in encouraging TA applications and performing the necessary administrative work for the decision process, since TA's are no longer seen as "their" program.

- the minimum security penitentiaries especially have apparently become less attractive to inmates because of the cutback in TA's from them. It is claimed that extra flexibility is needed in TA granting power in the minimum security penitentiaries, to encourage inmates to go to minimum farms and camps and to provide a reward for hard work there.

NPB's arguments for keeping the UTA power are the following:

- placing all UTA's (especially rehabilitative ones) under a single authority provides for increased consistency in release plans and decisions;

- it allows NPB to get involved earlier in the inmate's gradual release plans and ensure a TA program is started if it is necessary;

- NPB may be more sensitive to and expert in making assessments about the risk involved to the public;

- NPB is removed from the immediate pressure of inmate requests for TA's, which can cause "risky" TA decisions to be made. NPB, by the same token, takes pressure of CSC staff, some of whom acknowledged this as a postive benefit during our consultations;

- NPB can reduce TA abuses of favouritism, at least in those cases it reviews (it is claimed that penitentiary authorities are more likely to grant TA's to inmates who are cooperative or insistent, but not necessarily good risks);

- NPB review of cases with sentences of 5 years and over provides an additional check for potentially violent cases

After reviewing the available arguments on each side, and the evidence, the Working Group was not inclined to recommend that the UTA power be entirely given back to the Wardens. In the first instance, much of the UTA power has been delegated back to Wardens, and the requirement that NPB review the remainder, those cases of 5 years or over, may create some additional protection to the public. It was, additionally, impossible to say from the available data whether the decreases in the TA program have been compensated for in the concurrent increases in day paroles. Escort costs, though, are a real problem, and will be picked up again in discussions, below.

On the other hand, NPB rationales for keeping the TA power are also not strong. They provide limited extra protection for society - they review the case only on first and some subsequent UTA's for longer-term inmates. In addition, they provide limited protection to the inmates against overcaution by CSC. In a total of 1,745 NPB decisions about TA's recorded from 1978 to 1980, there were only 25 instances of an inmate receiving a TA from NPB in the face of a CSC recommendation against it; and there were 147 instances of the reverse, NPB not granting a TA where CSC recommended it. Thus, NPB was making more conservative reversals of recommendations than liberal ones, and it may be assumed that many inmates are discouraged from pursuing an application in the face of a negative recommendation from CSC.

NPB's rationale about becoming involved earlier in gradual release through the UTA power is also applicable only in instances where NPB must become involved in a TA application because of the length of an inmate's sentence (5 years and over). NPB does not have a fixed date on which it considers inmates for TA in the way it automatically considers all inmates for full parole at one-third. Even if a program of TA's is ordered by NPB to begin an incremental program of gradual release, there can be practical problems such as delays in case preparation and processing, which can impede the release. Finally, there are continuing questions of the value of TA's as a "test" and of the value of "gradual release" as opposed to outright release.

On balance, we are reluctant to recommend a major shift back in the TA power, especially since the last shift was so recent (3 years ago), it is imperfectly understood, and the effects of the new emphasis on "limited day parole" (intended to fill gaps in TA's) may have yet to be felt. Based on the information which can be obtained on limited day parole to date,

it will be some time before there will be useful data to shed much light on the subject.

However, we did find that there appears to be inadequate provision for the granting of UTA's designed to offset the debilitating effects of incarceration, to provide a "break" from imprisonment, and to reduce overall levels of institutional tension. These are not "rehabilitative" TA's in the sense that they can be seen (except in a very tenuous way) as part of a gradual release program. They are, rather, humanitarian in intent, and should be placed in that category of UTA's. NPB and CSC Procedures Manuals should be amended to allow for 3-day humanitarian UTA's in the discretion of the Warden where no "undue risk" is involved, but not requiring any specific plan from the inmate other than that he supply an address at which he can be reached, obey the law, and return on time. We suspect that a large number of TA's (especially those 18% coded "rehabilitative other" in our data) were in fact releases designed largely to offset institutionalization, provide a "break" from prison, and relieve overall penitentiary tension. We do not feel an escort is needed if the penitentiaries are screening for "undue risk to society", but one can be used if the need is felt. The success rates of TA since its inception are extremely high, so high in fact that they suggest perhaps too many controls are used and too restrictive a concept is involved. We would, however, especially for the first few years of operation, retain NPB authority over cases of 5 year sentences or over for this type of humanitarian UTA granted by the Warden, at least for "first" absences.

This type of humanitarian UTA's should be considered for inmates in all security statuses, and the assessment of the inmate's "undue risk" to society should be carried out on a case-by-case basis. There is some sympathy within CSC for restricting the TA program to minimum and, to a limited extent, medium security institutions in order to encourage "cascading" (transfer of inmates to less secure penitentiaries) and in order to limit the "contraband" problem of TA's in the more volatile maximum security environments. We disagree with making distinctions based on the penitentiary's security status, since many inmates will be classified "maximum" simply because there is no lesser security bed which is available and suits them. Saskatchewan Penitentiary, for example, holds all the "protective custody" cases for the Prairie Region, though many of them do not represent a maximum security risk. The Prison for Women holds many medium and minimum security inmates simply because it is the only federal penitentiary for women. There is a less rigid solution to contraband problems than preventing TA's; strip searches, for example, have recently been affirmed as an absolute administrative power of Wardens, and though far

from ideal, they do allow the inmate the choice of submitting to a search or not accepting the TA. Finally, the TA program, a concrete and successful program, should not be directed by the perceived need for "cascading", a far more tenuous and less successful program. The real reason for the lack of success of cascading appears to be the lack of choices available within regions, and especially the nature of the minimum security farms and camps, which are not generally geared towards release, but rather towards hard physical labour and self-sufficiency. Cutting back TA's from the maximums and mediums, and increasing them in the minimums is not an appropriate means of trying to solve the "cascading" problem. There are other means of making minimums more attractive, such as through higher pay scales than in medium and maximum security.

Additionally, the strain on CSC budgets as a result of escort costs and the effects of that strain on the actual operation of TA's is a significant problem which deserves attention. The flexibility of the new "humanitarian UTA" category we are recommending may, to some extent, solve the problem. We would recommend also that the limit of 72 hours per quarter on rehabilitative UTA's be relaxed. Any artificial and to some extent arbitarily determined rule of this type inevitably cannot foresee all the circumstances under which it will prove to be cumbersome and dysfunctional. Many of the CSC staff consulted also said the 72 hours per quarter rule forced the inmate to choose between either seeing his family or attending some program of a roughly "rehabilitative" nature, such as recreational participation. Recognizing that any limit we propose in place of a somewhat arbitrary rule, will also suffer charges of being arbitrary, we recommend a limit of 72 hours per month on unescorted rehabilitative TA's. Any increases in UTA's proportionally to ETA's which could occur as a result could have secondary benefits in terms of "testing" inmates on a more rigorous form of release.

Commissioner's Directive 228 disqualifies persons who are not CSC employees from acting as escorts for TA's. The Working Group feels that a greater use of civilian (volunteer) escorts could also be made, which would be in keeping with new policy about increased participation by the public in corrections, as well as with considerations of cost-effectiveness. Civilian escorts often can be a valuable influence on inmates and a means through which they can reintegrate into the community; they also work on an unpaid basis and enable some TA's to take place which might otherwise be prevented by staff or funding shortages. Civilian escorts should be approved by Wardens, subject to NPB approval on cases of non-delegated ETA's. The Working Group is confident that Warden's selection processes for civilian escorts will be sufficiently careful that only highly suited persons will be chosen.

The above recommendations will, it is hoped, reverse many of the problems caused by the 1977 amendment to the UTA provisions regarding authority, eligibility and duration. We are not, on the whole, convinced that day parole and "limited day parole" will or will not "work" as well as or better than temporary absences at their manifold purposes, and feel the philosophical rationale behind consolidating into a single decision-making body all the authority for granting more than just infrequent UTA's, or granting UTA's which appear to be leading into a gradual release, may be insufficient to justify the practical problems which result. As will be seen in the discussion below on day parole, considerable thought still needs to be put into the rationale behind day parole and the capability of NPB and the rest of the system to respond to the highly flexible role emerging in day parole.

Disparities in TA granting

There are a number of mostly unanswered questions raised about disparities in the granting of TA's. The Ministry data systems show some interesting apparent disparities in TA administration. According to data on our group of TA's granted from 1976 to 1980, about half of all inmates (excluding lifers) receive no rehabilitative TA's in an average year, but about a tenth of the prison population receives 10 or more rehabilitative TA'S a year. Inmates in maximum security account for a third of the penitentiary population, but only a fifth of the TA's. Inmates in the Pacific region have a better chance of getting a TA than do most inmates, and Quebec inmates have a worse chance, proportional to their numbers. There is also enormous variation in the proportion of TA's which are unescorted, within regions and within security status. (The Prairie region use unescorted TA'S more than any other region for example but especially from maximum and minimum security.) Group TA'S are used much more in some areas than in others. There is also enormous variation in the raw numbers of TA's from institutions of similar characteristics. (See Tables A-28 to A-31).

In the temporary absence program, as in all the processes we studied, there is an urgent need to provide decision-makers, case managers and planners with regular, current information about the persons being and not being granted TA's. This information must be in sufficient detail to allow relevant comparisons of case and system characteristics. Until this kind of information is available as feedback on the past (and its outcomes) and for use to guide the future, it will not be possible to really describe the nature of disparities in TA granting, let alone make policy decisions about them.

Our proposals for the detailed information feedback needed to monitor release programs more thoroughly is discussed in Chapter IV.

Other operational problems with TA's

Some other problems with TA's bear mentioning. First, if NPB is to continue its use of TA's in a "testing" and "gradual release" model, there is the problem of there being no fixed date on which the inmate will automatically be reviewed for TA or day parole. This results in cases of full parole hearings where NPB members decide a day parole should be tried first, and day parole reviews where a need is expressed to try a series of TA's before day parole. While an automatic TA review date at eligibility may provide a heavy burden on resources, it would serve to remind NPB of their responsibility to provide the opportunities to succeed on TA which the "gradual release" model would seem to imply, and would ensure that the case preparation for UTA would be fully done on all eligible cases. In many instances, this will mean paperwork where there is no real chance of release, but much of the documentation for TA will be part of the IPP process (individual program plan), once fully implemented. We recommend that a feasibility study be done, including of the resource implications, of automatic review for UTA at eligibility; in the case of delegated UTA's, CSC could approve any UTA at that time but denials, and all non-delegated decisions, would be reviewed also by NPB upon appeal by the inmate. Reasons would be given in writing for denial.

Travel time between the site of the temporary absence and the penitentiary can be significant, especially in cases of penitentiaries distant from major urban centres. Travel time should not be counted against the maximum limited placed on TA duration, though the hour of return should be fixed on the permit to avoid confusion. Costs involved in TA travel are also considerable, even in some of the more centrally located institutions. These costs and distances will remain a problem in any program of regular TA's, such as recreational or educational TA's, banning many inmates effectively from participation.

There is some suggestion that CA's (community assessments, in which a parole officer evaluates the situation into which the inmate plans to go when released) are currently required to be updated more frequently than is necessary for TA decisions, especially in "static" TA situations such as attendance at Alcoholics Anonymous. CA's should be used only as needed, and with due regard to restraint in the use of parole resources for duties other than those involved in direct supervision.

DAY PAROLE

As the temporary absence power became increasingly circumscribed (by the 1973 ban on back-to-back TA's, and by the 1977 introduction of minimum eligibility dates and limits of 72 hours per quarter), the day parole concept expanded. Day parole, originally an extremely limited program intended for use with halfway accommodation in risky cases, grew in number and in concept from a program of under 400 grants a year in 1972 to its present level of over 2,000 annually-close to the number of full paroles granted annually. But it is very difficult to say, as we have seen, to what extent this growth in day parole has been the direct product of the decline in TA's (i.e., to what extent there has been a growth in day parole programs of irregular or temporary releases), or to what extent day parole has also expanded in the direction of greater CCC and CRC (community halfway facility) use, and in the direction of the use of more day paroles which resemble full paroles: which require reporting to (but not living in) an institution on a relatively infrequent basis. (The Parole Act defines day parole merely as a parole "the terms and conditions of which require the inmate to whom it is granted to return to prison from time to time during the duration of such parole or to return to prison after a specified period".)

Day parole is thus an extremely flexible power and an extremely fluid concept. To the extent that a day parole program may resemble full parole, day parole is a program where offenders are largely "out". To the extent that it encompasses temporary or irregular absences, day parole is also a program where offenders are almost entirely still "in" penitentiary. Unfortunately, less is known about day parole than any other release program other than remission, and we have no precise description of the lengths of day parole programs, the types of institutions from which they are granted, the precise reporting requirements or frequencies, or the point in the sentence at which most are granted, let alone any qualitative assessment of the content of the inmate's program.

Because of the elasticity (some have said "vagueness") of the day parole concept, the primary issue is undoubtedly the objectives which it pursues, and the manner in which it pursues them. Many of the people we consulted felt that it was extremely important for day parole to have a "single purpose and concept"; another, totally opposed, view was that, far from attempting to define and narrow the day parole concept, we should increase its flexibility by eliminating the artificial distinctions among terms like full parole, day parole, limited day parole, and even temporary absence for rehabilitation, and "call everything parole" with variance only in the conditions

imposed on the release. The Working Group sees little real benefit in such a scheme, and in fact feels that it could result in much greater confusion and disparity.

Functions of day parole

The following are some of the ways in which day parole is used and the effects which day parole has:

- for gradual release and "testing" of inmates, a day parole with a requirement of CCC or CRC residence is a means of trying an inmate out under structured conditions before making a final decision about trying him on full parole.

- in mitigation of punishment (especially in cases of unusually harsh sentences), day parole prior to full parole eligibility at one-third can have the effect of lessening the length of time which deserving cases will serve in prison. We met one such deserving "case" in a CCC in a major Western city: a man convicted of manslaughter at age 18 and sentenced to life imprisonment. He had spent three years at the CCC before full parole eligibility and was graduating from university in the autumn. There is lack of universal agreement within NPB as to whether this kind of "early" day parole (i.e., before full parole eligibility at one-third) is an appropriate method of effecting sentence mitigation, even in cases of particularly harsh sentences. Even more so, there is disagreement about the appropriateness of day paroles prior to full parole eligibility which involve no requirement of residency at a halfway facility.

- for employing inmates on special projects in the community. This is largely what is now known as "limited day parole", involving the use of inmates in employment projects in the local community. The term "limited day parole" was coined for these types of projects after complaints from CSC that day parole had not enabled release of pools of inmates for these work projects, or certainly not as quickly and efficiently as had temporary absences when they filled that function.

"Limited day parole" was created to shorten the time it would take from the date of application for release on special project until NPB's decision to grant (from five months to five to twelve weeks depending on the necessity of holding a panel hearing).

- as an aid to the community adjustment of resourceless offenders, day parole with residence in a halfway facility provides the client with (relatively) inexpensive, available housing and a small weekly cash allowance while he seeks employment after release.

- to provide access to community resources or programs, day parole involving transfer to a CCC may provide proximity to local programs of education, medical or psychiatic care, or life skills; without transfer to a CCC, it can permit brief but regular attendance at accessible community programs (such as Alcoholics Anonymous).

- where used to bring about regular or frequent absences from penitentiary which go beyond the limits placed on TA releases, day parole can be used for socialization purposes such as participation in recreational or family activities.

- day parole can reduce what would otherwise be more onerous (and expensive) forms of imprisonment, and thus has "unintended by-products" in terms of restraint and cost-effectiveness.

Clearly, one of the characteristics of day parole is its flexibility, both in its objectives and its program. However, numerous concerns have been raised about these objectives and how well they are being attained.

Many of the people we consulted felt that day parole is "overused". By this they appeared to mean a number of things. First, residence in a CCC on day parole is sometimes required in cases where the risk does not warrant it, and there are other resources in the community, such as a family with whom the parolee can stay. Second, day paroles may be extended for unnecessarily long periods (either by case staff or by NPB), past the time when a reasonable "test" for full parole has been

made or the time when the offender has need of the extra controls or resources of the day parole. Third, many people felt that day parole is too infrequently used as practical help and control for those persons who are about to be released on MS. Some felt that day parole too often replaces full parole or is too often a prerequisite to full parole. (Over the years 1974-1979, the proportion of full parole releases occurring without a prior day parole has dropped from 71% to 37%, and for MS from 85% to 68%.) These expressions of concern may in part reflect concern over CCC and CRC bed-space shortages, and the need to use halfway facilities in the most pressing cases of need.

Because of this trend there is some scepticism about the actual degree of sentence mitigation and cost savings caused by day parole. It has been hypothesized that the increasing use of day paroles and the growth of the "gradual release" model has in fact contributed to a decline in the full parole rate, and has increased the length of time served until full parole: many of the people consulted had the impression that day paroles prior to full parole eligibility at one-third were becoming increasingly rare, that day parole was almost a prerequiste to full parole in some regions, and that multiple continuations of the standard four-month day parole period were becoming more common.

The very flexibility of the day parole concept, and the lack of "formal" objectives, leads to regional and other disparities in granting day paroles. In one region, for example, day paroles without a requirement of CCC or CRC residence after one-sixth of the sentence are considered entirely acceptable in certain cases, while in another region the policy is against any such releases.

Extended participation in day parole, especially in a halfway facility, is often a difficult and frustrating experience for the offender, and can lead to "failures" in the program, though not necessarily in the criminal sense. Our consultations also suggested that being exposed to the outside world regularly or extensively, yet not being free from intensive reporting and supervision, confuses offenders and causes disappointed expectations about being granted a more liberal form of release. The intense supervision, rules and régimes of the CCC or CRC can also be a major cause of problems (incuding day parole terminations) which may work counter to the primary objective of making community readjustment easier and more productive.

There continue to be conflicts between institutional and releasing authorities which seriously affect the day parole

program. The restriction on CSC's TA power which accompanied the growth of day parole has created some hostility towards the program generally. Some staff claimed that the extra submissions required for day parole application to NPB created "too much hassle", reducing the number of requests and releases. There is also some "competition" for "good inmates" between day parole/CCC programs and the work programs of the other penitentiaries: day parole submissions decrease during harvesting operations in penitentiary and increase during times of penitentiary population pressure. Even where there is no open conflict between day parole and the other programs of the penitentiary, inmates returning at night or on weekends from day parole can bring in contraband, create conflicts with other inmates, and generally create problems for the penitentiary which may result in less support for the submission of applications. Case management staff complain that the five-month case preparation period for day parole is unrealistic, that inmates do not "think that far ahead". Ironically, the usual five-to seven-week "limited day parole" case preparation time-frame, shortened to permit response to sudden or unexpected special project demands, is considered too short by many staff. This perception may be reducing support for limited day parole submissions.

The Working Group shares the view that the objectives of day parole need to be more precisely articulated, as do the criteria for granting. NPB also needs to come to grips with those regional disparities in the approach to and use of day parole which are not (as many are) a product of differences in available resources. In particular, a policy is needed as to whether day parole should be used in cases of relatively good risks or should be oriented more towards risky cases, and whether day parole prior to the expiration of one-third of the sentence is appropriate on grounds of justice and humaneness. Our overall view is that day parole with CCC or CRC residence should be used more where there is a real need for resources or a perceived need for short-term extra structure or "surveillance" before full parole or MS. It is not necessary that day parole be used as prerequisite for full parole, nor should it be permitted to delay full parole release in large numbers of cases. We do not feel that day parole is the most appropriate means of handling "clemency" type releases prior to one-third of the sentence either: we will recommend later (see "Full Parole") that parole by exception be reinstated for this purpose.

Issues around CCC and CRC use

On any given day in Canada, there are about 800 federal offenders in halfway facilities across the county, about half of them in CRC's (houses run by private agencies) and the other half in government-operated CCC's. Most are on day parole,

though NPB does sometimes require CRC residence as a condition of full parole or mandatory supervision (not CCC residence, though: these are legally "penitentiaries").

In most of the regions we consulted, there was a need expressed for more CCC and CRC bed-space, except in certain instances of available CCC bedspace in a large city. Indeed, CSC almost always exceeds in actual bed-days used its "guaranteed" estimates of CRC bed use for any given year; CRC's and CCC's generally have waiting lists, and occupancy rates which suggest a minimum of vacancies. There is also a distinct lack of CCC or CRC facilities in remote areas and small towns.

Some of the concerns about CCC's and CRC's have already been discussed; what follow are some of the more operational problems.

First, we find the <u>per diem</u> fee paid by CSC for CRC use to be too low to enable these facilities to operate competitively, to fulfill security requirements imposed on them by the Ministry, to pay their staff an adequate and equitable wage, and to offer sufficient services to their residents. The results of some of these funding problems have included the closing of some CRC's, a high staff turnover rate, and some reluctance on the part of some CSC and NPB officials to make use of CRC facilities. Given the scope of this study, we are clearly not in a position to recommend an actual <u>per diem</u> fee, though the fee must be raised. Elsewhere, we recommend that CSC employ block funding for specialized community services supplied by private agencies, and this funding mechanism should be considered for CRC bed use as well.

Because, legally, day parolees are "inmates", CCC and CRC residents sometimes experience difficulties in obtaining provincial health insurance, even though CCC's are too small to include medical staff and indigent inmates may have to travel to the penitentiary from which they were transferred in order to obtain medical care. (These problems also apply to persons in CRC's.) In cases of medical emergency, it may be difficult for the offender to obtain medical care, and dispute over what constitutes an "emergency" causes problems in assigning payments as well. CSC should enter into negotiations with provincial authorities to ensure that all released persons are registered with the provincial health insurance scheme at the time of their release, and are therefore covered and assigned a coverage number from the day of release.

Communications between a CCC or CRC and institutional case preparation staff, or, for that matter, the prospective resident is not always as complete as it should be. We were

informed of instances of day parolees or inmates on temporary absence arriving at halfway facilities without these facilities having received notice of the release. Some staff suggested that inmates should visit the facility on a TA prior to day parole release in order to become acquainted with the program. Indeed, the régime of the CCC or CRC is not always well understood by inmates prior to their arrival, and the restrictiveness of the facility's rules and the closeness of the interaction with staff often comes as something of a shock to inmates, especially when they feel they have been "paroled". The CCC/CRC environment continues to be a source of frustration and pressure for many inmates throughout their stay. One suggestion which appeared to make some sense was that CCC residents just released from penitentiary be given a couple of weeks to adjust to the transition and to re-acquaint themselves with the free world, before the staff pressure to obtain work and meet other goals begins in earnest. While in many instances this adjustment period is already provided, its legitimacy should be more fully recognized.

Other problems

Three other issues bear mentioning. The first is that there is an apparent inconsistency in granting post-suspension hearings to full parolees prior to revocation decisions, but not necessarily granting hearings to day parolees whose release has been terminated.* Since day parole termination can have very negative consequences in terms of return to penitentiary, cancellation of the program, and possible further releases, it is necessary to allow the offender an adequate opportunity to present his side of the case. There are or may be, however, resource limitations within NPB which would make prompt hearings in all such cases impossible. We recommend that a workload feasibility study be made of allowing hearings prior to day parole termination in all cases where the offender requests it. The possibility of moving to the use of hearing examiners at this and other stages should be explored as an alternative to further expansion of NPB. Second, though in practice the reasons for day parole denial are typically communicated to the inmate, the Parole Regulations should be amended to mandate the written provision of reasons for day parole denial.

Finally, persons successfully completing day parole and being "released" on full parole or MS must go through a procedure of official release, including a medical examination, at a "penitentiary". This is a formality, which in many instances

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* We refer here to terminations initiated as a result of problems with the day parolee's behaviour, not those which occur because of the expiry of a work or other program in which he was participating.

results in the day parolee having to travel to the parent penitentiary in order to go through the procedures. Since this process usually occurs on a week-day, it can mean loss of wages for the offender, who also must pay his own travel costs. CSC should examine the feasibility of using parole district offices and CCC's for this purpose. CSC should also enter into negotiations with provincial facilities, through exchange of service agreements, to permit the necessary procedures to be done, on a fee-for-service basis, by the usually more conveniently located provincial jails. (The ground for this kind of arrangement is already laid in federal-provincial exchange of service agreements.)

FULL PAROLE (SELECTION)

As has been seen in Chapter II, selection for full parole serves a wide variety of functions, though not all of them are formally "objectives": it mitigates the maximum possible punishment and determines the exact duration of the initial imprisonment period; it makes assessments of future risk in order to determine who should and should not be held as long as possible; it directs (in combination with TA's and day parole) the manner of the gradual or more sudden entry of the inmate into the community; it performs some sentence equalization functions; it has an effect on the penitentiary population. If full parole were to disappear, all of these functions would be affected, and the sentencing and corrections sytems would be faced with questions of how to perform the functions (or some of them) through other means.

Nevertheless, perhaps because of its diverse uses, the full parole function is not well defined, particularly in a way which is of any use to decision-makers in deciding about how and when to exercise their powers in individual cases. The three criteria for full parole in the Parole Act (10) are, as we have seen, either too vague (how much of a risk is an "undue risk"? and risk of what: violence, criminal recividism, technical rules violation?) or inappropriate and largely beyond assessment in individual cases (few releasing or even corrections authorities today would venture to describe what obtaining the "maximum benefit from incarceration" might entail, nor would many officials feel confident in saying that any given program will aid the "reform and rehabilitation of the inmate"). In many ways, of course, the vagueness and flexibility of the statutory criteria are extremely useful in allowing NPB to make decisions it considers appropriate (one official, for example, found it useful in some cases to use the criterion of "maximum benefit from imprisonment" to justify a positive parole decision, since

it is virtually impossible to demonstrate that any inmate has not obtained whatever benefits might be obtainable from imprisonment).

However, there are difficulties with any discretionary power which is so broadly defined. First, as the Auditor General (1978) has pointed out, there are accountability and evaluative problems with an inspecific mandate: NPB "was not in a position to evaluate its effectiveness since it has not specified criteria for assessing the quality and consistency of its decisions". The lack of specific policies is problematic in itself during an era of "accountability". The lack of measures and evaluative feedback on the extent to which the agency is conforming to its specific policies also seriously impairs NPB's ability to assess its own consistency and to make informed judgements about the success of policies and whether they could or should be altered. Second (discussed below), vague mandates can and do lead to disparities in individual decisions. Third, a vague mandate, even if understood by the agency holding it, is often not well understood by others; in this context, case management staff across the country complained of the difficulties of having to "second guess" unstated NPB decision policy. (Whether second-guessing is in fact proper or not, there is no question that it occurs.) Problems of disparity will in turn be exacerbated by variations in individual case management staff's "second guesses" of what NPB will do or "want from a case". And fourth, the lack of specific criteria will cause problems for the individual inmate seeking to present his case and prepare his release plans in the most appropriate and favourable light, and makes effective appeal very difficult.

The Working Group was not in a position to recommend which objectives full parole should and should not assume, nor what specific criteria should be used.* We did feel, however, that NPB must resolve questions of objectives which are before it, and must provide more specific criteria in law to guide its decisions and provide notice of its policies. Further, the statutory criteria in the Act should be amended to remove the requirement that a grant of parole be based on the maximum benefit from imprisonment, and that parole would aid the offender's reform. (This will be discussed further later.)

In fact, there is some merit in rewriting the statute to reflect reasons for denial rather than granting. Hugessen (1972) endorsed the Model Penal Code formulation which would have the statute read that "Whenever the board considers the

* We do provide a discussion, however, of the philosophy and implications of some of the major objectives "sets", in Chapter V, to aid the reader in drawing his own conclusions about the desirablity and feasibility of pursuing certain major directions.

release of an inmate who is eligible for parole, it shall be the policy of the board to order his release unless the board is of the opinion that his release should be deferred because:..." This reverse-onus reading permits consideration of factors (such as sentence equalization) which a releasing authority may wish to review, while circumscribing the number and nature of the considerations which can be used for denial. We disagree with Hugessen, however, that the Model Penal Code's actual proposed criteria* for denial of parole would be of any help in specifying parole policy, because they are so vague and because we vigorously disagree with some of them.

One last point bears making in a discussion on parole objectives. That is that there is no "ideal" or "magical" parole rate. There is no absolute standard or even informal consensus against which it can be said that "this inmate deserved parole" or "that inmate's risk is low enough to permit parole". The parole rate varies considerably from year to year, and higher parole rates will eventually yield higher parole return rates (but not necessarily, it should be noted, higher overall return rates) than will lower parole rates. But the parole rate and consequent parole return rate are determined by a discretionary weighing of various costs and benefits. It is impossible to say (as an absolute) what the parole rates "should" be. (During our consultations we asked corrections people in all regions what they thought of the current parole rate of 35-40%. Despite marked differences in regional rates, the typical response we received [except in one region] was, "it could be higher".) How one feels about the parole rate is essentially determined by which values and pressures are most salient to one's role in the system, and by one's assessment about where the balancing of various costs and benefits should be drawn.

None of this detracts, incidentially, from the validity or feasibility of specifying parole policy further and measuring its implementation and effects. It is only to say that parole policy is a relative, not an absolute, phenomenon, influenced (however informally) by assessments of relative costs and benefits. Any parole policy will have costs of various kinds. We feel that the balance drawn between costs and benefits should be better understood (i.e., measured) in order that it can be better controlled. Better measurement and understanding of the various "balances" which go into parole policy can also help NPB identify its specific criteria and deal with them more effectively.

* They are four: risk of serious harm to society; release would "depreciate the seriousness of his crime"; release would have a "substantially adverse effect on institutional discipline"; or for "continued correctional treatment" not "available in the community". American Law Institute (1962).

Disparity in full parole selection

A number of disparity concerns were raised during the Study.

As was suggested above, one of the major complaints received from case preparation staff in some areas was that it was extremely difficult to discern how parole policy would influence cases, or to predict how a given case would be received by individual board members. Of course, it may not be entirely desirable for case preparation staff to be able to "predict" parole decisions with perfect accuracy, since they may gear their recommendations accordingly.* However, it is desirable for parole policy and its application to individual cases to be well understood by both decision-makers and the people who explain release to inmates, prepare release case documentation, and guide inmates through the process of agreeing on and pursuing a plan of correctional programs which could ultimately lead to or be affected by an early release.

Numerous studies of NPB decisions have shown some interesting results. The finding that NPB decisions concord with case recommendations, especially those made by parole officers, who are closest to NPB organizationally, is well documented (Léveillé, 1972; Macnaughton-Smith, 1976; Demers, 1978). Other findings suggest that NPB decisions are influenced more by factors in the offender's criminal career (its seriousness, length, and consistency) than by personal or biographical factors such as age, sex, race, social class (Demers, 1978). A study of federal full parole decisions by NPB from 1970-72 (Nuffield, 1979) showed that, ignoring case staff recommendations, the most important factors to parole release probability were the security status of the inmate at the time of his hearing, his record of previous imprisonments, age (younger offenders were more likely to get parole), prior breach of parole or MS supervision, number of dependants, record of "alcohol problem", and aggregate sentence (inmates with longer sentences were more likely to get parole).

However, Canadian studies which can "explain" parole policy, in the sense of being able to "predict" a parole decision based on knowledge of case factors, are not available: information on case factors can only account for a very small amount of variance in parole decisions. This may be for a number of reasons, including poor information and an inconsistent (i.e. variable) relationship between case factors and parole decisions.

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* Concordance rates between CSC staff recommendations and NPB release decisions are already vey high: rarely do they fall below 85-90%. (Atack and Bonhomme-Beaulieu, 1978; Palamedes, 1979; 1980).

Hann (1980) notes a number of factors which may contribute to parole decision variability. First, strong variations in the annual granting rate (from a low of 25% to a high of 61% over the years 1967 to 1978) are observable. Second, strong regional differences in parole rates are apparent (there was a 26% absolute difference between the highest and lowest regions in 1978), with the Quebec and Atlantic regions showing higher parole rates, and the Pacific and Prairie regions the lowest rates. Hann's analysis of regional inmate characteristics leads him to conclude, however, that those parole rate differences are not apparently attributable to in differences the types of cases handled in different regions. He concludes that yearly variations in parole rates (which follow the same patterns at the regional level) are probably a product of generalized NPB policy about release levels. (Regional information from our data base suggests incidentially that differences in regional parole rates are not particularly related to parole and MS success rates; merged over 1974-80, the regional grant rates vary by 19% from the highest to the lowest, but do not seem to be related to differences in regional success rates. See Table A-23.)

The Working Group believes it essential that parole selection policy be more clearly and specifically articulated, though we were unable to agree on what the nature or characteristics of the criteria should be. What we did agree on was that there should be an extensive study of actual NPB decisions. In the main, this study should concentrate on empirical research of parole decisions made in the recent past in order to determine the quantitative contribution of various factors to these decisions. Additionally, there should be study of the formal "reasons" given to the inmate for parole decisions, and discussions with regional board members of their approach to parole. Past studies, it will be recalled, examined various types of factors and how well they "predicted" parole: legal, structural or organizational factors (such as offence, sentence length, region and voting procedures); case characteristics (such as marital status); and estimates of the individual's risk of recidivating. All these should be included in the study, along with information on the offender's behaviour and program participation in penitentiary, since these last two factors have not been extensively researched for their influence on parole. (NPB has in fact undertaken the planning of an extensive decision study, but since the methodology has yet to be worked out in detail, we cannot tell if it will meet these needs).

The purpose of this Study would be twofold. First, it would determine the level of "unexplained variance" (disparities which cannot be accounted for) in parole decisions. Though clearly a certain amount of variation is to be expected and is of course (depending on its nature) desirable, it is necessary

to determine first what the level is of unexplained variation, in order to allow decision-makers to come to grips with the policy implications of this variation. Second, the findings about what patterns of "explainable" variation are observable will allow policy-makers to make decisions about (1) how desirable these influences are; (2) whether they should be changed; and (3) whether they should be formalized in order to guide future decisions in a more definitive way, in order to avoid future disparity.

The above approach is akin to the so-called "guidelines" approach (see Chapter on "Major Directions for Release") which has, in some of its practical applications in the United States, aroused strong reaction of both a negative and a positive nature. Much of this reaction has been caused by the particulars of one or two "guidelines" applications in specific states. We wish to make it clear that by recommending a study of parole which could eventually lead to objective, specific guidelines for future decisions, we are not advocating any one particular type of approach. "Guidelines" are associated with a variety of different approaches, none of which NPB is compelled to adopt, and none of which, indeed, NPB should adopt unless they are suited to our system and our formulation of objectives for release. We feel it is essential, however, for NPB to specify better its criteria for parole; and, in order to do so, it is necessary that an improved understanding of actual practice be obtained. Finally, concern about disparity can never be translated into remedial action unless decision-makers become convinced that there is in fact a disparity problem.

Parole eligibility dates

The past ten years have witnessed a tightening of many of the constraints placed on discretion to release under various forms. These constraints include minimum periods to be served prior to eligibility for full parole of 25 years for first degree murder (reducible on application to the court after 15 years) and 10-25 years for second degree murder (also reducible after 15 years), depending on the sentencing judge. We find these long eligibility dates for murder to be inhumane, unjustified, and a potentially serious hazard to penitentiary order, and recommend elsewhere that they be reducible by application to the court at an earlier date, in order to bring them more in conformity with eligibility provisions for other life sentences (see under "Special Offender Groups", Chapter IV).

Additionally, a provision has been introduced (Parole Regulations, 8(1)) which requires inmates identified as

"violent"* to serve one-half (rather than the usual one-third) of their sentence prior to full parole eligibility. Regardless of whether this extension is intended in a denunciatory or incapacitative way, we find it unacceptable. The vast majority of sentencing judges in Canada are unaware of this provision, and are sentencing persons susceptible to this measure as if they were eligible after seving one-third of the term. NPB is quite capable of making any necessary distinctions between these persons and other inmates without being bound to an inflexible rule of this sort. The tendency to complicate the already confusing eligibility system should be avoided. Finally, this provision seems very susceptible to regional variations.

Most importantly, however, there is no longer any real provision for full parole of inmates prior to one-third of the sentence. "Parole by exception" was abolished in 1978 as part of the package of "peace and security" reforms intended to extend criminal justice powers (Bill C-51). The former "parole by exception" permitted release at any time prior to the one-third mark in "special circumstances" (1976 Parole Regulations, 2(2)1). This power was not extensively used and, in our view, was not abused. Under an extremely limited form of parole by exception introduced in 1979 at the request of certain provinces, this power may now be used in cases of inmates who are terminally ill, who are subject to a deportation order, or whose continued incarceration would likely result in serious physical or mental harm. Very few cases of this new parole by exception have been granted in the two years since its creation, and most of them were for deportation. It is virtually inapplicable to cases other than deportable inmates.

The Working Group recommends that the parole by exception power be restored to apply to any inmate whose special circumstances indicate that release prior to one-third would be in the interests of humaneness, equity or justice. Our discussion earlier of the sentence mitigation "by-products" of parole suggested how significant is parole's effect in correcting inequities and anomalies created by the law or its agencies. Further, one of the tenets of discretionary justice is that the law cannot possibly imagine, anticipate, or make allowances for all the incredible varieties of human behaviour, human circumstance, and criminal activity which will arise. Parole

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* In order to qualify as a "violent" offender for this purpose, the inmates must be so designated by NPB and must have a sentence of 5 years or more for a crime for which he might have been given 10 years or more, and must have committed an offence which seriously endangered or harmed an individual, or resulted in severe psychological damage to an individual. The offender must also have a previous record for such a crime, the term for which must have expired no more than ten years in the past.

by exception is a power which has been used in the past with restraint to compensate for some of the anomalies and injustices created by law and circumstances, and it should be restored.

The need for or desirability of any parole eligibility dates at all is also an issue, discussed along with other eligibility issues in Chapter IV.

Selection and training of NPB members

Despite the dictates of law, organization, structure and precedent, any agency will also be influenced to some degree by the individuals who work in it; this was a theme, in the penitentiary context, of the MacGuigan Sub-committee (1977). In parole, it is probably even more important, since parole consists of a small number of people, acting largely in independence from one another, making decisions of "absolute discretion" about the lives of large numbers of other people.

There are no formal criteria whatsoever for Parole Board appointment in Canada. Parole Board members are appointed by the Governor-in-Council on the recommendation of the Solicitor General. To some extent, the lack of a requirement of formal qualifications for members springs from the philosophy that NPB should reflect the community generally, and not represent any one pariticular discipline, viewpoint or expertise (though it could represent many disciplines in total). The Working Group feels that it is not known what makes a "good" parole board member - at least in part because the objectives of parole, and what makes a "good decision" in parole, are not settled. For this reason, we would not venture to specify what qualifications ought to be required in NPB members, nor would we support a mandatory system of drawing one or more members from various specified disciplines.

However, the board members selected can affect the quality of justice delivered, and just as importantly, the appearance of justice. Some NPB appointments are of a quasi-political nature, and this is undesirable because it serves to damage the credibility of the entire Board and it may inhibit the Board's ability to control policy and the individual exercise of it.

The Working Group was unable to agree on a system which could strike a proper balance between independence of hiring and the need to maintain some (undefined) standard of qualifications. We found some interesting ideas in other jurisdictions, however, which ought to be given more study than we were able to give them. One idea, used in a couple of U.S. states, is to establish a screening body which would be responsible for

drafting a list of nominees for NPB appointment for consideration by the Governor-in-Council. This screening body could be made up of persons, both within and outside government, who have recognized experience in and knowledge of the criminal justice system. A balance of public and private officials, as well as of prison-oriented and community-oriented persons, might serve to encourage balanced appointments. Some reservations were expressed about this model, however, in that the quality of nominations would be determined by the quality of the screening body itself - which in turn is not guaranteed.

The second model we encountered, used in four U.S. states, is civil service merit hiring of parole board members. This model could be expected to reduce the level or frequency of inappropriate appointments, but it requires some decisions about formalizing the types of qualifications necessary for board members, it could lead to an over-use of professional correctional people, and it creates civil service tenure (after a probationary period), which may not be desirable in a field as changeable as corrections.

There is also some suggestion that new NPB members are often sent into the field without sufficient understanding of the parole process. We are not in a position to specify what types of training are needed for board members (since, once again, there is no agreement on what makes a "good decision"), but it is self-evident that sufficient time must be given to newly appointed members to learn policy, procedures and something of how they work in practice. No new member should participate in case decisions until he has been familiarized with the system.

Accountability issues

The NPB has "exclusive jurisdiction and absolute discretion" to grant and refuse parole, meaning that the only external review permitted of its decisions is by the federal court on procedural grounds only. The substance of parole decisions can only be reviewed by NPB's own Internal Review Committee (IRC).

For a number of reasons, the Internal Review Committee is not as strong a review mechanism as it should be, and we recommend that it be strengthened. First - and this relates to our continuing theme of the need for greater specificity of criteria - it is hampered by the lack of a specific policy context in which to situate and to evaluate the decisions appealed to it by inmates. Second, it has no special status within NPB, and members of the Internal Review Committee are also members of the Board generally, who may be reluctant to reverse their colleagues' decisions. Third, its criteria for being able to

reverse a decision or order a new one are extremely restrictive. They require a finding that there was an error in fact or law, that significant information was not originally considered or available, or that the reasons given by the original panel do not support the decision. This means that the IRC can rarely reverse a decision, never substitute its judgement for that of the original panel, and only occasionally have an impact on policy or practice. Fourth, inmates may not be widely aware of the Internal Review process, and its low visibility and overlapping membership with other NPB panels hinder its credibility.

Statistics on the workings of Internal Review suggest that it is in somewhat limited use; out of all NPB decisions on the refusal of parole or day parole, and the revocation of parole, day parole or MS, Internal Review receives complaints on about 600 a year. Of 141 decisions reviewed during the period July 1 to September 30, 1980, 117 resulted in an affirmation of the original decision, and only 10 resulted in a parole denial or a revocation being reversed. (It is impossible to say, of course, what would constitute a "proper" case reversal rate. Nevertheless, these figures, in combination with what is known about the mandate and process of Internal Review, suggest that some strengthening of parole review could be made.)

We recommend that the Internal Review Committee be created as a separate body within NPB, and not made up through overlapping membership with other NPB panel members. Internal Review should be empowered to reverse a decision when it disagrees with it substantively. It should hold hearings, establish time limits for the scheduling of hearings and notification of decisions to an inmate, and should establish a procedure for written sharing with all NPB members of any significant precedents or decisions. Consideration should be given to allowing CSC to appeal the grant of parole or day parole to Internal Review where it disagrees with its substance, but caution must be taken to ensure this does not delay final parole decisions for other than very brief periods.

Once a more vigorous and effective Internal Review mechanism has been established, the Solicitor General should enter into discussions with the Correctional Investigator* in order to determine whether it would be feasible, given existing and potential resources, to have complaints about parole referred to the Correctional Investigator. This expansion of mandate has been raised in the past, and the decision not to pursue it

* The Correctional Investigator is a kind of "penitentiary ombudsman" (though he reports to the Solicitor General rather than to Parliament) appointed under the Inquiries Act to investigate and make recommendations on inmate complaints.

has been partially a matter of the enormity of the potential workload. The Working Group hopes that strengthening the internal appeal mechanisms may allay some of the fears of workload implied in taking on parole cases, since offenders would have to exhaust their internal remedies before appealing to the Correctional Investigator.

Most of the members of the Working Group believe that it is not sufficient to have only internal means for re-examining the decisions made by the correctional system, and that it would be useful to have an "ombudsman-type" official available to review cases (though it should be noted that the Correctional Investigator has no power to change decisions, but only to investigate complaints and try to negotiate a solution among the parties). This was not a unanimous Working Group opinion, however, and for this reason we have recommended only that discussions be undertaken of this option. Some of the Working Group members would go farther, however, and would support substantive appeal of parole decisions to an outside body.

Two currently visible reforms of procedural safeguards in parole also touch on accountability. NPB has begun allowing legally trained and other persons to "assist" at full parole and revocation hearings - though not to "represent" the inmate. The nature of the distinction between "assistance" and "representation" is not clear to us, and must remain to be seen, but the Working Group supports this reform as a step towards greater visibility, accountability, and the appearance of fairness. The second reform may be to give inmates in writing certain information from their files which will be used by NPB in making decisions about them. It is not, at this writing, yet established just what information would be made available and in what form (summary or descriptive). The Working Group would support as full as possible a disclosure of information, consistent with protection of third parties and confidential information. This reform, if properly implemented, would improve the accuracy of files and will permit more informed parole preparation by inmates and their representatives.

PAROLE SUPERVISION

Under this heading, we will discuss all aspects of community supervision except those which refer exclusively to mandatory supervision (see below). Therefore comments on "parole supervision" will usually be applicable to the supervision of MS cases.

Parole supervision has come under a lot of criticism as a result of research which fails to demonstrate any overall effect on offender recidivism from community supervision (Axon, 1980).

Some of the difficulties with this research will be discussed below. Parole supervision has suffered in importance as a result, especially in an era of perceived increasing conservatism and in the face of the demonstrable effectiveness of prisons at incapacitation: prisons keep criminals away from their potential victims, and parole does not (or not as effectively).

Nevertheless, prisons are a very expensive way to keep a crime from happening, or (as some would have it) to delay a crime for a few months. Prisons also, by their nature, have negative consequences in terms of debilitating inmates, embittering them, severing their connection with normal society and the resources they will need to reintegrate, teaching them criminal skills and contempt for justice, and "labelling" them for the self-fulfilling prophecy of a continuing criminal lifestyle. Because of these factors, prisons also, in the Working Group view, have very little chance of "working" in the sense of preventing crime or reducing its seriousness through other than incapacitative means.

Parole, whatever its present effectiveness, does not suffer to nearly the same extent from the factors which effectively prevent prisons from "working". Though parole is usually seen by offenders as oppressive, punitive, arbitrary, and ineffective, it does occur in the community, where the offender interacts with the conditions which contribute to crime. Unlike prisons, it therefore has at least the potential to deal with the conditions which appear to generate crime in the natural setting in which they occur, and will continue to occur, regardless of how long the offender serves before his eventual release. Parole is also much less expensive than prisons: it costs about $2,000 to supervise one parolee for a year, and about $25,000 to keep him in prison for a year (average cost).

Despite all this, the commitment to parole and improving its effectiveness has been far less apparent than has been the commitment to penitentiaries. Parole has been seen primarily in terms of its low cost in relation to pentientiaries, and the willingness or capacity to put more resources into parole to try to improve it has been limited.

We will discuss issues in parole supervision around four general headings: effectiveness, staff morale, conditions of parole, and suspension and revocation issues.

Effectiveness

During our consultations with parole field staff, we were struck by the apparent loss of a feeling of "mission" among parole officers. To some extent, this has been caused by the

"nothing works" view of corrections. It has been exacerbated by the recent introduction of "minimum standards" of supervision, which specify the frequency of contact which parole officers must have with offenders, but gives virtually no indication of what the content of that contact should be (CSC Case Management Manual, 1980). Parole officers sometimes refer to this new emphasis as "quantity control".

While the recent efforts to place more controls on parole officer activity and accounting were probably inevitable, they do beg the question of the quality, content or "mission" of parole. What is the parole officer trying to accomplish, and what should he not try to accomplish?

There are, of course, no definitive answers at present to the question of what will be effective with parolees, under what conditions and to what degree. Parole officers do a great variety of things, as we have seen earlier: they provide practical assistance to people recently released from penitentiary; they try to help them find jobs or get training, education or other assistance in the community; they counsel parolees; they check on their behaviour in the community. They do different things with different parolees. The research on parole effectiveness says a lot about what impact "parole" (taken quite generally) has on recidivism, and what impact smaller caseloads have on recidivism: little measurable effect. However, very little research has broken down the specific services or activities delivered by parole officers in an attempt to determine how successful we are at performing each type of function, and if successful, whether it has any impact on recidivism. Very little, too, is known about "differential intervention": what effect different parole officers will have in doing different things with different offenders. It is known that correctional intervention apparently makes some people "worse" and others "better", but is is not known how to tell which effect will take place with whom.

The Working Group feels that part of the commitment to parole supervision should include an interest in finding out more about what functions parole performs, and what effects these functions have individually on parolees. Parole, we believe, will probably be a part of corrections for a long time to come, and the justice system must build on its potential strengths instead of neglecting it for its obvious weaknesses.

Since the Federal Corrections Agency Task Force (1977), there has been an increased emphasis on the "brokerage" model of parole, wherein the parole officer does not try to provide directly or duplicate services which are available in the community, but acts to match up his parolees with those services

which they may need: employment agencies, counselling services, education or vocational training, and so on.

This is a desirable model from many perspectives. It makes the most efficient use of correctional resources in an era where there will be increasing competition for the correctional dollar. It makes use of community services provided for the general public in dealing with offenders, rather than providing separate programs just for them. It does not force parole officers to be "all things to all parolees".

Two members of the Working Group made site visits to the probation service of the Ontario Ministry of Correctional Services in order to learn more about their approach to brokerage and team supervision of offenders. Ontario is heavily committed to a program of purchasing service for its probation clients from private and public agencies which specialize in job finding, drug abuse treatment, counselling, and other specific services. It is spending over seven million dollars in fiscal year 1980-81 on 86 contracts for such services and expects to spend about $10 million in fiscal year 1981-82. Provincial officials feel they have become more effective since moving towards this brokerage model, and away from standard caseloads.

Under the team supervision model used by Ontario, the needs presented by individual probationers are assessed by a team of probation officers who have the discretion to decide what frequency or type of contact is necessary with the client. The emphasis is, in fact, not on regular reporting or casework intervention with probationers, but on obtaining services needed through brokerage by members of the supervision team, each of whom specializes in obtaining a certain type of service for clients.

About half the probation offices are organized in the team model, whereby case needs and case progress are discussed at weekly meetings involving all officers. Probation officers are in fact "evaluated" not in terms of conformity to standards of frequency of contact or other traditional methods, but largely by their peers during these team meetings, where each case will be discussed by all workers.

For most probationers, the team assesses the client as being in need of a "primary" service, and the case is assigned to the probation officer who specializes in obtaining that service. Cases with multiple needs will, of course, be assisted also through the skills of the other probation officers. For those cases which are unreceptive to intervention or where surveillance and control are considered to be the primary need, the probationer will be assigned to a "surveillance officer" who

emphasizes frequent reporting and control. This officer also serves as a kind of check on his fellow officers, who may wish to continue a case on probation while the rest of the team assesses the desirability of that action.

The Working Group recommends that the federal Solicitor General look more closely into adapting this kind of team/brokerage model to its operations. It has the potential for improving the chances of successful delivery of services to offenders, better liaison and cooperation with existing community resources, more extensive development of new community resources, more rationalized assessment of parole officer activities, and more cost-effective use of existing government personnel and funds. It may be that this model is not fully adaptable to federal corrections - we have more serious offenders and far fewer volunteer workers, for example - but we feel that it has enormous applicability to our system.

Commitment to the brokerage model must be more active if it is to be effective, however. Cash funds should be made available to District Parole Directors for flexible use to purchase training, psychiatric help, work tools, marriage counseling, or whatever services are felt to be needed in individual cases. Closer relations, on the level of senior management, need to be established with certain key agencies which provide services relevant to corrections. Standard arrangements for reserving seats in training courses need to be made. Serious attention must be given to assisting parole officers, who are often trained in and selected for casework skills, in adapting to the different orientation that the brokerage model implies.

More effective use also needs to be made also of the private aftercare agencies in Canada, agencies like the John Howard Society and Elizabeth Fry Society, which routinely provide supervision and aftercare to persons under correctional authority. The proportional role which these societies play in federal parole supervision has been steadily decreasing over the last 13 years, from supervision of over 70% of cases to about 15% of cases in 1979 (Jubinville, 1980). Whatever the other arguments about this trend (costs, application of supervision standards, etc.) it is alarming in view of the invaluable contribution which the private sector can make in providing <u>diversity</u> of services in the community. No government-run correctional service can hope to operate all the programs which are needed to meet the very diverse needs of offender populations. These diverse programs can however be provided by other government departments and by the private sector. But the private sector in Canada is, partially as a result of decreasing referrals, nearing a crisis, both in terms of funding and in terms of keeping its base of committed, competent staff. The Working

Group feels that a much more effective use can be made of the private sector through block funding of diversified and specialized services for offenders. This does not imply that CSC should cease to use the private sector for regular parole supervision; in fact CSC has made a commitment to increase private agency referrals by 10% a year for each of the next three years. However, we feel that one real strength of the private sector, its potential for diversification, is not being tapped properly; if anything, the trend is towards standardization of the private sector, similar to that in government.

Other avenues also need to be pursued further. CSC man-year formulas should allow for parole officer activities which are directed towards the development of resources in the community, often the most time-consuming activity initially, but having valuable potential pay-offs. More exploration should be made of the use of volunteers in supervision. Volunteers can be effective with certain types of cases (CAVIC, 1979); they can be a cost-effective means of providing intensive supervision or help; and most importantly, they provide an opportunity for public participation in corrections. Setting up a proper volunteer program can involve a large initial (and considerable continuing) commitment of time, selection and training activities, and frustration, but it has been shown to be effective in certain situations. CSC Headquarters should encourage volunteer supervision programs as part of its policy on citizen involvement.

Finally, effective parole supervision should also involve rational allocation of resources to those cases who most need it, and less so to those cases who need it less. More scope should be made for the relaxation of supervision "minimum standards" for cases which are the better risks, and not cooperative to the idea of being supervised.

Staff morale

It is almost a commonplace to say that morale is bad among field staff. During our consultations, the situation may have been exacerbated by recent bad press over violent incidents, as well as the emergence of a new emphasis on written reporting and meeting deadlines for written reports. A frequent complaint among parole officers is the excessive amount of paperwork required of them, to the detriment of casework; a frequent assessment was that parole officers spend at least half their time on paperwork. Our "guesstimate" of that figure is somewhat less, but the fact of frustration over paperwork is very real. Every effort should be made to reduce paperwork through the use of short-form reporting and reliance as much as possible on the parole officer's log book rather than on reports

written from it. In particular, quarterly supervision reports on active cases could be reduced to a short form which would be supplemented with a descriptive report only on an as-needed basis.

Parole officers also experience frustration from "serving two masters", CSC and NPB. While they are employed by CSC and subject to CSC administrative control, parole officers also must report to and to some extent take direction from NPB which, as the releasing and revoking authority, takes an interest in the conditions of parole, the level of supervision, and the offender's adjustment. Parole officers have only recently (1978) been shifted organizationally from being under NPB to being within CSC, and the strains of that move are still being felt, both in relations between parole officers and NPB and in the new role (some say reduced role) assumed by parole officers in the total federal correctional system. Many parole officers feel that the "community end" of corrections has suffered and will continue to suffer as a result of the penitentiary/parole service merger. The parole officer is now less influential in recommendations for parole, for example, because he is only one member of a "case management team". Many parole officers feel that case preparation has as a result become far more oriented towards penitentiary programs than towards the community, and that inadequate consideration is now given to community concerns. The new "career path" model which will encourage direct transfers of penitentiary case management personnel into parole officer positions is also a cause of some concern, based on the qualifications and "penitentiary orientation" of these staff as opposed to parole officers.

The Working Group finds these problems, and the frustrations they cause, to be of significant concern. We are reluctant to recommend any changes to such a recent, complex and controversial organizational change as the CPS-NPS merger, but we note the problems to ensure that they will be monitored closely in future. The parole officer is one of most important and accountable front-line workers in corrections, and has the potential for enormous influence over the post-release adjustment of offenders. Proportionate attention needs to be paid to the frustrations of parole officers.

Conditions of parole

Both parole officers and offenders in our consultation complained of the intrusive nature of some parole conditions. Some parole conditions apply to all offenders ("standard" conditions) while others are set only in cases of perceived need ("special" conditions). Many of the standard conditions do not refer directly to criminal activity, but are intended to prevent

the parolee from getting into certain situations (such as debt) which may contribute to an eventual return to crime. Other conditions are intended to ensure that the parole office has a rough idea of the whereabouts of the parolee.

Many of the standard conditions (and some of the special ones) are considered to be unenforceable and used only to "justify" a suspension which is really motivated by other concerns. Conditions like obtaining permission to marry or to leave a small geographical area are not consonant with formal correctional policies of minimal intervention and retention by offenders of the rights of ordinary citizens. Such conditions also create enormous resentment among parolees, regardless of their other problems.

The Working Group believes the standard conditions of parole should be reduced to the following:

- to proceed directly to the area specified in the parole agreement and report upon arrival. (This condition ensures that the parole system does not "lose" the offender and that initial contact is made with the parole officer.)

- to remain under the authority of the District Director or other designated representative. (This condition provides the requirement to report to the parole officer.)

- to remain in a designated area (individually determined and specified on each agreement) and not to leave this area without obtaining permission beforehand from the designated authority. (This condition also ensures that the parole system does not "lose" the offender. "Designated areas" must however be reviewed to ensure that they do not, as one parole officer put it, reflect "horse and buggy" days. Some designated areas in effect forbid parolees to travel to another township within the same large city, and require obtaining of permission.)

- to obtain permission from the designated representative to purchase or carry a firearm. (This condition represents a stricter standard than is required of the general population, for whom complex gun laws are in effect. The discrimination is not considered excessive, however, and permission can be obtained for parolees who need firearms to hunt and live.)

- to notify the designated representative of a change of address or employment status. (This condition is

intended to ensure the parole system does not "lose" the parolee, and also reflects a basic assumption about the importance of legitimate employment to successful adjustment in society.)

All other conditions can be required as "special" conditions by NPB or "special instructions" of the parole officer if they are necessary or appropriate. (Police reporting, for example, is not a program of all police departments; abstinence from alcohol should be required only of parolees who get into trouble when they drink.) Special conditions are currently used with restraint, and this should continue. (Of a sample of 205 full parole cases surveyed in Ottawa and Moncton during the Study, only 17 carried special conditions, most of them for alcohol abstinence.)

Requirement of restitution to the victim or community as a condition of parole has been questioned as being ultra vires. Review of this policy, and its legality, should be made by NPB. Such a requirement should at any rate only be made in cases of clear ability to pay where the restitution requirement will not create undue pressure on the parolee.

Suspension and revocation

A number of concerns have come to light as regards suspensions and revocations. The "revolving door syndrome" of rapid re-releases of revoked offenders, is primarily a problem in MS, and will be discussed under that heading, below.

There are still apparently problems with ensuring that parolees are given a full, descriptive account of the allegations which form the basis for the parole suspension. In some instances, notice consists only of an enumeration of the conditions violated, which sometimes, according to criminal lawyers consulted, lists those violations which are "hardest to disprove" and omits the true (but less easily proven) reason for the suspension. Suspension notice should include all alleged violations, together with a descriptive account of the behaviour which constituted the violation. Revocation should, moreover, not be permitted on grounds of "prevention" of a breach of conditions. Parole officers will occasionally suspend an offender for a few hours or days if they observe that he is drinking too heavily or otherwise deteriorating so severely that he is in need of a "short shock" or "time out" from his own lifestyle. While the Working Group supports the need for this kind of brief suspensions (that is, suspensions done to prevent a future breach of conditions) we do not endorse the translation of these suspensions into revocations under normal circumstances, a practice which is already apparently rather rare.

The brief received from the Criminal Lawyer's Association of Ontario also points out two interrelated sets of problems in the suspension and revocation process. The first is that parolees and MS cases may be held in custody beyond their warrant expiry date because a strict interpretation is placed on Section 20(1) of the Parole Act, which requires an inmate, upon revocation of his parole, to be "recommitted to the place of confinement from which he was allowed to go and remain at large at the time parole was granted to him, or to the corresponding place of confinement for the territorial division within which he was apprehended". Suspended offenders are thus typically held for return to the penitentiary they were released from, and distances and limitations on the availability of suitable transportation and escorts may cause considerable delays, sometimes even past warrant expiry. Delays in scheduling the offender's appearance before NPB once the transfer has been effected will also prolong the situation.

A compounded problem occurs - affecting some 200 persons a year in Toronto, according to the C.L.A. - when the offender is facing new criminal charges. There may be considerable reluctance on the part of the provincial bailiff to "ship the body" to the appropriate federal penitentiary in order for the revocation and possible re-release to occur: if bail has been set, the bailiff may wish to see the offender remain in the jurisdiction in order to appear in court or report to the police; and if bail has not been set, the warrant of remand will technically require that the defendant be held until trial or the setting of bail. In the meantime, the criminal court may be awaiting the outcome of the suspension/revocation process before making a decision as to bail. Section 457 of the Criminal Code in fact is often interpreted as not permitting bail or a bail hearing for suspended parolees ("detained in custody in respect of any other matter").

The C.L.A. makes several recommendations for resolving these interlocking problems. The Working Group endorses them. First, Section 20 of the Parole Act should be amended so as not to require recommitment to the original releasing penitentiary. (Additionally, negotiations could be undertaken, and in fact were begun some years ago, to have local jails, parole offices and CCC's designated as "penitentiaries" for the purpose of recommitment and revocation decisions, especially in brief "turnaround" cases.) Second, parole officers should inform the suspended offender of his option (NPB Policy and procedures, 106-2 [1-2]) to consent to his revocation and thereby waive these proceedings, which he may wish to do if little time is remaining before his warrant expiry or mandatory re-release date. Third, the offender should be informed as soon as possible of his next mandatory release date. (Surprisingly

often, the parole officer is unable to obtain an accurate estimate of the old and new remission standing to the offender's credit, and because of this the parolee may serve time in custody past warrant expiry. Parole officers should have available a standard way of obtaining an accurate estimate in these cases: the Working Group recommends that, as a possible method, greater care be given to the accuracy and details of entries on Penitentiary 208 [Release] forms, and that a copy of this form always be available for the parole officer to consult.) Finally, Section 457 of the Criminal Code should be amended to make it clear that suspended parolees have a right to a bail hearing.

The Working Group also recommends that delays in scheduling revocation hearings and reaching a final decision as to revocation be reduced as much as possible. An examination of the "warrant register" noting all 91 suspensions (and 7 revocations without a prior suspension) occurring from the Ottawa District parole office from January 1 to October 3, 1980, showed that the time lapsing between the date of suspension and the date of ultimate revocation may be quite lengthy. Of the 42 applicable cases for which the dates were recorded at the time of the survey, 20 revocations occurred within a month, but 11 took longer than two months. There is no required limit on the time to a post-suspension hearing. We recommend that the Parole Act be amended to require that the post-suspension hearing occur within two months of the parolee's request for it, and that "reserved decisions" as to revocation not prolong the ultimate decision beyond two months unless it is unavoidable.

The Working Group was told by a number of inmates that suspended parolees often do not bother to request their post-suspension hearing, presumably because little benefit for them is perceived to occur from hearings. Ministry data sources do not provide information on what proportion of suspended parolees request their hearing, unfortunately*. Every effort should be made to correct any delays or defects which may contribute to a low rate of request for hearings, since it is essential that the appearance and reality of justice be maintained in a process which materially affects loss of remission, potential time to be served, and the presence of a revocation on the offender's record. In particular, revocation should not normally occur without a prior hearing if the offender requests it. Such instances seem to be rather rare, but they may occur when there has been no suspension of parole: the Parole Regulations,

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* Workload statistics from the B.C. office of the NPB provide the closest thing to an estimate of the hearing rate. In 1980, 504 suspension warrants were issued in the region, and 161 post-suspension hearings were held, or about 32% of 504. From an Ontario region sample, Latta (1981) estimates the hearing request rate at 32-38%.

20(2), require a hearing only in cases which have been suspended by the parole officer. Even where there has been no suspension, a hearing should normally occur at the offender's request unless he has obsconded and is unavailable.

Finally, many offenders complained during our consultation of the "excessive" use of suspension and revocation in non-criminal circumstances. Ministry data sources show that of the persons released on full parole or MS in any given year, about half of the eventual revocations which occur are not accompanied by a new criminal conviction. "Technical" revocations of Mandatory Supervision seem to be increasing. Of course, many of the "technical" revocations may mask a new crime which is suspected but not proven, and there is no real data on the actual circumstances surrounding suspensions and revocations. Research is need in this area.

EARNED REMISSION

The perennial question in remission is, "Can it ever be made to be truly earned?" In Chapter II, we concluded that, given the types of institutions involved and the level of resources which can realistically be expected in CSC, it is not possible to administer remission truly on the basis of evaluating inmates for exceptional, average, and below-average performance.

Reservations have also been expressed about the desirability of creating a "truly earned" remission system, in terms of the institutional tension it could generate, the confusion it would cause among sentencing judges, the implications for increasing penitentiary populations, the effect on parole decisions, the possibility of increasing disparities and unfairness, and the questionable overall benefit to be gained.

Efforts occur periodically to try to make remission "truly earned". At least three such efforts have occurred in the last few years: in 1974, in 1977, during the shift from statutory and earned remission to an "all-earned" system, and again in late 1978 and 1979, after it had become clear that the new system worked largely along the same lines as the old. At present, study is ongoing of the possibility of integrating remission with other incentives systems, such as work assignments, pay scales, temporary absences and parole. The Working Group is skeptical about the feasibility of these plans and, for the reasons noted above, has reservations about their desirability as well. Above all, remission should not determine the parole eligibility date, because of the tenuous or inconsistent connection between primary release considerations and the needs of penitentiary management and control.

Two remaining issues in remission will be discussed below. They are: disparities in application (including questions of review of failure-to-earn decisions), and loss of remission during parole revocation.

Disparities in remission

Because of the very high rates of earning of remission in CSC, differences in rates of remission are sometimes overlooked. Nonetheless, there are differences (though usually small in absolute terms) in the amount of remission earned, depending on the region, the security level and the individual penitentiary involved.

Data for the first quarter of 1980 show that there are small regional differences in the remission rates for program participation, and somewhat larger differences in regional rates for disciplinary evaluation. The number of inmates per 100 population who do not earn maximum remission for program participation does not vary much (from a low of 5.0% of inmates in the Prairie region to a high of 7.3% of inmates in the Pacific region). Similarly, the actual number of days of remission not earned for program participation per 100 inmates per month varies from 31 to 36 in all regions but the Prairies, which has a much lower rate of 21 days lost per 100 inmates per month. However, the proportion of inmates losing remission for reasons of disciplinary conduct varies from 1% to 12% in the regions, and the regional rate of loss of actual days of remission based on conduct varies from 4 to 41 days per 100 inmates per year. Again, the Prairies and Pacific region provide the lowest and highest rates of lost remission (but curiously, the rate of issuance of disciplinary "caution slips" is about the same in those two regions, and higher than in the other three regions.)

Clearly, there are marked regional differences in the relative proportions of inmates losing remission for disciplinary infractions, and in the actual number of days of remission involved. Differences in the number of caution slips issued, and in the type of staff typically involved in issuing them (custodial or program staff, for example) suggest differences in the administration of the system as well as the ultimate results in terms of days of remission (see Tables A-28 to A-31).

Other differences in remission earning are observable: compared to an overall average of 47 days of remission lost per 100 inmates per month, minimum security inmates lose an average 212 days, while medium and maximum security inmates lose an average 38 and 53 days, respectively. The fact that minimum security inmates, who are by definition considered less of a risk to society and to fellow inmates, lose over 5 times as much

remission as inmates in the next highest security level, may be troubling. On the one hand, inmates in minimum security may have more "opportunity" to get into trouble, but on the other hand, some of the differences may also be attributable to closer contact and observation between staff and inmates.

Maximum security inmates, however, lose more remission on average than do medium security inmates, though they lose less for disciplinary reasons (10 days lost for conduct in maximum compared to 23 days lost for conduct in medium) and more for non-participation or poor participation in programs (43 days lost for programs in maximum, compared to 15 days lost for programs in medium). These differences in earning rates according to security status are not easily attributable to any one factor such as program availability, use of punitive dissociation (during which no "participation" remission can be earned), restrictions on the availability of other punishments or privileges, the presence of "independent chairpersons" in disciplinary procedures at maximum security penitentiaries or the types of staff involved in evaluating inmates and issuing caution slips.

Data on the rate of earning of remission in individual penitentiaries show strong variation, suggesting that the manner of administration of the program in separate institutions may be the most important determinant of the outcome. Three medium security penitentiaries in the Pacific region show different lost remission rates of 12 days, 66 days and 81 days per 100 inmates. Two maximum security penitentiaries in Quebec have rates of 71 and 111 days' remission lost per 100 inmates per month. The Prison for Women has the highest rate of lost remission of any medium or maximum security penitentiary - 178 days lost per 100 inmates per month.

One footnote to this discussion of disparities in the awarding of remission is that some staff and inmates mentioned during our consultations that custodial staff who perceive the formal disciplinary process of punishing inmates as too difficult or cumbersome and beyond their control, have (despite a case management directive forbidding it) been using "caution slips" as a means of accomplishing punishment without conviction in disciplinary court. The practice is a difficult one to prevent without mandating the use of disciplinary court prior to any loss of remission for bad conduct. This alternative could result in more inmates being charged for more minor types of misbehaviour, and possibly losing more remission days as a result-an outcome which may not be desirable. (A multiplicity of charges can in turn affect parole chances.)

On the whole, the Working Group feels that it would be preferable for remission to operate as a system which punishes

serious misconduct in penitentiary, and is not geared towards encouraging or evaluating program participation. We feel that this would be a fairer and more equitable system than the present one, which though largely geared towards punishing misconduct, can be used in certain circumstances in ways which promote disparity and institutional tension.

However, if this recommendation to use remission only to punish misconduct is rejected, we recommend that CSC institute a system of far more specific criteria for the evaluation of program participation, the use of caution slips, and the translation of these indicators into a final determination of "number of days". In particular, guidelines are needed to help "independent" and CSC disciplinary chairpersons to decide when to take away remission as a punishment and in what amount. However, since (in terms of number of days) the largest differences appear to be in "participation" credits, guidelines for making these awards are just as important, although more difficult to specify.

The Working Group further recommends that federal inmates be given the right to appeal the loss of remission to the National Parole Board in Ottawa for an independent review of whether the circumstances of their loss of remission fit the criteria specified by CSC. The reason an appeal mechanism outside CSC is considered necessary is because of the direct effect which remission has on the time served by some inmates, and because of the need for a centralized review to reduce regional disparities in policy and application. NPB should not, however, have any role in the formulation of remission policy. This power is, we feel, best left in the hands of an authority other than the parole authority.

A final disparity worth mentioning is the one between the descriptive "earned" remission and the reality of how the program operates. If remission does not operate as a "positive" earning system, as we believe it never will (within credible limits of resource availability and system coordination), it should not be called "earned" remisson. Although this may appear to be only a semantic matter, it is extremely irksome to inmates, especially in the context of mandatory supervision, and it is inconsistent with goals of public accountability and clear communication with other agencies such as the courts. It is also not conducive to internal consistency and accountability within CSC.

Remission loss for parole revocation

The submission made to us by the Canadian Association of Elizabeth Fry Societies points out an issue of inequity in the

present remission program. Currently, an offender on parole or mandatory supervision loses the remission standing to his credit if he is revoked to penitientiary. The amount of remission he has accumulated (and will lose) is determined by the amount of time he served in penitentiary prior to release. The CAEFS submission suggests that is is inequitable that two parolees revoked for the same violation of parole should lose different amounts of remission credit, dependent on the time previously served and not on the nature of the violation of parole.

To amend this type of inequity is difficult because of the extremely narrow use made of the power of "recrediting" of remission in 1977. NPB procedures permit recrediting of remission to an offender only in cases where "undue hardship" would otherwise result, and the examples given in the Policy and Procedures Manual make it clear that the circumstances where recrediting is allowed are to be very unusual indeed. This stringent policy appears to have been an over-reaction to the wholesale recrediting of remission by penitentiary staff that took place under the dual, statutory and earned remission systems of the past. The criteria for the recrediting of remission (which we believe should remain with NPB) should be expanded to include a principle of commensurate punishment for violations committed while on parole, and a more generous notion of fostering equitable outcomes for similar circumstances.*

Other issues of remission

From the discussion on objectives in Chapter II, it is clear that remission has many functions besides reinforcing the penitentiary employment and disciplinary system. These functions include: serving as a "safety valve" for NPB caution, by releasing non-paroled inmates at the approximate two-thirds date; ensuring the supervision of non-paroled inmates by requiring that remission credits be served under MS supervision in the community; and, through these functions, reducing time served and penitentiary populations.

These functions are seen by some as dysfunctional, however. Persons released through remission at the two-thirds date can commit new offences which would otherwise have been prevented or delayed (as our analysis of "Incapacitation" in

* Both this view of the remission recrediting power and the proposed new power to review remission loss (above) by NPB require, to be properly and fairly carried out, a detailed and up-to-date system of information feedback to NPB of the amounts of remission being awarded and lost for specific types of circumstances. This feedback system will be described in greater detail in the next chapter.

Chapter II showed, about a third of the persons released through remission are revoked before warrant expiry). The creation of mandatory supervision through remission is an extremely contentious issue which is dealt with below. Early release (or reduction of time served) is seen by some critics as undue mitigation of punishment or a usurpation of the sentencing power of judges (though not all judges agree themselves with this assessment). The automatic nature of the early release created by remission is seen by others to be inconsistent with the notion of having a single authority for all early releases.

While ultimately the Working Group was not able to agree as to whether, on balance, it was better to retain remission (the pros and cons of the major alternatives are laid out in Chapter V), we did agree on a few notions and conclusions. The first was that, some popular notions to the contrary, there is nothing inherently invidious in the judge's sentence being effectively reduced or mitigated by remission. Remission has been in existence for 112 years and its effect upon the time served in penitentiary by non-paroled offenders is understood on a general level by sentencing judges, who allow for remission in their choice of sentence length.

Our second finding was that if judges did not "compensate for" remission in setting sentence, and if the abolition of remission were to mean necessarily longer time served in prison by convicted offenders, this would not, on the whole, be desirable. We agree with Ouimet (1969), Hugessen (1973) and the Law Reform Commission (1976) that, except for a very few individuals who are a physical threat to the community, offenders should spend as little time as possible in penitentiary. Imprisonment is expensive, can be harmful, and in many cases is dysfunctional to successful readjustment in the community. There would be considerable human and financial costs - but no measurable benefit - to extending the current "norm" of time served by the number of months or years which remission removes.

Third, we are not as convinced of the need for a "single releasing authority" as were some previous studies (Hugessen, 1973; Law Reform Commission, 1976). The notion of one coordinated system for all releases is theoretically sound from some perspectives, but carries (as we have seen with TA's) certain practical difficulties. Beyond practicalities, however, there can be said to be merit in maintaining instead a balance of powers in release between the judiciary, parole, and penitentiaries. By the same token as one may wish to preserve fixed parole eligibility dates (before which the inmate cannot normally be released) as a "check" on Parole Board liberality, so one may wish to preserve remission as the complementary "check" on Parole Board conservatism. In any event, the "single release authority" notion is not necessarily an ideal.

MANDATORY SUPERVISION (MS)

Mandatory Supervision (MS) is such a controversial program that it has recently been a subject of its own review (Solicitor General, 1981), which, at the time of writing, has not yet resulted in any formal recommendations.

The controversial nature of MS is, in fact, one of its most interesting facets. It is controversial to NPB because the Board is constantly being blamed for the failures of offenders released on MS, although it has no hand in and cannot prevent* these releases, even if it believes the offender will be a physical threat when released. It is controversial to offenders because they consider remission as "time off" their sentence (as it was before 1970) and they resent having to serve the remitted portion under supervision, subject to revocation (especially for non-criminal behaviour), after their release. It is controversial to the police, who because they deal with MS violations in the form of arrests, regard the overall program as a failure. It is controversial to parole officers because of the resentment and hostility of offenders which make supervision difficult and unpleasant. Parole officers also have to deal with other problems caused by or associated with MS, such as the paperwork and frustration involved in "revolving door" cases (see below), lack of release plans (Atack, 1978) and even, for some, a sense of personal risk from MS cases. Finally, it is controversial to penitentiary authorities who have to live with the "returns" from MS, revoked offenders who are often bitter and difficult to deal with.

Outside critics (Auditor General, 1978) and internal CSC authorities concerned about costs point to the contribution of MS to penitentiary populations (an estimated 319 to 433 inmate-years in 1978: Canfield and Hann, 1978) and to person-year requirements for parole officers and support staff. Civil libertarians complain of the arbitrary nature of many of the revocations from MS, the ineffectiveness and oppressive nature of supervision, and the removal, through MS, of much of the practical effect of remission.

Not surprisingly, the above groups have widely varying views of what should be done about MS, each determined largely by the nature of their involvement with the program. Singly, none of these viewpoints would make MS so controversial, but

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* Other than by immediate suspension and subsequent revocation, on the day of MS release, of offenders thought to be dangerous. NPB has used this technique on a trial basis in a few recent cases to test whether the federal court will uphold the practice, though as yet no appeals have been lodged against such action.

together, they make MS a very sensitive issue indeed. The police* and inmate groups agree (if on nothing else) that "MS" is the biggest single issue in conditional release. It should be pointed out, however, that the police actually mean that remission, or the automatic release of non-paroled offenders prior to warrant expiry, is the biggest single issue in release, not the mandatory aspects of the supervision itself.

The advantages and disadvantages of the major alternatives for modifying MS are discussed under "macro models". They include such options as abolishing MS while retaining remission, abolishing both MS and remission, making post-release assistance voluntary with the offender, and establishing "separate" supervision terms (separate from the sentence) after release for all offenders. Some of the more operational issues or problems which have been raised with MS are discussed below.

Effectiveness issues in MS

MS was introduced as a "logical extension" of the community supervision process to cover all persons leaving penitentiary (not just parolees as had been the case). Some** police groups and the overwhelming majority of offenders feel that MS is ineffective in reducing recidivism. Not surprisingly, parole officers tend to disagree. The literature on supervision effectiveness generally is difficult to interpret definitively, as we have seen, and it is not known to what extent the limited optimism extractable from the literature might be further limited in cases of hostile or intractable offenders, as many persons on MS are said to be.

However, it has been seen (Chapter II) that the rates of revocation from MS in a six-year follow-up of 1974 release are not extremely different from the rates of revocation from parole releases in the same year. (The rates of violent and other recidivism from all forms of release will be examined in more detail in the next chapter). The alleged differences between parole and MS populations tend to be exaggerated. As many parole officers we consulted remarked, there are both intractable and amenable offenders to be found on both parole and MS, though MS offenders do present more overall needs for assistance and supervision than do parolees.

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* Or at least, those police groups represented by The National Joint Committee of Chief of Police and Federal Correctional Services, whose brief called for the abolition of both remission and MS.

** But not all: some regional committees of the NJC of the CACP/FCS favour retention of the present system of MS (NJC Annual Report, 1979).

The Working Group was unable to agree on whether remission credits should or should not be mandatorily served under supervision in the community. There was some feeling that the bitterness felt by offenders over having to serve remission under supervision made successful intervention possible only in a few cases, and that the success rates shown by MS cases occur regardless of, or in spite of, what we do to supervise people. On the other hand, there was also some feeling that the research on supervision effectiveness is inadequate for drawing conclusions about the specific impact of intervention on either amenable or unamenable offenders. Further, removing the requirement of supervision for the "worst" offenders for the remitted portion of the sentence could cause serious public apprehension about the protections offered by corrections. Finally, those Working Group members who did not support MS abolition felt that in general it was better to work on improving and evaluating supervision as a whole, rather than to hack away piecemeal at its application to specific offender groups.

One specific problem touching MS effectiveness is the "revolving door syndrome", a situation in which, because of the workings of the former remission system, a revoked offender must be almost immediately re-released from penitentiary*. This phenomenon has been explored as deeply as present automated data systems permit by the MS Committee, which concluded that the phenomenon is caused by a multiplicity of factors, including old earned remission, street-time credit, and the length of the average supervision (especially MS) period. One option given a great deal of consideration by the MS Committee is that, to lessen the revolving door syndrome, revoked MS offenders not be permitted to earn remission on the remainder of their sentence (or that part of it which does not overlap with any new sentence they may have received). As yet, however, no recommendations on the subject have been formalized. The Working Group, for its part, was unable to agree on whether the costs of this option would outweigh the benefits.

Fairness issues in MS

There are two main fairness issues in MS: first, whether the program itself is fair, given the meaning in terms of sentence mitigation which it has taken from "earned remission", as well as the questions of its limited effectiveness and "repressive" nature; and second, whether MS offenders are treated differently from parolees (by parole officers, NPB, police, or judges) in ways which are not justified by their behaviour.

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* The former system of earned and statutory remission called for full recrediting of the accumulated "earned" remission upon revocation. Some inmates still have some "old earned" remission to their credits.

As for the first question, the Working Group finds the inmate position on the unfairness of MS to be perfectly understandable, given the relatively control-free situation which predated the introduction of MS. However we could not agree on whether the provision of supervision to all offenders, even if of unknown effectiveness, is desirable at least until more definitive evidence of its marginal effect is in. (There is some feeling on the Working Group that assistance made available to those remission-released offenders on a voluntary basis would be an adequate, if not a better, approach to MS.)

As to the differential treatment given to parole and MS offenders after release, we are unable to judge whether (as some have claimed) MS cases receive more police "harassment", harsher judicial treatment, or lighter or harsher treatment from parole officers and NPB (both charges have been made: that parole authorities treat MS cases more casually because "they aren't ours" and nothing can be done for them; and that parole cases are treated more liberally because parole authorities want "the statistics" to look as successful as possible.) We have no direct evidence of differential treatment, but some of the groups consulted believed that these types of discriminations do occur. As recommended above, the Ministry should conduct detailed research on supervision, including MS, which would allow it to make an assessment of whether the treatment of MS cases in service delivery, nature of surveillance activities, use of suspensions and revocations, etc., differs from the handling of parole cases, and if so, whether the differences are attributable solely to differences in MS case needs and behaviour.

CHAPTER IV
SYSTEM-WIDE CONCERNS

Both during our consultations and our study of the individual elements of release, we were struck by a number of particularly stong concerns which ran as a consistent thread through all release programs. The most obvious and, some would say, most relevant concern is over violent and other criminal acts committed by persons released under federal authority. We will therefore address this concern at some length in this chapter. Other recurring concerns addressed below are sentencing, problems experienced by special offender groups (especially women, life-sentence inmates and native offenders), eligibility dates for release programs, services to and relations with provincial correctional systems, and the two-sided question of disclosure of information and protection of confidential information from disclosure.

VIOLENCE AND OTHER CRIMINAL VIOLATIONS COMMITTED BY PERSONS UNDER RELEASE

The Solicitor General's Committee on Mandatory Supervision (1981) considers the commission of violent acts by persons on MS to be the single most powerful concern about the program. (Indeed, the submission made to the Study by the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services refers only to the problems created by the few "dangerous" persons on MS, whose movements and behaviour cannot be controlled by parole officers.) While concern over any type of criminal or even technical violations by released persons is prevalent, it is undoubtedly true that it is the violent acts committed which cause the greatest concern, fear and anger. In fact, one of the factors which contributed to the decision to undertake this Study was a series of violent acts committed in Edmonton by federal releases in 1979.

In order to address the question of violence and other violations by released offenders, we drew on several sources of information. First, we used Ministry data sources to trace the outcomes of full parole and MS cases over the last few years to determine the rate of violations, especially violent violations (data for criminal acts committed while on temporary absence or day parole are, unfortunately, not reliable and cannot be used). Second, we reviewed the case audits performed on a number of "spectacular incidents" committed by persons under conditional release. (A "spectacular incident" is a rather flexible term applied to an instance of especially disturbing criminal conduct by a federal offender under release,

especially an act which receives "spectacular" coverage in the media. NPB and, now, CSC perform a special investigation of all incidents which become designated as "spectacular".) And finally, we examined the literature on the prediction (clinical and statistical) of violence in order to determine whether any useful information could be drawn from it to improve our ability to anticipate which offenders will be a physical threat when released.

We first examined all cases of full parole or MS release occurring from 1970 to December 1978, in order to obtain an overall view of the outcomes of these cases. Table 6 presents these outcomes for 30,370 of the cases which were full-released in the period. About half the cases have successfully completed their supervision period, though about ten percent of the parole cases and one percent of the MS cases have not yet reached warrant expiry and could ultimately represent either a success or a failure. About 30% of the parole cases and 38.5% of the MS cases were readmitted to penitentiary* or were returned to penitentiary during their supervision period, either for a "technical" violation or one which involved a new conviction for an indictable offence registered in the data base.** These figures include 20.0% of the paroles and 22.3% of the MS cases whose revocations involved a new criminal conviction. An additional four percent of the parolees and 11% of the MS cases successfully completed their supervision period but were later readmitted to penitentiary for a new crime.

The most typical outcome, therefore, of either parole or MS is the successful completion of the supervision period, without detected new crime or revocation for technical or criminal reasons. Just over a fifth of all cases have so far

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* Some cases (148 MS cases and 8 parole cases) were readmitted to penitentiary on a new offence warrant but not recorded as "revoked". These may be cases of new convictions followed by an "interruption" of MS (not yet legally possible with parole); or, they could be aberrations in the data.

** It must be noted that a "technical" revocation may actually have involved a new offence, but one which did not result in a conviction. Any undetected violations are also, of course, not recorded in these figures. There may also be some minor offences not reflected in the data (for which the offender merely received a brief stay in a provincial jail), though, according to Section 659 of the Criminal Code, all persons convicted of any new crime while still under a federal warrant must serve their prison sentence (if any) in a federal penitentiary. Finally, offences which have resulted in a revocation but not as yet in a conviction will not be reflected here as "new crime revocations".

TABLE 6

OUTCOME (TO JUNE 1980) OF RELEASES ON FULL PAROLE OR MANDATORY SUPERVISION, PERSONS RELEASED FROM JANUARY 1970 TO DECEMBER 1978

OUTCOME	FULL PAROLE NUMBER OF CASES	%	MS NUMBER OF CASES	%
Revocation without* new offence	1,575	10.8	2,574	16.2
Revocation with new conviction for indictable offence	2,903	20.0	3,533	22.3
New offence and penitentiary admission after successful completion of supervision period	563	3.9	1,731	10.9
Successful completion of supervision period, and no subsequent readmissions	8,010	55.1	7,848	49.5
Still under supervision	1,482	10.2	151	1.0
TOTAL	14,533		15,837	

* While some of these cases may have involved a new criminal act, no new conviction for an indictable offence is registered.

resulted in a conviction for a new offence before warrant expiry. About a third of all cases have been returned for any reason, technical or criminal.

Though it was impossible for us to obtain useful data* on the actual circumstances surrounding "revocations without new offence", we were able to obtain information about the types of offences for which offenders return on a "revocation with new conviction". Table 7 shows the breakdown of offence types for which full parole and MS cases were readmitted during their supervision period from January 1975 to June 1980 (the years for which the most reliable data are available). In the five year period, 3,303 persons on full release, or about 560 a year, were revoked from supervision with a new offence or readmitted on a new warrant during supervision. Of these annual readmissions, well over half (59.3%) are for "pure" property crimes: crimes like break and enter, theft and fraud which rarely involve personal contact between the offender and the victim. Another 16% of the readmissions were for robbery, a property crime which involves personal contact (and hence is often called a "crime against the person" though it does not always involve direct physical violence).

About 12% of the readmissions (391 over the 5-year period) were for clearly violent crimes such as homicide**, kidnapping, assault, rape or other personal crimes: almost half of the offences against the person group were readmitted for non-sexual assault or wounding. A total of 72 homicides resulted in the readmission of federal releases to penitentiary during the period. About five percent of the readmissions were for narcotics offences.

If this breakdown of annual readmissions can be taken as suggestive of the patterns of crimes for which a "cohort"***

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* NPSIS contains some data on the types of reasons ticked off by parole officers on a checklist form filled out after certain suspensions. We did not examine this information because it would not tell us much about the actual circumstances of the suspension, and would be confounded by questions about whether parole officers were giving the "official grounds" or the "real reason" for the suspension.

** Including murder, manslaughter and criminal negligence causing death.

*** A "cohort" is used here to mean a group of offenders all released during the same time period. Note that Table 7 actually refers to offenders readmitted only up to June 1980 who had been released between 1975 and 1979, and thus may provide an inaccurate representation of the "ultimate" results for that cohort.

of offenders are ultimately revoked or readmitted while still under warrant, it suggests that about a fifth (from Table 6) of all full-released offenders are eventually revoked with a new conviction, and of those, about a quarter (27.6%) commit (or are detected in) an assault, robbery, homicide, rape, or other "personal" crime. We have no way of knowing how many of the "technical" revocations may "mask" a violent new crime which could not be proven or for which the charges were dropped because of the revocation; presumably, in cases of violence, the latter circumstances would be rare.

In any event, these figures suggest that the "violence" of parolees and MS cases is often exaggerated or appears, because of the visibility of failure cases, to be higher for the overall group than it actually is. This is not in any way to detract from the unquestionable heinousness of the violent crimes which have occurred. It is also not to say that 560 new-crime readmissions (not necessarily violent) by federal releases annually is "acceptable" in any absolute sense: what number is "acceptable" in the circumstances is impossible to say as an absolute. For some, of course, any new crime committed by a person still under sentence for a previous crime is unacceptable, and if it is impossible to predict with certainty who will not commit a new crime if released early, then no early releases at all should occur.

A more moderate view, however, is that early release provides some (perhaps major) benefits such as humaneness, assisting the reintegration of the offender, and controlling penitentiary populations and costs. Some also argue that only early release helps to prevent further involvement in criminal activity. The majority of offenders do not appear to become involved in new criminal activity during the period for which they are at conditional partial liberty in the community before the expiry of their sentence. (It should be noted that in the years in which these 3,303 incidents occurred, approximately 7,000 persons were released onto full parole and 13,000 onto MS.) To hold in prison the approximately 5,000 persons out under community supervision on any given day, in order to prevent the 560 annual new-crime revocations seems, in this view and in the view of the Working Group, excessive. It would be desirable, certainly, to be able to distinguish better those who will be violators, especially the violent ones, in order to detain them, but as will be seen below, the prediction of violence is as yet not within our capability, although a great deal of further study needs to be invested in the subject.

TABLE 7

OFFENCES COMMITTED UNDER SUPERVISION BY FULL PAROLE AND MS CASES RELEASED FROM JANUARY 1979 TO DECEMBER 1979 AND READMITTED OR REVOKED WITH NEW CONVICTION AS OF JUNE 1980

READMISSION OFFENCE (NEW CONVICTION)	PERSONS REVOKED FROM PAROLE	PERSONS REVOKED FROM MS	TOTAL	PERCENTAGE OF TOTAL OFFENCES
CRIMES AGAINST THE PERSON				
Murder	9	31	40	
Manslaughter	9	21	30	
Attempted murder	0	11	11	
Rape and attempted rape	10	25	35	
Sexual assault	4	23	27	
Other assaults, wounding	17	153	170	
Kidnapping, forcible confinement	6	15	21	
Criminal negligence causing death	2	0	2	
Other crimes against the person	10	45	55	
Sub-Total			391	(11.8%)
ROBBERY	127	394	521	
Sub-Total			521	(15.8%)
CRIMES AGAINST PROPERTY				
Break and enter	192	737	929	
Theft, possession of stolen goods	148	615	763	
Frauds	53	214	267	
Sub-Total			1,959	(59.3%)
NARCOTICS				
Possession of narcotics	7	26	33	
Trafficking and importing	42	72	114	
Sub-Total			147	(4.4%)
MISCELLANEOUS				
Miscellaneous Criminal Code	58	179	237	
Miscellaneous Federal and provincial statutes	2	4	6	
Escape and unlawfully at large	9	33	42	
Sub-Total			285	(8.6%)
TOTAL	705	2,598	3,303	(Grand Total)

We conclude, therefore, that the prevailing impression of a high incidence of violent recidivism by federal releases, especially MS cases, is a distorted one, and the actual rates of successful completion, and of non-violent but unsuccessful completion of supervision, are often overlooked.

A perennial question remains, however, of whether anything could have been done in specific cases to predict violent incidents or do something to control or prevent them. We reviewed the reports of two audits of a series of serious release failures. The first audit, conducted by CSC and NPB, is an analysis of 8 "spectacular incidents" committed by offenders on parole, MS and TA over a two-month period in Edmonton in 1979. The second is an NPB audit of all 49 MS cases involved in "spectacular incidents" from January, 1979 to March 31, 1980. Both studies were based on a reading of case files, but the first involved also a series of interviews with Edmonton area police, penitentiary and parole staff, and private aftercare workers.

(It should be noted, of course, that only a partial picture of violent failure or releases is given from looking at "spectacular incident" reports. As the internal review of the 1979 Edmonton incidents noted, the definition of a "spectacular incident" is quite flexible in both NPB Policy Procedures and CSC Divisional Instructions. Some types of cases seem to attract the label more than others, and not all cases of a violent nature will necessarily be designated as "spectacular". The incidents should not be taken as a random sample or population representative of "release violence".)

The internal audit done of the 1979 Edmonton incidents included the study of eight cases, though at the time some of the Edmonton press and public were referring to a "parolee crime wave" of 100 or more incidents (the others, which became lumped together with the eight federal release cases, involved provincial cases, bail cases and other offenders not on a federal release). These eight cases involved one person on an unescorted TA, three on day parole, two on full parole and two on mandatory supervision.

The most striking finding of this audit was that there appeared to be little which could have been done to prevent these eight incidents. Though the audit made a number of recommendations for procedural changes that would improve the overall system, the report states that it is likely that the outcome would have been the same even had these procedural refinements been in place. Our analysis of these incidents supports these conclusions to some extent, with reservations noted in the next parpagraph. Four of the eight offenders had no previous violence registered in their criminal records (though one of these had apparently been involved in brutal victimizations of his fellow inmates in penitentiary) and of these four, one had no prior criminal or juvenile record at all. Six out of eight had an acceptable or reasonably acceptable record in penitentiary. Four had received partial releases before the final one and had succeeded on them; one other had been on a TA program, which was cancelled for possession of contraband. Of the three out of eight incidents which were of a particularly bizarre or disturbing nature, only one allegedly involved an offender whose record of behaviour suggested mental disorder or brutal disregard for human life (the inmate who apparently victimized his fellows).

On the other hand, one of the eight cases had, prior to the "spectacular incident", been involved in violence while under supervision. This one parolee had abused his wife, threatened to kill her and had apparently fired a loaded shotgun in their home during an argument. This incident resulted in a suspension, but NPB did not ultimately revoke the parole as recommended by the parole officer. The latter incident, occurring during the release period, might arguably have resulted in revocation, and thus prevention of the ultimate violence committed by the offender while still on parole. (It can always be argued, of course, that it would have been committed later if not sooner.) In another case, the parolee was severely beaten in "some type of ruckus" at a friend's home, an incident which did not result in a suspension by the parole officer. For the most part, however, the post-release behaviour of these eight persons (in the short time there was to observe it: four cases blew up in less than a month after release) was ambiguous enough to suggest problems but not impending violence or is found in a sufficiently high number of cases as to be unreliable as a predictor; or incidents which might have been taken as "warning signs" were simply not detectable by the parole officer in the normal course of his duties.

The study by NPB of 49 "spectacular incidents" committed on MS in a 15-month period concludes that there were some cases under study in which suspension and revocation could have been more seriously considered by CSC and NPB officials. Some of the behaviour of the offenders, if considered in light of a

violent previous record, could have suggested impending problems. The tendency not to revoke or not to suspend was found to be more frequent among "revolving door" cases where a revocation would inevitably result in a relatively early re-release. It will be recalled from Chapter III that our consultation revealed some of the same reluctance to suspend or revoke in "revolving door" (or "turnaround") cases, variously blamed on parole officers or parole board members. Whatever factors are most to blame for the phenomenon, the Working Group is in agreement that the appearance and reality of "justice" demands that the time left to serve should not dictate suspension or revocation practices in serious cases, and that violence especially should normally result in revocation even in "turnaround" cases.

The MS audit also found that violence or violent "indicators" (not necessarily violent incidents, but might include things such as threats or carrying a weapon) could be found in the prior criminal record, penitentiary behaviour or supervision adjustment of all 49 cases studied, which the auditors felt were insufficiently considered during problem periods under supervision. Various other problems were identified: inadequate documentation; frequent changes in the parole officer assigned to an offender; an extremely stringent NPB practice of not placing on files certain information which is pertinent but might ultimately be seen (with negative consequences) by the offender who requests to see his file under the Canadian Human Rights Act; and instances of poor communication between CSC and NPB about the quality of the community adjustment and the content of the supervision offered.

The Edmonton and MS "audits" resulted in a total of 24 specific recommendations. For brevity's sake, we discuss these below under four substantive headings. Many of the most important of these recommendations have resulted in an identifiable change, and these are noted below. Other recommendations have been rejected by CSC, NPB or both, or are still under consideration. In any event, it is still too early to tell whether any concrete results have been felt from these changes or what the effect of their implementation will be.

1. Information needs

A number of the recommendations were primarily intended to ensure that more information is available to be considered in making decisions about release, suspension and revocation. Some of these recommendations were specifically intended to ensure the transmission of

certain information by CSC to NPB, in order that NPB can provide another caution "check" on cases.

The following recommendations have been accepted by CSC and NPB or were already policy at the time of the incidents: that there be a nationally coordinated system for preparing and processing audits of "spectacular incidents"; that information on an inmate's visits and correspondence be contained in parole documentation; that all new charges laid by police against federal releases be automatically reported to NPB; that there be an automatic update of CSC and NPB files when any new charges against a released offender are adjudicated; and that supervision reports (seen by NPB) specifically state the level of supervision* maintained on the offender. In instances where the procedures were already policy, mechanisms have been put in place to try to ensure more effective implementation of them.

A recommendation that NPB and CSC develop a more specific, common definition of a "spectacular incident" and process for carrying out the required audit, is still under discussion by CSC and NPB.

No specific action has been taken on the remaining recommendations in this group because one or both agencies disagree with them, cannot reach an agreement on how to address them, or are not in agreement that there is a problem: that more information should appear on written files rather than being suppressed or transmitted verbally, for fear of disclosure to the offender under the Canadian Human Rights Act (Bill C-25, 1977: see below); that parole officers should have more frequent contact with persons and agencies in the community with information about the released offender's adjustment; and that CSC send supervision reports to NPB every month for the first eight months after release (rejected by both agencies); that supervision reports contain more qualitative information about the nature of the supervision undertaken and of the offender's adjustment.

2. Accountability needs

Three recommendations were intended to ensure that "quality control" by NPB and CSC be implemented. They

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* The level of supervision ("minimum standard") will determine the minimum required frequency of contact between the parole officer and the offender: every two weeks, every four weeks, or every quarter. (CSC Case Management Policy and Procedures Manual, 1980)

all require further written documentation by one or the other agency. Besides being intended to contribute to "quality control", they also seem intended to provide more information on practices to any future audit teams. NPB has agreed to supply more extensive comments on decisions to cancel a suspension (not to revoke) and to provide CSC staff with specific instructions about any new release plans set for these cases, and the information needed for a fresh "community assessment" report on the validity or feasibility of the re-release plans.

Two other "accountability" recommendations have not resulted in any action: that qualified NPB staff note in writing that they have read all supervision reports transmitted by CSC, and where possible make written comments on the case progress; and that there be more extensive written documentation of the actions taken by parole District Office Directors to ensure the quality of supervision by their parole officers.

3. "Tighten up" recommendations

A large group of recommendations are, or seem to be, ultimately directed towards a certain amount of "tightening up" of the system. This can take such forms as more contact between the system and the offender, the obtaining of more information on the offender, and a greater use of sanctions for wrongdoing.

The following recommendations have been accepted and most have monitoring systems in place to ensure their implementation: that stricter adherence be paid to notifying NPB of the proposed use of a private aftercare agency for supervision, and to ensuring that private agencies conform to certain standards for supervision and reporting required of CSC; that no release decision be made to be effective more than 2 months in the future, in order to ensure that up-to-date relevant information is considered; that NPB and CSC consider imposing more "special conditions" on CCC and CRC residents who may be in need of a stricter curfew or other conditions than are other residents of the halfway facility; that over-reliance on telephone contact between the parole officer and offender should not be tolerated; that the (brief) time left to serve by an offender under community supervision should not affect the decision to revoke the offender, especially in cases of serious criminal conduct where justice must be seen to be done; that any special conditions of a day parole

prior to MS be automatically carried over into MS unless otherwise indicated; and that NPB or, at NPB's request, CSC notify local police of the impending arrival of "high risk" MS cases, and of any specific concerns which there are about these cases.

The following recommendations of the "tightening up" variety have not resulted in action: that all released offenders be under "intensive supervision" for at least the first eight months after release (present CSC procedures state that intensive supervision should normally last four to six months); and that NPB give more consideration to special conditions and other possible "preventive measures" for persons considered particularly dangerous who are about to be released on MS.

Still under consideration is a final, rather vaguely worded recommendation that NPB consider the misconduct of a suspended parolee before considering possible new release plans, which was possibly intended to suggest that NPB should more consistently revoke released offenders who commit serious violations.

4. Justice and humaneness needs

A recommendation that NPB be more complete and candid in stating their reasons for revoking a release has been accepted on grounds of fairness, openness and accountability. A second recommendation, that the granting or denial of bail on a new criminal charge not be considered in the decision to revoke a current release, has not met with a formal response.

There has been another recent spin-off from the spate of "spectacular incidents" in the last two years - a number of parole District Offices have established more consistent and closer liaison with police departments in their area to ensure the sharing of relevant information and better communication between the agencies. This liaison, sometimes in the form of a designated parole officer as "police liaison officer", appears to have some valuable benefits in increasing understanding between police and parole, aiding efficient handling of arrest, warrant and notification procedures, and ensuring that identification and other relevant information on persons released to the area is available to police through the parole officers and vice versa. Regular meetings between parole and police officers seem productive for most offices; the designation of a specific parole service member as the usual liaison and information channel with police may be adaptable only for large city offices.

The Working Group tends to the opinion favoured by the Edmonton audit team, that it is unlikely that many of the spectacular incidents would be prevented through the implementation of the recommendations reviewed above. However, most are sound proposals from the case management viewpoint, and close evaluation of the implementation of those accepted should be conducted. In particular, a single coordinating body is needed to monitor the recommendations. The Working Group recommends that a CSC/NPB committee be established to review all the proposals made in these audits, evaluate their soundness, ensure that those which are valid but not yet accepted are implemented, and monitor the implementation and results of all those which are approved. This Committee should report to the CSC/NPB Interlinkages Committee on the progress of this implementation one year hence.

Prediction of violence

From an analysis only of violent failures on release, it may seem appropriate to conclude that violence is easily predicted. The MS audit reported that violence "indicators" were found in the records of all the offenders studied; it sometimes appears that past violence predicts future violence.

Past violence does indeed often appear in the records of persons who commit "spectacular incidents". But not all offenders with records of past violence will commit any violation, let alone a violent one, after release. Further, persons involved in violence do not always have a violent past. Past violence is not, therefore, a reliable sign of approaching violence on supervision, nor is the lack of a violent past a reliable sign that one will be non-violent in the future. However, greater incidence of violence in the past is associated with higher probabilities of violence in future, though the certainty or virtual certainty of violence in future is never assured.

There is no very accurate system for predicing violence which has yet been developed. Walker (1978:40) notes that "nobody has so far reliably defined ... a group of violent males with a probability of further violence approaching even 50 percent. In other words, we have not yet succeeded in providing criteria which would ensure that a prediction of future violence would be right more often than it would be wrong. With present criteria, it would more often be wrong." For reasons which can be demonstrated through complex mathematics, the more rare an event is, compared to the total number of persons or circumstances considered as possible "causes" of the event, the more difficult the event is to predict. And, regardless of how it may sometimes appear in the media and through other perceptions, violent recidivism among federal offenders is, as we

have seen, not frequent enough to permit accurate prediction of violence (i.e., pinpointing of all or even most of the future violent recidivists). Furthermore, even the available prediction systems which pinpoint some of the future violence do so while mistakenly "identifying" as future violent recidivists several hundred percent more individuals who will not, in fact, turn out to be violent. (Kozol, 1975; Molof, 1965; Steadman and Cocozza, 1974; Steadman and Braff, 1975; Stirrup, 1968; Wenk, Robison and Smith, 1972; Quinsey, 1977.)

An example may prove helpful. This example is drawn from real data on federal offenders released in 1970, 1971 and 1972 and "followed up" for three years after release, in an attempt to develop statistical aids to assist NPB in the prediction of recidivism (Nuffield, 1977). Because NPB was also interested in trying to predict violent recidivism, the researcher isolated only those instances of recidivism which involved actual or implied or threatened violence, in an attempt to "predict" these instances. A very broad criterion was thus selected, which included not only direct violence (homicide, assault, sexual assault, kidnapping, forcible confinement), but also all robberies, which do not necessarily involve violence. This broad criterion was selected in order to increase the "failure rate" and thus the possibility of achieving an accurate prediction: even at that, the failure rate over a three-year period (which would extend past the warrant expiry date of many of the offenders) was only 13 percent.

A numerical scoring system was developed, which (in the construction sample of 1,238 cases) resulted in the following prediction categories:

CATEGORY 1. (471 cases)
had a .05 failure rate (24 failures out of 471)

CATEGORY 2. (396 cases)
had a .10 failure rate (40 failures out of 396)

CATEGORY 3. (231 cases)
had a .20 failure rate (46 failures out of 231)

CATEGORY 4. (140 cases)
had a .33 failure rate (46 failures out of 140)

The first thing to note is that the most "dangerous" group which the system was able to isolate had a violent recidivism rate of less than 50 percent (33 percent, in fact: two successes out of every three in Category 4).

Thus, if we return to our discussion of Chapter II on incapacitation decisions and the two types of "errors" which can be made, detaining everyone in Category 4 will prevent 46 failures, (correct decisions) but will result in approximately twice as many "type two errors" (identifying as violent recidivists 94 other persons who will not actually commit violence when released). Perhaps more importantly, if our decision-maker were to release everyone in Categories 1 through 3, he would be making 110 "type one errors": in the remaining three categories, 110 persons who would not have been pinpointed will commit a violent act when released. Thus, a decision rule to release everyone in the first three categories and detain everyone in the fourth category would only "catch" about a third of all the future violent recidivists (46 out of a total 155). At the same time, 94 persons would have been detained mistakenly from Category 4: an approximate 200% "overprediction".

Applying the same calculations to a more cautious or conservative decision rule would "catch" more of the future violent recidivists, but would mistakenly identify more persons as future violent recidivists. That is, detaining all 371 persons in Categories 3 and 4 would "catch" 92 out of the total 155 future violent recidivists (or about three-fifths of them), but would mistakenly identify 279 other persons: an approximate 300% "overprediction".

Of course, it can be argued that "type one errors" are far more serious than "type two errors": it is worse to permit a violent crime to happen (at least while the offender is under sentence) than to hold 200% or even 300% too many convicted offenders in penitentiary. The 200 or 300% "overprediction" of violence and robbery in the above system would, in fact, be seen as quite acceptable to many critics, as a price to pay for correctly identifying a third or three-fifths of the future violent recidivists in the population.

The Working Group feels that, even with its rather broad criterion (including robbery) and its rather lengthy follow-up period (three years, or past warrant expiry date for many federal offenders), this violence prediction system is worthy of greater attention than it was received to date in the Ministry. We were struck, as has the Ministry Committee on MS, by the paucity of systematic efforts in the Ministry to study violence and develop more consistent, objectifiable systems for predicting possible future violent offences. We recommend that the above statistical prediction system be reviewed and re-validated on more recent data. It should also, following that process, be calculated for each federal offender at the time of admission, should be made available to CSC and NPB decision-makers on every case file, and should be placed, along

with statistical scores for general recidivism, on the Ministry data system (see below, under our seventh "system-wide concern").

CONFLICTS WITH SENTENCING

The second major system-wide concern we encountered was regarding the coordination of the release processes with the sentencing processes on which they are essentially based. We have already observed some of the problems which can occur in the interface between courts and release: difficulties in obtaining bail for persons suspended from a conditional release, for example.

However, problems of sentencing/release coordination go far deeper than these relatively minor problems. The major difficulties are that, by and large, sentencing judges are not well informed about release, that different judges behave differently in their sentencing vis-à-vis release programs, and that some judges in some instances deliberately set their sentences in such a way as to thwart the possibility of release before a certain date. (The latter difficulty would not be so much of a problem if the former difficulty did not exist, but different judges have individual approaches to dealing with the existence of release, based on different, and often highly imperfect, understandings of how release works.)

Probably all judges know that full parole eligibility normally occurs at the one-third mark in the sentence and that the last third of the sentence is, in the federal system, subject to remission. Beyond these basics, however, a considerable knowledge gap exists in the understanding of many judges. Many do not properly understand the differences between the federal and provincial systems of release, and when imposing a federal term sometimes do so in the mistaken belief that the offender will be immediately eligible for a liberal early release program, as he is in many provincial systems. Many judges are unaware that the federal system (unlike those of the provinces) requires all offenders to be supervised in the community for the remitted portion of the sentence (mandatory supervision: MS). Some judges, like the public, do not fully understand the difference between parole and MS. Some judges assume that anyone released before warrant expiry (federally or provincially) must be on "parole". Some judges believe that full remission is earned by almost all inmates while others have different estimates concerning remission. Few judges can correctly estimate the current parole rate or the possibility that a given defendant will receive parole. Some judges profess a belief - far beyond that now expressed by correctional authorities - in the rehabilitative value of

prison treatment programs, and may therefore sentence offenders on the mistaken assumption that a certain type of treatment (typically psychiatric or trade training) will be provided. Few judges understand properly the difference between temporary absence, day parole, full parole and parole by exception. Judges do not always ensure that they know what portion of his remanet an offender facing a new sentence on a new change will serve in prison after revocation.

In fairness, of course it must be said that some judicial confusion is a product of the complexity, confusion, low visibility, and conflicting objectives created by corrections itself. But we believe that, to some extent, the confusion has often proved functional to judges. Though there are some highly vocal exceptions (Bewley, 1977), it would appear that most judges strongly support the existence of both parole and remission. In fact, and understandably, several take the formal position that what happens after their pronouncement of sentence is not their concern, but falls within the purview of those correctional authorities who have the expertise to make the necessary decision.* A frequent judicial means of phrasing this official view is that "we cannot predict how the offender will work out in prison". This, rather, is for correctional officials to observe and, if appropriate, make release decisions upon.

There maybe other, less formal, reasons that judges support temporary absence, parole and remission. Perhaps, principally, these processes relieve judges of the burden of deciding precisely how long offenders should stay in prison, though their sentences will constrain the upper and lower limits of how much time is to be served. Rather, correctional authorities are given, with a majority of judges' support, the responsibility of determining the release date - and of accepting any inevitable criticism for failures committed by offenders while still under warrant. In addition, the present system relieves judges of the burden of making precise judgments about punishment, and allows them to pronounce a sentence which "sounds tougher" than it actually is, and than they really intend it to be.

Despite their support for conditional release, however, some judges set prison sentences in such a way as to ensure (so far as they understand it) that the offender will not be conditionally released until a minimum period of imprisonment

* This was the consensus view given us during our consultation with the provincial Chief Justices in Ottawa in November 1980.

has been served.* In more candid moments, some judges will admit to in effect tripling the sentence in order to provide for a fixed period of "denunicatory" imprisonment (prior to full parole eligibility), for a remission period, and for a "parole" or "rehabilitation" period. Hogarth (1971), in his study of Ontario magistrates, found that 59.2% of the judges were willing to acknowledge taking into account the possibility of mitigating action by the parole board. Mandel (1975) in fact makes an interesting case for the view that the introduction of parole in Canada has resulted in an overall increase in sentence length and in time served in prison.

This "tripling" effect is not, in itself, particularly troubling: judges ought to be aware and in control of what constraints their sentence will place on the upper and lower limits of imprisonment and release discretion. However, as has been suggested, some judges do not understand these constraints well, and they create anomalies in release. Further, not all judges allow for release in the same ways, and this can create disparities. Finally, of course, though it is at present fairly accurate to assume that all federal offenders will earn close to the maximum one-third remission, it is not warranted to assume that all federal offenders will be paroled, and hence the routine "tripling" of the minimum period may create inequities. The further result is that some offenders serve more time (or sometimes less time) in prison than the sentencing judge intends.

It must be acknowledged, on the other side, that correctional authorities have not always behaved in ways which would reduce conflicts with the judiciary or which would contribute to better understanding and coordination. Perhaps the most obvious example is the official contention that parole and remission do not alter the sentence of the court. All this means, in practical terms, is that they do not alter the date of warrant expiry. But all concerned understand (though some understand it imperfectly) that both parole and remission have a marked impact on the nature of the sentence: how much of it will be served in prison, and how much in the community, and under what conditions. The complexity of eligibility rules has also contributed to confusion among judges about what a sentence "means". Further, some judges may feel that release has been used, and may still be used, to violate the spirit or intent of the sentence.

* Again, however, not all judges understand how their sentences will affect release eligibility; the Working Group heard a particularly alarming story of an Ontario magistrate, on a visit to the Prison for Women, assuring a prisoner that despite her recent 25-year-to-life sentence, ways and means could be found for her to be released shortly by corrections officials.

Additionally, despite increasingly modest claims for rehabilitative effectiveness (Federal Corrections Agency Task Force, 1977), penitentiary officials have not systematically kept judges informed of the limited capacities of those programs (mostly psychiatric treatment and industrial training) which judges place most faith in and often assume will be readily available to the defendant. The introduction of "earned" remission in 1977 and the accompanying statements about how it would operate in a manner which truly distinguished among poor, average and exceptional performances has not contributed to a clear understanding of remission by sentencing judges. Finally, NPB has not, and currently cannot, better inform judges of the more specific criteria in use and how these will affect individual cases, such that judges would have a sound understanding of which defendants would be more and less likely to receive parole.

CSC and NPB must not only make concerted efforts to better inform judges of the formal mechanisms of release programs (and the eligibility constraints imposed by law and procedure upon them), but must also provide them with details as to the actual operation of the various release and imprisonment programs. We would suggest that an annual publication be prepared and mailed to all criminal court judges, explaining not only the formal workings of the system, but summarizing (in far more detail than is available, for example, in current Annual Reports of the Ministry) the numbers of eligible persons who did and did not receive an early release in the year (including rates of remission loss), the average amount of time served prior to release and the average percentage of the sentence served, the length of the release (particularly for TA's and day paroles), some of the characteristics of those released and not released, and the outcomes of the most recent available "cohorts" of releases. (This type of publication requires a better data feedback capability then is presently enjoyed by the Ministry. Later in this chapter we describe the data system needed.)

Also to be included in this publication would be the more specific criteria for release and revocation which we earlier recommended be developed by NPB and CSC. Finally, a brief factual description should be included of the types of programs available in every federal penitentiary, together with a statement of the number of inmates who can be accommodated in these programs. This should very definitely not be a "public relations" exercise, but a precise statement of what are very real and very tight limits upon the resources available for such programs as psychiatric and psychological assistance (typically for example one pyschologist available for every 100 to 200 inmates) and industrial employment programs (typically

able to employ less than fifteen percent of all inmates working at a job within penitentiary).

Written publications of the type described could form the basis for improved communication and coordination, but ought to be supplemented by seminars or conferences attended by judges and parole officials on a regular basis. Though attempts to organize these kinds of seminars have been made with limited success in the past, efforts should continue to try to arrange meetings.

Finally, there is one source of conflict and anomalous decisions which is of major concern both in itself and for its implications for penitentiaries and parole, namely sentence disparity. Well documented by Hogarth (1971), and the National Task Force on the Administration of Justice (1977-78) there is enormous unexplained variation in sentences given to similar offenders from region to region, city to city, and individual judge to individual judge. Sentence disparity is a tangible reality in places like Saskatchewan Penitentiary, where offenders who come principally from the three Prairie provinces arrive with very different sentence patterns.

To some extent, as we have seen, parole has the effect of evening out some disparities, particularly in longer sentences, and above we support measures which would enable it to do a better job at this (such as an improved data system to help identify anomalous sentences, and an expanded power of parole by exception).* But there are obvious and very strict limits on what can be done by a post-sentence release authority about a sentencing problem. We would therefore urge that the Canadian judiciary recognize and take action to reduce unexplained and unwarranted inequities in sentences, including the initial decision whether or not to imprison the defendant. While the Working Group has neither the mandate nor ability to recommend the best method for controlling sentences, we are convinced that methods such as requiring judges to give reasons for decisions, listing the aggravating and mitigating factors which can be taken into account, and introducing procedural refinements will not be of much help. Appellate courts, while they play in Canada a more active role in guiding sentences than in many other countries, do not provide the kind of specific direction we consider necessary, and different appellate courts behave in different ways from province to province. We do recommend that, as part of the federal government's Criminal Law Review exercise, serious study be made of numerical sentencing guidelines projects (Gottfredson

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* Ironically, the existence of parole and remission may, by removing from judges the burden of determining the exact duration of imprisonment, contribute to judges' failure to come to grips with sentence disparity.

et al., 1979) and presumptive sentencing in California and other U.S. States, though these innovations appear to be too new as yet to be well understood for their effects on sentence disparity (See Chapter V).

ELIGIBILITY DATES

The discussion under this topic is, of course, closely tied to the above discussion of conflicts with sentencing. One of the reasons eligibility dates are of concern to correctional authorities is that they are, for the most part, fixed (through Regulation) by the determination of the sentence. A nine-year sentence will mean full parole eligibility at three years; a three-year sentence will mean full parole eligibility at one year. Thus, sentence disparity translates directly into disparity in release eligibility. Short sentences translate into rapid mandatory release dates. Long sentences translate into long minimum stays in penitentiary. Some offences, such as narcotics importing, even carry a legislative provision removing judicial discretion to set the sentence below a certain number of years.

Requiring minimum periods to be served prior to release eligibility is principally intended to ensure that a certain denunciatory (or deterrent) period is served by all inmates, and allows the correctional system to reassure the public that sentenced offenders cannot be let out before a certain date (though both the public and, to a lesser extent, the judiciary still have a highly imperfect perception of eligibility dates). Minimum periods prior to release eligibility are often supported by parole and political authorities, both in order to allow them to give these assurances to the public, and to provide them with a barometer, or standard of punishment or judicial intent, after which they are free to make release decisions based on more traditionally "correctional" criteria, such as risk and treatment.

There are numerous disadvantages to or arguments against minimum periods, however. First, like any fixed mandatory provision, they are often a source of frustration to penitentiary and parole authorities. They are, by definition, both arbitrary and inflexible, and do not permit decision-makers to make those distinctions among unique individuals and unique circumstances which are the hallmark of "discretionary justice". Opponents of minimum periods argue that no such legislatively-fixed provision is appropriate in a system (such as most North American justice systems) which places such a high priority on responding to the unimaginable variety in human behaviour and circumstance. The strength of the belief in discretionary justice, in fact, is what apparently causes

such phemomena as prosecutors refusing to lay charges which carry stiff minimum penalties, juries refusing to convict on charges which they know would result in the death penalty, and penitentiary authorities resorting to extended gradual release for inmates who do not "belong" in prison. The parole by exception power, before it was cut back to its present state, was undoubtedly intended to serve as a legal safety valve for the kinds of cases in which fixed minimum periods simply seemed too harsh.

Second, minimum periods prior to release eligibility periods are, we have seen, imperfectly understood by sentencing judges, especially with the recent blurring of the distinctions among temporary absences, day paroles and full paroles. Many judges believe that offenders are eligible for close to full release much earlier than is the case, and they accordingly fix their sentence (and thus the real eligibility date) higher than what they really intend, and higher than a judge who understood the provisions better would do in the same case. Opponents of minimum periods argue that these kinds of disparities and unintended consequences would be removed through removal of minimum periods, since though the maximum sentence would still serve as some kind of indicator of judicial intent, the parole board would not be constrained to observe a minimum period of imprisonment before being able to consider release.

Third, minimum periods create confusion among offenders and case preparation staff as to when to apply for releases which do not carry an automatic review date. This can be especially confusing, and can create institutional tension, in instances where the eligibility date has been changed non-retroactively, and two different inmates convicted of the same offence at different times and receiving the same sentence length may have different eligibility dates.

Finally, minimum periods are not always seen by parole boards as the above-mentioned "standard" of punishment. That is, though it is not stated NPB policy, parole board members may, in some individual cases try to estimate what the judge "meant" by a fifteen-year sentence: did he "mean" the inmate should serve five years (full parole eligibility date), or did he "mean" that the inmate should serve ten years (mandatory release date), or did he mean that NPB should choose any term in between that it saw fit? Parole boards are sometimes so leery of appearing to countermand judicial intent that they may indulge in this kind of second-guessing, thus injecting yet another level of disparity into the equation. (NPB may in these cases attempt to contact the sentencing judge to inquire as to his intentions, or to obtain a transcript of the judge's remarks at the time of sentencing.)

Beyond initial arguments about the propriety of eligibility dates, per se, there are, of course, disputes about the levels at which these dates are set. Our basic (and rather typically North American) sentence structure of dividing the sentence into thirds - rather than for example setting the parole eligibility date at one-quarter or one-half the sentence, or the mandatory release date at nine-tenths of the sentence - lends symmetry to our system, but is indisputably arbitary. Requiring that inmates serve at least six months prior to eligibility for an unescorted TA is likewise an arbitary function (though not to say a non-functional one).

The Working Group was unable to agree categorically on either the level or the overall validity of eligibility dates. On the one hand, they do clearly create problems which either must be lived with, or circumvented in ways which are mostly cumbersome and inappropriate, such as executive clemency or parole by exception. On the other hand, we do have sympathy for the "balance of powers" argument, which seeks to place part of the decision power with judges (in setting the maximum term and thus the minimum period of imprisonment to be served), part with the penitentiary authorities (in the administration of remission), and part with the parole authorities (in the discretion over the middle one-third of the sentence).

It is clear, however, that there are problems of clarity and confusion caused by minium periods. We feel better communication with the judiciary in this area is essential, and recommend that in future, every effort should be made to avoid adding any further complexity to eligibility rules.

SPECIAL OFFENDER GROUPS

A number of concerns have been brought to our attention regarding identifiable groups of offenders who have, or appear to have, a particular problem or set of problems with the release process. We were not able to explore these problems in depth, but we note the following concerns and issues for follow-up by future policy groups.

Female offenders are in a unique position federally because there is only one federal penitentiary for women in Canada, the Prison for Women in Kingston. This means that, unless she can obtain a transfer under the federal-provincial Exchange of Service Agreements, the federal female inmate will serve her sentence in an area which can be thousands of kilometers from her home. Additionally, she will serve her sentence in maximum security regardless of her circumstances. The number and quality of prison programs available for her have also traditionally been less than those afforded to men,

though recent years may have witnessed some improvement in program availability. However, the distance from home, the security status involved, and the difference in the types of programs available combine to make individual program planning and release planning more difficult and less meaningful for women. Temporary absences to home are a virtual financial impossibility for some women, and given present rules about the non-exceptional inclusion of travel time in TA time limits, may be a logistical problem as well*.

In their submission to the Study, the Canadian Association of Elizabeth Fry Societies makes a number of recommendations for improving the lot of the female offender vis-à-vis release. Of these, we think three are of particular merit and should be given more study. First, more liberal use should be made of parole by exception (and, we might suggest, of early day paroles) to enable women to be moved closer to their home communities under federal correctional supervision; this "reverse discrimination" may be justified on the humaneness grounds that government policy about jails for women creates an additional deprivation (separation from home and family) not suffered in such high proportions and so automatically by men. Second, funds should be made available to finance conditional releases, particularly TA's, for pre-release planning in areas distant from Kingston. Third, funds should be made available for the Ministry to hire (either directly or through a private agency) a special caseworker who would be assigned full-time to participate in the case management team, to liaise with private aftercare and community service agencies who may be dealing with the female offender before or after release, and generally to ensure more meaningful release and pre-release planning for women. This last suggestion is intended to reflect the apparent fact that the present complement of classification officers is insufficient to deal adequately with the special problems and needs presented by the inmates at the Prison for Women. It is self-evident, finally, that vocational, educational and other programs for women should be brought to a standard which at least matches that available to a comparable male population.

Native offenders have a lower full parole release rate and a higher revocation rate than the population as a whole (Demers, 1978). This is not an indicator of racism in corrections, but in many cases reflects a lack of release plans considered appropriate by releasing authorities. Native offenders sometimes consider this judgment of their release

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* NPB may, in "exceptional" circumstances, add an additional 48 hours to a TA permit to allow for long-distnce travel. Elsewhere, we have recommended that travel time not be included in the time limits set for TA's (see Chapter III).

plans to be an insistence by authorities that Natives try to adapt their plans and post-release lifestyle to a standard appropriate for white offenders, but not necessarily for Natives.

The Working Group was not in a position to examine this problem in the detail it deserves. We recommend that the Solicitor General's recently constituted study group on Native offenders and the criminal justice system give special attention to the release question during their initial six-month survey of the problems faced by Natives.

Life-sentence inmates present unique problems for the penitentiary and release systems. Those convicted of first-degree murder automatically receive a 25-year minimum term prior to parole eligibility, though after 15 years they may apply to the court to have this term reduced. Second-degree murderers face a 10 to 25-year minimum term, with a similar option to seek a judicial review after 15 years. Generally speaking, other lifers are eligible after serving seven years in penitentiary. Unescorted temporary absences and day paroles are not available to lifers prior to three years before full parole eligibility. Remission does not affect lifers in any way which has real meaning.

To many of the penitentiary officials we talked to, this situation represents a prison management problem which is beginning to be felt and which will be increasingly felt in future. Since lifers have such long periods of "dead time" to serve without hope of relief and without direct incentives to good behaviour, many penitentiary officials believe that they create, and will increasingly create, direct and indirect disciplinary problems. Most murderers are young men and women when they enter penitentiary, and contemplating the age they will be and the years they will have "missed" by the time they are eligible for release can be an extremely difficult reality to adjust to. While no evidence is yet available to demonstrate that these inmates become involved in more disciplinary problems than do other inmates, some officials at Dorchester, for example, blamed lifers for an indirect influence on problems recently experienced there.

Lifers experience particular problems in making release plans because of the extended minimum periods they have to serve. Lengthy imprisonment causes some degree of "institutionalization" which makes it difficult for the inmate to conceptualize his future in terms of release plans. The years he has served have also typically severed most of his contacts with the community and impaired his ability to make realistic release plans. It is difficult to know when to begin

release planning, and the gradual release process itself may be a long, tortuous procedure.

In 1969, Ouimet remarked on the excessive length which a ten-year minimum prior to parole eligibility represented. The Working Group is of the view that long-term inmates may represent a significant problem for penitentiaries (including for populations in the mid-term and long-term future), and that long minimum periods seriously impair the chances of realistic planning of and success on parole. More importantly perhaps, these lengthy minimum periods violate our own sense of humaneness. Though Ouimet deplored minimum terms of ten years or more, and we are inclined to agree, we feel that it is not realistic at this time to propose that, for example, all life sentences carry a seven-year minimum. We accordingly recommend that all minimum terms be subject to judicial review and possible reduction after ten years in prison, under the procedures established for the present provision for review of cases of first- and second-degree murder after 15 years (Criminal Code, Section 762).

ACCESS TO INFORMATION

Some, though not all, of the field staff we consulted said that they were experiencing problems as a result of those provisions of the Canadian Human Rights Act (1977) which permit citizens to have access to information kept about them in federal information banks. The problems reported were of two complementary types: either offenders were gaining access to information which was placing justice officials or third parties in potential danger; or officials, for fear of offenders' gaining access to certain information, were not placing that information on files, some of which could be critical to important decision-making, especially by NPB. A third and related worry is that police, provincial officials, and other persons will refuse to transmit to federal officials important information which they fear may be disclosed.*

Section 54 of the Human Rights Act outlines a series of allowable exemptions to disclosure requirements. These include exemptions for "national security", investigations of crime, impediments to the functioning of a quasi-judicial board, possible physical or other harm to any person, and information obtained on an express or implied promise of confidentiality. Nevertheless, some field staff do report problems in protecting

* Police officials in Edmonton, for example, partially in consideration of this issue, refused to share certain information with CSC and NPB staff for a time. The addition of a police-parole liaison officer has alleviated this problem, however.

certain information from disclosure and have expressed concern about this matter. Many NPB members also report concern over this question. Some police have complained of the fact that their reports do not enjoy a "blanket" exemption (only documents which contain police opinion or advice are exempted).

However, generally speaking, there has been little noticeable decrease in information supplied by police to the Ministry since implementation of the Act in early 1978. If field staff identify information on a file as having been obtained on a promise of confidentiality, or indicate that its disclosure could harm an individual, a request for an exemption is virtually always made and successfully obtained. Part of the problem in the past appears to have been that field staff have not always elaborated their requests for exemptions with specific and supportable information. However, the new guidelines for exemptions recently developed within the Ministry, together with a possible need for refresher training for field staff, may serve to alleviate many of the problems reported. The Ministry will be closely monitoring this program in future.

SERVICES TO AND RELATIONS WITH PROVINCIAL AUTHORITIES

NPB has responsibility not only for making decisions about persons in federal penitentiaries, but in some provinces also exercises the paroling authority for provincial prisoners.* In fact, prior to 1977, NPB handled all provincial paroles except in B.C. and Ontario, where provincial boards had jurisdiction over the indeterminate portion of definite-indeterminate sentences. Since the introduction of enabling legislation in 1977 (Parole Act 5.1), three provinces have chosen to create provincial boards with jurisdiction over all provincial prisoners: B.C., Ontario and Quebec.

The reasons for the creation of these provincial authorities have been various, but are largely related to a desire and a perceived need for the province to have complete control over decisions made about the prisoners in its jails. A provincial board is thought to increase the chances of a coordinated, coherent correctional system within the province. Additionally, NPB has been unable, because of its workload, to give adequate consideration to provincial inmates serving very brief terms: in many instances the prisoner's mandatory release date will be reached at virtually the same time as case

* The parole power is actually, by virtue of the Parole Act, entirely a federal power, which may be delegated to provincial authorities through Section 5.1.

preparation for parole has been completed.* Resource limitations have also not enabled NPB to grant hearings to provincial prisoners, as it does to federal inmates, and this has caused human rights and equity concerns. Resource problems have in addition caused a lengthier turnover time than some provincial authorities are prepared to accommodate, given pressures to get prisoners out as soon as possible. Overcrowding in some provincial jails, combined with a current parole rate which is historically rather low, has also caused these provinces to feel that a provincial board could be more responsive to their needs. Since many provincial systems are heavily oriented towards community-based corrections, having a provincial release authority can enable them to make more internally consistent decisions about who should and should not be participating in community programs.

Those provinces which have not yet opted for their own parole authority have been influenced in that decision by a number of factors. In some of the smaller provinces, funding of an indigenous board may be a problem, including the anticipated consequent increases in related staff. Additionally, the negative publicity attendant on the inevitable parole failures is not an aspect of control which is entirely welcomed, and some authorities may fear a negative impact on their entire community-based correctional system from these kinds of failures.

Nevertheless, there is still the possibility of greater provincial entry into the parole decision-making and supervision areas. There have been some discussions around the creation of an Atlantic regional board, the costs of which would be shared by all the provinces involved. The possibility has also been raised of a "joint" federal-provincial parole board for decisions made about inmates residing in Alberta.

These types of negotiations will doubtless continue while concerns remain about the service available through NPB and CSC for parole decision-making and supervision. A federal-provincial association of persons involved in parole, the Canadian Association of Paroling Authorities, has been formed recently to provide a forum for discussion of topics of mutual interest and concern. NPB is also currently studying proposals to have NPB notify appropriate provincial prisoners of their eligibility dates, to institute automatic parole review rather than review only upon application by a provincial prisoner, greater attention to short-sentence prisoners, an accelerated decision and case preparation

* Though in some instances, those prisoners serving short terms (under 6 months, for example) are not automatically considered for parole under the new provincial authority either.

process, the conduct of hearings for provincial prisoners on whom NPB makes decisions, increased local participation in parole decisions, involvement of provincial staff in case preparation for parole decisions, and supervision of provincial parolees by provincial authorities.

CAPA is a promising vehicle for increased cooperation and discussion among parole authorities of their mutual concerns, and its progress should be considered by the Ministry as a priority concern. A particular concern should be coordination of standards, procedures and programs for temporary absence and day parole in the federal and provincial jurisdictions, and the question of federal offenders on mandatory supervision being supervised, through exchange of service agreements, by provincial authorities. Additionally, an ongoing project of NPB to study proposals for improving services to the provinces should continue to be given strong support.

DATA FEEDBACK SYSTEM

One of the principal concerns not only of the persons we consulted, but of the Working Group itself, is the complete lack of a viable, useful data feedback system which would enable decision-makers to have detailed, up-to-date information on the numbers and types of persons being granted and refused the various release forms each month. By this we do not necessarily mean to criticize the Ministry's management information systems, which have never been designed or intended to provide the kind of extremely current feedback which we feel is essential. Instead, we recommend that all parole board members and regional executive officers, wardens, classification officers, parole officers and regional CSC Offender Programs managers be automatically provided with a standard-format description of the decisions made about conditional releases in their own and all other regions every month.* Most of the information needed for this monthly feedback, with the exception of statistical risk prediction scores, is already available in the Ministry data sources, but the data system is not geared or formatted for the feedback needed.

This feedback publication should include the following information on all releases granted and refused, indicating the number of cases falling within various groupings of this information:

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* NPB is already exploring the possibilities of setting up computer terminals at regional and national headquarters to permit some kinds of feedback. Whatever the regional activities, the feedback we describe here should be a minimum requirement coordinated through national headquarters.

- release type
- sentence length
- time served in penitentiary
- proportion of sentence served
- statistical estimation of risk and of violent risk
- type of admission
- major offence
- releasing institution and security status
- age
- number of previous imprisonments
- number of previous convictions for indictable offences
- marital status
- special conditions (specify)

Additionally, for TA's, the following information should be supplied:

- escort status
- group or single
- purpose of release (in greater detail than "rehabilitative/medical/humanitarian")
- length of release
- part of approved series/not part of series
- releasing authority

For day paroles, the following information should also be required:

- length of approved release, and actual length of release as implemented
- receiving institution (if any)
- reporting requirements
- purpose of release (in detail)

This regular, up-to-date feedback will help decision-makers to "see" their policies and the differences between their policies and those of other regions and other penitentiaries, enabling more control (if desired) or manipulation of policies in a systematic fashion.

Additionally, on a quarterly basis, all concerned officials should receive information on the outcomes of releases granted either in that quarter (in the case of TA's) or in the equivalent quarter of the previous year, to permit a one-year follow-up of each quarterly "cohort". This outcome information should show the results for the total group, as well as for each category of case information used in the monthly publication (e.g., outcomes for persons released on break and enter). The outcomes should be grouped as follows:

- still under supervision
- suspended, not revoked
- suspended, suspension cancelled
- revoked for technical reasons (specify)
- revoked with new criminal charge (specify charge)
- other

CHAPTER V
MAJOR DIRECTIONS FOR RELEASE

Part of our mandate to examine release "from first principles" was to study various major directions which release might conceivably take which would redefine the objectives of release (or reorder the priorities attached to them), which could make us more effective at achieving our objectives, or which would in some way represent a new philosophy.

We have seen in the preceding chapters that the release processes need to come to grips with various questions of objectives. Some of release's most important objectives or functions are not explicitly or formally recognized, and thus probably not very systematically or effectively achieved. Other objectives which are stated as the key "formal" objectives are at issue because they either present great difficulty in implementation, or because we do not have the specific knowledge of how to achieve them with any measurable degree of success. Finally, of course, there is disagreement from various quarters about whether release ought to be pursuing the objectives or having the effects which are observed.

In this chapter, we will discuss a few "models" for sentencing and release systems which will exemplify certain distinct approaches to objectives. They will serve to represent certain "ideal" or "extreme" views of what release is intended, or primarily intended, to do. Some of these "models", for example, emphasize goals of incapacitation and punishment above other goals. Some of them would allow for great flexibility in the choice of some kinds of goals, but are directed primarily at other kinds of goals such as restraint or natural justice. Finally, some of these models can encompass diverse and even conflicting views of objectives, depending on the form they take and the individuals espousing them.

It is important to note that, though the "status quo" is not discussed below as a "model", we are not thereby implying that is not a viable alternative. Rather, the purpose of this Chapter is to examine major innovative proposals and what can be drawn from them.

The "models" we will discuss are:

- "Flat sentencing". All forms of early release (prior to warrant expiry) are abolished. This model reflects concern primarily for objectives of equity, proportionality between offence and punishment, accountability, and clarity and certainty of

punishment. Among its proponents there are, however, strong disagreements about the degree of punishment (and by necessity, incapacitation) to be exacted.

- Single release authority. By contrast to the first model, early releases from prison are retained, and are under the authority of a single correctional body separate from the penitentiary authority (remission is abolished). This model emphasizes goals of incapacitation risk reduction coordination of decision-making, and simplification.

- Institutional authority. Under this model, all early release decisions are made by penitentiary authorities. It emphasizes goals of incapacitation, risk reduction, coordination of decision-making, and control and management of offenders.

- Appellate models. These models would preserve various forms of release, which would or could be administered initially by penitentiary authorities, but would be subject to review by an independent body concerned with coordinating policy, reducing disparity, and preserving the appearance and reality of fairness. The available "appellate" models differ from our present system in ways both large and small.

- Minimalist models. These models would allow for and encourage release as early as possible, and would employ the minimal form of intervention possible in the circumstances. They are premised on objectives of restraint, cost-effectiveness, risk reduction, and the human rights principle of minimal interference in citizens' lives.

- Guidelines. These models preserve administrative discretion as to release, but create explicit, objectifiable decision rules for guiding the exercise of that discretion. They can reflect various types of approaches, but are based primarily on goals of equity, accountability, and clarity.

FLAT SENTENCING

The recent popularity of "flat sentencing" - the abolition of early release, or at least of parole - has been a product of numerous developments and numerous viewpoints from both conservative and liberal philosophies in criminal justice. (Law Reform Commission, 1976; Mandel, 1975; Bewley, 1978.) Recent research (Gottfredsen et al., 1975; Cosgrove et al.,

1978) has been interpreted to mean that though the parole decision-making process appears to be very complex, it can be "explained" (to the extent it is explainable) through a very few factors or dimensions (such as risk, or the seriousness of the crime). This "demystification" of parole has been accompanied by further indications that the factors which are most important to the parole decision process are factors which are known at the time of judicial sentencing. This has led some critics to argue that sentencing judges, who supposedly sentence offenders under conditions of greater visibility and protection for human rights, ought to take back the sentencing power from the parole boards.

Elimination of parole would, in the view of some advocates, bring greater certainty and equity to correctional terms, since the disparities evident in parole would be eliminated. These critics claim that parole judgments are marred by considerations which perhaps ought not to influence the time to be served: considerations of who the offender is (how good or bad he seems) rather than what the offender did on this occasion; considerations of his correctional treatment (which critics argue is a bankrupt ideal since there is no apparent evidence of rehabilitative effectiveness); and considerations of his future risk (which is not particularly well predicted, especially in the case of violence). Some flat sentencing proponents argue that it is fundamentally unfair to punish offenders on the basis of something they might do in future. Critics of parole also point to its susceptibility to fluctuations dependent on sensational parole failures reported in the media, on penitentiary pressures and concerns, and on the idiosyncrasies of individual decision-makers. Parole is thought to be inherently inhumane because of the uncertainty and anxiety it causes inmates. Finally, there are those who would like to see parole eliminated because they would like to see criminals serve longer in penitentiary; there are also those who would like to see parole eliminated at the same time as sentencing reforms are instituted in order to ensure that criminals serve shorter terms in penitentiary, and indeed that fewer people go to jail in the first instance.

The "flat sentencing" model is premised not just on criticisms of parole, but on belief in a system of equal punishments meted out for offences of equal severity. This "commensurate deserts" notion is thought by some to fulfill objectives not only of equity, accountability and fairness, but also of general deterrence. If "two years means two years", it may have through its certainty a greater impact on potential offenders. The authority (and hence the effectiveness) of the sentencing court would be enhanced by flat sentencing, claim its supporters. Finally, punishment of the particular offence

is thought by some to be the only relevant consideration in sentencing, a function for which only a judge is needed.

Twelve U.S. states* have now passed legislation eliminating the traditional parole authority in favour of flat sentencing. (Most have retained remission, however, on grounds of prison disciplinary considerations, and some have even increased its effect.) They have done so in widely varying ways. In Maine, for example, parole was eliminated during a criminal code review, and through maximum terms were reduced somewhat from their former levels, no real additional controls were placed on judicial discretion within these still lengthy permissible maximums. In California, an entirely different sentence structure which drastically curtailed judicial sentence discretion was set up (presumptive sentencing**) at the same time as parole was eliminated, and presumptive terms were set with deliberate consideration for the average amounts of time served in prison which had been the norm for various offence types in the state. In Indiana, the introduction of a new system of five "classes" of felony sentences resulted in both parole abolition and few additional controls on judicial sentencing discretion, since the presumptive and maximum sentence under each class of felony offences was set so high and the allowable range around each presumptive term was set so wide.

It is still largely too early to tell what the effects of these parole abolition experiences in the U.S. will be. The early evidence suggests that, in practice, "flat sentencing" reforms may have (or not have) the following effects:

- The "certainty" of flat sentencing (in the sense of a certain type of offence being likely to invoke a certain predictable sentence) may be more illusory than real, for various reasons. First, unless judicial discretion is circumscribed concurrently, then certainty of sentence is no more assured under

* These are: Alaska, California, Colorado, Illinois, Indiana, Maine, Minnesota, Missouri, New Mexico, New Jersey, North Carolina, Tennessee. In addition Arizona and Pennsylvania have passed determinate sentencing laws, but these retain traditional parole authority release.

** In presumptive sentencing, the legislative defines a range of punishment (e.g. "2, 3, or 4 years") within which the judges sets the sentence, which for the most cases would "presumptively" be the middle term (in our example, 3 years). Canadian and most other sentencing structures define in law only the maximum which can be imposed (not the "norm").

the "flat sentence" model than it is at present, which is to say very little. In fact, variation in the punishments served for similar offences may increase under this model because of the absence of the sentence equalization "by-products" of parole which as was seen of NPB (Chapter II), is a very significant effect. Second, even under flat sentencing reforms designed to curtail sentencing disparities, there are rarely any controls placed on prosecutorial authority to which much of the sentence discretion may "flow". And third, a great deal of discretion is typically left to the judge to choose a non-carceral alternative, to set consecutive or concurrent sentences, to add to or substract from the sentence for aggravating or mitigating circumstances, and so on, such that more judicial discretion than is immediately apparent still remains left in many flat sentence reforms.

- A second type of certainty, that experienced by the prisoner in knowing precisely how long he will serve, may be achieved by flat sentencing, though in some jurisdictions an increase in remission may bring the potential for continued uncertainty, and in other jurisdictions, some form of discretionary authority (though perhaps not called a parole board) may be preserved which can affect the time served in prison after sentence has been set, particularly through revocation during the supervision period that is often determined by remission.

- Especially if no additional controls have been placed on sentencing discretion, flat sentencing may (it is still too early to tell) cause increases in prison populations. Increased use of prison terms (more people sent to prison) may be an effect of flat sentencing in that it focuses so much attention on prison as a sentencing option. Increased time served in prison may be an effect if sentences increase or stay substantially the same, though compensatory increases in remission can ease the effect. To counteract this, some of the newer bills introduced in the U.S. to implement flat sentencing have in fact explicitly directed the body charged with setting new sentence ranges to consider prison populations and the former norm for time served in setting presumptive sentences*. Some flat sentencing laws, in an attempt

* Basing future sentences on past averages has also been criticized as a system which institutionalizes past practices which have been excessive.

to keep prison populations down, have also directed that a community-based sentence be presumptive, as in Illinois.

- A flat sentencing system may be more susceptible to sensational failures and public and political pressure than the system it replaces. More of the responsibility for sentencing rests with the judge, who is more visible and possibly more open to the pressure of bad press and the immediate demands of the situation. The original or originally drafted sentence lengths for flat sentencing bills are certainly susceptible to being increased during legislative debate, and after passage, through piecemeal amendments during times of "crisis".

- A flat sentencing system may have negative effects on the prison system. It can markedly increase the discretion exercised by prison authorities (through remission) and if inappropriately administered, could increase inmate anxiety and prison tensions. It could affect program participation and the williness of correctional authorities to maintain a range of programs and activities which is so important to management of penitentiaries, if not to rehabilitation. If the abolition of parole were seen to be an insufficient reform, finally, it could lead to abolition of remission as well - with the attendant effects on prison populations. However, there is as yet no evidence of these negative effects occurring on the prison system in the flat sentencing states the U.S.

Comments on flat sentencing

Flat sentencing has a "common sense" appeal because it is premised on principles of fairness (you should be punished for what you did, rather than who you are or what you may do), equity (people committing similar crimes should receive similar punishments), humaneness (it eliminates some forms of coercion, manipulation and dishonesty towards prisoners, and it is easier to be in prison knowing when your release date will be than wondering if you will be paroled). It also embodies the theory that general deterrence will be enhanced by the disappearance of at least one of the sources of subsequent mitigation of the sentence.

But we have seen, there are reasons to be cautious in expecting that flat sentencing will in fact result in a system of greater equity, fairness, humaneness, or certainty. Parole

abolition may also result in increased prison populations and increased time spent in prison. As our earlier discussions have indicated, the Working Group does not feel that an increase in imprisonment would be desirable, from the standpoint of cost-effectiveness, humaneness, or risk reduction. For the foreseeable future in Canada, moreover, there are only very slight possibilities that effective controls on judicial sentencing discretion can be devised and implemented, and while that remains the case, flat sentencing presents a danger of increases, rather than decreases, in inequities and harshness of punishment.

Nevertheless, we feel certain that this model will continue to be attractive to many, because of its potential benefits and its simplicity. Below we present some of the information which would be needed and cautions which would need attention for this model to be actively considered in Canada.

- A better understanding is necessary of the effects which various changes in sentence lengths and resultant time served in prison would have on penitentiary populations and inmate behaviour. In particular, commissions or other bodies established to propose new penalty schemes should have available statistical advice on current penalties and informed judgments about possible effects on judicial sentence behaviour which could occur as a result of a new sentencing scheme.

- Some of the U.S. states which created sentencing commissions (e.g. Minnesota) to develop new penalty schemes specified that these schemes were to reflect principles of restraint as well as the realities of current institutional capacity and normative punishment levels. Sentencing commissions which are set up by, but independent of, the legislature may be somewhat less susceptible to pressures to propose high presumptive and maximum terms and severe additional punishments which can be imposed under aggravating circumstances.

- Thought should be given to placing concomitant controls on prosecutorial discretion. The elimination of one discretionary body (the parole board) enhances the power and influence left to the other discretionary authorities, the judge and prosecutor. Under a scheme where judicial discretion is also narrowed, the prosecutor's decisions as to how to charge the defendant

and what additional punishments* to invoke will become even more significant. This may simply result in much of the system's disparity remaining, but residing with the prosecutor instead of the judge or parole board. Prosecutors may not be the best group, organizationally, professionally and philosophically, to hold so much of the sentencing discretion. At the very least, attention should be paid to developing guidelines for the exercise of prosecutorial discretion (as in Washington State), to restricting the range of effect which this discretion may have, and to efforts to try to eliminate plea bargaining (as in the State of Alaska).

- It is very difficult to find the proper balances and levels in placing controls or guidelines on decisions about how to charge offenders, about whether to use a custodial or non-custodial sentence, about what length of prison sentence to choose, and whether or not to invoke additional punishments for out-of-the-ordinary offences or offenders. While mandatory, fixed sentences (i.e., the total elimination of judicial sentence discretion) are undesirable and in effect unachievable,** it is unlikely that much control of sentencing would result from preserving the existing levels of permissible sentences and relying upon voluntary self-control by judges. The range of discretion available to judges and prosecutors should therefore be narrowed (to reduce disparity), but not to a point where it encourages the system to find other ways of making the distinctions among individuals which decision-makers consider, and will under any system consider, to be both fair and essential to the smooth operations of the pleading and sentencing processes.

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* Under many presumptive sentencing schemes, there is some specification of the aggravating and mitigating circumstances which should be taken into account in setting the "presumption"; the threat of invoking these aggravating and mitigating factors into additional punishments (such as a possible additional six months for carrying a weapon during the crime) is part of the bargaining power often given to the prosecutor under the schemes.

** Mandatory penalties cannot allow, in our view, for all the reasonable distinctions even in severity of offence which one might wish to make. They also tend to be subverted in practice by the low-visibility exercise of discretion elsewhere in the system.

SINGLE RELEASE AUTHORITY

At the other extreme from the "flat sentencing" model is the notion of having a single discretionary authority to make a wide variety of release decisions after the initial pronouncement of sentence.* In its extreme form, this model would give the release authority power to release at any point during the sentence (no minimum times would have to be served prior to parole elibility) and nothing would require release prior to the expiry of the warrant. In Canada, no recent major reports have recommended such an extreme system, though the National Joint Committee of the Canadian Association of Chiefs of Police and Federal Correctional Services (NJC) have recommended (1980) that NPB be given full control of the last portion of the sentence (from parole eligibility until warrant expiry; remission would be abolished and with it, mandatory supervision). A similar suggestion was made by the Criminal Lawyers' Association in Toronto, which also recommended that to encourage release of most offenders by the two-thirds (former MS) date, the onus should shift at the two-thirds date to NPB to demonstrate why the inmate should not be released. Any inmate could be kept until warrant expiry, however.

In its extreme form, the single release authority model is associated primarily with ideals of incapacitation, and often also with risk reduction: incapacitation because it increases or is intended by some of its advocates to increase the length of time for which risky offenders can be detained, and risk reduction, because it is concerned with allowing the parole board maximum discretion to make decisions based on clinical judgment of an inmate's readiness, including by means of "testing" him on gradual release or ensuring that he completes a "decompression" cycle or some other prison program before he is fully released. The single release authority model does not have to be premised on a strong treatment ideal, but it does place a high premium on wider discretion to make rational, coordinated release decisions without "artificial" constraints (such as eligibility dates and MS dates). The precise orientation or policy of the releasing authority, however, can vary markedly from simple risk assessment (incapacitation), to emphasis on gradual release (as for the Law Reform Commission's "separation" sentence cases), or even to a commensurate deserts philosophy. Before California's introduction of flat sentencing, in fact, its parole board based its release guidelines on a relative scale of offence severity, with minor variations for prior record: both these

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* Under this model, we will discuss only those simple release authorities constituted like a traditional parole board: organizationally separate from the prison authority, but within a corrections department.

factors, were seen purely in terms of just retribution for the nature of the offence, with prior offenders simply "deserving" to serve more time.

In Canada at present, however, the "single release authority" model seems to be proposed from three different perspectives. The first is a concern about the ineffectiveness of MS, which is inextricably coupled to the second concern, about "automatic" release of risky offenders prior to warrant expiry date through remission. Some police are particularly prone to seeing MS as ineffective in controlling recidivism, because they are often in close contact with the more visible cases of failure on MS. They also share some of the frustrations experienced by parole officers over "revolving door" cases who are taken off the street for unacceptable behaviour, but who reappear from penitentiary shortly afterwards. Frustration with MS is often translated into the proposal that all non-paroled offenders should stay in penitentiary until warrant expiry. For NPB, it is frustrating to be continually blamed for having "paroled" MS cases, and to be unable to prevent the "automatic" release of some potentially violent persons prior to warrant expiry. According to advocates of this model, NPB should be given wider discretion to make risk assessments and incapacitative decisions throughout the sentence - or at least for the last two-thirds of it.

The third, and perhaps less pressing, concern which lends weight to the single releasing authority model is concern for coordination under a single authority of all decisions which lead up to or result in a "release". Such an authority can develop systematic release plans, facilitate opportunities for participation in partial release, and make decisions based on release-relevant concerns. The gradual release model has taken on increased significance since Hugessen (1973) and the growth of day parole and temporary absences as a "test" for full parole or a preparation for MS. Rational release decisions should not be constrained (goes the argument) by considerations of denunciation (as in parole eligibility dates) or by the application of a virtually "automatic" system of time credits for "just keeping your nose clean".

Various objections have been raised to the single release authority model. Perhaps most importantly, there is more reluctance today than, for example, five or 10 years ago to vest any single agency with control over all or even most of the sentence, within limits set by warrant expiry. Mistrust expressed by the Chief Justice about NPB's "unfettered power ... without precedent among administrative agencies empowered to deal with a person's liberty" (Mitchell v. Regina, (1976) 25 Cr. 570) would probably become more of a concern under the

single release authority model, simply because the release authority would have more power to use or abuse. Recent and incoming procedural protections may allay some of this concern, however.

The lack of empirical proofs of some of the rationales underlying parole's discretionary decision-making has also caused some drawing back from this model. Parole as an aid to the "reform and rehabilitation" of the offender is, as we have seen, as yet an unproven effect. The limited efficiency of current clinical and statistical prediction of recidivism, calls into question the practicability of risk selection as an objective. The "testing" of offenders through gradual release is open to question as a means of either reducing risk or improving risk prediction, though some research (e.g. in Massachusetts) has pointed to some evidence of a risk reduction effect.

Practical considerations also raise queries about the single release authority. If judicial sentences do not decrease enough to compensate for the abolition of remission, penitentiary populations may rise, a concern to which NPB is officially and actually rather unresponsive. Critics claim that the additional time served by non-paroled inmates would represent greater punishment and incapacitation, but would be of little ultimate benefit, and would have demonstrable costs in human and financial terms, and perhaps also in terms of risk reduction. NPB would almost certainly incapacitate (not parole) a large number of persons on grounds of their dangerousness, who would not later commit an act of violence: violence is so infrequent when compared to the total number of offenders under consideration that overprediction and over-incapacitation on grounds of presumed dangerousness is almost, as has been seen, a mathematical certainty. Critics argue that it is unjust, counterproductive, and too costly to detain until warrant expiry all non-paroled offenders in order to prevent the serious crimes which will be committed by the few. From this viewpoint, mandatory release at two-thirds is a good "safety valve" for the conservative decisions of the parole board.

Another objection raised to this model is that offenders released at warrant expiry, presumbly the "worst" offenders, would not be subject to supervision after release. The Working Group supports the availability of post-release assistance to all offenders, though not necessarily on a compulsory basis. However, the "single release authority" model does not necessarily mean an end to the supervision of prisoners released after warrant expiry: this model can include the provision of a "separate supervision term" after release, which is unrelated to the initial "imprisonment term". Various arrangements are possible whereby a released prisoner who

re-offends while under this supervision term may be returned to prison to serve either the remainder of the period in prison, or to serve some period of it up to a maximum limit. Curiously, the "separate supervision term" concept has been applied so far only in the flat sentencing states*, but there is no reason that it could not be applied in models which retain discretionary parole release.

Comments on the single release authority model

As in the previous model, a great deal more will need to be known about the probable effects on sentencing and time served of the model. In addition, the effects on inmate anxiety, penitentiary population, community supervision, and prison discipline (by the abolition of remission) would have to be considered.

Most importantly, however, if parole board authority is to be increased there is arguably a more pressing need for more structuring of, or controls on, their discretion. Philosophically, there would be a need for the release authority to specify its orientation more precisely than at present. Given current concerns about disparity, lack of "mission" and unclear objectives in parole, it does not seem reasonable to increase NPB authority before a review of objectives and specification of decision criteria has been carried out. For example, if parole were to define its role simply as ensuring equal punishment for inmates who committed similar crimes, government would be in a better position to evaluate whether it would make sense to retain minimum eligibility limits and "automatic" early release dates.

RELEASE BY PENITENTIARY AUTHORITY

The arguments for placing all releases in the hands of the penitentiary service are essentially similar to those for placing all releases in the hands of the parole authority. This model would, like the other, allow for coordination of all decision-making by a single authority, without "artificial" constraints from eligibility dates or mandatory early release dates. Often, though not necessarily, implied in the model is the expectation or hope that decisions made will affect the inmate's ultimate risk of re-offending after release. To these arguments are added those that the penitentiary service knows the inmate best and can judge what is best for him at what time. Currently, there is some feeling that if CSC were

* In Colorado, for example, flat presumptive sentences are accompanied by separate supervision periods of 1 year served by all state prisoners after release, and revocations lead to a 6 month return to prison.

responsible for all releases, there would be more releases, and more "cascading" as a result of greater concern for efficient use of resources within CSC.

The "extreme" of this model has not been proposed in Canadian official reports for years, though Hugessen reflected it by recommending "local" review boards on which wardens were represented. Sympathy for this model was found among some of the CSC staff we consulted, however. This model usually takes less extreme forms, such as proposals that NPB commit itself early "in principle" to a release plan for the inmate which is prepared by CSC case management staff as part of the inmate's "individual program plan" (IPP). Another proposal is that remission play a more important role in the release process by becoming "truly earned" and deductible not only from the maximum but also from the parole eligibility date, or in some other way determining when NPB will consider the inmate for release.

Criticisms of this model are the same as those of the single parole authority model, except that fears of placing too much authority in the hands of one body may actually be greater under this model. The possibilities for improper use of release power, or use of release power on the basis of the wrong factors, are considered in this model greater in this model, because of the pressures of the penitentiary environment to constantly control inmates through rewards and punishments. Pressure from inmates on authorities to grant releases is also greater under this model, since the authorities are in closer contact with inmates. The primarily "penitentiary" orientation of authorities under this model is also thought by its critics to be less desirable because of the possibility of too much weight being given to penitentiary adjustment and not enough to community concerns. Adjustment to penitentiary is not generally considered a good predictor of post-release success or failure.

Comments on release by penitentiary authority

The lack of recent support for this model (outside CSC itself) reflects fear about placing the release power in the hands of authorities who already have almost full control over virtually all other aspects of an inmate's life, and by authorities whose prime orientation and constant struggle is to find ways to keep the "lid on" and otherwise encourage appropriate behaviour on the part of both staff and inmates.

In the inmates' rights area generally, and in the release area particularly, the long-term trend has been away from control by individual penitentiary authorities and towards

review by independent authorities such as the Correctional Investigator, the Federal Court, and NPB. This reflects the prevalent view that effective remedies are needed from penitentiary authority decisions. When the person's release to the free world is at stake, concern for review by independent authorities becomes even more important. This is at the base of the current "balance of powers" model, or sharing of release power among the judiciary, parole and penitentiary authorities. It can be expected to continue for the foreseeable future, and until more is known about effective remedies from penitentiary decisions, shifts of release power to penitentiary authorities should not be done wholesale. The next model we examine is in fact concerned entirely with creating the final release authority as a more effective check on penitentiary discretion.

APPELLATE MODELS

Various models for release have proposed that the ultimate releasing authority should assume far more of a role in setting clear policy and ensuring effective review of decisions or recommendations made at the first level by institutional staff. The Law Reform Commission model would allow appeal to the original sentencing court at any time during a "denunciation" sentence in order to effect a change in the length or manner of service of the sentence. For separation sentences, however, the LRC creates a "Sentence Supervision Board" (SSB) which oversees decisions made at the outset by penitentiary staff about releasing inmates on various gradual early releases which are intended to test readiness for full release. Their rationale is that an "independent and impartial" body like a Sentence Supervision Board, whose independence would be further reinforced by being "subject to the general control and supervision of the superior courts", is needed to ensure that deserving inmates are not "lost" in the opportunity system, that criteria, standards and procedures are followed in individual cases, and that an effective appeal mechanism is made available.

Critics of this model (which in many ways bears similarities to the current system) claim that it is essentially indistinguishable, or would be in practice, from the current system, which does not presently serve as an adequate check on penitentiary decisions. The Sentence Supervision Board is not described in great detail by the LRC, but what details are given of the scheme do not distinguish it in significant organizational or professional respects from the current NPB. The LRC does call for the Sentence Supervision Board to produce "express criteria for decision-making", but gives little indication of what these criteria might be other

than that they would encompass a series of presumptive decisions about "testing" and "decompressing" the offender on gradual release. Critics claim that if these criteria are not in fact expressly and objectifiably articulated, there will be no effective policy guidance and no meaningful review of release decisions by the SSB. These same objections touch on another criticism, which is that, in the absence of express criteria, disparity will actually increase because release "policy" will be made by dozens of different case management staff across the country, and review of negative decisions will not be an effective check on this multiple disparity source. The high concordance rates between NPB and case preparation staff show that an NPB/SSB may not operate with much independence from case preparation staff. Finally, the effectiveness of the SSB would be determined, to some extent, by inmate willingness to appeal decisions which they are dissatisfied with. It can often be extremely difficult for an inmate to pursue an appeal through CSC staff who made the original negative decision which is under review. Reliance on inmate appeals is a rather tenuous basis for effective, "independent" review.

To some extent, the second major "appellate" model addresses some of these concerns about independence and effective review. With variations, we were given numerous suggestions to change the parole board into a body (or individual) which operates in a judicial manner. According to some of our consultation participants, the board should be a separate body within the federal court, staffed by persons trained in law and operating in a judicial manner. For others, the power to amend sentences or modify the manner of their service should be shared on a rotating basis by all sentencing judges in a given area, as a periodic duty which would supposedly enhance all judges' understanding of sentence discretion and the post-sentencing process. A final appellate model is the juge de l'application des peines, a "sentence administration judge" in France who makes decisions about early release from other judges' initial sentences.

The chief attraction of the more legalistic "appellate" models is, of course, that they are legalistic: they would presumably operate to provide greater procedural protections for inmates, would allow open discussion of the factors to be considered, and would allow formal argumentation of the inmate's (and possibly also the state's) case for release or continued detention. Advocates of these notions are principally concerned about the low visibility of parole, the lack of specification of rules of evidence or criteria for decision-making, and the lack of legal training among board members which might serve to encourage uniform, fair

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decisions. It remains to be seen, however, whether these models would in fact provide a greater protection for inmates or would result in "better" decisions, however defined. Some critics would also argue that releasing authorities need to be better informed about the realities of corrections than judges, even judges who are appointed as "corrections/sentence administration" judges, could be expected to be.

It is worth describing the juge de l'application des peines in some greater detail, if only to highlight some of the problems which were encountered with this particular method in France. There is one or more juge de l'application des peines for each district, and by the law of 1958-59, these judges were created in order to effect the participation of judges in the protection of offender rights, and to bring about the individualization of treatment during an era of faith in the rehabilitative ideal. The JAP was created to effect releases of all kinds (TA's, day paroles, full paroles) as well as to affect the conditions and obligations of sentence. There quickly developed strong conflicts between the JAP (who had the decision power) and the prison administration (who had control over resources and the execution of the decisions). A requirements to visit the prisons once a month, together with the enormous number and range of decisions to be made, soon placed a strain on the capacities of the JAP to effect his mandate. Perhaps as a result of these conflicts, in 1972 the JAP was brought more into the stream of corrections by the creation of a Commission de l'application des peines (CAP), a body composed of officials from the local penitentiary who advised the JAP.

Accusations of various types surrounded the JAP, especially following the modifications of 1972, including that releases had become a means of maintaining good order and discipline, rather than promoting rehabilitation. However, tension between the JAP and the prison authorities increased to such an extent that in 1978, the law was amended to introduce minimum periods prior to release eligibility, and to require the agreement of the CAP to all temporary absences on terms over three ears. These reforms were in part occasioned by adverse reaction to the over-liberal granting of TA's and remission by the JAP. The 1978 amendments have been severely criticized by the judiciary as a move towards making the JAP an administrative, not a judicial authority, away from the role of protecting offender rights, and in the direction of placing the JAP under the effective authority of the correctional bureaucracy. (Outheillet-Lamonthézie, 1974; Aydalot, 1973; Plawski, 1979; Note, 1976).

The French experience seems to suggest that there will be enormous resource difficulties for a JAP set up along these lines, such that the JAP may soon come, de facto if not de jure, under the domination of the correctional officials who are advising him. Whether the JAP could be protected from these influences through organizational or professional orientation remains to be seen. Certainly, however, there is some reason for caution in drawing conclusions about the JAP as a means of protecting the appearance or reality of "justice".

Comments on appellate models

Appellate models depend heavily on the kind of interest in and resource committment to "express criteria" and strong safeguards advocated by the Law Reform Commission. No effective review or "watchdogging" of the administration of release by case management authorities appears to be possible without a clear basis for initial decisions, appeal and review. Further exploration of appellate models must futher take into account the need for "independence" without naiveté about corrections, or independence may soon become illusory (or be eliminated in order to promote better coordination).

MINIMALIST MODELS

Minimalist models need not be premised on any particular philosophy of release other than that it should represent the least intervention possible consonant with public protection. Minimalist approaches are based on cost-effectiveness and restraint notions, but also on notions of risk reduction, since there is thought to be a connection between the cheapest and most humane measures, and those measures which are most effective (or least harmful) to the readaptation of the offender to society.

Minimal intervention begins before decisions about release, of course, and can extend to attempts to prevent offenders from entering prison in the first place. For the federal release system, a minimalist model would involve presumptive release of all offenders at the earliest possible date, supervision for as short a period as possible under minimal restrictions (if not under a voluntary supervision scheme), and return to penitentiary only for new criminal offences. In terms of the current system, this would probably mean release of most offenders at parole eligibility (or sooner), parole supervision not to endure past the mandatory release date, and the abolition of MS for offenders not paroled. One example of a modified minimalist model was created for NPB in 1977, involving presumptive release for the all offenders who score well on a statistical score for

predicing violent (as opposed to any criminal or technical) recidivism. The remainder of offenders would be "tested" and "decompressed" through gradual, partial releases later in the sentence (Nuffield, 1979).

Minimalist models argue that in the absence of specific evidence about "what works", it is best (and the best use of shrinking resources) to make the least intervention which can still serve important criminal justice aims such as preservation of the denunciatory portion of the sentence. Minimalists argue that the current luxury of relatively abundant resources will be short-lived, and it will become necessary to allocate resources to those offenders who truly need or want them. Some research suggests that the greater the penetration of an individual into criminal justice control systems, the less his chances of succeeding eventually. Minimal interventions are thus thought by some to "work" at least as well as more extensive or vigorous programs in corrections. Finally, minimalist systems are typically cheaper and more humane.

The Working Group is sympathetic to the minimalist view, but recognizes that it may not be the most politically realistic approach at this time, though it may suit anticipated budgetary restraints in the 1980's. In particular, it is far more difficult from the standpoint of public acceptance for a government to remove or relax controls once they have been imposed, than it is to increase or maintain controls: this is probably one of the major "realistic" factors behind the continuation of MS. One minimalist view is clearly worth pursuing, however, and that is the search for better means of identifying which offenders are most worthy of being controlled, in order to allow us to exercise minimal control over the remainder (Ouimet, 1969).

GUIDELINE MODELS

Guideline models for release arose in the 1960's and 1970's as a result of empirical research on decision-making and criminal recidivism, and as part of a human rights concern for greater accountability, visibility, objectivity and equity in criminal justice decision-making.

Possibily the first formal guideline application in criminal justice was to pretrial release decisions in New York City (Vera Institute, 1962). Courts were facing increasing workload pressures which made the increasing number of decisions to be made as to whom to release prior to trial a major problem. Because the major consideration in pretrial release is concern over appearance for trial, evaluation of how to assess the likelihood of appearance was undertaken.

Researchers examining the problem found that using a simple numerical checklist, it was possible to make accurate assessments of how likely various defendants would be to appear for trial if released on their own recognizance. These assessments could be initially made and verified by staff of the court (subject to approval by the judge), thus freeing judges' time for other matters. Perhaps more significantly, evaluations showed that the introduction of the numerical assessment system allowed more persons to be released prior to trial (and without cash bail or sureties) while actually bringing about a reduction in the percentage of persons who failed to appear later for trial. The reason for this phenomenon was that the numerical system was apparently more accurate than were judges at predicting who would fail to appear.

As parole was increasingly the subject of empirical research, applications of the Vera system to parole began to appear. Research on parole decision-making (e.g. Gottfredson et al., 1973) seemed to contradict the belief and assertion made by parole boards that the parole decision is made on the basis of an extremely wide variety of factors, and that each case is considered in a unique fashion on its individual merits. Rather, researchers found that a "hidden policy", of which even parole boards were unaware, existed which could "explain" a great deal of the variance in individual cases decisions. Among parole boards (such as the federal U.S. Parole Commission and in Minnesota) which had wide discretion and were not in many instances constrained by long minimum periods to be served prior to parole eligibility, parole decisions were found to be largely accounted for by only two basic factors: the severity of the offence for which the prisoner was serving time, and the likelihood that the prisoner would commit another crime if released (risk of recidivism). Among parole boards (such as North Carolina) which were constrained by minimum periods to be served prior to release eligibility, parole decisions were found to be almost entirely a product of the risk of recidivism, and in some instances, but less significantly, the institutional conduct of the prisoner.

From this apparent finding that the complexity of parole decisions is more apparent than real, some U.S. states proceeded to formalize the "hidden policies" discovered through research in order to increase visibility and accountability, and to decrease the chances of the "hidden policy" being applied in somewhat differing ways to different prisoners. Accordingly, in those jurisdictions where the severity of the offence was not "taken care of" through the "barometer" of the minimum eligibility date, a standard scale of offence severity was developed, into which each prisoner's current offence could be categorized. Similarly, and in view of the finding that

numerical or statistical systems for prediction of risk are more accurate than professional clinical judgment (e.g. Meehl, 1954; Gottfredson, 1973; Heinz et al., 1976), several U.S. jurisdictions "translated" concern about risk into the use of a statistical scoring system. The formalizing of the risk and crime-seriousness dimensions into standarized scales was intended to ensure the best possible overall prediction and to decrease the chances of individual board members' applying these dimensions in different ways to different cases (unless special circumstances suggested the need to step outside the guidelines). These dimensions then became translated into "presumptive" lengths of time to be served by individual prisoners in non-exceptional circumstances.

"Guidelines" models are thus premised on notions of clarifying and objectifying policy, conscious decisions not to allow other factors to intrude unless there is good reason to do so, and attempting to apply policy as equitably as possible to individual cases. Guidelines are also premised on the notion that it is more humane to inform prisoners in a fairly precise fashion of what they will be "judged" on and how much time they can expect to serve unless their case presents an exception from the general rule.

Criticism of "guidelines" models is of several types. In the first instance, many parole boards and corrections personnel question whether parole decisions are in fact as "simple" as research suggests that they are. Since research cannot "explain" all the variance in parole decisions, these critics argue that other complex and individual factors make up the balance of the variance in parole decisions - not, as the researchers suggest, that the unexplained variance in decisions is simply disparity caused by vague formal and informal policies and differences in approaches taken by different parole board members or panels. Second, critics may object to only a few basic dimensions being used as the foundation for parole decisions, arguing that greater flexibility is needed to consider any number of things, including underworld connections, special humaneness considerations such as family crises, or the presence of other outstanding warrants in other jurisdictions. (Supporters of "guidelines" models argue that these factors can simply be used, as necessary, as reasons to step outside guidelines in individual cases. Factors which are really intended to address questions of risk, however, would not be seen as allowable exemptions from guidelines: attempting to inject "clinical" factors, such as family ties, to improve statistical risk assessments would only reduce their efficiency, according to the guidelines model.)

It is also argued that "guidelines" are less, not more, humane than traditional case-by-case approaches because they try to fit most cases into a Procrustean structure which does not allow for sufficient discretion to take into account unique behaviours and circumstances. The use of a numerical system is also seen as somehow "inhuman" and inappropriate to traditional approaches of discretionary justice. It is claimed that prisoners would prefer a human face on justice, rather than having to "fight the computer". As was seen earlier, however, some research suggests that prisoners prefer to know their probable release date as soon as possible, and to the extent that guidelines systems are consistent with decision predictability and traditional approaches are not, the latter system may from the prisoner's perspective be less humane.

It is also argued, against guidelines systems, that they tend to formalize or "freeze" existing policies rather than seeking improved approaches. They may also prevent future innovation for the same reason. (Guidelines supporters argue, per contra, that it is also impossible to improve and innovate unless once can "see" current policy, which the empirical approach at least allows the decisions-makers to do.) Guidelines critics argue, finally, that disparity is not greatly reduced by these systems in certain practical applications, since the decision-maker's power to step outside his guidelines for defensible reasons still allows him discretion which can be rather broad. It is extremely difficult to assess whether this may be true, since follow-up evaluations of the kind needed are not always available.

Comments on guidelines models

The Working Group has recommended earlier (Chapter III) that an extensive study be made of the factors which enter into NPB decisions, both to shed more light on the complexity or simplicity of "hidden policy" and to determine how much unwarranted disparity is present in NPB decisions.* To this extent, we recognize the validity of the empirical approach to the "demystification" of parole, and support greater visibility and objectivity in decision criteria. We were unable to agree, however, on whether the "Guidelines" approach should be carried to the more formal types of implementation observed in some jurisdictions.

In future study of this approach, it is important to recognize the critical nature of the amount of discretion which

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* The Executive Committee of NPB in November 1980 endorsed the notion of such an in-depth study of the factors involved in parole decision-making, but were not prepared to endorse the development of a guideline system at that time.

is to be preserved in the guidelines, and the amount of "mandatoriness" which is to be used. If the amount of discretion preserved is extremely broad, the system will run the danger of not reducing disparity at all. If too many controls are placed on discretion, it can lead to inappropriate and inflexible decisions. This is a very difficult balance to strike, though it should be recognized that a certain amount of dissatisfaction among decision-makers over the breadth of discretion and the mandatory controls may or can be a sign that the guidelines are working properly.

Future study of this approach in Canada should also bear in mind the possibility of using an innovative policy for parole rather than of "freezing" any current "hidden policy" which may emerge. If decision-makers are not content with a system which considers only risk, for example, there is no requisite reason not to make a policy decision to include other factors (such as sentence equalization or "institutional behaviour"), which would still fit the guidelines approach so long as they were objectively and consistently applied. Our recommendation above (Chapter II) that the Ministry take a hard look at what objectives it wishes release to serve should be read in the light of this approach.

CHAPTER VI

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Release Study was an internal inquiry into all forms of conditional release, ordered by the Solicitor General in 1980. Its mandate was threefold: to examine the incidence of violent and other violations of conditional release, to examine the problems, issues and concerns with the current system, and to examine release from "first principles": what is it trying to accomplish, and how realistic are its objectives?

The Study first reviewed the objectives of release in the broad context of the purposes of imprisonment. It was found that release has many goals and functions, some of which are not recognized or even intended as "objectives", but whose effects are clearly present. The formal or "official" objectives of release, especially those stated in the three statutory criteria for parole, were found to be either too vague (selection of "undue risks") or based on assumptions which are open to serious question (ensuring that the inmate has received the "maximum benefit" from incarceration, and that parole will aid his "reform and rehabilitation"). The unintended functions and effects of release may be at least as important to the sentencing and correctional systems as the official goals, but their informal status does not permit them to be pursued in an effective or consistent fashion. Some of these unintended functions and effects include the reduction or control of penitentiary populations, the mitigation of punishment, the evening out of sentence disparity, the control and management of penitentiary inmates and programs, and cost savings. Many of the functioning which are important to one agency are not a priority with the other, and vice versa.

The initial finding and recommendation of the Working Group was therefore that the objectives of release need to be addressed in workshops held on a Ministry level* in order to try to achieve more agreement on what we are trying to accomplish, whether any of the traditional objectives should be rejected as unrealistic or inconsistent with modern correctional thinking, whether any of the unintended functions should be recognized and pursued more systematically, how any new objectives set might be articulated in a more specific operational fashion in order to reduce vagueness, and whether changes could be instituted to make the release system more effective at pursuing its goals. Connected to this initial finding and recommendation, the Working Group found an insufficient level of systematic self-

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* By "on a Ministry level" we mean in an exercise involving all three major sectors of the Solicitor General involved in correctional (NPB, CSC and the Ministry Secretariat).

monitoring and self-evaluation throughout the imprisonment and release processes, a deficiency which seriously affects the system's ability to address questions of the realism of its objectives and the effectiveness with which they are achieved.

The Study next proceeded to an examination of more operational issues and problems, taking each release program in turn: temporary absence, day parole, full parole, earned remission and mandatory supervision. Some of the findings, of course, relate to the integration of two or more of these processes, and many of the recommendations are similar for various programs: we recommend, for example, the development of more specific, operational criteria for the administration of all release programs, and the availability of more current, detailed feedback to decision-makers on the decisions being made and their outcomes.

Temporary absence has been an extremely successful program of some 50,000 releases annually, of which fewer than one percent are declared unlawfully at large, detained by the police, or terminated for misbehaviour. There have been serious concerns among penitentiary personnel, however, about the recent decreases in the numbers of UTA's, apparently due largely to restrictions imposed in 1977 on the number of hours an inmate may be absent from penitentiary in a given quarter. To remedy this, and to allow for more flexible use of TA's to relieve institutional tension and to reward deserving inmates, we recommend that there be a three-day humanitarian UTA available, at the Warden's discretion, which need not be reserved for extraordinary circumstances such as a family death, but could be used for more broadly "humane" purposes. In addition, we recommend that the limit on rehabilitative UTA's be extended from 72 hours per quarter to 72 hours per month. Cases presently not "delegated" by NPB would, however, remain under NPB authority.

To reduce costs and to make more effective use of community resources, civilian volunteers should be permitted to serve as TA escorts or supervisors. Travel time should not be included in the duration limits imposed on TA's. Every effort should be made to reduce any unnecessary use of community assessments and supervision for TA's. Study should be made of the practicability (given resource limitations) of automatic reviews of inmates for UTA at the date of eligibility. UTA decisions delegated to CSC may be granted at that time, but all UTA denials (if appealed by the inmate), and all TA's administered by NPB, would require NPB involvement at that time.

Day parole was found to be a program which is growing but whose objectives are still unclear and under active debate by decisions-makers and practitioners. We found that there was a

strong current of opinion among Ministry staff and private agencies that day parole is over-used both as a "test" for full release and as a rehabilitative or supportive technique. This may account, in part, for its high success rate of about 80%. We recommend it be used only in cases of clear need or uncertainty about serious risk to the public, and not for the less serious or "risky" offenders. Day parole with a requirement of residence in a halfway facility should not normally be used, merely as a means of achieving release prior to full parole eligibility; an expanded power of parole by exception should be used in these types of cases. The fee paid to private agencies for use of their halfway facilities was found to be too low as it seriously affects their ability to provide adequate program, security and wages to their staff, and the fee should be re-negotiated by a Ministry committee. Block funding should be considered as a payment mechanism which would provide more program stability for such facilities. Negotiations should be undertaken with the provinces to remove obstacles to providing all released inmates and day parolees in CCC's and CRC's with health insurance coverage from the date of release. More sites should be designated as "penitentiaries" for the purpose of effecting the administrative release of day parole offenders onto full parole or MS. Better communication is needed to give inmates a more accurate picture of what is expected from CCC or CRC residence. There sould be more formal recognition of the need not to put heavy pressure on recently released inmates in halfway facilities for the first brief period of shock and difficult adjustment to normal society. A hearing prior to day parole termination should be mandatory unless the offender waives it. Study should be made of the practicability of automatic review of all inmates for day parole at the time of eligibility.

Full parole selection suffers from vague and questionable statutory criteria, and needs to be reviewed as part of the above-noted Ministry workshops on correctional objectives. Disparities in selection for full parole were found to be a major concern, and we recommend an extensive empirical study of full parole decisions, to determine how much variance can be explained through various legal, organizational, and individual case factors. Parole by exception should be made less "exceptional" through expansion of the current, virtually prohibitive, criteria. There should be more controls on the process for selection and training of new NPB members. Study should be made of the use of screening bodies for potential appointments, and of civil service merit hiring, to protect NPB from the appearance and reality of political appointment. The NPB Internal Review Committee should be strengthened by having a separate membership, and by being permitted to reverse appealed decisions on their substantive merits, to hold hearings, and to establish procedures for the written sharing of information and

reasoning on significant IRC decisions. Once the IRC proces has been strengthened, discussions should be undertaken with the Correctional Investigator to determine the practicability of his reviewing parole decisions after the exhaustion of internal reviews. Finally, there is some feeling across the country that the parole rate may be too low; MS cases succeed on supervision at a rate only about 10-15% lower than the success rates of paroled offenders. Overall, about 70% of parolees are not revoked during their supervision period.

Parole supervision has been subject to a great deal of criticism based on research which suggests that offender recidivism is determined much more by factors such as previous criminal involvement than by interventions by government officials. However, the Working Group found this research to be less than definitive, and finds that community supervision has fewer negative effects than imprisonment, and represents a cheaper and more humane program. However, a great deal more research is needed into the actual delivery of specific services to offenders by parole officers, and the effects of these services individually on different types of offenders. There has not been within CSC the needed commitment to community supervision in terms of the provision of resources, training, innovation and evaluation.

The Working Group found a great deal of practical experience and research which leads us to recommend that the "team" and "brokerage" models of parole supervision be more actively pursued and supported through start-up funds and training from national headquarters. The private aftercare agencies are not being used as effectively as they might be, namely in the provision of more diverse and specialized services to offenders than government agencies can provide. More exploration should be done of block funding to encourage and support innovative private agency programs. CSC parole officer man-year formulas should provide for time spent in community resource development. Greater use of volunteers in parole supervision should be encouraged through start-up projects supported at national headquarters. More consideration should be given to the option of relaxing minimum standards for supervision in lower-risk cases in order to permit more effective allocation of existing resources to more pressing cases.

The present conditions of parole are, in some cases, onerous, unrealistic, and unenforceable. The Working Group recommends that they be narrowed to require reporting to the parole office and remaining under the authority of the CSC, remaining in a designated area not bounded by unnatural geographical or municipal borders, obtaining permission to

purchase or carry a firearm, and notifying the parole officer of a change of address or employment status. All other requirements should be designated as "special conditions" by NPB. The practice of specifying restitution to the victim as a condition of parole should be reviewed to determine its legal status and fairness. Reasons given for the suspension of parole or MS should be supplied to the offender in writing and with as much detail as possible of the circumstances surrounding the suspension. Revocation should not be permitted on grounds of preventing a breach of conditions. Research is needed into the ground of actual suspensions and revocations, to address complaints that revocation is over-used in non-criminal circumstances.

Supervised persons often experience difficulties in obtaining bail or a bail hearing when they are under suspension for parole or MS breaches. Possible changes to the Criminal Code should be explored to deal with this, and negotiations shold be undertaken to allow provincial facilities and parole offices to be designated as "penitentiaries" for the purpose of revocations in "turnaround" cases. Post-suspension hearing to discuss possible revocation of parole or MS should always be held unless the offender waives the right. Hearings should occur as soon as possible, and normally within two months of notice of request for a hearing.

Finally, the Working Group noted that parole supervision staff morale is low, though we could make few specific recommendations to improve it. The problem seems to be tied to a loss of a sense of "mission" in community corrections, which is tied to the above-noted apparent lack of commitment to the community end of CSC. Other contributory factors appear to be a perceived emphasis on "quantity control", minimum standards, paperwork, and having to serve both CSC and NPB "masters". These problems should be carefully monitored to determine whether they can be remedied in future.

Earned remission was found to offer little promise as a "positive" motivator of exceptional or industrious inmate behaviour. However, it may serve to punish and deter negative behaviour, and may discourage voluntary inmate unemployment. We recommend that it be used as a punishment for unacceptable conduct, and not be used for evaluation of an inmate's "program participation". More specific criteria for its removal should be used to prevent apparent disparities and loss of remission should be reviewable, on appeal by the inmate, to NPB. The term "earned" should be eliminated. Though there was some feeling that remission has little effect on inmate behaviour, either "negative" or "positive", its retention as a control on penitentiary population size was found to be desirable, given

uncertainties about whether sufficient reductions in judicial sentences would accompany its abolition. Finally, criteria for the recrediting of remission should be relaxed to allow for the consideration of a principle of commensurate desserts after parole or MS revocation, since the amount of remission lost for parole or MS revocation is presently determined, not by the nature of the behaviour which caused the revocation, but by the amount of time served in penitentiary prior to release.

Mandatory supervision is a highly controversial program, more controversial in fact than one would expect from a simple examination on its merits, but the diversity of different groups concerned about it (NPB, police, offenders, parole officers) have increased its visibility as an issue. The Working Group was of the view that it is desirable that all persons released from penitentiary have available some form of post-release assistance (as MS provides), but some felt that this should be available on a voluntary basis for non-paroled offenders. Research is needed to determine whether, as some claim, MS offenders are treated differently from parolees simply because they are MS offenders. In particular, the use of technical revocations (as opposed to new-conviction revocations) in MS cases (as indeed in parole cases) should be examined.

Other concerns were reviewed by the Study. The first and most significant of these is recidivism on release, especially violent recidivism. We found the failure rates on various forms of release to be exaggerated, especially for MS, and in some instances, such as TA, to be so low as to suggest that too conservative a selection process may be in place. We examined recidivism from full parole and MS in some detail, and found that fewer than a fifth of all cases return to penitentiary with a new conviction prior to warrant expiry (though some "technical" revocations may mask a new crime which is suspected but unproven). Of these new-crime revocations, 15% involved a clearly violent crime such as assault, homicide or kidnapping, and another 13% were for robbery, which may involve actual violence. This is not to detract from the seriousness and reprehensability of the violent recidivism which does occur, but popular notions of the frequency of violence appear to be out of proportion to its actual incidence.

The Working Group found little systematic attention devoted to either predicting violence or providing treatment for potentially violent offenders in penitentiary. This may be partially a product of the relative lack of scientific knowledge of how to predict rare events and how to intervene successfully in people's lives, let alone in potentially violent situations.

The second system-wide concern encountered was the lack of coordination and understanding between sentencing authorities and releasing authorities. Release is not particularly well understood by some judges, who may increase their sentence to "allow for" an anticipated early release which may not occur, or may occur much later than expected. Many judges also appear to have much more confidence in the effectiveness of imprisonment and of correctional programs than do correctional officials. We recommend an annual publication to judges, providing more operational information about the actual practice of release, and emphasizing the limited nature of prison treatment.

The Working Group also noted the particular difficulties experienced, or apparently experienced, by certain special offender groups such as Natives, life-sentence inmates and women. It was not possible to explore the Native question in detail, and we recommend that the Minister's special committee on Natives examine difficulties experienced by Natives in preparing release plans which will be acceptable and functional. Lifers can experience a very tortuous preparation and gradual release process, and the lengthy periods of "dead time" which they serve prior to eligibility can be both disfunctional and inhumane. In particular, we recommend that all lifers serving minimum periods of longer than 10 years be able to apply to a court for reduction of that period after the service of 10 years. Women, being normally able to serve a federal sentence only in the maximum-security Prison for Women, experience particular difficulties in planning, obtaining and paying travel expenses for release. We recommend that study be made of three possible changes. First, more liberal use could be made of parole be exception and day parole to move women closer to their home communities under correctional supervision. Second, government funds could be made available to finance releases to areas distant from PW. Third, there may be a need for a special caseworker at PW to help deal with the special release planning and coordination problems experienced by women.

We also reviewed the difficulties reported by some staff in protecting confidential information from disclosure under the Canadian Human Rights Act. New procedures put in place to guide the protection of information which could harm an individual or which would disclose case opinions made on an understanding of confidentiality appear to be adequate, but should be closely monitored by the Ministry. Services to provinces with no parole board of their own are also a concern, since some provinces have complained of lengthy delays in case preparation and of difficulties in NPB's exercise of paroling authority over provincial prisoners. Resolution of these possibly through federal-provincial discussions should be considered a Ministry

priority. Finally, the Working Group considers essential the creation of a management information system which will provide timely monthly feedback to key personnel on the persons being granted and denied various forms of release in their own and other regions.

Lastly, the Study reviewed the major available "models" for release which have been proposed in Canada and elsewhere for defining the proper philosophy which should guide release and the manner in which release should be administered. Many of these models contain elements or reflect approaches which may be meaningful and useful to release in Canada. As "macro" systems, however, which would involve a major re-ordering of release discretion, or its elimination in certain forms, these models may create system imbalances of major significance, about which little is as yet known.

Based on the limited available knowledge about these new models, the Working Group cannot recommend the adoption of any of them as an alternative to the status quo. The available "macro models" for reform should, however, continue to be studied and monitored, especially in the light of any re-ordering of priorities and objectives which may occur as a result of the Study's first recommendation.

APPENDIX A

STATISTICAL INFORMATION

The following data were obtained through the use of a combined data base developed for the Release Study, incorporating into a single offender-based file all the information available on release programs, in the Inmate Record System, National Parole Service Information System, and Temporary Absence data base. These tables were compiled by Release Study staff, not by the management information staff of CSC or NPB. The figures contained in this Appendix may differ from those which appear in other Ministry publications, but in most cases the differences are slight. We believe that the figures contained herein are at least as accurate as those found in other sources.

Though these programs were in operation much earlier, individual case data are available on temporary absence only from July 1976, and on day parole only from 1974.

A few tables are included from other data source surveys. If so, the source is noted.

TABLE A-1

AVERAGE (MEAN) AGGREGATE SENTENCE FOR PERSONS RELEASED FROM FEDERAL PENITENTIARY IN 1978 AND 1979, BY OFFENCE GROUP AND RELEASE TYPE

Admission Offence Group	Aggregate Sentence (months)								
	All Releases			Parole Releases			M.S. Releases		
	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation	No. of Cases	Average Sentence	Standard Deviation
CRIMES AGAINST THE PERSON									
Murder	70	life	*	70	life	*	0	N/A	N/A
Manslaughter	323	71	46	182	81	52	141	59	33
Attempted murder	69	89	61	34	111	69	35	67	42
Rape and attempted rape	354	52	30	157	54	26	197	50	32
Sexual assault	103	34	19	16	45	23	87	31	18
Other assaults, wounding	359	34	22	80	42	20	279	32	23
Kidnapping, forcible confinement	76	54	44	31	76	58	45	38	20
Criminal negligence causing death	24	33	19	13	36	16	9	29	23
Other crimes against the person	267	37	24	103	42	22	164	33	24
ROBBERY	2,353	50	39	968	62	49	1,385	42	29
CRIMES AGAINST PROPERTY									
Break and enter	1,922	31	19	463	38	22	1,459	29	17
Theft, possession of stolen goods	844	28	18	177	37	19	667	25	17
Frauds	489	33	24	132	41	24	357	30	23
NARCOTICS									
Possession of narcotics	54	28	16	25	35	10	29	21	17
Trafficking and importing	1,048	52	33	702	55	34	346	45	30
MISCELLANEOUS									
Miscellaneous Criminal Code	316	35	23	99	47	26	217	30	20
Miscellaneous Federal and provincial statutes	11	50	35	3	66	62	8	44	23
Escape and unlawfully at large	72	20	15	5	38	14	67	19	14

* Life imprisonment is mandatory for murder.

TABLE A-2

NUMBER OF ETA'S AND UTA'S GRANTED EACH QUARTER,
JULY 1976 TO SEPTEMBER 1980, BY REGION

Year and Quarter	Atlantic	Quebec	Ontario	Prairies	Pacific	Total
1976-3	951	2,248	3,459	1,742	3,342	11,742
1976-4	911	2,136	2,417	2,037	3,180	10,681
1977-1	928	2,167	5,317	2,453	3,412	14,277
1977-2	729	2,528	2,734	2,588	3,761	12,340
1977-3	917	2,522	4,066	2,560	3,715	13,780
1977-4	949	2,989	3,145	2,254	3,800	13,137
1978-1	1,065	2,802	3,070	2,226	3,087	12,250
1978-2	1,143	3,048	2,886	2,013	3,937	13,027
1978-3	1,115	3,179	2,539	1,872	3,655	12,360
1978-4	1,015	3,921	2,995	1,665	3,273	12,869
1979-1	1,163	3,225	2,712	1,869	3,206	12,175
1979-2	1,457	3,221	2,818	1,598	3,979	13,073
1979-3	1,425	3,551	2,580	1,870	4,660	14,086
1979-4	1,372	3,577	2,773	1,553	4,341	13,616
1980-1	1,477	3,559	2,866	1,636	4,390	13,929
1980-2	1,753	3,410	2,456	1,695	4,644	13,958
1980-3	1,026	2,367	1,812	1,233	3,131	9,569
Total	19,399	50,473	50,651	32,868	63,533	216,924
% of Grand Total	8.9	23.3	23.4	15.1	29.3	GRAND TOTAL

TABLE A-3

TOTAL NUMBER OF UNESCORTED AND ESCORTED TEMPORARY ABSENCES FROM JULY 1976 TO SEPTEMBER 1989, BY YEAR AND QUARTER AND BY ESCORT STATUS

Year and Quarter	Number (and Percentage) of TA's Granted	
	Escorted	Unescorted
1976-3	7,088 (60.4)	4,654 (39.6)
1976-4	6,599 (61.8)	4,082 (38.2)
1977-1	9,293 (65.1)	4,984 (34.9)
1977-2	7,328 (59.4)	5,012 (40.6)
1977-3	8,884 (64.5)	4,896 (35.5)
1977-4	9,009 (68.6)	4,128 (31.4)
1978-1	9,110 (74.4)	3,140 (25.6)
1978-2	10,868 (83.4)	2,159 (16.6)
1978-3	10,369 (83.9)	1,991 (16.1)
1978-4	10,372 (80.6)	2,497 (19.4)
1979-1	10,383 (85.3)	1,792 (14.7)
1979-2	11,147 (85.3)	1,926 (14.7)
1979-3	12,189 (86.5)	1,897 (13.5)
1979-4	11,417 (83.8)	2,199 (16.2)
1980-1	12,069 (86.6)	1,860 (13.4)
1980-2	11,955 (85.6)	2,003 (14.4)
1980-3	8,128 (84.9)	1,441 (15.1)

TABLE A-4

PURPOSE OF ETA'S AND TA'S GRANTED FROM JULY 1976 TO SEPTEMBER 1980

Purpose of TA	Number of TA's	Percentage of TA's
REHABILITATIVE		
Sports	38,099	17.6
Social Project	21,130	9.7
Visit family	18,084	8.3
Transition to Community	15,617	7.2
Work Release	13,038	6.0
Visit wife	7,689	3.5
Visit friend	6,761	3.1
Education	1,858	1.1
Job seeking	1,225	0.6
Other	40,037	18.5
SUB-TOTAL		75.6
MEDICAL		
Medical	42,299	19.5
Dental	4,067	1.9
Psychiatric	1,079	0.5
SUB-TOTAL		21.9
ADMINISTRATIVE		
PRE-RELEASE	3,267	1.5
HUMANITARIAN		
Family death	1,134	0.5
Family illness	705	0.3
Family marriage	135	0.1
Other	700	0.3
SUB-TOTAL		1.2

TABLE A-5

TOTAL NUMBER OF UNESCORTED AND ESCORTED TEMPORARY ABSENCES FROM JULY 1976 TO SEPTEMBER 1989, BY YEAR AND QUARTER AND BY GROUP STATUS

Year and Quarter	Number (and Percentage) of TA's Granted	
	Group	Single
1976-3	5,296 (45.1)	6,446 (54.9)
1976-4	4,520 (42.3)	6,161 (57.7)
1977-1	6,653 (46.6)	7,624 (53.4)
1977-2	5,362 (43.4)	6,978 (56.6)
1977-3	6,428 (46.6)	7,352 (53.4)
1977-4	6,249 (47.6)	6,888 (52.4)
1978-1	6,238 (50.9)	6,012 (49.1)
1978-2	7,371 (56.6)	5,656 (43.4)
1978-3	6,687 (54.1)	5,673 (45.9)
1978-4	6,788 (52.7)	6,081 (47.3)
1979-1	6,901 (56.7)	5,274 (43.3)
1979-2	7,197 (55.1)	5,876 (44.9)
1979-3	8,182 (58.1)	5,904 (41.9)
1979-4	7,597 (55.8)	6,019 (44.2)
1980-1	8,071 (57.9)	5,858 (42.1)
1980-2	11,211 (80.3)	2,747 (19.7)
1980-3	9,569 -	N/A -
TOTAL	120,354 (55.5)	96,570 (44.5)

TABLE A-6

NUMBER OF GROUP AND SINGLE TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY PENITENTIARY

Penitentiary	Number of TA's Granted		
	Group	Single	Total
Maximums:			
B.C. Penitentiary[1]	21	424	445
Kent[2]	89	101	190
Edmonton[3]	206	2	208
Saskatchewan Penitentiary	41	537	578
Millhaven	265	972	1,273
Prison for Women	2,647	4,850	7,497
Laval	148	1,372	1,520
Archambault	334	1,189	1,523
Centre de développement Correctionel	139	1,541	1,680
Dorchester	309	2,075	2,384
Mediums:			
William Head	2,711	3,022	5,733
Matsqui	2,073	2,282	4,355
Mountain	16,426	3,558	19,984
Mission[4]	443	1,129	1,572
Stony Mountain	1,036	3,505	4,541
Drumheller	2,740	5,965	8,705
Bowden	2,759	3,484	6,243
Collins Bay	819	2,559	3,378
Joyceville	1,945	3,202	5,147
Warkworth	2,316	3,599	5,915
Leclerc	2,678	3,765	6,443
Cowansville	946	3,851	4,797
Federal Training Centre	3,133	4,278	7,411
La Macaza[5]	1,371	1,023	2,394
Springhill	5,999	3,087	9,086

TABLE A-6 (cont'd)

Minimums			
Pandora Centre	0	0	0
Robson Centre	0	5	5
Agassiz[6]	5,559	1,201	6,750
Elbow Lake	11,532	1,429	12,961
Ferndale	8,216	1,927	10,143
Osborne Centre	0	1	1
Rockwood	2,595	3,748	6,343
Saskatchewan Farm Annex	1,068	1,345	2,413
Drumheller Trailer	34	1,631	1,665
Altadore Centre	0	3	3
Scarboro Cent	0	3	3
Grierson Centre	405	1,685	2,090
Oskana Centre	0	0	0
Montgomery Centre	0	463	463
Bath	1,332	1,124	2,456
Frontenac	840	1,943	2,783
Landry Crossing	2,110	644	2,754
Beaver Creek	10,575	2,718	13,293
Pittsburgh	1,883	1,832	3,715
Beniot XV[7]	0	1	1
Martineau Centre[8]	0	0	0
St. Hubert Centre	0	0	0
Ogilvy Centre	0	0	0
Sherbrooke Centre[9]	0	0	0
Montée St. Francois	9,132	4,738	13,870
St. Anne des Plaines	6,507	2,758	9,265
Westmorland	5,061	1,668	6,729
Shulie Lake	774	41	815
Dungarvon[10]	264	120	384
Carlton Centre	0	0	0
Parrtown Centre	0	0	0
REGIONAL PSYCHIATRIC CENTRES			
RPC Pacific	113	524	637
RPC Prairies	37	37	74
RPC Ontario	8	453	461
REGIONAL RECEPTION CENTRES			
RPC Ontario	267	1,282	1,549
RPC Quebec	314	1,163	1,477

TABLE A-6 (cont'd)

1 Closed 10/77
2 Opened 8/79
3 Opened 10/78
4 Opened 1/78
5 Opened 8/77
6 Closed 10/78
7 Opened 10/77
8 Opened 1/78
9 Opened 1/79
10 Closed 5/77

TABLE A-7

NUMBER AND PERCENTAGE OF GROUP AND UNESCORTED TA'S GRANTED, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	Group TA's		Unescorted TA's	
		Number Granted	Percentage of Total	Number Granted	Percentage of Total
Maximum:					
Atlantic	2,384	309	13.0	378	15.9
Quebec	6,290	935	14.9	519	8.3
Ontario	10,744	3,187	29.7	1,693	15.8
Prairie	860	284	33.0	311	36.2
Pacific	2,019	353	17.5	76	3.8
Total	22,297	5,068	22.7	2,977	13.4
Medium:					
Atlantic	9,086	5,999	66.0	1,417	15.6
Quebec	21,045	8,128	38.6	6,931	32.9
Ontario	14,442	5,080	35.2	3,595	24.9
Prairie	19,490	6,535	33.5	6,671	34.2
Pacific	31,644	21,653	68.4	4,644	14.7
Total	95,707	47,395	49.5	23,258	24.3
Minimum:					
Atlantic	7,928	6,099	76.9	1,132	14.3
Quebec	23,136	15,639	67.6	6,315	27.3
Ontario	25,464	16,740	65.7	6,933	25.5
Prairie	12,518	4,102	32.8	6,705	53.6
Pacific	29,869	25,307	84.7	3,350	11.2
Total	98,915	67,887	68.6	24,435	24.7

TABLE A-8

NUMBER OF INMATES RELEASED ON TA EACH QUARTER, JULY 1976 TO SEPTEMBER 1980

Year and Quarter	Number of Inmates Released on TA
1976-3	3,232
1976-4	3,109
1977-1	3,538
1977-2	3,444
1977-3	3,619
1977-4	3,413
1978-1	3,348
1978-2	3,561
1978-3	3,561
1978-4	3,609
1979-1	3,366
1979-2	3,592
1979-3	3,448
1979-4	3,425
1980-1	3,477
1980-2	3,598
1980-3	2,877

TABLE A-9

FREQUENCY OF TEMPORARY ABSENCES GRANTED PER YEAR TO INMATES RECEIVING A TA,* JULY 1976 TO SEPTEMBER 1980, BY YEAR

Year	Number of Inmates Receiving TA's							
	1 TA	2 TA's	3 TA's	4 TA's	5-9 TA's	10-19 TA's	20+ TA's	TOTAL
July-Dec. 1976	2,509	964	545	335	674	341	169	5,537
1977	3,678	1,652	953	708	1,413	700	548	9,652
1978	4,145	1,790	1,067	680	1,338	690	484	10,194
1979	3,908	1,678	1,023	633	1,316	713	547	9,818
Jan.-Sept. 1980	3,164	1,318	746	469	1,010	500	362	7,569
TOTAL	17,404	7,402	4,334	2,285	5,751	2,944	2,110	42,770
% of GRAND TOTAL	40.7	17.3	10.1	6.6	13.4	7.0	4.9	100.0

* Table does not reflect the numbers of inmates who did not receive any TA in the year. In any given year, about 13,000 persons are in or admitted to penitentiary.

TABLE A-10A

OUTCOME OF ESCORTED TEMPORARY ABSENCES GRANTED* FROM JULY 1976 TO SEPTEMBER 1980, BY YEAR**

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	12,815	386	160	5	15	1	1
1977	28,145	1,477	747	26	10	0	10
1978	30,714	2,610	1,408	55	1	0	3
1979	33,126	2,287	2,624	62	0	1	2
Jan.-Sept. 1980	23,763	1,675	1,624	37	0	0	3
TOTAL	128,586	8,445	1,624	185	26	2	19
% of GRAND TOTAL	89.4	5.9	4.6	0.1	0.0	0.0	0.0

* Does not include 22,424 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-10B

OUTCOME OF UNESCORTED TEMPORARY ABSENCES GRANTED* FROM JULY 1976 TO SEPTEMBER 1980, BY YEAR**

YEAR	Return On Time	Return With Extension	Return Late	Declared Unlawfully At Large	Detained by Police	Termination **	Pre-Release ***
July-Dec. 1976	7,665	438	405	51	0	0	89
1977	15,144	985	1,051	153	13	13	577
1978	7,121	212	718	122	13	13	733
1979	5,603	177	674	115	11	11	726
Jan.-Sept. 1980	3,814	104	443	70	7	7	487
TOTAL	39,401	1,916	3,292	512	44	44	2,613
% of GRAND TOTAL	82.4	4.0	6.9	1.1	0.1	0.1	5.5

* Does not include 2,858 TA's granted but cancelled prior to execution.

** A "termination" would be made for unacceptable behaviour while on TA, other than failure to return on time.

*** These are "administrative" pre-release TA's which end on the day of granting of a day parole, full parole, or MS.

**** The columns do not add up properly because of some missing dates in the TA system.

TABLE A-11

TA FAILURE* RATE, JULY 1976 TO SEPTEMBER 1980, BY REGION AND SECURITY STATUS

Region and Security Status	Total Number of TA's Granted	TA Failures*	
		Number	Percentage of Total
Maximum:			
Atlantic	2,384	10	0.4
Quebec	6,290	5	0.1
Ontario	10,744	24	0.2
Prairie	860	3	0.3
Pacific	2,019	4	0.2
Total	22,297	46	0.2
Medium:			
Atlantic	9,086	38	0.4
Quebec	21,045	144	0.7
Ontario	14,442	135	0.9
Prairie	19,490	146	0.7
Pacific	31,644	65	0.2
Total	95,707	528	0.6
Minimum:			
Atlantic	7,928	24	0.3
Quebec	23,136	47	0.2
Ontario	25,464	88	0.3
Prairie	12,518	32	0.3
Pacific	29,869	32	0.1
Total	98,915	223	0.2

* A TA "failure" is defined as an early termination, being detained by the police, or being declared unlawfully at large.

TABLE A-12

NUMBER OF DAY PAROLES* GRANTED, 1967 TO FIRST QUARTER OF 1980

Year of Granting	Number of Day Paroles Granted
1967	19
1968	11
1969	47
1970	123
1971	336
1972	394
1973	1,127
1974	1,750
1975	1,449
1976	1,716
1977	1,988
1978	2,713
1979	2,624
Jan-March 1980	596

* Includes "temporary paroles" in 1973 1974 and 1975.

TABLE A-13

NUMBER (AND PERCENTAGE) OF M.S. RELEASES WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM, BY YEAR, 1974-1979

Year of M.S. Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total M.S. Releases
1974	32 (1.3)	330 (13.5)	13 (0.5)	2,075 (84.7)	2,450
1975	59 (2.4)	538 (22.2)	23 (0.9)	1,803 (74.4)	2,423
1976	61 (2.4)	597 (23.4)	9 (0.3)	1,880 (73.8)	2,547
1977	57 (2.0)	642 (23.1)	5 (0.2)	2,077 (74.7)	2,781
1978	51 (1.8)	609 (21.4)	127 (4.4)	2,054 (72.3)	2,841
1979	49 (1.9)	514 (20.1)	253 (9.9)	1,741 (68.1)	2,557
TOTAL	309 (2.0)	3,230 (20.7)	430 (2.8)	11,630 (74.5)	15,599

TABLE A-14

NUMBER (AND PERCENTAGE) OF FULL PAROLE RELEASES WHO HAD PARTICIPATED IN DAY PAROLE PROGRAM, BY YEAR, 1974-1979

Year of Full Parole Release	Number (and Percentage) Participating				
	Day Parole Granted & Cancelled	Successful Day Parole	Day Parole Failure	No Day Parole	Total Full Parole Releases
1974	20 (1.4)	371 (27.3)	1 (0.0)	967 (71.1)	1,359
1975	5 (0.3)	570 (45.1)	0 (0.0)	689 (54.5)	1,264
1976	11 (1.0)	466 (44.1)	2 (0.0)	578 (54.7)	1,057
1977	18 (1.2)	694 (46.9)	0 (0.0)	796 (51.9)	1,481
1978	8 (0.5)	865 (55.2)	7 (0.4)	687 (43.8)	1,567
1979	15 (0.8)	1,033 (59.9)	36 (2.1)	640 (37.1)	1,724
TOTAL	77 (0.9)	3,999 (47.3)	46 (0.5)	4,330 (51.2)	8,452

TABLE A-15

PROBABILITY OF RECEIVING PARTIAL* AND FULL RELEASE TYPES, FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND RELEASED FROM JANUARY, 1978 TO JUNE 1980

Partial Release Participation**	Proportion of All Cases	No. of Cases	Percentage of Cases Receivi Full Parole
Cases granted ETA, UTA and DP	.26	2,579	56
Cases granted no ETA, UTA or DP	.17	1,751	18
Cases successful at ETA, UTA and DP	.22	2,196	64
Cases failing at ETA, UTA and DP	.00	0	N/A
Successful ETA (and no other release types)	.15	1,468	26
Successful UTA (and no other release types)	.07	687	21
Successful DP (and no other release types)	.04	389	60
Failure on ETA (and no other release types)	***	12	8
Failure on UTA (and no other release types)	***	11	0
Failure on DP (and no other release types)	.01	58	16
Successful ETA and UTA (no DP)	.18	1,786	33
Successful ETA and DP (no UTA)	.07	749	61
Successful UTA and DP (no ETA)	.03	321	61
No TA granted	.22	2,198	25
ETA success	.67	6,808	43
No ETA	.32	3,264	28
ETA failure	***	40	10
UTA success	.53	5,364	44
No UTA	.44	4,454	32
UTA failure	.02	205	12
DP success	.37	3,729	62
No DP	.58	5,853	25
DP failure	.05	531	11
All cases		10,112	37

* The column titled "Proportion of all Cases" gives the probability of participating in each pattern of partial releases.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorte temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

TABLE A-16

OUTCOME (TO JUNE 1980) OF DAY PAROLES GRANTED FROM JANUARY 1967 TO MARCH 1980[2]

Type of Termination	No. of Cases	% of Cases
Forfeited for new conviction[2]	562	3.8
Revoked without new conviction	681	4.7
Terminated by NPB[3]	1,139	7.8
DP expired while suspended	2	0.0
Regular expiry of DP program[4]	910	6.2
Early termination (DP program ending before expiry of approved period)[5]	1,319	9.0
Termination through release onto full parole or MS	753	5.2
Other terminations[6]	263	1.8
No record of termination[7]	8,963	61.3
Died during DP	26	0.2
TOTAL	14,618	100.0

[1] It should be noted that the number of cases in this table does not add up to the number of day paroles "granted" in Table 12 because of data base inadequacies. This Table does not include 614 day paroles granted but then cancelled prior to execution. For summary purposes, the first four categories in this Table, plus the "other terminations" category, have been counted as day parole "failures", yeilding an overall failure rate of 18.1%. See notes, below.

[2] "Forfeiture" of parole is a term formerly used to denote what was an automatic parole revocation upon grounds of new criminal conviction.

[3] This cateogry denotes an early termination of day parole for reasons related to unacceptable behaviour on the part of the offender, such as failure to conform to the rules of a CCC.

[4] This category denotes a termination of day parole through the expiration of the approved period (typically four months), without any renewal of the program, continuation, or release onto full parole or MS.

[5] This category denotes an early termination of day parole as a result of the purpose for which it was granted ending prior to the expiration of the approved period. For example, a day parole granted to allow the inmate to pick apples might be terminated early if the apples ran out before the four-month approved period.

[6] Though NPB surveys suggest that some of the persons in this category may simply be early terminations (as above). However, we have counted all these entries as "failures" in our overall totals.

[7] These cases have all been counted as "successes" because they presumably indicate that the day parole was continued, is still active, or expired at the end of the program. We are assuming, in other words, that any negative outcome of the day parole to date would have been recorded.

TABLE A-17

OUTCOME (TO JUNE 1980*) OF ALL FULL PAROLE AND M.S. RELEASES FOR PERSONS ADMITTED TO PENITENTIARY AFTER JULY 1976 AND FULL RELEASED FROM JANUARY 1978 TO JUNE 1980, BY PARTICIPATION IN PRIOR PARTIAL RELEASES

Partial Release Participation**	No. of Cases	Percentage Granted Full Parole	Percentage Successes* on Full Parole	Percentage Successes* on M.S.
Group as a whole	10,112	37	87	72
Cases granted ETA, UTA and DP	2,579	56	90	78
Cases granted no ETA, UTA or DP	1,751	18	85	68
Cases successful at ETA, UTA and DP	2,196	64	90	80
Cases failing at ETA, UTA and DP	0	N/A	N/A	N/A
Successful ETA (no other release types)	1,468	26	83	69
Successful UTA (no other release types)	687	21	88	73
Successful DP (no other release types)	389	60	83	64
Failure on ETA (no other release types)	12	8	-***	-***
Failure on UTA (no other release types)	11	0	-***	-***
Failure on DP (no other release types)	58	16	-***	65
Successful ETA and UTA (no DP)	1,786	33	87	75
Successful ETA and DP (no UTA)	749	61	87	74
Successful UTA and DP (no ETA)	321	61	89	76
No TA granted	2,198	25	83	67
ETA success	6,808	43	88	74
No ETA	3,264	28	85	70
ETA failure	40	10	-***	-***
UTA success	5,364	44	89	76
No UTA	4,454	32	85	68
UTA failure	205	12	76	73
DP success	3,729	62	89	76
No DP	5,853	25	85	71
DP failure	531	11	79	73

* Full paroles and MS cases registered as "successes" (i.e. persons not revoked) may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed high. The Table should be read for internal comparisons, not as absolutes.

** Abbreviations in the Table refer to escorted temporary absence (ETA), unescorted temporary absence (UTA), and day parole (DP).

*** Numbers in this cell are too small to permit meaningful calculation.

TABLE A-18

NUMBER OF FULL PAROLE, MANDATORY SUPERVISION AND DIRECT DISCHARGE RELEASES, 1970-1979, BY YEAR OF RELEASE*

Fiscal Year of Release	Number (and percentage) of Full Parole Releases	Number (and percentage) of M.S. and Direct Discharge Releases	Total Full Releases**
1969-70	2,054 (49)	1,896 (48)	3,950
1970-71	2,764 (61)	1,554 (36)	4,318
1971-72	2,366 (58)	1,512 (39)	3,878
1972-73	1,738 (47)	1,669 (49)	3,407
1973-74	1,247 (33)	2,316 (65)	3,563
1974-75	1,615 (33)	2,633 (62)	4,248
1975-76	1,315 (29)	2,553 (66)	3,868
1976-77	1,512 (25)	2,689 (64)	4,201
1977-78	1,747 (31)	2,850 (62)	4,597
1978-79	1,920 (33)	3,002 (61)	4,922

* Source: CSC Weekly Population Movements

** Includes releases through court order, death, provincial transfers, and other miscellaneous means, which accout for some 3-11% of all releases in the years shown. For this reason, percentages for full parole and MS/direct discharge releases do not add to 100.

TABLE A-19

TIME SERVED BEFORE FULL PAROLE, PERSONS RELEASED FROM JANUARY 1970 TO JUNE 1980

Time Served in Penitentiary	Number of Cases	Percentage of Cases
1 year	5510	30.1
< 2 years	7748	42.4
2< 4 years	3382	18.5
4< 6 years	862	4.7
6< 8 years	376	2.1
8< 10 years	175	1.0
10< 15 years	173	0.9
15< 20 years	29	0.2
20< 30 years	20	0.1
Total	18275	100.0

* Percentages do not include released lifers.

TABLE A-20

PERCENTAGE OF AGGREGATE SENTENCE SERVED BEFORE FULL PAROLE, PERSONS RELEASED FROM JANUARY 1970 TO JUNE 1980

Percentage of Sentence Served	Number of Cases	Percentage of Cases*
< 20%	270	1.5
20< 30%	621	3.5
30 < 40%	8695	49.2
40 < 50%	3824	21.7
50 < 60%	2677	15.2
60 < 70%	1326	7.5
70 < 80%	138	0.8
80< 90%	62	0.4
90 < 100%	44	0.2
Lifers released	529	-
Total	18186	100.0

* Percentages do not include released lifers.

TABLE A-21

AVERAGE (MEAN) TIME SERVED BY PERSONS RELEASED FROM FEDERAL PENITENTIARY IN 1978 AND 1979, BY OFFENCE GROUP AND RELEASE TYPE

Admission Offence Group	Time Served (months)								
	All Releases			Parole Releases			M.S. Releases		
	No. of Cases	Average Time Served	Standard Deviation	No. of Cases	Average Time Served	Standard Deviation	No. of Cases	Average Time Served	Standard Deviation
CRIMES AGAINST THE PERSON									
Murder	70	131	66	70	131	66	0	N/A	N/A
Manslaughter	323	36	23	182	33	22	141	40	25
Attempted murder	69	49	31	34	51	33	35	46	30
Rape and attempted rape	354	30	20	157	24	15	197	34	23
Sexual assault	103	22	14	16	26	17	87	21	14
Other assaults, wounding	359	21	16	80	18	11	279	22	17
Kidnapping, forcible confinement	76	28	18	31	30	21	45	26	16
Criminal negligence causing death	24	18	15	13	16	8	9	21	23
Other crimes against the person	267	21	16	103	18	12	164	22	17
ROBBERY	2,353	28	22	968	28	22	1,385	29	21
CRIMES AGAINST PROPERTY									
Break and enter	1,922	19	13	463	18	12	1,459	20	13
Theft, possession of stolen goods	844	17	14	177	18	16	667	17	14
Frauds	489	20	17	132	20	16	357	20	18
NARCOTICS									
Possession of narcotics	54	13	9	25	14	4	29	13	12
Trafficking and importing	1,048	25	17	702	22	15	346	30	21
MISCELLANEOUS									
Miscellaneous Criminal Code	316	20	15	99	21	16	217	20	15
Miscellaneous Federal and provincial statutes	11	29	15	3	33	17	8	28	15
Escape and unlawfully at large	72	14	12	5	18	6	67	14	13

TABLE A-22

OUTCOME (TO JUNE 1980*) OF FULL PAROLE AND MS RELEASES, JANUARY 1974 TO DECEMBER 1979, BY SECURITY STATUS OF RELEASING PENITENTIARY

Security Status	Full Parole**		M.S.**	
	Number of Releases	Percentage of Successes	Number of Releases	Percentage of Successes
Minimum	3,265	80.2	2,855	63.2
Medium	3,953	72.6	7,332	55.0
Maximum	901	67.2	5,301	48.6
Total	8,450	75.2	15,627	54.3

* Cases registered as "successes" may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed somewhat high.

** Total numbers are greater than sum because of missing institutional codes in some records.

TABLE A-23

PAROLE RATE* AND FULL PAROLE AND MS OUTCOMES
(TO JUNE 1980**), PERSONS RELEASED
FROM JANUARY 1974 TO DECEMBER 1979, BY REGION

Region	Parole Rate	Percentage of Full Parole Successes	Percentage of MS Successes
Atlantic	44.8	72.7	54.8
Quebec	51.3	80.3	62.3
Ontario	37.8	74.2	62.2
Prairie	32.2	73.3	51.5
Pacific	34.8	75.2	52.1
Total	40.5	75.2	54.3

* Defined as the percentage of all full releases which were by full parole (not MS or direct discharge).

** Cases registered as "successes" may still be under supervision and ultimately result in a revocation, so success rates in this Table are skewed somewhat high.

TABLE A-24

OUTCOME (TO JUNE 1980) OF FULL PAROLE RELEASES FROM 1970 TO 1979

Year of Release	Number (and Percentage) of Full Parole Releases					
	Total Releases on Full Parole	Revoked Without New Offence	Revoked With New Offence	Offence After Successful Completion*	Successful Completion, and no Subsequent Readmissions	Still Under Supervision
1970	2,519	348 (13.8)	751 (29.8)	151 (6.0)	1,221 (48.5)	48 (2.0)
1971	2,339	297 (12.7)	674 (28.5)	125 (5.4)	1,222 (52.2)	37 (1.6)
1972	1,756	209 (11.9)	442 (25.2)	97 (5.5)	988 (56.2)	20 (1.1)
1973	1,191	116 (9.7)	219 (18.4)	65 (5.5)	751 (63.0)	40 (3.3)
1974	1,359	125 (9.2)	224 (16.5)	39 (3.0)	906 (66.6)	65 (4.8)
1975	1,264	141 (11.1)	181 (14.3)	39 (3.2)	790 (62.5)	113 (8.9)
1976**	1,057	88 (8.3)	127 (12.0)	20 (2.0)	646 (61.1)	176 (16.6)
1977**	1,481	125 (8.6)	146 (9.8)	21 (1.4)	837 (56.5)	352 (23.7)
1978**	1,567	142 (9.1)	139 (8.9)	6 (0.4)	649 (41.4)	631 (40.3)
1979**	1,724	104 (6.1)	100 (5.8)	1 (0.0)	175 (10.1)	1,344 (77.9)

* These cases successfully completed their parole supervision period, but were subsequently readmitted to penitentiary for a new offence after the completion of the parole period.

** It should be noted that many of the persons released in these years are still under supervision as of June 1980, and revocation rates for these release years must therefore not be taken as definitive.

TABLE A-25

OUTCOME (TO JUNE 1980) OF M.S. RELEASES FROM 1970 TO 1979

Year of Release	Number (and Percentage) of M.S. Releases					
	Total Releases on M.S.	Revoked Without New Offence	Revoked With New Offence	Offence After Successful Completion*	Successful Completion, and no Subsequent Readmissions	Still Under Supervision
1970	3	0 (0.0)	1 (33.3)	1 (33.3)	1 (33.3)	0 (0.0)
1971	80	8 (10.0)	25 (31.3)	10 (12.5)	37 (46.2)	0 (0.2)
1972	871	103 (11.8)	227 (26.1)	131 (15.0)	410 (47.0)	0 (0.0)
1973	1,780	234 (13.1)	445 (25.0)	248 (13.9)	852 (47.8)	1 (0.1)
1974	2,382	251 (10.5)	616 (28.9)	297 (12.5)	1,209 (50.7)	9 (0.3)
1975	2,431	329 (13.5)	623 (25.6)	278 (11.4)	1,199 (49.3)	2 (0.1)
1976	2,555	520 (20.4)	594 (23.2)	218 (8.5)	1,219 (47.7)	4 (0.1)
1977	2,822	578 (20.5)	547 (19.4)	278 (9.9)	1,408 (49.8)	11 (0.3)
1978	2,913	551 (18.9)	454 (15.6)	271 (9.3)	1,513 (51.9)	124 (4.2)
1979**	2,524	465 (18.4)	369 (14.6)	59 (2.3)	985 (39.0)	646 (25.6)

* These cases successfully completed their mandatory supervision period, but were subsequently readmitted to penitentiary for a new offence after the completion of the MS period.

** It should be noted that many of the persons released in this year are sill under supervision as of June 1980, and revocation rates for this release year must therefore not be taken as definitive.

TABLE A-26

OFFENCES COMMITTED UNDER FULL PAROLE BY PERSONS RELEASED FROM JANUARY 1975 TO DECEMBER 1979 AND READMITTED TO FEDERAL PENITENTIARY WITH NEW CONVICITON FROM JANUARY 1975 TO JUNE 1980

Admission Offence Group	Number of Full Parole Cases Revoked	Percentage of Total Offences
CRIMES AGAINST THE PERSON		
Murder	9	1.3%
Manslaughter	9	1.3%
Attempted murder	0	0.0%
Rape and attempted rape	10	1.4%
Sexual assault	4	0.6%
Other assaults, wounding	17	2.4%
Kidnapping, forcible confinement	6	0.9%
Criminal negligence causing death	2	0.3%
Other crimes against the person	10	1.4%
Sub-Total	67	9.5%
ROBBERY	127	18.0%
Sub-Total	127	18.0%
CRIMES AGAINST PROPERTY		
Break and enter	192	27.2%
Theft, possession of stolen goods	148	21.0%
Frauds	53	7.5%
Sub-Total	393	55.7%
NARCOTICS		
Possession of narcotics	7	1.0%
Trafficking and importing	42	6.0%
Sub-Total	49	7.0%
MISCELLANEOUS		
Miscellaneous Criminal Code	58	8.2%
Miscellaneous Federal and provincial statutes	2	0.3%
Escape and unlawfully at large	9	1.3%
Sub-Total	69	9.8%
TOTAL	705	100.0%

TABLE A-27

OFFENCES COMMITTED UNDER MANDATORY SUPERVISION BY PERSONS RELEASED FROM JANUARY 1975 TO DECEMBER 1979 AND READMITTED TO FEDERAL PENITENTIARY WITH NEW CONVICTION FROM JANUARY 1975 TO JUNE 1980

Admission Offence Group	Number of M.S. Cases Revoked	Percentage of Total Offences
CRIMES AGAINST THE PERSON		
Murder	31	1.2%
Manslaughter	21	0.8%
Attempted murder	11	0.4%
Rape and attempted rape	25	1.0%
Sexual assault	23	0.9%
Other assaults, wounding	153	5.9%
Kidnapping, forcible confinement	15	0.6%
Criminal negligence causing death	0	0.0%
Other crimes against the person	45	1.7%
Sub-Total	324	12.5%
ROBBERY	394	15.2%
Sub-Total	394	15.2%
CRIMES AGAINST PROPERTY		
Break and enter	737	28.4%
Theft, possession of stolen goods	615	23.7%
Frauds	214	8.2%
Sub-Total	1,566	60.3%
NARCOTICS		
Possession of narcotics	26	1.0
Trafficking and importing	72	2.8
Sub-Total	98	3.8%
MISCELLANEOUS		
Miscellaneous Criminal Code	179	6.9%
Miscellaneous Federal and provincial statutes	4	0.2%
Escape and unlawfully at large	33	1.3
Sub-Total	216	8.3%
TOTAL	2,598	100.0%

TABLE A-28

AVERAGE PERCENTAGE OF INMATES WHO LOST REMISSION AND AVERAGE NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY SECURITY STATUS*

Security Status**	Average Percentage of Inmates Who Lost Remission***			Average Number of Remission Days Lost Per 100 Inmates***		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Minimum	8.0	7.2	7.0	132.8	44.5	64.8
Medium	9.8	6.5	6.0	39.0	18.6	20.4
Maximum	11.4	5.6	8.9	67.1	18.5	48.1
All Penitentiaries	9.6	6.5	7.1	77.3	27.2	42.1

* Source: CSC Remission Survey, 1980.

** Obtained by averaging the rates for all minimum, medium and maximum security penitentiaries and for all penitentiaries combined. Not included are the Regional Reception and Psychiatric Centres.

*** The "overall" figures in these headings do not necessarily represent the sum of the "conduct" and "program participation" columns because averages for each column have been calculated separately.

TABLE A-29

TOTAL NUMBER OF DAYS OF REMISSION LOST ON EACH SENTENCE BY PERSONS RELEASED FROM FEDERAL PENITENTIARY, 1970 JUNE 1980

Number of Remission Days Lost	Number of Persons Released	Percentage of Persons Released
None lost	30,468	68.3
1-10 days	6,608	14.8
11-20 days	1,788	4.0
21-30 days	966	2.2
31-40 days	863	1.9
41-50 days	507	1.1
51-70 days	644	1.4
71-100 days	748	1.7
101-200 days	1,153	2.6
Over 200 days	885	2.0
	44,630	100.0

TABLE A-30

PERCENTAGE OF INMATES WHO LOST REMISSION AND NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY PENITENTIARY*

Penitentiary	Percentage of Inmates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Minimum:						
Ferndale	14.8	16.7	13.0	187.0	51.8	135.2
Elbow Lake	22.2	22.2	22.2	320.0	104.4	215.6
B.C.C.C.	7.6	7.6	6.1	93.9	33.3	60.6
Shulie Lake	1.9	0.0	1.8	470.6	158.8	311.1
Saskatchewan Farm Annex	3.5	1.8	1.2	6.5	5.3	1.2
Rockwood	0.5	0.0	0.5	0.0	0.0	0.0
Frontenac	9.9	9.9	9.9	148.2	49.4	98.8
Pittsburg	15.3	15.3	13.9	219.4	76.4	143.0
Bath	10.4	9.1	9.1	128.6	46.8	81.8
Ste. Anne des Pleines	6.1	0.7	5.1	6.8	0.7	6.1
Montée St. Francois	0.8	0.8	0.2	1.8	1.6	0.2
Westmoreland	3.5	2.3	1.2	10.3	5.7	4.6
Mediums:						
Mountain	5.0	1.7	3.9	12.1	3.9	8.2
William Head	18.0	15.6	7.0	57.8	36.7	21.1
Bowden	8.8	6.1	4.8	29.3	19.1	10.2
La Macaza	18.3	12.4	10.7	59.8	37.3	22.5
Mission	15.9	15.3	5.7	65.9	46.6	19.3
Warkworth	3.8	0.9	3.8	20.7	4.5	16.2
Springhill	7.8	0.5	7.8	28.1	1.3	26.8
Matsqui	15.5	12.4	7.2	80.7	54.0	26.1
Drumheller	13.0	0.7	12.3	44.8	1.3	43.5
Stony Mountain	3.7	1.7	2.3	11.7	4.8	6.8
Joyceville	4.9	7.8	4.2	31.4	12.0	19.4
Cowansville	10.4	8.6	4.3	34.2	19.7	14.5
Federal Training Centre	11.0	6.7	9.0	52.8	19.4	14.5
Collins Bay	4.5	3.2	4.5	47.2	14.4	32.8
Leclerc	6.5	3.3	3.1	9.2	4.3	4.9

TABLE A- (cont'd)

Penitentiary	Percentage of Inmates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Maximums:						
Kent	17.7	12.3	10.0	73.1	37.7	35.4
Edmonton	7.1	0.3	7.1	27.6	2.0	25.5
Saskatchewan Penitentiary	2.9	1.4	1.6	10.0	4.1	5.9
Laval	12.2	2.4	11.1	71.1	3.1	68.0
Archambault	22.3	10.3	15.0	111.6	23.6	88.0
Dorchester	9.3	5.0	6.6	41.5	10.4	31.0
Millhaven	10.4	6.5	8.9	66.2	23.4	38.8
Centre de Développement correctionel	4.3	2.6	4.3	24.8	7.7	17.1
Prison for Women	16.6	10.1	15.8	178.4	54.7	123.7
REGIONAL PSYCHIATRIC CENTRES						
RPC Pacific	14.0	14.0	4.0	66.0	46.0	20.0
RPC Prairies**	N/A	N/A	N/A	N/A	N/A	N/A
RPC Ontario**	N/A	N/A	N/A	N/A	N/A	N/A
RECEPTION CENTRES						
RPC Ontario	3.4	2.2	0.7	5.6	4.5	1.1
RPC Quebec	2.8	0.0	2.8	5.6	0.0	5.6

* Source: CSC Remission Survey, 1980.

** In these instances, it is not entirely clear whether the data indicate no loss of remission, a rate of close to zero, or missing data.

TABLE A-31

PERCENTAGE OF INMATES WHO LOST REMISSION AND NUMBER OF DAYS OF REMISSION LOST IN FIRST QUARTER OF 1980, BY REGION*

Region	Percentage of Inmates Who Lost Remission			Number of Remission Days Lost Per 100 Inmates		
	Overall	On Conduct	On Program Participation	Overall	On Conduct	On Program Participation
Pacific	14.7	12.2	7.3	76.9	41.9	35.0
Prairies	6.3	1.5	5.0	25.2	4.4	20.8
Ontario	6.3	5.1	5.6	55.0	18.6	36.4
Quebec	10.5	5.3	7.1	43.6	12.3	31.2
Atlantic	7.9	2.5	6.5	40.7	8.7	32.0
TOTAL	8.8	5.1	6.3	46.9	15.8	31.1

* Source: CSC Remission Survey, 1980.

APPENDIX B

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APPENDIX C

SUMMARY OF CONSULTATION WITH CSC AND NPB FIELD STAFF AND OFFENDERS

PERSONS CONSULTED

During the months of July, August and September 1980, the Release Study Working Group consulted with NPB and CSC staff at national, regional and local levels as well as with inmates and persons out on various forms of release. We spoke to the heads of both agencies, to the Regional Director General of CSC and to Parole Board members and their respective senior managers in each region. We visited three penitentiaries (one of each major security status) and at least one public or privately run half-way residential facility in each region, and talked to management, security, classification and living unit (where such distinctions exist) staff and to offenders (usually the inmate Committee) in each. We also visited two district parole offices in each region, where possible one dealing heavily in case preparation, and one more in supervision, to talk to parole officers and managers. At national headquarters, we talked to staff from CSC's Offender Programs and Industries branches, and to some of NPB's policy, corporate planning, and internal review staff.

We spent an hour and a half to two hours with each group, and asked them questions from a schedule of 52 areas for discussion drawn up to guide the consultation. We found a great deal of agreement among certain groups in the various regions, though strong diversity of opinion on some issues (certainly on options), and diversity of opinion between particular groups.

The following very brief summary of what was said is broken down according to each of the release programs under study. Briefs received from groups and individuals outside the Ministry are available under separate cover.

TEMPORARY ABSENCE

Although feedback was received on both escorted and unescorted temporary absences, most of the concerns were addressed to the unescorted TA program.

The idea of a short periodic release is supported but CSC penitentiaries staff in particular complain that problems are encountered in the area of the granting authority, eligibilities and frequency as well as in the area of the functions and conditions of this process.

MAJOR ISSUES

The following were the major issues considered most significant to the TA program.

The Granting Authority - Opinions seem to be divided as to whether the Board should have the authority over the UTA program. Most respondents were dissatisfied with the present situation: lack of flexibility, delays, complexity and confusion, cumbersomeness of procedures, NPB inconsistency and over-sensitivity to failures, inability to guarantee UTA to the inmate; it is also felt that the institutional staff has a better knowledge of the inmate than the Board. However, other groups expressed their preference for one releasing authority as it prevents favoritism; delays are said to be caused by institutional staff.

UTA Frequency - The frequency of 72 hours per quarter creates almost a unanimous dissatisfaction; need was expressed for more UTA than the limit established by the Board; the lack of flexibility of this limit is criticized as it does not allow for differences between different institutions (maximum, medium and minimum). Whether the limited day parole program will solve these problems is a debated question, with CSC personnel most likely to think day parole will not be a solution, and NPB staff most likely to think it will or can be.

Eligibility for UTA - Problems raised with respect to the eligibility for UTA are in relation to eligibilities for different programs: the overlapping of UTA and day parole dates reduces the possibility of gradual testing recommendations; also, the ETA eligibility creates unrealistic expectations for UTA programs; eligibility is not a guarantee of grant and therefore is seen as a myth.

Functions of TA's - Both UTA and ETA programs are seen as important motivators and credibility builders which creates problems for inmates in maximum security institutions where there is practically no TA granted.

ETA Program - Although the program is a postive one, its application varies from one region to the other and one institution to the other; also its use depends on overtime budget and staff availability; inmates from remote areas are penalized in that respect. The definition of escort is also seen as unclear (security escort and resocialization escorts). It was also felt that regional authority should not be involved as they don't know the inmates.

Most of the comments identified came from institutional staff; major differences in opinions can be identified between the National Parole Board and CSC groups. For instance, most of NPB representatives prefer to have the jurisdiction over the TA program while CSC groups think they should have this authority. The Ontario Division of the Board does not see the need to modify the frequency allowed for the UTA program. Also, the Security staff see some problem with the TA program as a route for contraband. No marked differences can be identified among the regions in the opinions expressed.

Particular problems or issues. The following are some secondary issues discussed, some problems which are or seem to be particular to certain sites, and some less universally expressed opinions.

- Bath, a minimum-security penitentiary attached to a maximum, complains of receiving fewer TA's than other equivalent minimums.

- The amount of money an inmate has available will, in almost all instances, affect his ability to carry out a TA, but in some instances, travel distances, times and modes are an especially severe problem, e.g. Springhill, Prison for Women.

- Some parole officers felt that the conditions imposed on UTA's and the "purposes" for which they are formally granted can be unnecessary, burdersome, and productive of anxiety and undue pressure on the offender.

- Inmates claim that long-term inmates have less chance of getting a TA just because they are long-termers.

- Some parole officers felt that there is sometimes an excessive requirement made of performing a community assessment before and after a TA.

- In the Quebec region, parole officers claimed that TA's were frequently disrupted by unexpected transfers of inmates.

Suggestions offered. Suggestions made for improving the TA process included to reduce the number of rules, decision points and the complexity of different eligibility and granting provisions; to establish clear criteria for granting and refusing; to employ parole officers and volunteer civilians to escort inmates on ETA: to hold hearings for UTA; to use TA's more integrally as a reward in work programs, especially in minimum security; to allow more TA's from minimum security. On the major issue of who should be the granting authority for

TA's, most NPB personnel, and parole officers seemed to support the present arrangement, if not greater direct NPB involvement in TA granting. Most penitentiary staff and inmates favoured a return to Warden authority for TA, with the scope of TA power extended further. Some felt that NPB should grant all TA's and/or day paroles which are aimed at resocialization or gradual release, and that CSC should grant all TA's which are necessary to motivate and reward inmates and reduce institutional tension. Finally, most CSC staff and inmates agreed that UTA frequency limits should be extended and the UTA granting power and process should allow greater flexibility. Most NPB personnel consulted disagreed, on the grounds that day parole would fill the gap created by TA cutbacks, and that any substantial release program should be coordinated by a single authority.

DAY PAROLE

Day parole is generally perceived as a stepping-stone between TA's and parole or M.S. In fact, the various types of Day Parole (LDP, DP prior to M.S., various time frames such as four months to one year, and formulae of in and out periods such as "5 and 2" or "29 and 1") create an overall feeling that this process is being overused and that it has become the "panacea of 'testing'".

A number of consequent operational problems have arisen, some with respect to resources, and some with respect to process. The resource complaints concern the shortage of bed space in CCC's and CRC's and the scarcity of employment possibilities in particular areas, while the latter complaints concern the bureaucratic heaviness of the process in terms of the numberous deadlines and requirements in tasks and paperwork, problems related to revocation, and so on. Also noteworthy is a visible conflict between other release processes and institutional programs, such as TA.

Major Issues.

- Limited day parole (LDP). In most regions across the country, LDP is being used as a program out of minimum institutions. However, there has been widespread opposition to and ambivilence voiced about it by many institutional staff, most case preparation offices (except in Quebec), minimum inmates (Atlantic), some CSC regional staff, and NPB in Quebec. The most frequent negative comments were that LDP procedures are unclear and too complex, it doesn't really solve the Unescorted Temporary Absence (UTA) problem, it is unnecessary or redundant, time limits are not and

cannot be met, it is for institutions not inmates, UTA should be extended instead of creating a whole new program, and more resources are needed.

Not all comments, however were negative. Some staff stated that LDP was a good idea and should be given a chance, especailly for longer-term inmates. Most NPB regional offices (except Quebec) felt that LDP had some potential. In Ontario they even suggested that the program be expanded to medium institutions. NPB also felt that LDP gave them more influence over transfers in the prison system. Although there has been little impact of LDP on the system, many felt that the program would grow. Some NPB personnel and inmates suggested that CSC case preparation staff were not working as hard as they might to support LDP and make it effective.

- Day Parole Prior to Mandatory Supervision. NPB offices favoured day parole prior to MS and felt it could be increased. It was mentioned that this was the original intent of CCC's. However, it was pointed out that not all MS cases would accept a day parole just prior to their MS release date. In addition NPB offices indicated that the riks involved in releasing these MS cases early had to be considered. For example, it would be difficult to grant day parole to severely mentally disturbed individuals or apparently dangerous ones. Most institutional staff talked postively about this use of day parole as did many parole offices, some inmates and one CSC regional office.

  One concern voiced, especially in areas where CSC space is at a premium, was that such day paroles could clog CCC's and failure rates would soon reverse the program. A few CCC residents suggested that NPB gave such day paroles because they "didn't have the guts to say no". They suggested that if the program were to be used at all, it should use the CCC's just as drop-in centres.

- Day Parole Over-Used - Too much Testing. Almost all parole supervisions offices (except Quebec); CCC's (except Ontario); western case preparation offices; CSC regional offices in the Pacific and Quebec; Atlantic medium and minimum penitentiaries; the Prairies and Quebec mediums; and two inmate groups (Atlantic minimum, Prairies medium) felt that day parole is over used. Comments like the following were expressed: the extended controls and resources of day parole are not needed by all those who receive it; if the NPB were

less conservative, they would grant full parole in many such cases; time day parolees are left on day parole too long; over control and extended control on DP can lead to failure in some cases; DP is granted closer and closer to full parole eligibility; NPB's tendency to graduate everything is not useful; there was not time for the graduation game where sentences are under 3 years. One NPB offices even suggested that day parole may, in fact, delay full parole. Over-use of day parole was blamed for space problems in CCC's and CRC's. One case preparation office and two inmate groups suggested that family support was sufficient in some cases to make CCC or CRC involvement redundant. One inmate group claimed that parole officers often discouraged full parole applications, arguing that it is easier to get day parole. In contrast, the Maximum staff in the Prairies felt there should be more day parole to CCC's; and the medium institution in the Atlantic stated that day parole had not compensated for the decrease in TA's since the NPB took over authority. Minimum staff in Ontario also felt that day parole testing was a good stepping-stone. Medium inmates in all regions agreed that day parole was a useful device.

- Shortage of CCC's, CRC's, Bed Space. In contrast to the claim that day parole is over used, many institutional staff, most NPB offices, several inmates groups, and at least one case preparation office felt that day parole could be used more if more facilities existed. This need seems to be especially felt in remote areas and less populated areas. The problem was raised more in the Atlantic and the Prairies. Even in some metropolitan centres there have been difficulties with long waiting lists. NPB also pointed out that they would be willing to grant more day paroles if they were recommended by CSC, although the new Case Management Process may help in this regard.

- Over-Bureaucratization. Most of the complaints in this area were registered by inmates. Inmates in minimums (who are affected the most by day parole) in 3 regions (Pacific, Prairies and Quebec) commented that the process was too long and over-mechanized and waiting periods were too extended. Inmates in the Ontario medium agreed. Many penitentiary case preparation staff also were inclined to the view that the work involved in day parole applications, especially in brief LDP timeframes, was a "hassle", especially since NPB's reaction could be unpredictable. Some case preparation staff felt inmates did not "think far enough ahead" for lengthy DP preparation times to be meaningful for them.

- Termination/revocation. Offenders complained of the use of revocation in trivial situations, the amount of remission lost for revocation, the need for a hearing upon all revocations or terminations of DP, and the inconsistent use of a revocation (which implies loss of remission) in preference to a DP "termination" (which does not). Some penitentiary staff agreed that there was some inconsistency on that procedure.

- Day Parole and Institutional Programs. Several CSC regional offices (Prairies, Ontario and Atlantic) mentioned the conflict between day parole and institutional programs and maintenance. In general, this problem revolved around the competition for "good" inmates. Some people commented that some day paroles should only be implemented on weekends when the inmate has time away from institutional work or training. Also mentioned was the contraband problem where there are not separate buildings for day parolees and other inmates. Minimum inmates in the Prairies agreed, suggesting separate facilities for day parolees. They also indicated that often day paroles were granted, but not activated. Presumably the explanation in most cases is the scarcity of CCC or CRC bed space; but conflicts with institutional programs was also blamed.

- CCC's and CRC's too Selective. This problem was mainly brought up by CSC staff in the Atlantic. There were concerns that some CCC's were turning down good risks (to work with more resourceless cases), while other CCC's would only accept a limited number of difficult cases. Minimum inmates in the Prairies felt that DP should be used for resourceless people.

  In contrast, the Atlantic CCC staff felt they should have even more say in the selection of residents. The same view was expressed by the inmate committee chairman in the CCC in the Prairies. The staff in the Prairies' CCC felt that "parent" institutional population pressure determined the number of cases sent to them. In the Pacific CCC it was suggested that NPB make an "in principle" day parole decision and then let CSC implement it in terms of CCC bed space/program availability.

- Unclear Criteria. Concern about the blurring of programs and authority was expressed by some NPB and parole case preparation staff. Some statements made were that the difference between LDP and unescorted temporary absence is small, day parole needs a single purpose and concept, day parole should be for specific

purposes and not just given because an inmate is a good risk, and day parole shold be based on the needs of offenders.

- Other problems. Other issues mentioned by some consultation participants were that a perceived increase in violent, recidivist and long-term inmates made pressure on release processes greater, and risks higher; that high unemployment in many areas made job planning for DP release difficult to plan realistically in advance; that distances from penitentiaries to LDP job sites made release infrequent; that halfway facility rules are too strict and not sufficiently communicated in advance to prospective residents (CCC staff often disagreed, citing the difficulties of running such facilities with few effective controls, and occasional NPB refusal to uphold a recommendation to revoke); that there were strong regional differences in the approach to day parole.

- Suggestions offered. Suggestions for LDP ranged from its abolition to its expansion. Greater use of DP prior to MS was a frequent recommendations. Many felt DP should not be so routinely used as a "test" prior to full parole. Procedures relating to violations (see above) needed reform, according to some. More CCC's and purchase of service in CRC's was also a frequent suggestion.

PAROLE SELECTION

Comments about the parole selection process centered mostly around the parole grant rates, the criteria for selection, the structure of the NPB as it influences the process (voting structure, internal review, etc.) the philosophy of the Board as well as the NPB appointments.

- Major issues. NPB and CSC institutional case preparation staff in three regions leaned towards the view that the parole rate could be a little higher; as for the low Pacific and high Atlantic regions, however most shared the view that differences in inmate populations in those regions adequately explained the parole rate differences there. Penitentiary staff in two regions also suggested more parole by exception. Complaints were also made in two regions about the unexplained fluctuations in the parole rate. Overuse of "gradual release" was blamed for some of the recent decreases in overall full parole rates.

- Criteria for parole. An important area of concern is what some saw as the vague, unclear and inappropriate criteria for parole. There were frequent comments that "there are as many criteria as Board members". Some felt that the parole selection process does not reflect a given rationale, and that disparity is created by differing Board members' interpretations, philosophy and biases. As a result, NPB decisions are seen as highly unpredictable and inconsistent, except in the Atlantic region. There, presumptive parole was seen to be the philosophy, effectively carried out, of the regional Board.

- Board Members' Appointments and Training. Concerns were expressed with respect to the appointments of the Board Members, which were widely perceived to be blatant rewards for political loyalty. It was felt that the appointments are not really made in relation to the job that has to be done; there seems to be no requirement in terms of qualifications; people appointed on the Board are not well prepared to take the decisions inherent to the Parole Board; it was also felt that the Board does not provide any training for the new members who are left to "learn by experience".

- Gradual release. Many case preparation staff felt that gradual release is over-used as a test or treatment program, and some NPB members felt that that might be the case. Case recommendations would in turn be affected by such a perceived policy. NPB conservatism and fear of negative reaction were blamed for the problem.

- Voting structure and internal review. The NPB voting structure was seen by some as too cumbersome and weighted in favour of the denial of release. Some felt multiple voting increased inconsistency. Internal review is seen as having little effect on decisions, and ensuring only that NPB members are more careful about their recording of the reasons for their decisions.

Suggestions offered. Recommendations for changing parole included the greater specification of criteria and policies; increasing the grant rate in three regions; more and better NPB member training; eliminating exchanges of NPB members, which are seen to cause disruptions in regional patterns; the use (or rejection) of numerical risk prediction aids; greater NPB involvement in IPP, transfers, discretion over the remitted portion of the sentence (these last suggestions were usually made by NPB personnel); and that NPB be abolished, in favour of decision-making entirely by CSC (this suggestion was usually made by CSC personnel).

PAROLE SUPERVISION

Major Issues

- Conditions of supervision. Many inmates, penitentiary staff, and some parole officers said that the conditions of community supervision required changes. Some of the conditions are largely unenforceable, others intrude too much in the private lives of offenders, and others are simply unrealistic in the limitations they impose on offenders. Especially criticized were requiring permission to marry or purchase articles on credit, and living within designated areas which are too small and may require the offender to obtain permission to leave one part of the city and enter another. Most of those who criticized conditions felt that "standard" conditions should be very few, and other needs could be met through greater use of "special" conditions.

- Administrative problems. An almost universal comment among parole officers was that bureaucratic procedures and paperwork has grown to outrageous proportions and was affecting the amount of time available for dealing with offenders. Some of the paperwork required was felt to serve primarily the ends of "covering yourself" in case a serious reoffence occurred; detailed quarterly reports on the supervision of each offender were particularly criticized as serving little utility and forcing officers to mouth standard formulas in these reports. Connected to these complaints by parole officers was the feeling that supervision had lost its "mission" in the sense that no direction was given as to the quality or nature of the services to be given, but rather that management was interested primarily in "quantity control" through the specification of the number of contacts to be made with offenders (minimum standards). Parole officers warned that the quality of supervision was and would continue to be affected by this trend as well as by the perceived submerging of community concerns and expertise in the new penitentiary career model and Individual Program Plan process (IPP). (Some parole supervisors and regional authorities disagreed with officer complaints about administrative burdens, however, claiming that the paper requirements, which were still reasonable, had changed little over the years; if anything, the deadlines for submission of paperwork were merely more strictly enforced.)

- Effectiveness of supervision. Most inmates reported that community supervision was unhelpful to them. Only the practical assistance, such as cash loans, which was sometimes made available on release was mentioned by some as a possible benefit. Some parole officers came close to agreeing, saying that administrative burdens, the lack of time for community resource development, and the limited employment opportunities in some areas made effective intervention very difficult. While most offenders complained of how easily revocation cold take place and on such trivial grounds, some parole officers complained that their suspensions were not carried over into revocations by NPB, especially in "revolving door" cases. Some NPB members complained of the very "minimal" nature of minimum supervision standards, and the delays in obtaining necessary reports. Many parole officers (except in the Atlantic region) complained of the difficulty in contacting NPB members directly to discuss a case.

Other problems. Some parole officers spoke of the need for more discretionary funds to purchase specialized services and goods (such as tools) for offenders. Some inmates and a few penitentiary staff said high staff turnover in Québec affected supervision. Some institutional staff called for a greater use of volunteers in supervision. A number of offenders found their parole officers to be too young and inexperienced, and a few noted that parole officers were inconsistent in their approaches and use of sanctions. Many supervision staff complained of the lip service paid to "brokerage" without the concomitant commitment in training and responsiveness to innovation. Finally, supervision staff were split on the issue of the merger of CPS and NPS. Some felt the merger had caused a downgrading of emphasis on the community perspective, and would bring unqualified, security-oriented persons into parole officer positions. On the other hand, many officers resented what was often perceived as their high-handed treatment by NPB members, and would prefer a separate parole service.

Suggestions offered. Offenders were inclined to suggest that parole officers work on providing practical assistance and jobs, that revocations only be permitted for criminal convictions, or that supervision be made voluntary with the offender or be abolished altogether. Parole officers wanted more resources, more flexibility in determining the appropriate intervention in each case, less paperwork, and greater NPB sensitivity to their needs and their recommendations to revoke. Many NPB members would like a more intensive level of supervision.

EARNED REMISSION

Discussion on remission centred on two main dimensions: first, its limited value as a positive incentive to active program participation; and second, (expressed mostly by inmates) its connection to mandatory supervision.

Major issue: Incentive value. Almost all penitentiary and parole staff and inmates said remission did not act "positively" to encourage above-average behaviour and program participation, especially for longer-term inmates and persons with good parole prospects. (Only at Archambault Penitentiary, in fact, was it claimed that remission distinguished properly among inmates with a poor, average or above-average overall adjustment.) Some of the persons consulted also felt remission had no effect at all on inmate conduct, though others felt it was a useful punishment and deterrent to misconduct, and failure to work. Among the reasons given for remission's perceived limitations as an incentive were that there were too few resources available and too many difficulties involved in rating each inmate properly on all dimensions; that staff, especially those who work closely with inmates, were reluctant to give poor ratings and thereby jeopardize future relations; that MS has diminished the benefits which accrue from remission; that other incentives, such as TA, pay and visits were of more immediate value; and that, for inmates admitted before July 1, 1978, the crediting of old "statutory" remission reduced the amount of benefit which can be earned under the new system.

Other issues. One NPB member noted another function of remission, which is to act as a safety valve for denials of parole, since many offenders do well on M.S. Some persons consulted felt that remission should be better integrated into other punishment and reward systems, rather than act in isolation or opposition to them. Many security and socialization staff said their contact with inmates was too irregular or infrequent to permit rational assessment. A few staff suggested that "cascading" would be aided by a higher rate of remission earning in penitentiaries of lower security status.

Suggestions offered. A wide range of recommendations was offered on remission, including that it be better integrated into other incentives systems, that it affect the parole eligibility date, that it be lost only for disciplinary infractions, that it be applied to the supervision period to shorten it, that it be increased in minimum security, and that it be abolished.

MANDATORY SUPERVISION

Major issues

- Continuation/abolition. Almost without exception, offenders favour the abolition of M.S. and a return to the pre-1970 system of direct discharge at the two-thirds date. This view is based on the perception that M.S. negates whatever is supposed to be "earned" through remission, that is unfair for that reason, that M.S. reduces the parole rate, that it creates the "opportunity to fail", that M.S. cases are treated more harshly than parolees, and that M.S. merely serves to contribute to penitentiary populations. Some offenders, however, felt that in principle, some assistance after release should be made available, but that it be optional. Most staff felt that M.S. should be retained to provide support and control after release, to reassure the public, and to provide information to police on potentially dangerous offenders about to be released.

- Conditions and revocations. Most offenders found it ironic to be refused parole and yet expected to conform to the same conditions as parolees. They felt that M.S. cases were more likely to be "harrassed", however, and returned to penitentiary for technical reasons. Staff typically stated that M.S. cases were not treated any differently, but merely according to their needs. Some noted that M.S. cases usually had fewer "special" conditions, however.

- "Revolving door syndrome". Many parole officers complained of the "turnaround" syndrome of revoked cases (more often MS cases) being rapidly re-released from penitentiary as a result of accumulated "old" earned remission. Parole officers claimed NPB would not revoke suspended "revolving door" cases, and NPB claimed parole officers would not suspend such cases, because of the paperwork, time, and small ultimate benefit.

- Release of "dangerous" offenders. NPB members were most likely to cite the early release of dangerous persons as the principal problem with MS (or, more properly, remission). In this situation, immediate suspension and revocation was seen as the only alternative. Many staff complained of the inability or unwillingness of the mental health system to take on these cases, a reluctance attributed to fear of civil suits, institutional problems, and the "untreatability" of such persons.

- Pre-release program. Parole officers almost universally endorsed a greater use of partial release, including with halfway facilities, for difficult M.S. cases, (staff of CCC's and CRC's tended to disagree). Greater provision of room and board, mone and other practical assistance for M.S. cases was also endorsed by staff and inmates alike. Some suggested a compulsory pre-release process to plan for such MS cases. Offenders in particular complained of "cold turkey" releases of inmates from maximum security to the street, and wondered why gradual release seemed to be available only to those who needed it least.

Suggestions offered. Virtually all offenders recommended abolition of M.S. and retention of remission; some CSC and NPB staff called for abolition of both M.S. and remission, allowing NPB to hold all offenders until warrant expiry. Some parole officers suggested that offenders be eligible for only one MS release, after revocation of which only parole could create a release prior to warrant expiry. Some suggested shortening the M.S.period to a standard, brief period, or shortening it through application of remission to community supervision. Some suggested a lessening of remission credits in the first instance, to further delay the M.S. date and shorten the M.S. period. Some called for a return to the "minimum parole" system in order to increase motivation and receptiveness among offenders denied full parole. Offenders suggested that no revocation of M.S. be possible on non-criminal grounds. Some parole officers suggested that there be greater flexibility in applying minimum standards to intractable M.S. cases, a few recommending that police reporting only be required of the most uncooperative cases.

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