(Management Committee of the Australian Crime Prevention Council when meeting on the 27.1.79 dealt with the subject matter of various reports of the council issued over many years now past. It was the decision of the committee that certain selected reports would be republished from time to time within the A.C.P.C. Forum for the information of all membership and that the first such report to be republished would be on 'Conditional Liberty'. Ed.)

# CONDITIONAL LIBERTY

# A REPORT ON PAROLE PRACTICE AND LEGISLATION

prepared for

**The Third National Conference**

**of**

**The Australian Prison After-Care Council**

by


The Hon. Mr. Justice J.H. McClemens,
Supreme Court, N.S.W.

Professor K.O. Shatwell,
Dean, Law School, University of Sydney.

Mr. G.J. Hawkins,
Senior Lecturer in Criminology, University of Sydney.

Mr J.A. Morony,
Comptroller General of Prisons, N.S.W.

Mr F.D. Hayes,
Principal Parole Officer, N.S.W.


**DISCUSSION LEADERS AT CONFERENCE:**

The Hon. Mr Justice Matthews, Sth. Qld. Prisoner's Aid.
The Rev. W. Frawley, Staff Chaplain, Pentridge Prison, Vic.
Mr. C. Gannaway, Welfare Officer, Prisons, Dept. W.A.
Mr R. Heairfield, Comptroller of Prisons, S.A.
Mr. M. Howe, Dept. of Labour and National Service
Mr. A. McCulloch, Principal Probation Officer, Tas.
Mr. P.A. Vinson, University of N.S.W.
Mr. C.R. Bevan, Chief, Probation and Parole Officer, Qld.
Mrs. P.I. Frost, C.B.E. Fairlea Womens' Prison Council, Vic.

# INTRODUCTION

The report on the Conditional Liberty was presented to the Third National Conference of the Australian Prison After-Care Council on Wednesday, 27th January, 1965. The Council decided to adopt the report with the omission of the propositions set out in pages 14 and 15.

As will be seen from the Foreword, the report was designed to introduce conflicting points of view and to stimulate discussion. This it certainly did, particulary on the form of the Parole Board. On this matter it was decided that there be endorsement of the pactice already adopted in three of the six Australian States, namely Victoria, Queensland and Western Australia.

The general overall policy accepted by the Conference delegates is set out below:

(1) In any enactment regarding sentences the wording should be such as to ensure that it does not detract from the discretionary powers held by judges.

(2) A Parole Board with certain exeptions should have an effective power to deal with the release of prisoners. Such powers should extend to include release on parole, deferment of release on parole, denial of release on parole and revocation of parole.

(3) The Parole Board should not have such powers in respect of prisoners serving life sentences, or who have been found not guilty on the grounds of mental illness and are held in detention during the Governer's Pleasure. In such cases the Parole Board should be required to recommend a course of action to the Governemnent.

(4) There should be reciprocal arrangements between the States for the extension of parole supervision and parole revocation. In this respect consideration could be given to the inclusion of a warrant revoking parole as an instrument within the meaning of the Service and Execution of Process Act, 1901-63, so as to enable its enforcement in all Australian States and Territories.

In addition to these matters a number of other important points were made in the discussion syndicates led by Mr. Justice Matthews, Mrs. P. I. Frost, The Rev. Mr. W. Frawley and Messrs. C. R. Bevan, C. Gannaway, R. Heairfield, M. Howe, A. McCulloch, and A. Vinson. The points relevant to the operation of conditional liberty were:

**PAROLE PRACTICE:**

(1) Work loads for each Parole Officer should be fixed at a maximum of 50 cases. Female parole officers working with released women prisoners should be required to deal with no more than 40 cases in each work load.

(2) Measures of conditional liberty will be effective only when work loads are fixed at a manageable level and when sufficient time is permitted to allow adequate institutional contact and field supervision or released prisoners.

(3) A Parole Service should be allowed considerable flexibility in supervision. It was suggested that according to the circumstances of each case, the degree and extent of supervision be determined by an Executive Parole Officer at maximum, medium and reduced levels.

(4) Parole Officers should not be concerned with short-term prisoners or prisoners detained on remand. The Conference considered that this area was one in which voluntary workers might attend to remand cases, those unable to obtain bail, and appellants.

(5) A flexible, helpful relationship must be established between Parole Officers and voluntary workers which would permit the maximum effective use of both groups. The States should be encouraged therefore, to develop to the greatest possible degree, voluntary help in prisoner rehabilitation.

(6) The morale of all workers in the field of prisoner rehabilitation must be maintained by the provision of sufficient staff and work facilities. A balance also must be established between independence in functioning and relationship to existing penal policies.

(7) There should be an interchange of Parole Officers to enable interstate experience to be gained in other correctional services. This step would strengthen parole measures and lead to greater uniformity in in parole practice between States.

(8) In reciprocal supervision between States, the conditions imposed by the releasing State should remain unaltered within the host State, providing such conditions were compatible with legislation in the State where supervision was being carried out.

**PAROLE BOARD:**

(1) The Chairman of a Parole Board should be a Judge of the Supreme Court. This position should be full-time or at least one which would be regarded by the Chairman as his primary duty.

(2) The Chief of the Prison asministration of the State concerned should be a member of the Parole Board.

(3) The chief Executive Parole Officer or his representative, should always be present at Parole Board meetings so that his advice will be readily available on each case. Such representation would enable him to personally instruct field officers as to the views of the Parole Board in respect of supervision for each parolee granted conditional liberty. It was not felt that a Parole Officer should be a member of the Board, but it was considered essential that field services be represented by the Chief or Principal Parole Officer at Parole Board meetings.

(4) The Secretary of the Parole Board should be an officer engaged in a full-time capacity on Parole Board work although he should not be a member of the Board itself.

(5) The Parole Board must only operate within the limits prescribed by the sentence. Under no circumstances must it reduce or increase the length of time specified by the sentence.

(6) A Parole Board in determining release on parole, either in respect to the individual or with regard to general categories of offenders, should not allow its deliberations to be influenced by any publicity or by any other form of pressure.

**PAROLE SERVICE:**

(1) A Parole Service should be a separate branch of a State Correctional Department.

(2) A Parole Service should co-ordinate all statutory aspects of institutional treatment leading to conditional liberty as well as those community service facilities provided by prisoners' aid organisations, and other community groups working for prisoner rehabilitation. Such co-ordination should not interfere with the autonomy of the voluntary agencies.

(3) A Parole Service must provide a ,functional link between institutional and field work which permits early institutional contact with the prisoner and ongoing work with the prisoner and his family subsequent to eventual placement in the community. A Probation Service should be a separate organisation from a Parole Service, except in areas of smaller population where both services could come under one authority. Although the two services of Probation and Parole should be distinct, they nevertheless should work in close collaboration.

**COMMUNITY SERVICES:**

(1) There is an urgent need to publicise the community aspects of rehabilitative work in parole and prisoner after-care, as undertaken by voluntary and statutory groups.

(2) The development of voluntary organisations should be encouraged and as many suitable voluntary workers as possible be recruited to work in the field of prisoner rehabilitation. In this area the Civil Rehabilitation Committees of New South Wales have set a good standard in a co-ordinated after-care service which brings about co-operation between community members and professional social workers.

(3) That there should be an allocation by the State of scholarships which would enable voluntary workers to study for the position of Probation and Parole Officers.

**PAROLE FACILITIES:**

(1) After-care hostels must be a part of a parole system. The hostels should not be used on a long-term residential basis, but either as a post-release or pre-release measure to assist in the transitional period between prison and the community. At the same time the use of private homes to provide accommodation should not be neglected.

(2) In the establishment of a Hostel or Half-way House the co-operation of the police should be sought.

(3) There should be a central bureau for research in the correctional field which as an independent service would evaluate the institutional and community work of parole and voluntary agencies.

(4) There was a need for regular seminars and conferences at State and Federal levels which would facilitate an interchange of ideas and permit an examination of objectives in after-care. These discussions should also consider ways and means of securing practical support for the resettlement of released prisoners.

Finally, most prisoners, including many who have committed aggressive crimes, will return at some time to the community. The experience of many people, particularly the victims of recidivist prisoners, points to the need for decisive action in the introduction of controls during the period of release and until the prisoner is resettled. Such controls ultimately will be in the interest of both the community and the released men and women. They will be a good investment by a society interested in the welfare of its citizens.

In the following pages the original report is set out. It is felt by the Council's Executive that even though it is a lengthy document there are many parts within that are of practical value in the development of a parole system. Therefore the document as presented to the Conference is reproduced without deletion.

# FORWARD

In July 1962, the Executive of the Australian Prison After-Care Council asked for the establishment of a sub-committee to study the question of conditional liberty. In its work the Sub-Committee has interpreted the phase "conditional liberty" as concerning only convicted persons, released on parole, ticket of leave, or license, after having served some portion of a judicial sentence. It is recognised that the term, conditional liberty, has a much wider connotation. The Sub-Committee, however, did not seek to cover the wider aspects of the term, but has examined one of the principal, if not the most important of the areas of conditional freedom, which has a practical bearing on penal treatment in this country.

The Sub-Committee, formed in August, 1963, consisted of Judge A. E. Rainbow, who was then the President of the Australian Prison After-Care Council, Mr. Justice McClemens, of the New South Wales Supreme Court, Professor K. O. Shatwell, Dean of the Law School of the University of Sydney, Mr. G. J. Hawkins, Senior Lecturer in Criminology at the University of Sydney, Mr. J. A. Morony, the Comptroller General of Prisons of New South Wales, and Mr. F. D. Hayes, Principal Parole Officer, New South Wales. Following the death of Judge Rainbow in December, 1963, Mr. Justice McClemens, who succeeded him as Acting President of the Australian Prison After-Care Council, was appointed as Chairman of the Sub-Committee.

This report, which is presented for consideration by the Australian Prison After-Care Council at its Third National Conference in Hobart in January, 1965, is designed to stimulate discussion. There is general agreement as to the form of sentencing: as to the desirability of more detailed and satisfactory parole procedures, as to the imprisonment should be released to conditional liberty at an appropriate time prior to the completion of his nominal sentence; as to the need for adequate supervision during the remainder of the sentence period, exercised by professionally trained parole officers. There was general agreement that parole supervision should be flexible and should be expressed at maximal, intermediate and minimal levels, depending on the circumstances of each case.

Fundamental differences appeared, however, in the discussions of the Sub-Committee as to the form the Parole Board take. It is regarded as beneficial that this should have occurred in the preparation of a report designed to arouse discussion, because of the benefits of bringing together five minds of widely divergent training and approach, is that each brings a different point of view to the problem under discussion.

The Sub-Committee is of opinion that it will best fulfil its duty by bringing fundamental issues into the clearest relief for consideration and determination. It also will enable the Australian Prison After-Care Council to differentiate between that which is theoretically ideal and that which is politically practical within the framework of a parliamentary democracy.

The Divergent views arose from the fact that some of the Sub-Committee were strongly of the opinion that the Parole Board should be an independent, quasi-judicial administrative body, established in its own right, with control over its own funds, and with the power to implement its decisions. The other point of view was that decisions to release persons before the completion of their sentence and the control over such persons, are essentially matters for the Executive Government. These matters are fundamental and important. They involve matters in a parliamentary democracy affecting the Royal prerogative of mercy, under which persons are now released before their sentences are finished, and they affect the powers of the Executive Government. The more clearly these problems are appreciated, the better. The Sub-Committee was unanimous on the points that parole services must be strengthened; that there must be more research in this field, that the existence of parole ought to be regarded as consideration taken into account in judicial sentencing; and that in any area the Parole Board, whether administrative or advisory, should be a body of the highest quality available, for implementing in the community this important area of social defence.

# Australian Prison After-Care Council. Report of Special Committee on Conditional Liberty.

**BASIC ASSUMPTIONS**

The assumptions that underly this report are implicit in the recommendations of Section Six of the Conclusions and Recommendatins adopted by the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at London from August 8th-19th, 1960. This Section dealt with Pre-release Treatment and After-Care as well as Assistance to the Dependants of Prisoners.

The particular aspect of conditional liberty to which this report is directed, is in the release to conditional liberty on parole or license of a person sentenced to a term of imprisonment. There are other important matters affecting persons awaiting trial, or who have been convicted and are released from the Court to probation, with which we do not in this report intend to deal.

It is postulated that one of the most effective forms of social defence that can be devised by any community is through the reduction to the possible minimum of the number of persons who, having served a prison sentence, are not reconvicted. Among the important resolutions of the Congress were these:—

> "It is desirable to apply the principle of release before the expiration of the sentence, subject to conditions, to the widest possible extent, as a practical solution of both the social and the administrative problem created by imprisonment. The authority releasing the prisoner should be specialised and decisions about the prisoner should be taken, preferably after a personal interview with him, but in any case, on the basis of exhaustive information about him." (Section 6, Recommendation 4).

In deciding conditional liberty, the releasing authority should have some discretion, within the framework of the law, regarding the time at which the prisoner becomes eligible for release. There should also be room for flexibility regarding the conditions of proof of employment, required in some countries before the prisoner is released. It is desirable that flexibility should be applied in the case of the violation of conditions so that mandatory revocation could be replaced by substitute measures such as warnings, the prolongation, or change in methods, of supervision; and placement in after-care hostels (ibid. Recommendation 5).

We wish to state that an effective form of conditional liberty must be based on an an adequate correctional system which is founded on well-defined principles of action. This system must not only extend to the correction of the prisoner, but also extend its influence beyond prison in seeking to change present adverse social attitudes to prisoner rehabilitation. It must educate the community generally to the idea that it is better to use the penal system of a country to prevent the likelihood of future crimes. It should be made known that prison should not be used in such a way that

released prisoners are unemployable and a charge on the State, and hence liable to revert to crime. We also consider that the scheme for conditional liberty which is set out in this report, must of necessity be regarded as an important aspect of the overall process of justice. Sentencing procedures must be integrated with the concept of conditional liberty. Furthermore, the law should be so framed as to make clear that the Judiciary, in imposing sentence, provide for an adequate period of conditional liberty, to enable the prisoner to make possible his rehabilitation in society. Treatment both inside and outside the prison, in the words of the United Nations Congress recommendations, should prepare the offender for resettlement as a law-abiding citizen.

It is desirable that release from prison, followed by the fulfilment of a term of conditional liberty, should lead to the full restoration of rights as a citizen. This is not always possible, since certain types of profession require special attributes of good character (e.g. lawyers and doctors) and in other cases it would be socially dangerous. However, these exceptions can and ought to be kept to a minimum. Conditional liberty, however, can supply the bridge by which a man unable to return to his former employment, can move to other valuable work in the community.

It is our view that varying parts of the entire correctional system must constitute an integrated whole. This would include the Judiciary as well as employers, trade unions, and other sections of the community whose specialised interests will aid the social reshaping of lives whose usefulness otherwise may be lost through continued crime. In particular, provision must be made to integrate the functions of imprisonment, parole, probation and other sanctions. Likewise, the role of the police in relation to a Parole or Probation Service should be made clear.

Contingent on these facts is the claim, in the public interest, that parole in a correctional system subject to the sentencing powers of the Courts, must be the responsibility of an Authority charged with ensuring that the maximum degree of community protection and welfare is obtained. We emphasise that measures of conditional liberty in the ultimate analysis are related to the welfare of society. Within these measures the rehabilitation of the offender must be a necessary element. Nevertheless, though the welfare of the offender is important, it is neither the sole nor the most crucial factor. The welfare of the community of which the offender is a member must be paramount. Indeed the community has a **right** to the protection of a system of conditional liberty which will reduce the possibility of further crime by released prisoners through adequate supervision, and by ensuring that necessary services are provided in employment placement, material assistance and advice. However, we would emphasise that the welfare of the community is not served by an inadequately trained service which does not contain carefully chosen officers or one that is starved of finance or personnel.

As the Gluecks very wisely say:

"That the parole agents largely missed the opportunity to aid their charges in succeeding in their work as well as in other ways necessary to rehabilitation of offenders is shown by considering another example of the use of the follow up study in the evaluation of correctional instrumentalities. One of the deplorable practices sometimes found not only in peno-correctional treatment but in other branches of administration is that of pre-empting the name of some new reform while at the same time retaining many of the worst features of the old regime which had necessitated that reform. A number of examples might be cited in the field of criminology, but the point need here be made only regarding parole. To speak of "parole" without providing for planful supervision of parolees by persons specially trained in the work is to foist a counterfeit device upon a gullible public. Yet, although practically all the American states make legal provision for the parole of prisoners, only a comparatively small number of them also provide for the intensive oversight of parolees during their conditional liberation. Parole in many states can thus be little more than an additional device enabling experienced criminals to be incarcerated for shorter periods than the sentences imposed by the courts, through easy manipulation of the too loosely articulated cogs in the machinery of criminal justice.

Although many states provide by statute for employment of parole officers for supervisory work, even in these states statutory provision for oversight of parolees is one thing while the quality of actual supervision is another. The qualifications of the personnel for the work, their case-load, the technique employed by them, and their conception of the nature and aim of parole supervision — these are some of the factors that determine the true quality of parole. A scientific analysis of these factors is not alwyas feasible, for they embrace certain imponderables. A follow-up study should, however, look into these basic matters to the extent possible."*

## NEED FOR RESEARCH

In most areas of Australia there is a serious lack of research material upon persons released on parole or license. This does not reflect adversely on those responsible for prison management. Indeed, progressive prison administrators recognise the need for investigation into many aspects of penal treatment, including the evaluation of rehabilitative work carried out within the prison and on release.

The present position, however, does emphasise the need for Governments and Universities to make available funds to permit adequate research and follow-up programmes. Such funds could be well spent within the whole field of penal treatment, leading to more effective measures which would bring about a reduction in crime among released men and women. In this way it would be possible to come to a practical evaluation of the worth of imprisonment and of other forms of penal treatment. In particular, it would enable a realistic view to be taken of the difficulties with which prison administrators are confronted.

It is our opinion that as the type of Parole Service we envisage would have its consultative relations with industry and in particular would be working with the specialist employment services of the Commonwealth Government, as it would have power to carry out research, it would be the proper authority to report upon the effect of prison training in respect to future employment and the actual needs of industry.

* "After Conduct of Discharged Offenders": Sheldon & Eleanor Glueck — McMillan & Co. Ltd., London, 1946.

By definition a prison service cannot do this as its control over a man ceases on discharge. Yet prison training without an evaluation of its results, based on a well-planned research design, is moving completely in the dark without a practical sense of direction.

Again in this regard we emphasise the recommendation of the 1960 Congress that:

"Research projects on various aspects of after-care and on attitudes of the public towards the released offender should be encouraged and assisted. The results of such research and the findings of the various disciplines should be given the widest possible dissemination, particularly to judges and others having power to determine the character and length of sentences or commitments." (ibid. Recommendation 11)

## RELATIONSHIP OF IMPRISONMENT AND PAROLE

We recognise the right of the community to expect that adequate supervision and assistance will be extended to released prisoners in such a way as to reduce the possibility of further crime. It is necessary, therefore, that parole be related to the process of imprisonment itself. The State must undertake the responsibility of implementing a system of parole whose agents must make contact with the prisoner as early as possible in his sentence. This is a proposition stated in Recommendation 8 of the United Nations Recommendations of 1960:

> "Since after-care is part of the rehabilitative process, it should be made available to all persons released from prison. It is the primary responsibility of the State, as part of the rehabilitative process, to ensure the organisation of appropriate after-care services."

(a) We do not intend to deal in this Report with the immense problems involved in prisons of differing types and sizes; whether the old Bastille type of walled goal ought to be progressively abandoned in favour of camp-like institutions; with education and work programmes in prison; and with neither the training of mental defective and unskilled prisoners, nor the treatment of psychotic or neurotic ones.

But even within the existing framework of the types of services now available, the parole officer should have the opportunity of interviewing prisoners who are likely candidates for parole, at the earliest possible occasion after reception into prison. The ideal would be an adequate body of social workers employed as parole officers, with a caseload not so heavy as to prevent their establishing a relationship with both the prisoner and his family. Work commenced in this way within prison, could be followed through by the same officers into the community after release. It also is necessary that parole officers be adequately trained in methods of treatment, involving both individual social casework techniques and group counselling. Without adequate training, assessments of the value and implications of the various factors involved in each case could not be properly made. Attention is also drawn to the fact that academic training by itself is not sufficient, for all officers must be persons with good qualities of leadership and sound motivation.

The nature of the prison community itself creates influences which seriously impair the value of rehabilitative work carried out within a prison. These influences stemming from the anti-social values and criminal associations of the prisoner community, unfortunately affect adversely many prisoners during sentence and after release. This fact again underlines the necessity for the adequate training of parole officers and for sufficient suitable personnel to meet the needs of the exacting tasks set in parole work.

(b) In turn, the education of prison officers in this area is important. If prison officers are going to regard rehabilitative activities, especially individual and group counselling as being without value, their influence may well tend to diminish the value of these treatment measures. We recognise the need for security in certain types of prisons, but even within this essential custodial framework, many rehabilitative steps can be taken which would involve prisons officers working in co-operation with parole officers.

Outstanding work in the participation by prisons officers in such measures in reported by Dr. Norman Fenton from Southern California, who writes:

> "Whatever is done in the prison to or for the inmate is treatment. What is done may be helpful, or it may be harmful, as regard to the individual's progress toward becoming a better person — what we call treatment goes on everywhere in the prison. It is not confined merely to places like the medical clinic, the school room or the chaplain's office. The correctional officer, including the man in the tower, may have a part for good or ill in treatment."

Dr. Fenton points out clearly that if prisons are to be treatment oriented, it is necessary for the whole staff to participate in treatment. We feel that these steps are possible in any prison system.

It is recognised that group counselling as a form of treatment is able in many cases to give a prisoner insight into his problems and thus enable him to withstand the personal tensions and social pressures which he will face on release. The value on a long-range basis of group counselling within prison, has not been adequately assessed in this country, but from observation of its limited application it is apparent that prisoners have benefited from the experience. It also has been demonstrated that prisoners are able to withstand the destructive pressures of the prisoner community through the influence of group counselling. Therefore, we consider that in a number of categories of group work, prisons officers with training in such methods, could play a constructive role in collaboration with parole officers. These measures would have a direct bearing on the ultimate effectiveness of measures of conditional liberty.

(c) We envisage the purpose of conditional liberty and the control it involves, as being associated with a sentencing policy which will in a maximum of cases enable imprisonment to be followed by a length period of parole supervision. Within the ambit of the sentence imposed by the judge.

There must of necessity be some few cases in which elements of community protection would render it impossible for persons to be released to conditional liberty. Therefore with proper and adequate services, a maximum proportion of prisoners could be so released to conditional liberty after a detailed and scientific evaluation of their cases. Some parolees would require maximum supervision during the whole period. Others would require medium or minimum control. In other cases the degree of parole supervision could be tapered off, according to the period of conditional liberty that has elapsed, and the parolee's adjustment during that period. We also envisage that in this tapering-off process voluntary organisations and private individuals may well be involved.

The very statement of the last proposition emphasises the need referred to earlier, for both research in this field and adequate social work training for parole officers, in which studies of community organisation would be incorporated.

In a group of parolees there must be persons who would be served best if left to work out their problems independently; there must be others who would need minimal aid; and yet others who would need aid, but who might be unable and unprepared to accept it from Parole Officers. There

would also be both parolees and their families who would need long and detailed supervision, direction and counselling. In this context, conditional liberty through the form and degree of supervision already mentioned, could apply flexibility according to the stability, progress and adjustment of the parolee and the appropriate use of voluntary organisations.

## THE RELATIONSHIP OF THE COURTS TO PAROLE

There should be no watering-down of the principle that sentencing is a judicial act. The imposition of penalties is for the public courts, which alone have and should have the power to fix sentence, to order imprisonment, and to impose sanctions which involve the deprivation of civil rights, the subjection to penal discipline and to parole supervision and direction. Rehabilitation is not directly a matter for the courts, as their functions involve wider aspects of social control and crime prevention. Often the very machinery of the courts have to use is inconsistent with the rehabilitative process and the return of the individual to community life. Judges do on occasion sentence persons who, they believe, will never offend again, and who could with safety to the community and themselves, be released forthwith, but the crime is such that in the public interest it must be marked by a substantial sentence. Such a sentence can be personally destructive of the individual, however necessary it may be for other reasons.

No Parole Board should ever have the power to add one minute to a prisoner's sentence as fixed by the Public Courts. Any work of rehabilitation, therefore, must be carried out in the period set by the Courts. There is no objection in principle to a person voluntarily seeking the service of a parole officer after the period of his sentence has ceased, but at that stage he is not, nor should he be, liable to the restraints of conditional liberty. Nevertheless, he is entitled to be given help if he seeks it although we stress the desirability of independence and the ability to reach a stage where a person, in a law-abiding sense, is self-sufficient. We do not wish to encourage undue dependence by relased prisoners on parole officers or other social workers.

As the function of the Parole Board is therefore to rehabilitate the offender within the period of sentence set by the public courts of the country, his period of conditional liberty should be regarded as part of that sentence. No injustice therefore is done if conditional liberty is revoked on a breach of the conditions of release, and the person concerned is required to serve the full period of imprisonment originally set by the court. Recalling from parole and breach of parole, will be dealt with later in this report. There are, however, certain important considerations that ought to be taken into account. We think it is essential that the determination of release — the most crucial step in terms of reclamation — be made by expert opinion. This decision must be based on a number of factors, which would include the safety of the community, relevant social and psychological aspects, and the success of — as opposed to mere conformity to — treatment measures. We consider, however, that its implementation must pay regard to the intentions of the courts and be tempered by the reality of public opinion. The judge and the process of the court, symbolise to the average citizen the protection of rights as well as being a practical expression of social censure on law violators.

A judge's opinion, legal or otherwise, carries a great deal of weight with the public generally. Particularly is this evident if a sentence is radically altered at a later date through the action of some authority distinct from the court, and subsequent to this action the released prisoner commits further crime. Public reaction may well be erroneous in regard to a proper appreciation of such a situation; it will contain, more often than not, irrational emotional qualities. Yet these views will not be eradicated, let alone modified, by rational arguement. Such action for release is seen by the public generally as interference by an outside body, removed in time from the offence and the judgment of the court. Furthermore, such decisions often are interpreted as arbitrary and capricious.

If a system of conditional liberty, based on the decision of an authority with the sole responsibility for release, could be demonstrated over a lengthy period of time, and interpreted through good public relations, there may be a change inpublic attitude towards this measure. However, this would be a long and doubtful process. A practical way to overcome this difficulty would be through a statement by the judge at the time of sentencing as to both the maximum length of sentence, and the minimum period which must be served before release can be considered. In effect, it would be similar to the present system in operation in Victoria. It also would be somewhat analagous to the method occasionally used in New South Wales, by which a trial judge recommends release after a specified period of time, subject to certain conditions.

We think it desirable that the judge should use his discretion, within prescribed limits, in setting a minimum level of commitment. In so doing, two things would be accomplished:

(1) The judge is concerned with release to conditional liberty. It is his responsibility to impose the sentence. He should, therefore, express an opinion as to the earliest time at which release could be considered, contingent on a number of factors specified at the time. The judge's remarks in fact set the pattern of penal treatment. Moreover, his remarks would make clear to the prisoner what is expected of him. In this respect a statement by James Bennett, Director, U.S. Bureau of Prisons, is relevant: "The courts can help to minimise our prison problems by the very manner in which they impose sentence."

(2) Once the minimum level of sentence is reached, the Parole Board has the task of determining the appropriate time of release. At this point a decision can be made without the inhibiting factors that arise through public criticism and controversy, if the responsibility for release rests entirely on the Parole Board, without reference to the judges or the Ministry of Justice.

It is clear that subjective factors can influence the nature of a sentence. It is also realised that a dispassionate evaluation at a later date may provide a better assessment of the prisoner's readjustment with due regard to all factors relating to the prisoner, his offence and the safety of the community, than when the sentence was made in the court. The fact must also be recognised, that there are many prisoners serving lengthy sentences, who reach an optimum time for release, at an early stage of their sentence. This optimum time varies and cannot be predicted, but we know that continued imprisonment in such cases can blunt the personal keenness to make good, and jeopardise the benefits that can be achieved through the granting at the time of conditional liberty.

Nevertheless, despite these considerations and at the risk of greater rigidity within the system, it would seem that if conditional liberty is to succeed, it must involve the judge in a practical way at the point of sentencing. The judge could

set a minimum level of imprisonment, in which he could use his discretion in applying, within a specified range, a minimum commitment. Above this period is set the maximum length of sentence. It is then left to the Parole Board to determine the appropriate time of release. This, in turn, might prevent the destructive criticism that release is being granted by sentimental "do-gooders", far removed from the operation of the court.

We also recommend that it be the normal practice whenever a case is brought before the Parole Board, the minimum period for consideration for release having elapsed, for the judge who sentenced the person to be informed. The judge may wish to make a report or he may desire to ascertain how the prisoner has behaved since he was sentenced. It would also be desirable, as a matter of normal practice, that the judge concerned be notified when a prisoner sentenced by him is released on parole, and also in all cases of parole breach. The question may be raised as to whether this is practicable in the event of a Parole Board dealing with a large number of cases, or the important nature of the judge's views. Our statement in this respect is related to the principle that the judge, who is involved in the imposition of sentence, should also express his opinion at any time on the matter of release. Nevertheless, granting the Parole Board the power to act without reference to the courts, creates drawbacks far outweighing these advantages. It is possible that a Parole Board might lay down a policy that a specified portion of each sentence should be served before release. This, however, would lead to rigidity and would not enable the greatest benefit to be derived in many cases, although it might save an individual case from political criticism.

Moreover, there is a form of structure of a Parole Board which gives to it the power to make a decision as to what it considers to be the optimum time for release in each individual case, irrespective of the length of sentence.

We consider that this would lead to many difficulties, and to constant allegations that the Board's decisions were partisan, politically flavoured, and expedient. For example, there are always persons who can unfairly criticise a proper decision, e.g. releasing a wealthy prisoner whose behaviour and personal adjustment may have merited release on parole, by comparing it with an equally proper decision to keep in prison a truculent, violent prisoner who happened to be a poor person. In both cases the criticism is centred on factors which would have no bearing on parole being granted. Such matters, however, can lead to a widespread public outcry without knowledge of the true facts.

Likewise disparity in the length of sentences served could unsettle a prison population, and within a penal establishment, do more harm than good. The reasons behind such disparity would not be accepted, irrespective of the careful thought and intrinsic merit of each decision. Therefore we think that a judge imposing sentence could effectively place both a maximum period of imprisonment as well as a minimum level of imprisonment which must be served prior to release consideration. The minimum period would allow discretion to be used in the determination of that period. This would still permit a substantial measure of flexibility for a Parole Board to determine release. It also would enable the judge to decide the maximum and minimum periods; to take into account the prevalence of, and the social dangers involved in, the offence; as well as considering as mitigating factors the circumstances peculiar to the offender.

We regard it as important that the judge, as the arbiter of public justice, should fix the earliest date of release on parole. It is evident that his decision is more likely to obtain public acceptance than a decision made by any other individual or organisation. It is equally important that there should be the clearest legislative assertion that the concept of conditional liberty is part of the ordinary law of sentencing.

One of the authors of this Report not infrequently sits on the Court of Criminal Appeal in New South Wales. That Court in general only considers the appropriateness of the sentence imposed when deciding appeals against the severity or inadequacy of sentences, independent of considerations as to the likelihood of release on parole before the conclusion of the sentence, and the fact that the prison regulations provide for substantial remissions.

We have no doubt, on the authorities as they now stand, that this is the correct approach as a matter of law — a court has to deal with the law as it is and not as it ought to be. In other parts of Australia in which there is specific provision for parole eligibility to be part of the sentence, different considerations might arise.

Although there is a great amount of force in the assertion that the decision to release should be the function of an experienced parole authority and not of the original sentencing judge, it can fairly be asserted that a system which removes from the latter all discretion as to date of release, for all practical purposes would be unacceptable in Australia.

We are therefore of the opinion that parole legislation as related to a specific period of imprisonment, should contain some provision along these lines:

"In any case where a court imposes a sentence of, or in the aggregate, two years' imprisonment or greater, the following provisions shall apply:

(a) the court imposing the sentence or sentences unless it is elsewhere expressly otherwise provided shall fix the appropriate sentence or sentences which it in its discretion thinks just, having regard to the requirements of public justice, the protection of the community, the prevalence of the offence, the nature and seriousness of the offence, the character of the offender, the deterrence of the offender and of other persons and all other relevant matters;

(b) the court shall, as part of the sentence imposed, declare the earliest date at which the offender shall be liable for consideration for conditional liberty. The court in making such a declaration shall provide for a period sufficiently long to enable all reasonable steps to be taken for the reformation and rehabilitation of the offender and to enable adequate observation, supervision, training and treatment to be carried out after his release to conditional liberty and before the termination of the full period of the sentence imposed."

## FUNCTIONS OF A PAROLE SERVICE

In view of the heavy responsibilities that the proposals we are adumbrating would cast on a Parole Board and on a Parole Service it is necessary to mention a number of matters concerning the function of such bodies. We consider that a Parole Board must be of sufficient status and contain persons of sufficient standing and capacity to enable it properly to accept public responsibility for the release of parolees and their subsequent behaviour. It should be clearly understood that the Board has this responsibility just as the judges have the responsibility of deciding in the case of a person being sentenced, what that sentence ought to be. Unless the Board has this responsibility and reflects the independence of thought that would naturally emanate from the stature

and capacity of its members, it would be unduly open to criticism that it is subject to extraneous influences and involvements. In such a situation the Board's position would be most difficult and its hold on public confidence would be extremely tenuous.

In considering the function of a Parole Board and a Parole Service, it is necessary to make this observation. It is essential that where possible there be continuity in the treatment of prisoners from the point of sentencing until re-establishment in the community. If the maximum value of parole is to be obtained, it must be through a complete involvement of the Parole Service in a process of continuous treatment from reception to re-settlement. This will never be accomplished from an intermittent contact made by a service regarded merely as an "ad hoc" classification, tacked on to a penal system. A Parole Service cannot properly commence its work at the time of a prisoner's release. If it does it will fail. There must be the fullest involvement of parole officers as social workers within penal institutions, with their work focussed on the social and personal readjustment of prisoners as part of a continuum which is completed with eventual re-settlement in society. At the same time attention to the families of prisoners should be included where practicable in such services. In this way a contribution by a Parole Service can be made to penal treatment and training. Indeed, whatever is achieved through treatment and training within prison can be further developed by parole officers in a specialised sense through intensification of their work both with prisoners and their families in the immediate pre-release stage. The value of such work in the post-release period is obvious in terms of the quality of the relationships created, the practical service given, and the personal understanding developed before prisoners are released.

## FORM OF THE PAROLE BOARD

This could take various forms:

(a) It could be a purely advisory body, with no executive functions of its own, which would consider only cases referred to it by the Ministry of Justice or from the Prison Services. As such it would make recommendations to a Minister who would not be bound to implement them.

(b) It could also be a body with a discretionary power to order the release of a prisoner on parole under the supervision of a parole officer, and subject to certain conditions. It would not have the power to hold property or to employ staff. Parole Officers implementing parole directives, would be under the control of the Ministry of Justice, except insofar as they would be subject to direction of the Board in relation to a parole order.

(c) It could be a body corporate with power to own property, to control its own funds, to employ its own staff, to release on conditional liberty and to recall therefrom. The details of such a Board as envisaged are set out later. It is this third form that the majority of this Committee recommend as a practical step towards implementing an effective system of conditional liberty. Because of its close connection with the releasing authority, it would be essential to have the Parole Service attached to this body. The Parole Board would therefore become a separate entity with executive powers of its own both as to release and revocation of parole, and with the capacity to incorporate within its structure a Parole Service. Within this framework at least one of the Parole Board members should be a full time official.

(d) It could be a body working within the framework of the senticing procedure set out on pages 9 and 10 to which all cases which fell within that framework would be referred. The function of the body would be to make recommendations as to the granting of terms of parole. The actual decision as to parole and the term of parole would be for the Executive. This body also would consider and make recommendations as to cancellation and recalling from parole.

There are reasons which might support each one of these four alternatives. Furthermore, it is a widely debated question whether a Parole Board and its Parole Officers should operate within the framework of a Prisons Department, or whether it should be a separate and independent authority. Weighty reasons can be adduced in support of each alternative, but having examined carefully these points, the majority of the Committee are of opinion that alternative (c) in its recommendation of a parole authority is the most desirable.

A minority thought that the alternative (d) was the desirable form. Shortly stated, the reasons of the minority are.

(a) The release of a person judicially sentenced, during the sentence, is a matter so essentially for the Executive Government that it should not properly be removed from the control of those who must accept responsibility for it.

(b) The creation of a body with power to act independent of the Executive, represents neither an exercise of a truly judicial nor a truly executive function.

(c) No matter what the form of the Parole Board in a Parliamentary Democracy may be, the Executive Government will have to accept responsibility for its acts. Hence a system which enabled releases to be effected without its concurrence, would create a situation which imposed responsibility for acts on those who had no power to prevent or control those acts.

(d) To divest itself of the power either to release or retain sentenced persons, during their sentences, would be tantamount to the Executive abrogating certain of its powers of community protection.

In the United States of America, Federal and some other Parole Boards do have executive authority but it is submitted that this is not a factor applicable to the various States of this Commonwealth.

The adoption of the fourth alternative would obviously make unnecessary many of the recommendations contained in the latter part of the report. As a body which is purely advisory, it would not employ its own staff, would not have the requirements of its own budget, would not have power (nor should it have power) to revoke parole once granted, but pending a determination as to which of the alternatives is to be adopted as the view of the Conference, the minority has not endeavoured to spell out each of the matters which would become redundant.

The reasons of the majority are as follows:

A separate and independent parole authority also has the further advantage that it can submit its own budget and thus have its own finances available to enable it to implement its planned activities. It must be remembered that a Parole Service can never succeed if it is regarded as an unwanted

interloper in a penal system. It is a human tendency for prejudice and misunderstanding to arise where there is a radical departure from the traditional functions of a social institution. Such feelings can hamstring the activities of a new vigorous development in penal treatment. Unfortunately it can frstrate its officers to such a degree that the vital spontaneity and enthusiasm so necessary for success is removed from their work. Conditional Liberty and its operation are aspects of penal treatment too important for this to be permitted to happen. Therefore it is the view of the majority of this Committee that a parole service be incorporated within an Authority administratively distinct from a Prison Service.

Although rehabilitation is an increasingly important aspect of prison administration, it cannot be its main function. A prison, generally, must be a custodial institution. Therefore one of the matters that must be constantly in the minds of prison administrators must be the maintenance of security within the prison. A prison system which had frequent escapes, followed by crimes of violence by prisoners while at large, or in which a minimising of security in the interests of rehabilitation led to the seizing of someone as a hostage to cover a gaol break, would be doing harm to the work of rehabilitation as well as to the community as a whole.

Security, therefore, must have a predominant role in a prison service. Even so, it must be made clear that hardly any prisoners will never be released. Most at some stage or other, even if sentenced to life imprisonment, are regarded as being safe to be at large. All fixed sentence men must be deemed to be safe to be at large after serving their sentence less remissions.

The function of a Parole Authority, therefore, must include deciding, in the interests of the rehabilitation of the prisoner and the community interest, when the prisoner is safely ready for release to conditional liberty.

This would involve:

(1) the decision of a Parole Board in determining release between maximum and minimum levels of imprisonment;

(2) effective parole supervision, based on a reasonable case-load and incorporating the best professional practice that can be developed in correctional social work.

The form of the Parole Board should be that of an administrative body of independent existence. It also must be re-emphasised that the Parole Board should in no way detract from the judge in his sentencing functions but is subsidiary to them. The Parole Board should offer an expert service based on continuous observations, and reports after sentence, as to the appropriate time of release of prisoners within the prescribed limits set by the court.

We recommend legislation along these lines:

(a) There should be a Parole Board to which the Government should appoint five persons involving both sexes.

(b) The Chairman of the Board should be a Supreme Court Judge.

(c) Each member of the Board should hold office for five years but should be eligible for re-appointment.

(d) Except for the Chairman, each member of the Board should hold his office during ability and good behaviour and should be removable only after notice to remove him has been given and he has been heard in his defence.

(e) The Chairman should cease to hold office if he ceases to be a Supreme Court Judge.

(f) Each member of the Board should retire on the day on which he attains the age of seventy (70) years.

(g) When the Chairman is ill, absent or unable to act, there should be provision for the immediate and automatic appointment of a Deputy Chairman, who should also be a Supreme Court Judge.

(h) The Government may, upon a report from the Board that any member is prevented by any cause from attending to any of the duties of his office appoint some person qualified to be appointed a member, to act temporarily as an additional member of the Board and such person should, while so acting, be deemed to be a member of the Board.

(i) On appointment the members of the Board other than the Chairman should take the appropriate Oaths. This extends to a person appointed to act temporarily as a member.

(j) Sittings of the Board should be arranged by the Chairman or, in his absence, by his Deputy.

(k) No act or proceeding of the Board should be invalidated or prejudiced by reason only of the fact that at the time when such proceeding or act was taken, done or commenced there was a vacancy in the office of any one member.

(l) No action or suit should be brought or maintained against any person who is or at any time has been a member of the Board for anthing done or omitted by him pursuant to the duties imposed upon him by this or any other Act nor any action, suit or other proceedings lie against him, nor any costs be payable by him, in respect of any proceedings before the Board.

(m) The majority is of opinion that the Board should be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name and shall, for all purposes and subject to the provisions of this Act, be capable of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property and enduring and suffering all such acts and things as bodies corporate may by law endure and suffer. The Board should have a corporate name.

(n) The Board should cause minutes of its decisions to be kept upon the official papers and cause minutes to be kept of the proceedings at formal meetings and an annual report of its work and statements of accounts to be prepared and presented to Parliament through the Minister of Justice.

It will be observed that we have recommended the appointment of a Supreme Court Judge as Chairman. We do this because we believe that parole is a field of such significance, and involves so many different problems of a judicial and quasi-judicial nature, that it calls for a member of the highest tribunal in the State to preside over its deliberations. In this respect a Supreme Court Judge has a particular status and tradition of independence.

Whether the work of a Parole Board would be so great as to require that the Chairman would need to be seconded from his ordinary duties, either permanently or intermittently on a full-time basis, or whether he could combine the active work of Chairman of the Parole Board with his active work as a Judge, is a pragmatic question which will have to be answered in the light of the individual circumstances involving each Parole Board.

The practice of seconding a Supreme Court for other work is not unknown and has worked very well in the State of New South Wales, as when Supreme Court Judges have presided over the work of the Crown Employees' Appeal Board.

Turning to the composition of such a Board, other than the Chairmanship, we strongly emphasise the need for persons of adequate qualities and qualifications to occupy such positions.

In our view, the proper approach to this problem should be this: that the requirements of public justice having been fulfilled by the appropriate period of imprisonment and the penal services having as far as they can, oriented the man to fitness for conditional liberty, the Parole Board and its officers then proceed through supervision and guidance to seek to orientate him for unconditional liberty. We also state that the voice of the Permanent Head of the Prisons Department must be heard, both in policy-making and in the implementing of individual decisions granting paroles.

We have recommended the appointment of four other persons from the community, and provision should be made also for a member or members of the Parole Board who are women so they would be available to act in cases involving women prisoners.

A senior administrative officer of the Board would act as its secretary and attend its meetings. Provision and probationers, to be present at meetings at which the persons with whom they are concerned are being considered. This may not always be practicable, but it should enshrine a principle that the principal parole officer or an officer acquainted with the case should always be available when the case of the person concerned is being considered, or he is being interviewed.

### POWERS OF THE PAROLE BOARD

(a) The basic function that a Parole Board must be given is power either to order the release of a prisoner undergoing a sentence of imprisonment in respect of which a minimum term was fixed, or to make a recommendation to the Executive for his release. Such order or recommendation could be subject to such conditions relating to supervision, behaviour, residence, employment, medical treatment and otherwise as may assist in his rehabilitation.

In deciding whether or not any individual prisoner ought to be released at any particular time after the prescribed minimum has elapsed, the Board would have to obtain information on, and consider all relevant circumstances, including the personal attributes of the prisoner himself.

(b) The majority think that the powers of the Parole Board must also extend to revocation and recall from parole, and must include power to cause warrants to issue, so that parolees whose parole is revoked, or who are recalled, might be returned to prison. The minority think there should be adequate legal powers to permit the Executive to do this.

(c) The Board should be authorised to publish the results of its work, or of any research made by it, or on its behalf.

(d) The majority are of opinion that the Board ought to be empowered to appoint, employ and dismiss such permanent and casual officers as it would deem necessary, although provision would have to be made in those places where there is a permanent Public Service, with rights of promotion and superannuation, to enable persons appointed to the Board or its Service, to maintain their promotion and superannuation rights and the continuity of their service.

(e) The Board should have power and authority to summon witnesses, and receive evidence. It should have power to compel the attendance of witnesses, and the answering of questions relevant to any enquiry, investigation of hearing that it is conducting. It should have power to compel the production of books, documents and writings. Moreover, there should be provision by way of separate and independent proceedings in the ordinary courts for punishing persons guilty of disobedience to any order or summons made or issued by the Board, or to provide penalties for wilful false statements.

(f) For the purpose of conducting an enquiry, investigation or hearing, at which it may be inconvenient for all or any of the members of the Board to be present, the Board ought to be able to delegate any of its powers or functions to any one member of the Board, or to any fit person, but the decision of any matter in dispute should be determined by the Board. Every parolee should be seen by the full Board before the decision to release, but if this is not possible, then he ought to be interviewed by at least two members. There is some question as to whether the Board should have the power to prevent publication of any account of its proceedings. This may not be desirable, but it should be made clear that a man or woman who has served the minimum or other term before release and who has satisfied a parole authority that it is proper that he or she be released to conditional liberty, must be deemed to have the right again to seek to re-establish a place in a free society. The re-agitation many years later of the circumstances of a crime for which the parolee has undergone punishment can amount to a further unjustified and heavy punishment on the offender, and a denial of his rights both to privacy and to rehabilitation.

We would refer to the United Nations Congress Recommendation that.

> "It would also be desirable that the press refrain from focussing attention on the released prisoners".

(g) The majority think that provision ought to be made by the parliament in its appropriation to make available funds for the Parole Board, because a Board such as is envisaged will need its own funds and its own staff. Without its own funds and its own staff anything in the nature of a complete and satisfactory system becomes impracticable.

The majority view is that it is scarcely necessary to particularise the reasons why it is desirable that a Parole Board should have power to expend its own funds. One reason springs to mind immediately — the provision of the small half-way "Hostel", either by the Board or conducted by a voluntary organisation which is assisted by the Board. We could cite many other examples.

### RELATIONSHIPS WITH THE POLICE

This matter is of critical importance to a successful parole system.

Commencing from the proposition that it is undesirable that the police should be given supervisory functions in

respect of former prisoners, we realise that there must be many circumstances in which a parolee is more than likely to be properly the subject of police enquiry than an unconvicted person.

If offences such as pilfering commence in a factory about the time a parolee starts work in the organisation, a natural human reaction is to associate one with the other. There are parolees who are not genuinely prepared to make an effort towards their own rehabilitation; in any event one might expect that parolees whose home environment was associated with members of the criminal class, would return to former associations and be more likely, because of these associations, to commit further crimes. These considerations underline the need for a basis of pragmatic co-operation between Parole and police services. This would be in the interests of those parolees unlikely to offend further, but who may come under suspicion, and also in the interests of the community as affected by those parolees likely to commit further crime.

Irrespective of the measure of co-operation, we strongly recommend that under no circumstance should the police be given supervisory duties in respect of parolees. This proposal does not suggest that individual members of the Police Force should not voluntarily assist in this area. Police officers have helped on many occasions and their efforts have been willingly accepted by former prisoners with good results.

It is important that a system be formulated whereby police who desire to interview a parolee, will have the help of a parole officer who would be responsible for taking the parolee to the interview. This procedure would obviate the need for the police going to the parolee's place of employment or abode. However, any measures of this nature would need flexibility and close co-operation between police and parole officers.

Different police action would be legitimate where a parolee was suspected of a serious crime and where an escape attempt was feared, as compared with a case where a man merely was required to be interviewed about a matter which may not involve him.

A system also would be required so that all police action against a parolee would be forthwith reported to the Parole Office, so that action in respect to breach of conditional liberty might be considered without delay.

## PERMITS OR LICENSES FOR CONDITIONAL LIBERTY

Under the system we envisage, whereby the parolee is at liberty until the full nominal period of his sentence is served, it is the majority recommendation that the Parole Board should have power to provide for the forms of licenses or permits to be at conditional liberty. The minority view is that this is a Ministerial function. In any event the power to prescribe forms should be extensive. This would permit the inclusion of terms relative to particular needs as to compulsory saving, recognizances, restitution, payment by instalments, undertaking courses of education, as well as the general requirements involving good behaviour, non-association with persons of bad character and co-operation with the supervising authority.

So far as the forms of permits and licenses are concerned, it is recommended that there be three standards of parole supervision: Maximum, medium and minimum. Fixed standards of supervision during a full period of parole cannot be laid down in advance. We postulate, however, that with an efficient and properly staffed system, these standards will guide field officers in parole treatment. An adequate system would demand that each parolee be seen not only early in sentence and thereafter, but particularly before and immediately after release, when there is a greater likelihood of criminal breakdown in the transitional period between prison and the community. Case-loads should never be so heavy as to prevent adequate contact being maintained as determined by the needs of each case. However, as progress is made towards a satisfactory carrying out of parole by the person concerned, standards of supervision will vary accordingly. In this way the Parole Officer can utilise in supervision the services of existing voluntary agencies. This would enable the case-load for field officers to be eased by requiring only minimum control in those cases in which this was desirable or in which there was no longer a need for statutory supervision. It also would have the beneficial effect of enabling parole officers to obtain the assistance of voluntary workers and organisations in the cases of parolees where medium or minimum supervision would suffice, or where official supervision was less likely to be as effective as the personal oversight of a voluntary worker.

It is not unknown that physical disabilities of a remediable type have been a factory in the production of delinquency. One cannot overlook the fact also that there are a number of prisoners who are suffering from some psychiatric disturbance to a greater or lesser extent. In many such cases the interest and understanding of the prisoner's family, or the reduction of personal stress within the family group itself, will lead to a better chance of readjustment by the prisoner on release.

It is to be expected that the Parole Board will receive many applications by the parents, wives, and other relatives of prisoners requesting their release on parole. There will be cases where the involvement of the family in the prisoner's rehabilitation will be beneficial. In a number of cases where relatives are attempting to get a prisoner released, there would be an opportunity for a well developed Parole Service to work towards the minimising of crime through the family situation.

In these circumstances a system that encouraged relatives to co-operate in the parolee's treatment is recommended. We will mention this agin in relation to group therapy.

## COMMUNITY ACTION IN FACILITATING CONDITIONAL LIBERTY

We assert that there should be a wide education programme among the community, in particular employers and trade unions, which would enable better understanding of the need for adequate industrial training and employment within prison, and would permit speedy reassimilation into the community on release. Unfortunately, it appears that the community is completely apathetic towards this question. Manufacturers tend to see any prison production as a threat to their businesses, by reason of the existence of potential competitors; some trade unions are fearful lest the use of prisoners for production purposes will lessen the amount of employment available to their members and will tend to reduce wage and industrial standards. We mention these matters because they present a problem which cannot be avoided when one comes to deal with matters affecting the release of prisoners and their re-absorption into the work force of the community.

Many prisoners are persons who before conviction have had unsatisfactory work records. Most of them are unskilled. Unfortunately, there are limitations on the work available in prisons, particularly of a sort that will challenge the interest of prisoners. Yet, often after years of prison, men whose prior employment records were unsatisfactory and who are still unskilled, are released into the community. It

then becomes the obligation of organisations in parole and after-care, to find work for these men where they will be able to earn their livings in competition with men from the ordinary labour market, who bear none of the disadvantages of a poor work record and the history of imprisonment of the former prisoner.

This fact is unfortunate for the community in both an economic and social sense. Industry today requires a wide variety of technical skills and procedures for which training is necessary, but not over a lengthy period of time or with teaching restrictions as may be stipulated in many apprenticeships.

It would not require a great deal of adaption to incorporate some of the training schemes and courses used by industry, within the structure of the prison training programme, so that such a programme is geared to the actual needs of industry. Indeed, industry including trade unions — as important sections of the community — should be involved in the actual planning of any industrial training to be given within a penal system. In the long run it would mean that the number of unskilled workers amongst released prisoners is reduced, and a positive contribution is made towards improvement in the quality of the work force of our society. In a practical sense it would mean rapid re-employment on release. One direct result would be less burden on the financial resources of the community which are devoted to unemployment relief and other welfare measures. Such steps must of necessity be linked to the implementation of conditional liberty — for the question of available and satisfying employment is vital to the successful re-establishment in society of released men. Indeed, one of the conditions of freedom could well be continuance in certain avenues of employment based on prior prison training.

We would suggest also that one of the most valuable adjuncts that could be devised in a parole system is a system similar to the Civil Rehabilitation Committees which exist in the State of New South Wales.

the Civil Rehabilitation Committee, which was formed in 1951, at the invitation of the Minister of Justice, was envisaged orignally as a co-ordinating body of organisations who traditionally have been associated with prisoner welfare. In addition, other bodies were added to the Committee, enabling it to widen its sphere of work and provide a greater comprehensiveness of the services offered, for example, representatives of the Trades and Labour Council, Chamber of Manufactures. Later a representative of the Chief Justice and the Commissioner of Police were included.

The Committee worked in close collaboration with Parole Officers who referred cases of men requiring any form of assistance on release. Experience showed that organisations represented on the Committee could not take complete responsibility for individual cases. There then developed a system of close co-operation between parole officers and committee members in all the work undertaken. This form of after-care service in which Government and voluntary workers were merged, extended beyond the Sydney Committee to the twelve other Committees which were established at a later date. In the regional Committees, prisoner after-care bacme, in a community sense, a more individualised service through the inclusion within the local committees of many citizens, both men and women, who were not necessarily representatives of organisations. It was found in the regional groups that there was a greater movement to direct personal service given in collaboration with the parole officer.

In the development of these bodies, it was ensured that all committees maintained their autonomy. In their work they were not directed by parole officers or representatives of the Prisons Department. The Committees were completely free to take or reject any case presented to them. They were free to be critical at any point on the function of parole and prison after-care. We consider that the voluntary contribution by the community in prison after-care should not be obstructed, but it should be encouraged at every point. It is to the community that the released prisoner returns, and unless society becomes involved in this work, the ultimate effectiveness of conditional liberty will be lessened.

If it is possible to get large organisations either to be prepared to accept, or not to discriminate, against former prisoners, then the scope of employment is correspondingly increased. The involvement of such organisations through a Civil Rehabilitation Committee and a Parole Service will have the benefit of enabling steps to be taken to stabilise a parolee who is showing signs of breakdown. Likewise appropriate steps can be taken in relation to a prisoner released to conditional liberty who is failing deliberately to co-operate.

Effective citizens' groups such as the Civil Rehabilitation Committees can be a means towards the pragmatic implementation of Resolution 6 of the 1960 United Nations Congress, namely, that:

> "The principles under which offenders are excluded from certain occupations should be re-examined. The state should set an example to employers by not refusing, in general, to give certain types of employment to released prisoners."

For example, if representatives of industry and Trades Unions can be persuaded to be associated with a Civil Rehabilitation Committee, it may enable objections to be overcome relating to the employment of former prisoners. Moreover, through the co-ordinating work of an experienced parole officer, practical advice and help can be given by which harmful consorting by former prisoners can be stopped. In this way the interests of both employers and employees are protected, and fears of employees lessened relative to such things as pilfering from their lockers and working with ex-convicts.

## AREAS OF PARTICIPATION BY VOLUNTARY ORGANISATIONS ON CONDITIONAL LIBERTY

No Parole Board or its services would ever be able to deal with the whole area of prisoner welfare and supervision. It is most unlikely that funds would ever be available to enable a far-reaching State-controlled service to operate to the exclusion of the voluntary organisations. We have already indicated that if it were possible, it would be highly undesirable.

This report has been focussed principally on conditional liberty relative to the prisoner serving sentences of two years and over. It assumes the existence of a sufficiently long period of parole to accomplish something positive in relation to the rehabilitation of each person granted conditional liberty. But this leaves untouched many prisoners, some of whom are in goal for lengthy periods. These categories include: the remand prisoner who, unable to obtain bail, has to remain in gaol until his trial, which may be delayed for some months; the man whose case is under appeal; the person whose period of imprisonment is merely between his arrest and the obtaining of bail; and the short-term prisoner.

Without exhaustively examining these types of cases, it is obvious that their material needs and those of their families are extensive. It would be impossible, without

diverting the parole service from work which demands immediate attention, for it to deal with all those prisoners. In the future it may be desirable to provide parole supervision for short-term prisoners, and even for persons granted but unable to get bail. The committee is of opinion, however, that it should at this juncture, limit its deliberations to those sentences of two years' imprisonment or upwards or "Governor's Pleasure" prisoners, dealt with at a later stage in the report.

Flexibility is necessary in the operation of and in the relations between a parole service and the various voluntary organisations working in the field. This is obvious because of the overlapping in function which inevitably will arise. At some stage and in respect of some prisoners, rigorous and authoritarian control by parole officers is desirable. At other stages and in respect of the same or other persons, this form of control becomes undesirable. Furthermore, the point might well be reached where supervison and help are still necessary, but could be better extended from other than official sources. It should therefore be clearly recognised than organisations such as the Society of St. Vincent de Paul, the Salvation Army, the Prisoners' Aid Association and other church and voluntary groups, have important functions to fulfil in the field of parole.

It is essential, however, to define where possible, the areas of activity of both statutory and voluntary groups and as far as possible prevent overlapping. One positive step the Parole Authority might take, would be to act as a link with the Prisons Department in increasing the access of appropriate voluntary organisations and suitable voluntary workers to the prisoners. It is natural that a Parole workers to the prisoners. It is natural that a Parole Service must have free access to prisoners upon terms that prison administrations would feel bound to deny to some or all voluntary organisations. However, it is desirable, provided voluntary workers and organisations can do beneficial work, to widen as much as possible the field of their activities.

A real problem in the penal field is to hold the balance between ill-advised and ill-informed criticisms of the system by people coming in from outside the prison service, and healthy informed criticism by responsible people. The first is undesirable. The second is to be encouraged.

A prison is in large measure shut off from the public gaze. Administrators, no matter how enlightened, tend to regard the status quo which works without trouble as being the optimum to be aimed at. On the other hand, that may indicate mere conformity on the part of men anxious to earn maximum remissions, but with no real intention of living a law-abiding life on release.

Here the voluntary organisation has great scope. Provided its representatives have sufficient balance not to be influenced by the false and malicious story, and can make proper judgments, it will be a valuable reformative agency both on the system and the individual.

If, therefore, arrangements can be worked out as to who may see prisoners before release and how each group can work with the administration and official bodies, both before and after the release of prisoners, it would be a highly desirable measure. Merely to treat voluntary after-care services as really nothing more than an extension of governmental services seems to burke its real implications. It is delicate and difficult work in which definitions between the proper functions of each of the agencies concerned will have to be drawn in practice, through those definitions must of necessity be elastic. If the State were to monopolise all the area of after-care, one might be left with a system in which it would be impossible for the individuals concerned to do other than resent it as an extension of a punitive system. Furthermore, it would make it most difficult for voluntary organisations and the Churches, who have carried out so much valuable work in the field, to continue with their efforts. We believe that if conditional liberty is to be effective, and if attention is to be paid to the material for co-operation by all relevant sections of the community. We have traversed already in reference to the Civil Rehabilitation Committees, the specialised group and the church and charitable agencies, which should be included in prison after-care. Many of these agencies already have carried out the difficult pioneering work in penal treatment and traditionally have interested themselves in this field, irrespective of the neglect and unconcern shown by society generally.

Government organisations must work within the framework of Acts of Parliament and Statutory Regulations. The obtaining of an amendment of the law is always fraught with difficulty and delay. The administrative control of a large Public Service means that rules have to be followed, even in circumstances where the taking of short cuts might be pragmatically justified. The voluntary organisations, however, have an elasticity and the ability to innovate which is not immediately possible for any Government service. Likewise voluntary organisations have the opportunity denied to the Government employee to criticise and to publicly press for penal reform. We cannot too strongly recommend, therefore, that Governments encourage the development of voluntary groups. At the same time the voluntary organisation must seek to co-operate with the Government services. Whilst we emphasise the need for the existence of a continued action by voluntary organisations in prisoner rehabilitation, we also stress the point that if voluntary organisations do not provide adequate services, then their policies must be changed to accord with proper social work methods. Unfortunately, some voluntary organisations and some voluntary workers, are committed to out-dated methods, and to ill-informed and irresponsible criticisms of developments they do not understand and about which they have not sought enlightenment. One reason for the decay of the voluntary organisation in the penal field is because some of these groups are still operating in a milieu that is not acceptable to prisoners, or their familes, or in fact to any person who must have association with them.

A constructive personal relationship and mutual confidence have to be established if there is to be any real change in outlook on the part of the released men. In certain cases there would be many reasons why the prisoner would feel happier dealing with private individuals than with Government officers, no matter how competent or considerate. Yet it is necessary that flexibility be introduced to enable any form of conditional liberty to draw on the strengths and resources of both voluntary and statutory groups. At the same time the impact of differing agencies in the field has a tendency to maintain standards of work at a proper and adequate level.

We conclude this section of our report by referring to Resolution 9 of the United Nations Congress recommendations:

> "In the organisation of after-care services, the co-operation of private agencies, staffed either by voluntary or full-time experienced and trained social workers, should be sought. The necessity for a working partnership between official and non-official agencies should be emphasised. The importance of the role of the voluntary after-care worker is fully recognised. Private after-care organisations should be provided with all necessary information to

assist them in their work, as well as reasonable access to the prisoner."

## APPLICANTS FOR PAROLE

Any releasing authority will be the recipient of many requests from various sources for the release of prisoners. Some of these sources will have access to funds which they will be prepared to spend freely in legal representation towards obtaining the release of the person concerned.

It should be laid down in advance that applicants for parole or conditional liberty cannot be permitted to have legal representation before the Parole Authority. Moreover, applicants should not have the right to accumulate witnesses of a partisan type. The function of the Parole Authority is to act impartially within the period of the prescribed sentence on the material it accumulates relative to each prisoner. The Parole Authority has the responsibility of accumulating the material on which it acts. Additionally it must satisfy itself that it has obtained within reason all proper material, having regard to all the circumstances of the individual involved. The experience of the courts has shown that, provided a party shops around long enough, he can usually get the medical evidence he wants, because unfortunately an egregious form of medical advocacy is not unknown. So far as legal representation is concerned, anything that will bring the adversary system of litigation into a Parole Service is to be condemned.

The basic concept is that a parolee is a person serving a sentence of X years, but that to assist him and the Committee generally an attempt will be made to give him conditional liberty long before that term is up. These steps will bring about ". . . the re-integration of the offender into the free community, and to give him moral and material aid giving special attention . . . to his emotional needs and to assistance in the obtaining of employment." (ibid 7)

In this field the professional lawyer has no place. His duty is to gain, in a proper manner, the best advantage he can for his client. He is not bound to call evidence in his possession which will not help his case. He has no duty to determine the honesty of the witnesses he calls, or their professional or other standing. He makes the selection that he thinks will help and sends away the other witnesses.

Such an approach would be harmful in any measures to determine conditional liberty. The rich offender or the one backed by a criminal gang might well be gaining advantage over the poor but far more deserving case. We, therefore, strongly recommend that partisan information be discouraged. This, however, causes us to strengthen our recommendation that all available information of a responsible nature be obtained in respect to each applicant for parole.

## PAROLE BREACH

Unfortunately, it will be true that there will always be a proportion of persons who will be guilty of other offences or breaches of the conditions of conditional liberty. Such persons have an influence on public opinion out of all proportion to their numbers or to the seriousness of the average breach of conditions of release. Nevertheless, it is a fact that one who violates his parole has a most unfortunate effect on the interests of other men likely to be released on parole or who are so released.

A number of parolees have a tendency to regard their release not as an occasion for them to seek their rehabilitation, but as representing solely the end of a period of servitude. We are of the opinion therefore, that it is highly desirable in respect of persons who breach parole, for the Courts to be given cognizance of the breach as a separate and independent offence. We feel that if any person released to conditional liberty commits any breach of the terms of his release, the Parole Authority, through an officer either generally or specifically authorised, should have power to lay information against the person concerned. This measure would enable the parolee to be charged before a magistrate with a substantive offence of parole breach for which he would be, on the summary conviction, liable for a further term not exceeding two years. The Court concerned should have power to make that sentence cumulative on the sentence which he was serving at the time of the breach, and cumulative also with any sentence for any offence which he might have committed while on parole.

It will be observed that these suggestions do not involve the giving of punitive powers to the Parole Authority. It gives the authority the right to invoke a duly constituted court to exercise its powers, which it will do if the offence is proved beyond reasonable doubt. These provisions should, however, be so designed as not to cut down the powers of the Parole Authority, to release on parole again the same man, if it considers that he is unlikely to offend again. The seriousness of breaches varies greatly. There may be cases in which after another six months or a year or more, it is felt that the parolee is ready for further consideration, and action might be taken for release again to conditional liberty.

Punitive powers are solely for the Courts. It should be clearly understood, however, that persons on parole should be regarded in law as being still under sentence of detention as not having fully served the term to which they were sentenced. Hence, the cancellation of parole by order of the Parole Authority or its amendment or variation, cannot be treated as an additional punishment because the proper punishment is that already inflicted by the Court. Nevertheless, the power to cancel parole is a necessary adjunct for public protection; and where there is another conviction, that should operate as an automatic cancellation of parole.

Where a parole order is revoked or a parolee recalled, a simple procedure is needed to obtain a warrant directed to the proper police officers to apprehend and return the person concerned.

There is real difficulty in a parole order being restricted to State boundaries. We recommend, therefore, that there be reciprocal parole facilities between States which would enable a period of conditional liberty to maintain its sanctions irrespective of where the parolee may move within the Commonwealth.

## PERSONS FOUND NOT GUILTY ON THE GROUND OF MENTAL ILLNESS AND THOSE CONVICTED OF CRIMES INVOLVING DIMINISHED RESPONSIBILITY

In the various Australian States, the McNaughton Rules are still applicable, in that a person is not criminally liable if at the time of the act he was so affected by mental illness as not to know the nature and quality of his act. Alternatively, if he knew the nature and quality of his act, he was so affected by mental illness, as not to know that what he was doing was wrong.

The concept of diminished responsibility as found in the English Homicide Act 5 & 6 Eliz. II, c.CH.11, s.2, does not exist in Australia. When a person is found not guilty of an offence on the ground of mental illness — and this in practice is limited almost entirely to cases of murder — he is then

ordered to be detained during the Governor's pleasure. In effect, this means that he is retained, usually in a prison, on the basis of an indeterminate sentence until the authorities are satisfied that it is both proper and safe to release him.

If he is certificably mentally ill, he is usually not put on his trial, but retained in a mental hospital. If he recovers sufficiently to be fit to plead, he is tried. If a person found not guilty on the ground of mental illness is found after conviction to be certifiably mentally ill, he is transferred to the criminal ward of a mental hospital, being usually returned to prison if he ceases to be mentally ill. There is always a group of persons acquitted on the ground of mental illness, who never have been certifiably mentally ill, or if they have been, are presently not so.

As a matter of strict legal theory, since the person acquitted on the ground of mental illness has committed no offence, because it is basic to the philosophy to our legal system that to be convicted he must be criminally responsible, he is not liable to any penal sanctions at all. In the period when a conviction for murder was usually followed by execution, an acquittal on the ground of mental illness resulted in the saving of life of the person concerned. However, the abolition of capital punishment in some Australian States and the fact that it is more sparingly used in the other ones, means that the person acquitted on the ground of mental illness has to be retained under circumstances little different from those of the convicted murderer until the stage is reached where the authorities think it is safe to release him.

Furthermore, there have been cases where persons acquitted on the ground of mental illness, having been for a considerable time retained in prison and then released, have committed other offences. This emphasises the need for continuing careful evaluation of each one of these patients on the basis of full reports and of psychiatric examinations over the whole period of imprisonment. It is imperative that such prisoners are the subject of skilled social and psychiatric evaluation so that when released no appreciable measure of risk to society will be involved. Based on this evaluation the period of conditional liberty and its elements of supervision would be so structured as to enable developing tendencies to a breakdown to be seen and preventive action to be quickly taken.

We recommend therefore in relation to persons who are acquitted on the ground of mental illness, that the Parole Authority be given power to release these persons to conditional liberty on licenses or permits, either for an indeterminate or determinate period. Conditional liberty of such persons must involve detailed and continuous psychiatric examination and specialised field supervision. In particular does this latter requirement underline the need for professional training of all parole officers in social work, which would embody courses in mental health and related subjects.

## MENTALLY ILL PAROLEES

In the public interest the Parole Authority should have the power to act where it appears that the released person is mentally ill. If a parole officer, authorised in this regard, believes that any parolee is mentally ill, he should be empowered to take him to an admission centre for examination. A parole officer should likewise have power to obtain from a justice an order to require a member of the Police Force to apprehend the parolee and take him to the nearest admission centre. In emergent circumstances the parole officer himself should have the power to request the police in writing to so act.

In New South Wales (and in the other Australian States the legislation is similar) unless the person concerned was prepared to remain as a voluntary patient, he would as soon as practicable be examined by two medical practitioners separately and apart from each other; and if found to be mentally ill appropriate steps could be taken for his further observation and treatment in a mental hospital.

## POTENTIAL OFFENDERS AMONG PAROLEES

It is essential that there be adequate powers to protect the public against the parolee who is likely to commit offences.

A flexible system by which the Parole Authority could be informed of the arrest of a parolee is necessary. It would be of practical benefit if such a system could be coupled with a power to obtain an order from a magistrate that the parolee be retained until he could be interviewed by a parole officer. This action would often prevent further crime, as would the right granted to a parole officer to swear out information and obtain a warrant for the arrest of any parolee whom he believes is wandering at large. Similar action could be taken if the parolee is discovered under circumstances which may reasonably suggest that he was about to commit an offence against the law.

## FURTHER PAROLE

The Board should have power to release a prisoner on parole, notwithstanding that his parole has been cancelled on a prior occasion. Where a prisoner's parole is cancelled, the part of the time between his release on parole and his re-commencing to serve the unexpired portion of his term of imprisonment, should not be counted as part of the sentence.

Though it is not to be expected that more than a substantial proportion of persons released to conditional liberty will achieve rehabilitation, an effective service which has public support and which co-operates with voluntary and other agencies can reduce in a very marked way the amount of recidivism amongst released prisoners. Particularly is this so, when the system can be integrated with co-ordinated voluntary effort, representative of many sections of the community including employers and trade unions.

An effective system of conditional liberty also would require attention to be given to the transitional area, between young offenders and adult offenders. Adult penal treatment should not be applied to the juvenile offender. In practice, an arbitrary age is treated as being that at which he ceases to be the subject of juvenile or youth delinquency treatment, and becomes subject to the full penal sanctions of the criminal law in respect to an adult. However, there are so many factors involved in this field of the young offender that it is not possible to lay down a definite formula. We do suggest that, without in any way seeking to fuse together into one service the activities of those responsible for probation and parole for juvenile offenders and adult offenders, there should be maximum co-operation in this area, in respect of those offenders who lie in the transitional age groups.

We have stressed the involvement of as many sections of the community as possible in making a strong, effective system of conditional liberty. This process requires skill and patience in adapting voluntary effort within the structure of parole supervision. Basically, the acceptance by the community of those men and women who have been

imprisoned, is a salient factor in the success of any form of penal treatment. Acceptance and understanding will not come easily. It requires a whole-hearted effort in an intelligent interpretation of the need for, and to demonstrate the practical value of, a system of conditional liberty. Perhaps our views can best be expressed in terms of Recommendation 10 of the United Nations Congress recommendations:—

"10. Successful rehabilitation can only be achieved with the co-operation of the public. The education of public opinion on the necessity for such co-operation should, therefore, be fostered by the use of all information media and means should be sought to obtain the co-operation of the whole community in the rehabilitative process, especially that of Government, the trade unions and the employers."

Finally this point must be reiterated. A system of conditional liberty is not designed to let loose on the community violent criminals who without delay can recommence their predatory habits. It is fundamentally a system of control based on flexible supervision which enables not only the critical transitional stage after release to be safely covered, but extends over that period of time deemed necessary for re-adjustment in society. In so doing the offender is subject to certain sanctions imposed in the interests of the community. It has been demonstrated that parole supervision over a cross-section of the prison community is more effective in preventing crime during the period of control, than when prisoners are granted unconditional liberty. The economic value in the saving of State expenditure is self-evident. Supervision in the community would only cost about 10% of the cost incurred through imprisonment. There are many offenders who could be safely placed under supervision each year. Their return to the community would not only lessen the financial burden on the State, but in the light of measures proposed in this report, conditional liberty would bring about other positive gains through personal rehabilitation and through a greater material contribution by released prisoners to society.

# ADDENDUM

## A. THERAPY

A question considered by the Sub-Committee was the relationship between a Parole Authority and those treatment measures which should commence within the institution, and which should be continued into free society so that they are readily available to released offenders.

The Second United Nations Conference on the Prevention of Crime and the Treatment of Offenders in 1960 adopted the following recommendation:

"12. Special attention should be given to the provision of appropriate after-care for handicapped and abnormal offenders, alcoholics and drug addicts."

Detailed discussion of this recommendation involves a number of technical matters. It is evident, however, that if a Parole Authority is established as an independent body it must have adequate power to enable it to make direct arrangements for specialised treatment measures in mental health with a Department of Psychiatric Services. It must also have power to co-operate with other related authorities in the implementation of this resolution. It is not intended in this report to discuss whether there should be a special penal establishment for the treatment of such cases, or whether there should be special hostels which would provide care and oversight in free society. These questions are complicated technical matters which require expert advice. We must point to them, however, as essential aids in the effective operation of a system of conditional liberty.

Mention must be made, however, of the successful results that in some areas are claimed for group therapy. If well-designed research and extensive follow-up validates these claims, then the working out of a formula by which suitable parolees, their families and friends, might be able to undertake this treatment, would require consideration. It must be made clear, however, that group therapy and its application, has at the present time the touch of a panacea. This rising optimism, however well merited, must be tempered by well-directed research.

Another recommendation of the 1960 United Nations Congress of relevance to the extension of therapeutic measures was:

"14. The establishment and maintenance of satisfactory relations with the members of his family and with persons who may be of help to him should be supported."

If it is established as a fact that group therapy or group counselling does permit stronger, helpful relationships to be established by Parole Officers with prisoners; if, as a consequence, it thus unables practical steps to be taken for the prisoner's re-establishment in the community, action should be taken to ensure that this form of treatment is readily available for suitable cases, both during imprisonment and during periods of conditional liberty. Often it has been found in the work of prisoner rehabilitation that if a family position is unsatisfactory, if its personal tensions are unresolved, and its emotional instability is extensive, then the return of the parolee to such a home may lead possibly to another criminal breakdown. Yet there frequently is nowhere else for the prisoner to go. Therefore, in such cases, providing that families and friends were willing to participate action should be taken for the provision of group counselling or group therapy under the leadership of trained parole staff, or with more deeply disturbed cases under the leadership of psychiatrists.

If the benefits that are claimed as accruing from group therapy are in fact a reality, a healthy co-operation between the prison administration and the Parole Authroity could result in the establishment of small groups in a Metropolitan Prison at night, so that relatives could be brought to the prison in order to participate in the group sessions. There are evident objections to this suggestion on the grounds of security. Nevertheless, it should be possible to reduce the element of risk through the segregation from the mainstream of the prison of those who, on a particular night, would be attending group treatment. Furthermore, relatives or friends could be brought by parole officers from a central point to the prison, and returned to that point, so as to minimise the security dangers that may arise.

But prescinding from the problem of technical difficulties, all of which could be dealt with appropriately by the prison administration, there would be an opportunity for real progress in the adjustment of personal and social problems, throught the involvement of members of families in group

discussions in the pre-release period. There is every possibility that many of the problems faced by prisoners returning to society could be reduced in intensity through the help and understanding that can be engendered by group interaction. We do no more than adumbrate the suggestion, because the details involve technical matters which could not be covered in the space of this report.

We do point, however, to the importance of pre-release and post-release hostels which can provide the milieu of a therapeutic community. In so doing, we point to overseas experience in this measure, and stress the practical benefits that can occur in appropriate cases through a controlled return to the community. This additional aid in conditional liberty could involve individual and group treatment within the precincts of the hostel.

## B. THE RELATIONSHIP OF PROBATION AND PAROLE SERVICES AS SEPARATE OR COMBINED GROUPS

The question naturally arises whether probation and parole should be operative within a combined service. In this report the focus has been on the problems of the released prisoner, together with the steps that should be taken so as to ensure that a period of conditional liberty affords both protection to the community and aids the social reclamation of released men and women. Nevertheless, in the light of efficiency and in the interests of the community, the question must be faced as to whether these two important systems in the treatment and control of offenders should be merged or should remain separate. There are difficulties in the treatment of offenders which are common to both groups. There are also some problems faced by probationers and by parolees, which are distinct to both categories. It would seem, however, that the probationer is more likely to be a person who is convicted on a first offence, and whose personal circumstances and social background warrant from the outset, non-institutional treatment. This situation, of course, will vary, and in some regions it is a fact that there are many probationers who are recidivists and who have served periods of imprisonment on more than one occasion. Although the two groups will overlap in the area of social readjustment, it can be said nevertheless that generally the released prisoner is a person who has been uprooted from the community, and whose resettlement often can only be accomplished in the face of considerable hardship and strain.

Furthermore, the released prisoner has undergone an experience, referred to by Donald Clemmer as "prisonisation", which involves in varying degrees the development of a sense of affinity with other prison inmates, and to some extent the espousal of a criminalistic ideology. The inbuilding of criminal values and standards frequently intensifies deep-seated anti-social attitudes, and may be expressed in continued aggressive hostility towards society. Undoubtedly there are many probationers who in their own lives also have been subjected to the process of prisonisation, before being granted a probation order. The problem lies, however, in the fact that all parolees, irrespective of previous background, seem to be affected in some way by the process of prisonisation. Parole supervision, therefore, must work towards reducing the force of the pernicious influences that can stem from the prison environment, and which in many cases create a socially harmful effect. At the same time, we realise that both probation and parole must use specialised casework services, so that both groups of offenders can be helped to modify anti-social attitudes and to channel their energies towards more constructive objectives.

Although a probationer may lose his employment through the result of his offences being published in the press, it does often happen that an offender who is released on a bond conditioned by probation, can return to his job and to his family with few people knowing of what has transpired in Court. If it is possible for this state of affairs to continue, then it is more desirable. In the case of a parolee, the siutation is somewhat different. The parolee has served a term of imprisonment which may have removed him for many years from his family and his neighbourhood.

It is this form of dislocation that raises manifold difficulties in respect to the personal, emotional and material aspects of everyday living, as well as to the social status of the prisoner. The relevant strands of these areas of social functioning are used by parole officers in case-work treatment, so as to strengthen the prisoner's possibility of adequate readjustment. It is not necessary to enumerate all these areas of work, but it is obvious that the strengthening of self-esteem; repairing damaged marital relationships. of dealing with problems of separation; of preparing a positive plan of employment; of unfolding awareness of personal difficulties; is part of a specialised continuum of treatment commencing in prison and ending in society. This form of social work treatment functionally is the work of one unified specialist group. If the attention of its officers is diverted to other activities, its potential strength and its usefulness to society is weakened.

The parolee's return to society presents difficulties which can be solved or modified through assistance from parole officers. In the system of conditional liberty that we envisage, we also feel that there is a distinct place for voluntary effort. Such assistance, beyond the material help and specialised counselling that can be offered by some agencies, is often not needed in the case of the probationer. Indeed, it often would be undesirable for any voluntary worker in after-care to be asked to maintain contact with a probationer, whose identity as a criminal offender has not been made public, and who therefore does not wish to be in contact with any person other than the probation officer.

An important difference which must be considered in the operation of probation and parole, is the fact that parole officers must commence their work at an early stage of a prisoner's sentence. Throughout the period of imprisonment, parole officers must continue their institutional work as prison social workers, with the focus of treatment on eventual re-establishment in society. Indeed parole officers must be identified by both prison staff and prisoners as those who will carry out this particular function. This process will mean the application of individual casework services and the development of group treatment aimed at involving the prisoner, his family, and people of significance to him. This relationship must be maintained until ultimately it moves beyond the prison into the community. At this point a parole service cannot remain as the sole rehabilitative agent. It must relate itself to a wide community movement in a way which may not be possible or necessary for a probation service.

We realise that both probationers and parolees require help designed to meet material and personal hardships which frequently are of a serious nature. However, with released prisoners after-care assistance necessitates the involvement of many organisations and individuals whose services may not be applicable in work with probationers. In fact the involvement of such voluntary bodies must also commence at an earlier time than the release of the prisoner. It is necessary that they be merged with parole services when a point is reached within the period of imprisonment where help from the community would be appropriate. It is this

framework of action for the operation of both services which suggests to us that they should be separate. At the same time it is acknowledged that both probation and parole services face similar problems in terms of social control. Likewise both services should be staffed by suitably motivated personnel whose training is at a tertiary level of education which will enable the extension of professional social work services at every point in their activities.

It may appear that the two services can be easily merged and that parole officers and probation officers could be interchanged in respect to their cases. This may not be as easy as it would appear, nor would it be as operationally effective as it may sound. At points there are radically different methods of treatment, for example in the development of case-work services within an institutional setting, or in conjunction with voluntary aides, as compared with case-work services in probation treatment with an offender who often may not have any institutional experience.

Furthermore, though both services must at all times give careful attention to the demands of their work, it is only natural in a busy service that the pressure of court work with its requirement for personal attendance by an officer, will preclude at times attention to the needs of a parolee, however urgent, when one officer is performing both functions. An observation pertinent to this fact was made by the late Professor Paul Tappan, Professor of Law and Criminology in the University of California, whilst visiting Australia in 1958 as Fulbright Lecturer at the University of Melbourne. Professor Tappan stated:

> "I think the two do not belong together; at least, it is our experience in a few States in the United States that in a Probation and Parole Department, generally their time and attention go to one or the other and not very effectively to both. The usual parole services suffer as you may imagine. The probation officers are tied up most of their time preparing investigations for the Court. This they must do. The leavings of their time go in the supervision of probationers and, if there is anything left, the parolee may be seen occasionally . . . this is not the way to run a Parole system."

With due allowance for the fact that Professor Tappan was influenced by his experience in the United States, and that he had limited observation of a combined probation and parole service in Australia, there is, nevertheless, a strong strand of realism in his observation, particularly in services where case-loads are high and time is severely limited in the application of field supervision. The requirements of a Court in the preparation of pre-sentence investigation and in its standards of supervision, cannot be ignored or stood over. In this light it is likely that work related to a parolee may take second place because of the pressures that accrue from the needs of the probation field.

All authorities in this field acknowledge the fact that release is one of the critical points in the experience of imprisonment. Its nature is such that it cannot be left to chance in the hope that everything will work out satisfactorily for the released prisoner and for the community. Nor can measures to implement conditional liberty be tacked on as some ancillary service in penal treatment. If this is to be the case, a parole service will be limited and will never reveal its real worth in terms of a reduction of crime amongst released prisoners, in its task of social reclamation, or in its economic value to society through restoring and maintaining past offenders in the work force of a community. A parole service as an independent organisation, with adequate resources, with suitable and well-trained personnel, and with workable case-loads, without doubt can attain the objectives set out in this report. Indeed such a service is the vital force within a system of conditional liberty. If able to concentrate on the one specialised task of parole, involving a process from reception into prison to ultimate restoration in free society, this single unified service will make a positive contribution towards prevention of crime.

In August, 1963, a report of an expert Sub-Committee was submitted by the Advisory Council on the Treatment of Offenders to the British Home Office. This report suggested the establishment of an "organisation for all forms of after-care which would amalgamate compulsory after-care (i.e. parole) and voluntary after-care". It was proposed that this organisation would be merged with the Probation Service. It is interesting to note that a memorandum of dissent by three members of that Sub-Committee, headed by Professor Radzinowicz, indicated in the opinion of the members concerned, that the report had not gone far enough. In their own words.

> "What is needed now is a bolder vision — and a scheme with some guts in it."

They asked how the peculia problems of after-care in an obligatory as well as voluntary sense could be explored with a sufficient sense of urgency and on a national basis? How after-care could be developed into a service "with its own identity, drive, experimentation and expansion". It was pointed out in this Memorandum that the broader question of community provision must be considered and that any policy of after-care must be evolved in relation to the social and economic structure of the country. These three dissenting committee members felt there had been enough tampering with after-care over the last fifty years and that, next to the local prisons, it was the weakest link in the system dealing with offenders.

### C. STANDARDS

We agree that any form of conditional liberty must be one of the strongest links in a pattern of social defence stemming from corrections. To this end it is necessary for parole services to be staffed by sufficient well-trained personnel who should work with reasonable case-loads of no more than fifty persons per officer. We realise that in each case-load there will be parolees who require little oversight or personal care. Nevertheless the exigencies of parole or any after-care service are such that time may be demanded extensively for but one case and often over a long period. This state of affairs will never alter. Therefore, a parole officer must be in a position where he rapidly can give his attention to emergent situations which require speedy action, without reducing his efficiency in other areas of his work.

It must be realised that parole officers can be "burnt out" in a severe and demanding job which with heavy case-loading and ever pressing demands, offers scant respite and little thanks from an often misinformed community. A parole authority should have sufficient flexibility to move its officers within the parole framework from one area of correctional treatment to another. It should have sufficient experienced personnel to provide specialised oversight and guidance through case supervision. It should be able to organise regular staff conferences and case meetings without officers feeling that such meetings are an intrusion into badly needed working time. Indeed the implementation of any form of conditional liberty requires the provision of adequate time for the internal servicing of a system that will always make heavy demands on the personal resilience of its staff.

Finally, we stress the need in conditional liberty for its field staff to have a professional standard of education and

training in social work. This must involve not only studies related to growth and development of the individual but also an understanding of the purposes of punishment, of the sociological forces related to deviant behaviour and the use of authority and other factors of particular relevance to this field within the case-work relationship.

In this way a parole service under the direct control of a parole authority would have the resources and the personnel to implement a form of treatment which will provide both community protection through speedy social re-assimilation and the supervison of released men and women, whilst at the same time making an accomplished fact the rehabilitative aspect of a period of imprisonment.


K. & S. Adams

*Specialising in*

Wrought Iron Gates * Security Doors & Grilles * Pipe Columns * Steel Stringers

**265 3661 — Delta Street, Geebung. Qld.**


# Australian Prison After-Care Council

EXECUTIVE
(1965)

**President:** *The Hon. Mr. Justice J. H. McClemens. New South Wales.*

**Vice-Presidents.** *Mrs. G. N. Frost, C.B.E., Victoria.*

*C. R. Beven, Queensland.*

**Secretary:** *F. D. Hayes, New South Wales.*

**Asst. Secretary:** *Mrs. H. M. North, New South Wales.*

**Treasurer:** *R. D. Hohnson, New South Wales.*

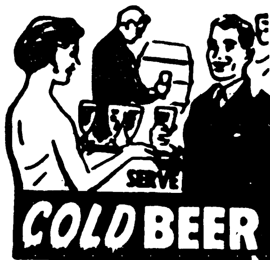
**Committee:** *J. G. Mackay, Tasmania.*

*C. A. Gannaway, Western Australia.*

*R. G. Ince, Victoria.*

*G. Mathieson, South Australia.*

*S. Kerr, Queensland.*


# Railway Junction Hotel

**(Props, D. R. & M. CRAZE)**

• Tooths Old and New on tap • Tooheys New • Tasty Counter Lunch • Accommodation at a reasonable tariff

**FRIENDLY SERVICE**

**FITZROY STREET, DUBBO, NSW**
**Phone: 82 4553**