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"THE ATTORNEY GENERAL'S SURVEY OF RELEASE PROCEDURES"

An Address

by

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Section of Criminal Law of the

American Bar Association,

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Mr. Chairman,

Ladies and Gentlemen:

I need not attempt, before this audience, to describe the effort in which the Department of Justice is engaged to aid in the development of a modern administration of criminal law in the United States. Through the maintenance of high standards of personnel, the constant improvement of material and scientific equipment and the exercise of a cautious, balanced administrative judgment, the Department has sought to fulfill the functions assigned to it in a manner that, it is hoped, may commend itself as an example to those in other jurisdictions working in the same field. The Department has further endeavored to exert such leadership as it possessed in launching a national program to deal with crime. This has not been done out of a conviction of superior wisdom, but rather because of our feeling that the Federal Government had the advantage of a central position, from which helpful impulses might be sent forth to all agencies concerned with the crime problem, whether their jurisdictions be great or small, their status official or otherwise.

Such has been our approach to this situation, and, with the advantage of a Federal perspective of the sordid panorama of crime, it was inevitable that our attention should become focused on the subject of parole. During recent years there has been an increasing public challenge of the validity of that procedure both in theory and in the manner of its administration.

The importance of this subject suggested to me several months ago that the time was opportune for a nation-wide examination of parole, related as it is to the proper administration of criminal law throughout the

country. Because of the variations existing among the statutes and practices of the several jurisdictions, I became convinced that such a survey should include, not only parole but all forms of release procedures. Thus was initiated the studies now in progress, concerning which I have been asked to give a brief report tonight.

The dangerous criminal who may become the subject of parole does not differentiate in his criminal activities between Federal and State laws, and is frequently a violator of both, sometimes in the same transaction. Such criminals become, therefore, common enemies of the states and of the nation; and it behooves us to proceed against them with the greatest possible common understanding of methods of repression and control. Only a few tentative and preliminary studies in small areas have heretofore been made of the operation of parole, but the problem is nation-wide in character and a survey to be useful must be nation-wide also.

This need is readily apparent when we consider the fact that there is not even common understanding of the meaning of the word "parole". In one jurisdiction it means release by the Governor or other executive, under circumstances which resemble so closely the granting of clemency or pardon as to be indistinguishable therefrom. In other jurisdictions the word is used to describe the release of prisoners by trial judges under conditions which approximate the procedure generally known as probation. In a third group of jurisdictions parole means release following an investigation of the record of the prisoner, based upon some form of prediction as to the probability of success following release, and controlled by the supervision of the parole officer into whose custody the prisoner is

placed. Even the third form just described has many variations according to the administrative method in vogue.

So far as the general public is concerned it is quite immaterial by what route a dangerous criminal is released. For instance, if the work of investigation is so inadequately done that a defendant cannot be effectively prosecuted; if by reason of political interference at the arrest stage he is released by the police; if by reason of unintelligent analysis of facts no indictment is found by a grand jury; if by reason of poor prosecution such a criminal is not convicted, the public suffers just as much in the one case as in the other. If an inadequate investigation has been made of a particular case and, thereby, a dangerous criminal is improperly released on probation society suffers whether the release is granted by a trial judge, by the pardon of a Governor, or on parole by a parole board. The public is not apt to draw fine distinctions between one method and another.

There are some who seem to assume that the way to solve the problem of crime is to keep convicted persons "locked up" for very long periods of time. The use of excessive punishment inevitably causes a revulsion of feeling upon the part of the people. It is well known that where heavy sentences are made obligatory by law, juries become notoriously tender toward accused persons and are reluctant to bring in verdicts of guilty. Moreover, long and severe sentences have often produced excessive executive interference by way of pardon and commutation.

Another reason which makes impossible an easy solution by long imprisonment lies in the fact that we have barely enough room in our penal institutions to guard those now incarcerated. Practically all of the penal

institutions of the country are already over-crowded. The cost of maintaining prisons and supporting prisoners is a continual drain upon the resources of our country. Moreover, a large proportion of the prisoners who are confined in penal institutions leave dependents who must be supported at public expense. It is contended by many professional probation and parole officers that a state-wide system of supervision, control, and discipline for certain types of prisoners can be operated at a cost of approximately one-tenth of the cost of maintaining such prisoners in institutions, with as great protection to the public and with much more promising results so far as concerns rehabilitation and readjustment.

The various forms of release constitute a part of the general picture of penal treatment. So considered, what are the relative values of parole, probation, pardon, commutation of sentence, release following credit for good conduct and the other devices which are used by the various judicial, executive and administrative agencies?

The correct answer to these questions is of the utmost importance to any integrated program for the control of crime, or for a modernization of criminal law administration in the United States.

To secure at least a partial answer to these questions, I procured from the Works Progress Administration a fund for the carrying on of the survey, the understanding being that the direction of the work should be within my control through such administrative and supervisory agents as I might select; and further that the clerks to be used for statistical tallying from the records should be supplied from the relief rolls, care being taken to select properly qualified "white-collar" workers. I placed the administrative direction of the survey in the hands of Mr. Justin Miller, one of my special

assistants, who, as you know, is also the Chairman of the Section of Criminal Law of this association. For the position of Technical Director, I secured Dr. Barkev S. Sanders, a member of the staff of the Public Health Service, which generously granted him leave of absence for this purpose. Upon the basis of qualifications set therefor, a group of men were selected as Regional Directors and Regional Field Supervisors. Their quality is well indicated by the fact that Professor Rollin Perkins, the vice chairman of the Section of Criminal Law of this Association, was selected as one of the Regional Directors.

These men were called into Washington early this year and given a special course of training. Thereafter they were sent out into the field and during the intervening months the survey has been initiated in forty-one States and the District of Columbia. We have every hope that the work when completed will include every State in the union, as well as the Federal system.

Many efforts have been made to anticipate the results of our labors, but no reports will be issued until all of the fact-finding has been completed, and probably not thereafter until the task of tabulating, analyzing and preparing commentaries has been completed. It is possible, however, to suggest some of the results which may be achieved.

No doubt the report will reveal the systems of laws, rules and administrative practices which exist in the various States. It will not be feasible to speak with finality as to parole successes or failures, but it will be possible to indicate striking correlations based upon various data as secured, and to indicate directions in which more intensive research should be carried on in the future.

It is not unlikely that the survey will reveal the desirability of establishing a permanent research organization, perhaps in the Department of Justice, for the purpose of carrying on such studies, in order to make available, both to the Federal government and to the States, valuable information as to procedures now in operation, new experiments undertaken from time to time, and suggestions for continued development and improvement.

It is probable - in fact it is inevitable - that the survey will disclose a striking lack of uniformity among the various State jurisdictions. Such lack of uniformity is not in itself necessarily important, especially in the earlier stages of the development of a general plan. There is even some advantage in having so many laboratories at work. The possibilities which thus appear will be readily apparent to members of the American Bar Association because of the fact that in the preparation of the American Law Institute code of criminal procedure exactly the same process was used by incorporating into the code effective procedures which were discovered in actual operation.

A proper understanding of the nature and purpose of probation and parole would remove many objections to their use. Still more convincing would be their proper administration. Not alone the general public, but, indeed, many officials have assumed that these procedures are forms of clemency. They should not be so regarded or so applied. Considered not merely as a method of rehabilitation but, in each case, as a method of punishment administered in such manner as actually to supervise, discipline and control the offender, probation and parole would cease to be looked upon as a way of defeating the efforts of police and prosecutors, and would achieve a recognized position as important as imprisonment and other forms of penal treatment.

It has, also, been suggested that if long-time, scientific research can be applied to the problem it might be possible to achieve as great a certainty in predicting success or failure of persons released as is now possible in the work of insurance actuaries. In any event, the report of the survey can and will present the opinions of professional people (judges, institution officials, probation and parole officers) who are now working in this field and who will largely control the administration of such new techniques as may be developed. The report of the survey should provide, also, a basis upon which the various States and the Federal Government may establish effective methods of cooperation in the handling of released prisoners.

I am deeply grateful to the authorities of the various States for their friendly interest and helpful cooperation in the working out of our plans. I am sure that their participation has been of benefit to them in suggesting new approaches and new methods of administration. Consideration by them of the schedules which are being used by our regional directors and regional field supervisors must necessarily indicate existing inadequacies and the possibilities of improvement.

The report will, of course, show the standards now in use by many well-equipped institutions, courts, and boards of parole and probation. It will cite the methods of record-keeping employed by the most highly developed institutions and administrative agencies and present all available information for the interpretation of such successes as they have been able to achieve. It will make clearly manifest the inadequacies of many existing practices and shed a flood of light upon systems, or lack of systems, which have tended to bring parole into disrepute.

I do not, for a moment, expect that the results of our examination of release procedures will divulge or suggest some pat formula, some neat, precise method, of administering parole and the other techniques related to this problem. The studies now being made are in the nature of an experiment -- an experiment, first, to discover whether it is possible to ascertain the facts from the maze of complicated regulations existing in multifarious governmental jurisdictions in this field; and second, to determine, once the facts are made available, whether public opinion will encourage and support those procedures that have proved successful, and enforce drastic reforms in those jurisdictions where parole and other forms of release are shown to have become notorious failures.

In short, what we seek is the truth. A wider and more accurate understanding of this vital matter will, I am confident, be of marked assistance in eliminating fundamental defects and curing vices of administration.

Those who believe in the central thought that lies at the heart of parole are unwilling that so promising a social device should be debauched by the unworthy or maladministered by the ignorant. Those who have misused parole and have thereby brought it into disfavor have committed a grave injustice against the splendid men and women who are pioneering in this difficult and important field and have, already, in so many places brought about an encouraging development both in personnel and in method.