

PUBLIC HEARING  
before  
SUB-COMMITTEE OF THE SENATE JUDICIARY COMMITTEE  
on  
The New Jersey State Parole Board

Held:  
September 10, 1981  
Room 310  
Bergen County Courthouse  
Hackensack, New Jersey

MEMBERS OF SUB-COMMITTEE PRESENT:

Senator John M. Skevin, Chairman  
Senator John F. Russo

ALSO PRESENT:

Senator Frank X. Graves, Jr.  
District #35

ALSO:

John J. Tumulty, Research Associate  
Office of Legislative Services  
Aide, Senate Judiciary Committee

\*

\*

\*





I N D E X

|   | <u>Page</u> |
|---|-------------|
| Christopher Dietz<br>Chairman<br>New Jersey State Parole Board  | 3 & 1X      |
| Assemblyman William J. Bate<br>District #34   | 23          |
| Robert Personette<br>Member, Board of Institutional Trustees<br>Women's Correctional Institute at Clinton | 24          |
| Stanley Reeck<br>Cottage Court<br>Clifton, New Jersey   | 28          |





SENATOR JOHN M. SKEVIN (Chairman): Good morning, ladies and gentlemen. My name is Senator John Skevin, District 38, Bergen County. I am the Chairman of a special Subcommittee of the Senate Judiciary Committee to investigate Parole Board procedures. This is our third public hearing.

To my right is Senator Frank Graves who represents Passaic County and a portion of Bergen County. He is the Chairman of the Senate Law, Public Safety and Defense Committee. He is extremely interested in this problem involving premature release of those who have committed violent crimes. On my left is John Tumulty, Legislative Aide to the Judiciary Committee.

We have a list of witnesses. If, by chance, you have not signed up and you care to testify, would you see Mr. Tumulty to get on that list.

I would like to open this hearing with a statement.

The President of the United States may well have set the tone for this meeting when he recently told a convention of labor leaders that Americans do not have the right to choose which laws they intend to obey.

To bring that sentiment into focus for our consideration here today, let me read from the New Jersey Statutes. And I will be quoting from 30:4-123.45 of the Parole Laws:

"Public notice shall consist of lists including names of all inmates being considered for parole, the county from which he was committed and the crime for which he was incarcerated. At least 30 days prior to parole, such lists shall be forwarded to the appropriate prosecutor's office, the sentencing court, the Office of the Attorney General, any other criminal justice agencies whose information and comment may be relevant, and news organizations."

That language seems clear to me.

Yet, in one recent case here in Bergen County, we find that Robert Augustine of Garfield, a convicted murderer, was paroled without such public notices having been given.

The Chairman of the Parole Board confirms this fact. He maintains, however, - and here I will quote from a newspaper, specifically, "The Record" here in Bergen County - that he did not think such notice was necessary because the sentencing judge, the prosecutor's office and the press should all have been aware that Augustine would be coming up for parole as a result of a previous Superior Court action. In other words, it would seem that in the opinion of the Chairman, it had become the obligation of the court, the prosecutor and the press to keep up with events rather than the Board's obligation to inform them.

We also have another case, that of Lee Morgenstein of Teaneck, in which the Prosecutor of Bergen County told another of our daily newspapers, "The Passaic Herald News," that - and again I quote from the newspaper - "The notice was so short that the hearing was over before my office had a chance to reply."

Let me go back for a moment to the language defining "public notice." Among those to be notified are - and now I quote again - "any other criminal justice agencies whose information and comment may be relevant."

In this regard, I would submit that the Parole Board, itself, as an agency of the Department of Corrections, should be considered a criminal justice agency. I would also submit members of that Board might well have information and comment which might be considered relevant.

Yet members of that Board do not receive copies of these public notices. In fact, one member has told me: "My first knowledge of a parole comes when I read about it in the newspapers."

I find this shocking. By law, there are six members of the Parole Board - plus the Chairman - and if we are to believe the statement I have just quoted, all members of the Board do not know of pending paroles. How can relevant information and comment come from these presumed experts if they do not know of pending cases?

I would like to add another dimension to this aspect of public notice and the question of whether or not the intent of the statute is being met. Let me propose a hypothetical question. Would it be possible for an individual convicted of a most vicious murder in a New Jersey county to be subsequently released for that crime, then resentenced for a crime in another county, and eventually to be paroled for that second crime without the first county, the one in which he had committed murder, even knowing about the case? Certainly under the requirement that any "criminal agency" with relevant knowledge and comment should be notified of a pending parole, the county prosecutor in the county where this individual was first convicted of murder should be informed.

But, he or she, is not.

I will give you an actual case, that of William Boland who was convicted of murder in Mercer County in 1962. Subsequently, apparently while out on a work release program, this individual committed aggravated assault on a woman, a case which seems to have borne a striking resemblance to the original one. Mr. Boland had a fetish for women who wore gloves. The one he murdered wore gloves and the one upon whom he subsequently committed aggravated assault wore gloves. Mr. Boland, however, had been paroled on the aggravated assault charge without Mercer County authorities ever having been informed of that action. In short, while Mercer County certainly had relevant information regarding Mr. Boland and his background and its authorities might well have wanted to comment on his pending parole, they were not provided with public notice of that parole.

I want to emphasize that this Committee does not have the investigative staff to fully develop all such facts. Who knows how many others might have been paroled without their names appearing on the so-called public notice list. I might add that I have personally talked with a number of prosecutors in the State's major counties and I found that, without exception, they do not believe the notice of pending paroles is adequate nor do they have any way of knowing whether a list, as provided by the Parole Board, is complete. As a result, I am asking this Committee to join with me in requesting that the Attorney General's Office conduct its own investigation to determine whether the parole laws, particularly in regard to public notice, are being met.

As for this Committee, itself, our task remains that of eventually making recommendations for improved legislative procedures. It is becoming increasingly evident to me that the Legislature's intent in regard to parole is not now being met. We apparently have reached a point where paroles, even for the most vicious crimes, are routinely and automatically granted. I believe we will want to take a much closer look at the situation and, speaking for myself, I certainly do not intend to let comments concerning overcrowded prisons influence me to the extent where I believe the problem should be solved by returning convicted murderers and rapists to the streets without requiring thorough compliance with any procedures which may have been established for the protection of the public.

I believe this has always been the intent of the Legislature.

I am not certain, however, that such intent is currently being implemented in New Jersey.

Mr. Dietz, you have heard my statement. Would you like to make any general comments in regard to compliance?



C H R I S T O P H E R     V.     D I E T Z:     Senator, this is the first time ---

SENATOR SKEVIN: Or may I say lack of compliance with the requirements for public notice.

MR. DIETZ: Senator, this is the first time that I have formally been informed by you, other than through the media. This is the first time. We haven't received a letter as to what this is about today. But what I would like to do --

SENATOR SKEVIN: You knew about this. You have had notice of this meeting, Mr. Dietz.

MR. DIETZ: Senator, may I say ---

SENATOR SKEVIN: Will you respond to that question? You have had notice about this meeting.

MR. DIETZ: Senator, what I would like to do if I may have the permission of the Committee is to get into the general overview of the stewardship of the Board now in its tenth month of administering the Parole Act of 1979 and then to respond to your specific questions immediately after that statement.

SENATOR SKEVIN: I would like you to respond to the fact that you had notice of this meeting at least a month ago, Mr. Dietz.

MR. DIETZ: Senator, we knew by a telephone call that there would be a meeting. We did not know the substance of the meeting.

SENATOR SKEVIN: Did you know that the meeting was at least a month from the time you were notified?

MR. DIETZ: You informed us through your committee aide that there would be a meeting. At first, I thought it was a continuation of the questions raised at previous hearings that you have held. This is the third hearing. And I will be very pleased to address the questions previously raised so we can put those to rest, give you an account of our stewardship, and then specifically respond to the questions that you have raised, if I may be permitted to do so.

SENATOR SKEVIN: You have also been aware of the situations involving notice of Augustine and Morgenstein. Isn't that correct, sir?

MR. DIETZ: Through the newspapers, Senator.

SENATOR SKEVIN: Before you start, I would like to introduce Senator Russo from Ocean County who just joined us on the Committee panel.

SENATOR RUSSO: We have met.

MR. DIETZ: Senators, thank you for the opportunity to address you today. My remarks will include reference to several topics of interest to you. They review the Board's activity since its inception, containing an explanation of the Board's decision-making processes and the procedures utilized in parole decision-making, and an analysis of the recidivism this past fiscal year.

The New Jersey State Parole Board was first created in 1948 by an act of the State Legislature. In December of 1979, after extensive research, discussion, and public hearings spanning a two-year period, the Legislature restructured the Board to establish a unified paroling authority for all correctional institutions in the State. This new Act is viewed by many as model legislation. It accomplished several things, among which were the unification of hitherto decentralized paroling authority under one board and a re-affirmation of our State's policy that parole is, and remains, a privilege and not a right.

The Parole Board is now composed of a Chairman and six Associate Members who are appointed for terms of six years by the Governor with the advice and consent of the Senate. The members serve overlapping terms and are subject to re-appointment. Members devote their full time to the duties of the Board. Each appointee must be of recognized training or experience in law, sociology, criminal justice, juvenile

justice, or related branches of the social sciences.

The Parole Board is divided into three two-member panels: Prison, Youth, and Juvenile. This establishes expertise in each area. The Governor must designate, at the time of appointment, two associate members to serve on the panel for juvenile commitments. The remaining four associate members are appointed by the Governor to panels on adult sentences. The Chairman assigns two of the associate members to a panel on prison sentences and the remaining two associate members so appointed to a panel on young adult sentences. The Chairman is a member of each panel.

We are a new Board, just beginning to implement the Parole Act of 1979. Our total responsibility commenced only ten months ago in November of 1980. The new law envisioned a phased implementation. Fiscal year 1980-81 provided us with our first opportunity to develop a track record, to gather statistics, and to evaluate both the new Act and its impact critically.

During fiscal year 1981, the Board conducted approximately ---

SENATOR SKEVIN: Excuse me. Are you going to read this entire 7-page statement? I think we all have a copy of it.

MR. DIETZ: I think it is very relevant, Senator, because many of the questions that will come up later are spelled out in detail. If I go over it now, I will be able to have you question me on it.

SENATOR SKEVIN: If I may, sir, I would like to interrupt you for a moment. Rather than hear you read a 7-page statement in the record - it is very clear what the statement says - I would like to get into the issues that I presented in my statement.

Do you have any comment regarding compliance with public notice?

MR. DIETZ: Yes, sir.

SENATOR SKEVIN: Or lack of compliance.

MR. DIETZ: Senator, I think you are wrong.

SENATOR SKEVIN: Let us know why. Let us know why then.

MR. DIETZ: Let's take the Morgenstein case, Senator. On February 6th, the Board sent to the Prosecutor a notice. On page 3 of that notice appears the name of Lee Morgenstein, Teaneck, New Jersey; date of sentence 6-23-76; sentence reduced 7-27-79; original sentence, life; reduced sentence, 21 to 26 years; jail credit, 351 days; offense, murder. That notice was sent. I contacted the Prosecutor's Office. I am sure he was misquoted in the press, Senator. He has assured me that he received that notice on February 13th. On Morgenstein, the initial hearing was held on March 24th. It was referred to panel on March 30th. It was deferred for an adult diagnostic evaluation. The panel did not receive the necessary reports that we required in the comprehensive nature that we required until July 13th, 1981, at which point the decision to parole was made and the individual was scheduled for release July 28th.

SENATOR SKEVIN: You mean that the Prosecutor of Bergen County was quoted incorrectly that the notice was so short that his office didn't have a chance to reply?

MR. DIETZ: Senator, he had more than 40 days. That may be insufficient.

SENATOR SKEVIN: Did you get a reply from him? In a case involving Lee Morgenstein who shoots his neighbor and gets out in six years, there was no response from the Prosecutor? Is that a thing to be expected from the Prosecutor of Bergen County? I have a high regard for the Prosecutor of Bergen County.

MR. DIETZ: Senator, I am not questioning the integrity of the Prosecutor's Office. I think Bergen County is fortunate to have one of the finest prosecutorial



staffs in the State.

SENATOR SKEVIN: Did you get a response from Prosecutor Breslin?

MR. DIETZ: Senator, it is not unusual for the Board. In fact, it would be unusual where the Prosecutor joins in a sentence reduction as a result of a reversal of an original conviction by the Appellate Division. It is called plea negotiation.

SENATOR SKEVIN: Would you mind answering the question? Did you get a response?

MR. DIETZ: No, we didn't, Senator. But it is not unusual.

SENATOR SKEVIN: I am asking you if you got a response?

MR. DIETZ: The answer is no.

SENATOR SKEVIN: Did you think it was unusual in this type of a case ---

MR. DIETZ: Absolutely not.

SENATOR SKEVIN: --- not to get a response?

MR. DIETZ: No, sir.

SENATOR SKEVIN: --- not to get a response in a serious case where someone takes another life? Do you think it is serious enough?

MR. DIETZ: Senator, you are asking me questions that are rhetorical.

SENATOR GRAVES: He is asking questions because for some reason or other you flounder all over the map and don't answer them. Will you give a yes or no answer?

MR. DIETZ: Senator, I am giving you an answer. The answer is that the original conviction of murder was overturned for prosecutorial misconduct.

SENATOR SKEVIN: Whose misconduct?

MR. DIETZ: The original conviction in Lee Morgenstein was overturned by the Appellate Division. It was remanded to the trial judge for a new trial. There was a plea negotiation, at which point the Prosecutor joined in a reduction in sentence which resulted in this early parole. I don't know how to say it any different than that, Senator.

SENATOR SKEVIN: Will you just answer the question. Don't you think it is unusual for the Prosecutor of Bergen County not to respond to this horrendous and heinous crime committed by Morgenstein in this county - his being let out in six months? Do you think that is unusual?

MR. DIETZ: Senator, I am not trying to be unresponsive.

SENATOR SKEVIN: Just answer the question yes or no.

MR. DIETZ: The conviction of the heinous crime was overturned by the Appellate Division of our State. There was a plea negotiation entered into. The Prosecutor joined in that. When that happens, it is not unusual for any Prosecutor in the State not to respond to our notice because they knew what the consequence of the plea bargain was.

SENATOR SKEVIN: So your answer is no, that you don't think it was unusual.

MR. DIETZ: Not in this particular case because there was a reduction in sentence before a court of competent jurisdiction.

SENATOR SKEVIN: Your answer is no, then, you don't think it is unusual for the Prosecutor to fail to respond to your notice involving the pending parole of this killer? Is that what your answer is?

MR. DIETZ: Senator, it is not unusual for any prosecutor in the State. I don't want to single out Bergen County.

SENATOR SKEVIN: I am talking about this particular case.

MR. DIETZ: It is not unusual in this case and it wouldn't be unusual in any case where there was a reduction in sentence due to a reversal.

SENATOR SKEVIN: We have your answer. Your answer is no. You don't think it is unusual.

All right, specifically, I understand that you do not deny that Robert Augustine's name was not on the list, that you didn't consider it necessary; is that correct?

MR. DIETZ: Senator, when Mr. Augustine stood before Judge Hewitt on March 13th and Judge Hewitt reduced the sentence, the Bergen Record carried on March 15th ---

SENATOR SKEVIN: Mr. Dietz, please do not go into a speech.

MR. DIETZ: What I am saying, Senator, is ---

SENATOR SKEVIN: All I am asking for is a yes or no answer.

MR. DIETZ: Our office did not ---

SENATOR SKEVIN: You do not deny that Augustine's name was not on your public list? It's a simple question.

MR. DIETZ: Senator, there was no way it could have been on the list, according to the mandates. There are two sections of the law.

SENATOR SKEVIN: Your answer is ---

MR. DIETZ: No.

SENATOR SKEVIN: --- that it was not on the list.

MR. DIETZ: Because we couldn't have put it on the appropriate time list.

SENATOR SKEVIN: Okay. It was not on the list.

MR. DIETZ: Yes, sir.

SENATOR SKEVIN: Is that accurate?

MR. DIETZ: Yes, and I said that.

SENATOR SKEVIN: Why did you consider that not necessary?

MR. DIETZ: Senator, the day he was sentenced, the judge noted in open court and it was reported --- and I would ask that this be made a part of your record. (Mr. Dietz hands paper to Senator Skevin.) I think it is in the third paragraph. The judge noted that there would be immediate parole eligibility. The prosecutor was present at the time. My office --- I did not direct. If you are asking me did I direct that a notice not be sent out, no, I did not do it.

SENATOR SKEVIN: I am asking you why you didn't think it was necessary. That is all I am asking.

MR. DIETZ: What I responded to in the press was that the spirit of the law was carried out. It was more than adequate in this case than any case---

SENATOR SKEVIN: Why did you think it was not necessary?

MR. DIETZ: Senator, because the newspapers carried headlines of immediate parole eligibility. The judge mentioned it from the bench that this resulted in immediate parole eligibility. The prosecutor participated in the plea bargain that resulted in a sentence and it was immediate parole eligibility. Everyone knew.

SENATOR SKEVIN: So, you felt it was within your discretion not to notify the people involved in the statute.

MR. DIETZ: No, Senator, that is not what I felt. I wish I had the staff. I wish we had the resources. And this is something you hear from every agency. But if you were to say to me, Mr. Dietz, you have a choice of two things: command before you the necessary reports to make sure that the individual that is going to be returned to society is, in fact, safe to return. I would spend my effort on that. We are under-cut on secretarial assistance. We have not enough space, Senator. I have invited the Committee to come to our offices. I have even asked them to come to our hearings to see the type of circumstances and conditions we work under.



SENATOR SKEVIN: Mr. Dietz, I just want to know, do you think you have a discretion not to notify the proper authorities under the statute?

MR. DIETZ: Absolutely not, Senator, and I have already asked the Bureau of Budget --- There is no question ---

SENATOR SKEVIN: But in this case, you made the decision not to notify the authorities; is that correct?

MR. DIETZ: No, sir.

SENATOR SKEVIN: You didn't make the decision?

MR. DIETZ: No, sir. There is insufficient staff. The staff had a letter.

SENATOR SKEVIN: Don't blame it on the staff.

MR. DIETZ: I am not blaming it on the staff.

SENATOR SKEVIN: Just tell me why.

MR. DIETZ: It never came to my attention. May I explain why? The father of the victim in the Augustine case had written us 7 days after the reversal and the resentencing in the court on March 13th. We responded. In the file at that time, when we were finally notified by the Department of Corrections of the official action taken by the court, it was already --- even a note from the victim's --- which is very unusual, very rarely ever happens --- I am sure what happened at that time was, someone did not come to me and say, "Do you think we have to do this?" It was an oversight. Will it ever happen again? Absolutely not.

SENATOR SKEVIN: It was not the question of the staff or of a low budget, or whatever?

MR. DIETZ: It was an oversight, Senator. I wrote to the Budget Bureau and asked for additional people and I am sure we will get them, because I agree with you. It is not that we disagree on what you are saying.

SENATOR SKEVIN: So you don't have any discretion. Is that what you are saying?

MR. DIETZ: Absolutely not, Senator. But in this case, I feel that the spirit of the law was met. Yes, there was an oversight. Yes, in fact, I did not cause that to be done. But I didn't do it personally. I didn't say, "You don't do this." It just happened because it appeared to an individual to be appropriate. It won't happen again, I can assure you. But I do assume the responsibility for it. There is no question but that it is my responsibility.

SENATOR SKEVIN: Well, this is the first time you have admitted that, Mr. Dietz.

MR. DIETZ: I admitted it in the press. I said we didn't.

SENATOR SKEVIN: As far as I can see in the press, you said it wasn't necessary.

MR. DIETZ: I said that we had not done it ---

SENATOR SKEVIN: I will quote from the press.

MR. DIETZ: Senator, you and I both know that the press doesn't accurately ---

SENATOR SKEVIN: Unless you feel that the press is not accurate.

MR. DIETZ: There are times, that they just can't ---

SENATOR SKEVIN: (Reading) Dietz says he is positive the Parole Board did notify Breslin.

MR. DIETZ: On Morgenstein, yes, we did.

SENATOR SKEVIN: But on Augustine, no notice was sent out because he did not think it was necessary. That was a misquote by The Record?

MR. DIETZ: It is a conclusion, Senator. I admitted to the reporter we had not --- I specifically admitted to the reporter - excellent reporter, by the way - that

I did not send the notice. He said, "Why didn't you?" I said, "because it was in the newspaper ---"

SENATOR SKEVIN: --- because it wasn't necessary. Is that what you said, because it wasn't necessary? Is the quote accurate?

MR. DIETZ: It would appear in retrospect, if you are Monday morning quarterbacking - I am not saying that we should do it that way, Senator --- I am saying that it appeared that we met the spirit of the statute with public notice.

SENATOR SKEVIN: Isn't it a fact that you discussed with this reporter that it wasn't necessary?

MR. DIETZ: I said it appeared --- The accurate quote was: It would appear that the spirit of the statute had been met, that we were obviously under a mandate to go forward with other critical responsibilities, that more notice in the Augustine case --- And you know as well as I do, Senator, that last year we paroled 200 murderers perhaps out of a possible 1,000.

SENATOR SKEVIN: Tell me was this reporter from The Record accurate when he said you felt it wasn't necessary.

MR. DIETZ: Senator, the accurate quote, okay, which he digested ---

SENATOR SKEVIN: Answer yes or no; was it accurate when this reporter from The Record here in Bergen County said that you felt it was not necessary?

MR. DIETZ: The reporter contracted a statement.

SENATOR SKEVIN: Can you answer it yes or no?

MR. DIETZ: Senator, I told you what my statement was. Obviously, it is not an accurate, in-context statement. What I am saying is he condensed it down. Did I say at some point it wasn't necessary? Yes, I said when the spirit of the law is met, perhaps it wasn't necessary, or whatever I said at the time.

SENATOR SKEVIN: Did the spirit of the law give you any discretion?

MR. DIETZ: Senator, it was an oversight. I admit that there was an error made in our office and I am responsible for it. But it did not have an adverse effect upon public safety. There was adequate notice. To make sure that never happens - and normally it would never happen, except that we had been notified in this case, sir, four months after the court --- three months after the court action almost - two and one-half months - so that we were under an obligation to expedite as best we could a late parole hearing. Had there been sufficient time, had the sentence envisioned sufficient time for us to be able to do what the law mandates --- The date Augustine was sentenced, I was 90 days late ---

SENATOR SKEVIN: Mr. Dietz, we are talking about the notice now. Will you stay on that issue?

MR. DIETZ: I am, Senator; that is what I was just going to tell you.

SENATOR SKEVIN: Don't you think it was a little unusual again for the Bergen County Prosecutor in a case where this man batted his wife's brains out and comes out after serving six years --- that the Bergen County Prosecutor had no comment to make about this case? Don't you think it is unusual?

MR. DIETZ: Senator, I gave you a copy of the Bergen Record article. The answer is - perhaps you should ask the Prosecutor. I don't know.

SENATOR SKEVIN: I am asking you. You are the Chairman of the Parole Board involved in the release of these two murderers. We are asking you.

MR. DIETZ: Senator, I repeat the same answer I explained to you. When there is a reversal for misconduct or otherwise and it goes back for a plea negotiation, it is not unusual in either Bergen County or any county in the State for a prosecutor to not respond.

SENATOR SKEVIN: So your answer again is, no, it is not unusual ---



MR. DIETZ: I don't consider that unusual.

SENATOR SKEVIN: --- for the Prosecutor of Bergen County not to respond to this situation?

MR. DIETZ: No.

SENATOR SKEVIN: In the case of the Mercer County authorities that I mentioned in my statement, don't you think that the Prosecutor's Office in Mercer County would be an interested criminal agency since Boland was convicted of murder in that county?

MR. DIETZ: I will tell you, Senator, I agree with you there entirely that there should be a provision and there should be something. And I certainly will take that back to my Board. I think we have the authority under the Administrative Procedures Act to make sure that all prosecutors touching --- It will be an administrative burden. You are right. But in that case, again, sir, before Boland was ever released, the Trenton papers carried headlines on Boland.

SENATOR SKEVIN: But it is your responsibility under the statute to provide public notice.

MR. DIETZ: No, sir. It has been interpreted for budget purposes that our responsibility is only to the county from which the individual is. I agree with you and I think ---

SENATOR SKEVIN: You have the responsibility. The Mercer County authorities should have been notified of this case. Isn't that so?

MR. DIETZ: Senator, I was not aware of that responsibility.

SENATOR SKEVIN: You are not aware of it?

MR. DIETZ: I was not aware that if an individual had been sentenced under another --- and that parole action had already taken place on that and they were no longer a party in interest ---

SENATOR SKEVIN: Don't you think it is a responsibility to protect the people of our State to have that information before a parole hearing about a prior conviction for murder?

MR. DIETZ: I agree with you. And if the Legislature will give us the sufficient funds to be able to do that, I would be more than happy to do it.

SENATOR SKEVIN: Come on, Mr. Dietz, you are begging the question. How many funds do you feel are necessary to notify a prosecutor of a county where a murderer was convicted? An 18-cent stamp?

MR. DIETZ: Senator, it is not an 18-cent stamp. People don't go to State Prison as first offenders. Normally, the rap sheet is 3 pages long. It is not notifying Mercer County; it is notifying many counties. I agree with you, all counties should be notified.

SENATOR SKEVIN: How about in this case, notifying the Prosecutor of Mercer County about a conviction of aggravated assault and, actually, murder is a successful aggravated assault? How about notifying the Prosecutor in that particular county?

MR. DIETZ: Senator, there is no question that the Board should take under advisement or the Legislature should mandate that we do. I agree with you. But for you to say to me, "Mr. Dietz, why didn't you do it in this one case," because then we would have set up a special circumstance ---

SENATOR SKEVIN: It is not in this one case, Mr. Dietz, is it? It is in a number of cases. How many cases are there throughout the State where this has occurred? We know at least two serious cases here in our State: Augustine and Boland. How many other cases are there? And how about the members of the Parole Board, itself, do they all receive copies of the pending paroles? Do they receive copies of pending

paroles?

MR. DIETZ: Senator, it is as available to the press --- right downstairs ---

SENATOR SKEVIN: I am just asking a simple question.

MR. DIETZ: I do not make copies for each Board member. If they want to see what the Board action is, it is down there. Right in the center of our office there is a folder with every decision in it, a matter of public record for any person to see.

SENATOR SKEVIN: You have no distribution to the Parole Board members, is that correct?

MR. DIETZ: Senator, there were 18,000 decisions last year. For me to reproduce 18,000 times 6 ---

SENATOR SKEVIN: I am just asking ---

MR. DIETZ: --- no, of course I don't.

SENATOR SKEVIN: I am just asking whether the Parole Board members receive notice of the pending paroles. That's a simple question. Yes or no?

MR. DIETZ: I expect that my Board members would be able to get that list if they chose to get it. They know it is published. They know their cases are on it. I don't give them a copy of it.

SENATOR SKEVIN: They don't receive the list; is that correct?

MR. DIETZ: No - until recently. We just agreed we would.

SENATOR SKEVIN: How about notifying the press; how is this done?

MR. DIETZ: We take the notices that we send to the prosecutor, AG and the judge and we bring them to the State House and they are distributed to the State House press. That is the only notice that is given, Senator. I agree with you there.

SENATOR SKEVIN: Who prepares the public notice?

MR. DIETZ: Our office.

SENATOR SKEVIN: Are you involved in it at all?

MR. DIETZ: It is done by our staff, Senator; but I am responsible for it.

SENATOR SKEVIN: Do you have any idea as to how many other names, such as Augustine and Boland, may actually have been left off previous lists and also how many cases, let's say, in a year, of an individual paroled for a crime committed in one county without authorities in other counties where he had committed previous crimes being notified, like Boland?

MR. DIETZ: Senator, I would say that there would be virtually none.

SENATOR SKEVIN: Do you know? Do you have any idea? How do you know?

MR. DIETZ: I am confident that our procedures pick up. I am sure that the appropriate authorities from the actual point of conviction - the Camden County authorities - whichever it was in the Boland case - I don't have that here - did receive, as in Morgenstein, the proper notification. I do agree with you we ought to expand that, personally. And we certainly will explore that. But we did not feel that that was our responsibility, nor was it ever explained to us in any way that it was. We never considered sending it to all counties that had any previous convictions of the individual. It is a very meritorious concept. I think it is something worth looking into. And I don't think that the cost should matter. I agree with you on that also. But there are very few cases where a judge reduces a sentence - I would say infinitesimally, maybe less than 1 percent, if that, much less than 1 percent - where resentencing produces an immediate parole or a past parole eligibility. Sometimes it happens, but it is so infrequent that it rarely happens. So with the Augustine case, that is an exception that I would say almost never happens.

SENATOR SKEVIN: And the Boland case is another exception; it never happens.

MR. DIETZ: In the Boland case, I agree with you, Senator, we did not feel at the time - when I say "feel," I am not saying exercise judgment --- we were not

under any explicit direction to mail to any person but the county from whence the matter was being considered. If you are saying to me, should we notify all counties that had any touching with the criminal, I think that is a very smart idea.

SENATOR SKEVIN: I don't think, Mr. Dietz, that public notice to the newspapers is adequate for such heinous crimes as were committed by Augustine or Boland.

Along these lines of questioning, I would like my colleagues to have the opportunity to participate and ask questions. Senator Graves?

SENATOR GRAVES: I would like to have John go first.

SENATOR RUSSO: Chris, - and I think John may have covered this in his initial statement before I got here - but clearly there is no notice at the present time given to any victims or the families of victims in the case of murder; is that correct?

MR. DIETZ: No, Senator. What I imagine we relied on --- and I was speaking to one of your colleagues, Assemblyman Bate. He is going to address that issue specifically with a proposal that I think is just super. No, there is no provision. The answer is no. We rely upon prosecutors to contact if they choose to.

SENATOR RUSSO: I am not, of course, familiar with what Bill is going to talk about. But I have legislation prepared for filing and I would like your comments on it that would require - and I emphasize the word "require" - that notice be given to the victim of a serious crime or, in the case of murder, to the family of the victim and invite them or allow them the opportunity to testify at the parole hearing. Chris, could you comment on that legislation, both from a philosophical point of view and from a budgetary point of view, whether it imposes any undue burden or whatever?

MR. DIETZ: Senator, we discussed among ourselves - and I was discussing with some of my key staff --- and I hate to preempt your colleague Mr. Bate, but I think it goes right to the heart of what you are saying. First off, I don't think that the Board should maintain the record of victims, because too often we have had victims come to our office saying, "Please, don't let anyone know where I am. I am afraid of reprisal." I do agree with you. I think that the Prosecutor should maintain the list of victims and when we send notice --- and perhaps it means, to take Senator Skevin's suggestion further, providing 60-day notice to the Prosecutor so there would be more than enough time to accomplish that, rather than the 30 days required now. But with the Prosecutor, I would almost go a step further, if the victims wished. To bring them down to a prison --- Our hearings are held behind the wall. There is no way that Commissioner Fauver is going to take a person that is in the center of Trenton prison and move him out to some less secure facility. We go behind the wall to do our hearings. To bring a victim, inside there might be --- If you are saying, should the Board receive --- we do that now. Any victim who wants to come to our office and talk to us in advance or give us information, we accept that. I don't know how that could be done from a security point of view.

SENATOR RUSSO: I am not following you.

MR. DIETZ: You are saying, should the victim be present at the hearing to testify? I don't know how it could be done.

SENATOR RUSSO: Let me say it again. The legislation that I have would require you, the Parole Board, to notify the victim or the survivors of a victim in the case of murder, and allow them - advise them of their right to be heard if they so choose. It can be behind the prison walls; it doesn't say you have to go downtown. It would simply put a requirement on them --- Let me tell you what happens and it happened particularly in Ocean County in a rather prominent murder case, the last capital case that came out of Ocean County - I was the prosecutor in it - and one of



the two defendants - a rather vicious murderer - was paroled. You probably gave the notice to the Prosecutor. I can't say whether you did or not. I assume you did. But the victim's family learned about it through the newspapers after the parole and, of course, called me since I had been the Prosecutor. They were quite upset that they hadn't had the opportunity. I am sure this goes on a lot around the State and it goes on because there is not a requirement. It is not a reflection on your office as no one has put this burden on you.

MR. DIETZ: Senator, may I ask you a question? How would we maintain an accurate --- In order words, how would we maintain an accurate list of people who should be notified? Would it be the last known address? Would it be part of the pre-sentence report?

SENATOR RUSSO: It may be that the notification perhaps should come through the Prosecutor. I don't know. We can work out the mechanics on that. I guess what we are really talking about now is policy, that we should level the level of the ocean, but the details of how we are going to do it, that is somebody else's job. We want to put a requirement that the victim or his family be notified. Certainly, if they can't be found, well then, you can't do anything about that. For example, in this particular case and the particular cases Senator Skevin talked about, I assume the people were still where they were in that area. Certainly, they were in the Ocean County case. They could easily have been notified and at least have been given that right to present testimony. True, it will often be emotional. But that is not to say that it isn't part of our system either. With the requirement, the mechanics of which can be worked out, particularly in serious cases - certainly murder - that the family of the victim should be notified that 60 days from now there will be a parole hearing at the State Prison, or wherever, and you have the right to testify and here is how you do it, here is who you contact, at least then they have that opportunity to speak their piece and bring their thoughts before you, be they emotional, factual, or whatever.

MR. DIETZ: May I comment on your suggestion? I was going to say to Senator Skevin before he opened the panel to questions that at the time we discussed this bill, a year and a half or two years ago, I felt very strongly and I still feel strongly today that there ought to be public moneys allocated for public notice so that a newspaper doesn't have to give free space, that in every county of the State the major newspaper - and the Secretary of State can identify them - there would be a list once a month published so that the first notice would then be, not that the individual has been paroled, but that, in fact --- and I think moneywise, it is money well spent.

SENATOR RUSSO: But that doesn't solve the problem because my recollection is - what do they say? 30 percent of the people read the newspaper and that includes those who read the sports, although that is dwindling the way the Giants are going. But it is a small number of people who read newspapers. Certainly, oftentimes in the case of crimes where you are dealing with people of the lower education and economic strata, it may be even less. So a letter sent to the last known address, as you put it, or whatever, with the help of the Prosecutor, to the family - I am talking about homicide - to say that you have this right to testify and here is the date and here is the place, at least public relationwise in the era that we live in of rising crime, rising murder and what not, certainly makes a lot of sense to me as a legislator. I ask you whether mechanically you see any grave problems, other than the location of the victims.

MR. DIETZ: Just identify the victims so we could work with the Prosecutor and have that identified at the time of the sentencing. Maybe we could get the clerks

to give it to us as part of the pre-sentence report. Senator, I agree philosophically with what you are saying. But there is another problem and I bring this to the panel's attention. That is, so often, victims have come into my office and said, "I thought the individual was getting life." It was an indeterminate sentence to life. "I thought he was going to be put away for x number of years. They told me he would never get out for these number of years." He is eligible in 3 or 4 years. It also ought to be mandated that the appropriate criminal justice agency inform the victim at the time of sentencing of the consequences of the sentence so that they are not misled.

SENATOR RUSSO: Well, that is another problem. The difficulty now is they think he is going to be there for life and they don't even know he is going to be paroled until they run into him at the corner drugstore and they see him there, to make the point by exaggeration, almost really what happened in the Ocean County case. That is another problem though, Chris. Maybe we should take that up separately in another area. At least, certainly, - and I think I understand that you agree with me philosophically that you would support legislation that required notice be given to the victim or the families of the victims in serious criminal cases and give them the right, if they so choose, to come down behind the walls and be heard.

MR. DIETZ: I see nothing wrong with that. I would think it would not be a second opportunity for re-sentencing, but to contribute anything that might not have been available in any of the reports available to the Board. The Board would certainly give appropriate weight to that.

SENATOR RUSSO: It is true - and in all fairness we have to, I think, admit - that most of the testimony by the victims or their families will really be totally irrelevant to the issue you are going to have because it is an emotional one. They don't want them out most of the time. The argument could be made, why go through a charade.

MR. DIETZ: It is not a charade.

SENATOR SKEVIN: Maybe it serves as a reminder, Senator - if I may interrupt - of what the original crime was so that the Parole Board members would realize what they are doing in terms of premature release. That would certainly be an important factor.

SENATOR RUSSO: I think so - I think that is well put - particularly in those really serious cases.

SENATOR SKEVIN: I think more serious than homicide, Senator.

SENATOR RUSSO: It is about as serious. To see the effects of that murder and bring it to the fore, not just as an individual - has he or has he not been rehabilitated - but to really see the dramatic effects of it, certainly I think is something that the public has a need for and I think we have to respond to that. I think it makes sense.

SENATOR SKEVIN: I think you make a very valid point, Senator. Also the Parole Board would have an opportunity to see the effect on the family and the relatives involved in terms of the original homicide.

MR. DIETZ: Senator Skevin, may I just say one thing?

SENATOR SKEVIN: We would like to continue with the proceedings, if we may.

MR. DIETZ: May I respond to what you just said, Senator?

SENATOR SKEVIN: We would like to continue in this area, Mr. Dietz.

MR. DIETZ: I will wait then.

SENATOR SKEVIN: Senator, do you have anything further?

SENATOR RUSSO: That is all for now.

SENATOR SKEVIN: Senator Graves.

SENATOR GRAVES: I sit here at the invitation of Senator Skevin. I hold a comparable committee chairmanship of Law and Public Safety. I sit here as the new legislator for Bergen County, having been shifted by reapportionment. Senator Hagedorn, Senator Skevin and Senator Graves all now represent Bergen County and we are all here. And Senator Russo who is also here has the expertise because he was formerly a Prosecutor here in the State.

There are two or three things that are incredible about this committee. Number one, with the support of the three Senators sitting here, I wrote a mandatory law because I felt that law was necessary to punish criminals that were found guilty in view of the compassion and sympathy that are being offered by judges, not so much on the parole end, but if you did it and you did it with a gun, you would have to go to jail and there was no getting out.

We wrote a law to provide more police for the State.

Now we sit here today not so much because of the laws we have written, but because you as an individual are a prime example of showing compassion to people and sympathy to people who aren't worthy of it. You seem to base your appraisal of a person on their actions while being incarcerated and how they behave there. It seems that you as an individual forget what caused them to be put there in the first place. I think we are going to have to write more laws to hold the public safe from people like you, not from the laws that now exist, but from people under your direction. We have read in the newspapers where you and one other person make a decision that somebody deserves their freedom, or where there is a tie vote or where two people don't vote and a three to two vote releases another killer. It is a shame that in 1981 that Senator Skevin has to bring us all together here today to help prepare laws to safeguard us from another arm of government. You are not from outer-space; you are from another arm of government that our constituency depends upon to protect them from these criminals. Here we are right back in the same syndrome that we went through with the judicial matter.

SENATOR SKEVIN: Senator, well said.

MR. DIETZ: Senator ---

SENATOR SKEVIN: Mr. Dietz, we will give you an opportunity later. We would like to continue on the issue of notice and the issue of your reports and the statistics that you presented to the committee.

At our prior hearing, we asked for statistics that you said were not up to date and you did not have available to you at our two prior hearings, further that you would not be able to compile these statistics until the early part of the summer. By letter of August 25th, you sent a version of your statistical overview section of the Board's report. Do you have a copy of that report, Mr. Dietz? I have a copy in front of me with your covering letter, dated August 25th - statistical overview. Would you desire to enter that into our record?

MR. DIETZ: I will submit it to you, certainly. It is a rough draft, Senator. What we are doing is double-checking its accuracy. It is an early draft of it.

SENATOR SKEVIN: It is fairly substantial of what is happening in terms of your activities under the new Code. Is that an accurate statement?

MR. DIETZ: It is a rough draft that is currently being reviewed carefully as to its final accuracy. When we submit to you our formal report, which should be forthcoming, I would hope, within 60 days, that will be the most accurate information



available to us.

SENATOR SKEVIN: All right. I want to compliment you on the comprehensiveness of that report. If I read it correctly, it states during the year of 1980, a total of 4,743 paroles were granted. Is that accurate? That is what it says on page 2. Is that accurate?

MR. DIETZ: I would presume so.

SENATOR SKEVIN: Returning to the figures, looking at page 3, I believe that the total of 4,743 is composed of 2,171 from the youth complex; and 2,572 from others. Do I assume that is the adults, the "others"?

MR. DIETZ: Yes, sir. It could include some juveniles.

SENATOR SKEVIN: For the most part, those 2,572, are adult crimes; is that accurate?

MR. DIETZ: Yes.

SENATOR SKEVIN: I want to return to the breakdown between youth and adult. Table 5 provides a rather detailed breakdown on the young people's panel in terms of the offenses: murder, manslaughter, kidnapping, aggravated sexual assault, etc. Do you have any comment on that?

MR. DIETZ: What comment are you looking for?

SENATOR SKEVIN: Does it provide that type of detail. Is that accurate?

MR. DIETZ: No, that is the average months of time goals given for those persons by the panel during the period of time.

SENATOR SKEVIN: There is a detailed breakdown of those various serious crimes.

MR. DIETZ: Yes, sir.

SENATOR SKEVIN: Table 6 provides the same information on the juvenile panel; is that accurate?

MR. DIETZ: Yes, sir.

SENATOR SKEVIN: However, I don't seem to find the same information attached for adults. Is anything missing?

MR. DIETZ: Sir, eligibility is not determined by ---

SENATOR SKEVIN: Okay. You don't have the same information for adults; that is, the same breakdown as you had for juveniles and youth offenders for serious crimes. You haven't provided that.

MR. DIETZ: No.

SENATOR SKEVIN: All right. It is as simple as that.

Could you tell me how many adult murderers were paroled among that total of 2,572?

MR. DIETZ: That is what I was going to tell you, Senator. Thank you for the opportunity. In 1980, I did, anticipating the question, compute what we did ---

SENATOR SKEVIN: We don't have that in our report though.

MR. DIETZ: No, I just got it. I just did this, Senator.

SENATOR SKEVIN: But that is missing from the original report. Is that accurate?

MR. DIETZ: This is only murder. It is nothing else. The State Prison considered a case of murder. One person had a five-year sentence. And this is the difference, because we don't control sentences. And the other two panels ---

SENATOR SKEVIN: Mr. Dietz, would you just answer the question. How many adult murderers were paroled of the total of 2,572?

MR. DIETZ: Well, not paroled. These were the ones that were --- Yes, paroled. Two hundred and fourteen.

SENATOR SKEVIN: How many rapists or other sexual offenders?

MR. DIETZ: I don't have that, Senator. May I just explain the information to you.

SENATOR SKEVIN: I wish you would answer the question. How many rapists or other sexual offenders?

MR. DIETZ: I don't have that, Senator. May I continue, please. Senator, you are being most unfair on this. You cut me off when I want to give you an explanation.

SENATOR SKEVIN: I think I know now why you made every effort to prevent this committee from being formed.

MR. DIETZ: Senator, I made no such effort.

SENATOR SKEVIN: Excuse me.

MR. DIETZ: I made no such effort.

SENATOR SKEVIN: You know damn well you made considerable effort to prevent this committee from being formed.

How many rapists or other sexual offenders, Mr. Dietz?

MR. DIETZ: We don't have that, but we would be happy to get that for you.

SENATOR SKEVIN: Okay.

I will yield to Senator Russo on the question of murders.

SENATOR RUSSO: Mr. Dietz, do you know, or do you have any information, or is it available if it is not here today, the average number of years spent in prison by those 214 murderers for those particular murders?

MR. DIETZ: No, Senator, I don't have the average number of years, but I could give you a breakdown of the sentences which I think are shocking. That is what I wanted to bring to the committee's attention. There was one person who got a 5-year sentence for murder, 22 people who got 6- to 10-year sentences for murder; 52 people who got 11- to 15-year sentences for murder; 45 people who got 16- to 20-year sentences for murder; 29 people who got 21- to 25-year sentences; 26- to 30-year sentences were 39; 31 or more, 7; and only 19, less than 10 percent, got life from the judges. And parole eligibility is determined by the sentence. That is what I wanted to respond. It is not that we are insensitive. But if a judge gives 5 years for murder, not just by auto, not manslaughter - this is what your law corrected --- 2C is probably the most magnificent document that has ever been presented, in my opinion - and I have said this time and time again to the committee. 2A - there are going to be other cases. Responding to Senator Skevin from the last hearing we had, are there some sleepers in there that are going to be able to get through the cracks? - yes, because of the constitutional mandate against ex post facto legislation. Is it wrong? Absolutely, it is wrong. I agree. You know it was only 5 years ago, Senator, that I was before a Senate committee charged with being too conservative.

SENATOR SKEVIN: May I interrupt. Mr. Dietz, first you blame the Legislature for being too lenient on the law itself, which permits you to grant early release. Now, you are telling us you have kept people in for extended periods of time.

MR. DIETZ: I have never done that. That is not true, Senator. That is a falsehood.

SENATOR SKEVIN: You can't have it both ways.

MR. DIETZ: I have never said to the Senate or the Assembly that.

SENATOR SKEVIN: All we want from you is information. And we have asked for this information several times. How many rapists and other sexual offenders are involved in the adult portion of this report?

MR. DIETZ: I will get that information for you, Senator.

SENATOR SKEVIN: When?

MR. DIETZ: As soon as I can personally do it.

SENATOR SKEVIN: Is that 30 days or next year?

MR. DIETZ: Senator, do you want me to stop parole hearings? I will do it as soon as I can.

SENATOR SKEVIN: I want some idea because you promised this information to us at prior public hearings.

MR. DIETZ: Senator, I thought we had met what you wanted. If the Senator would be so kind as to give me a list ---

SENATOR SKEVIN: Can you give me some idea when.

MR. DIETZ: I will do it, Senator. I am not playing with you. Just tell me what to do and I will do it.

SENATOR SKEVIN: You provided this information for youthful offenders but it is not here for adult offenders. Why not?

MR. DIETZ: The reason we give you the information on juvenile and young adults is because there is no set term by the court. The Board is empowered by the Legislature to set those terms.

SENATOR SKEVIN: Let's go to the report, Mr. Dietz.

MR. DIETZ: The judges set the eligibility on the others.

SENATOR SKEVIN: When we look at the figures for parole revocation, can me tell you how many of these involved for murders or sexual offenses repeated their crimes? Can you tell me that from your report?

MR. DIETZ: No, but I certainly will cause to have that information brought together for you. Had I read all my statement to you, a lot of these things would have been discussed. At the end there is a breakdown of new crimes. We don't have the breakdown from the department.

SENATOR SKEVIN: All we want is the answers to these questions; we don't want excuses.

MR. DIETZ: Senator, I don't have a computer capacity. I don't have a word-processing ---

SENATOR SKEVIN: You provided it for the youthful offenders and the other category. Why weren't they provided for the adults?

MR. DIETZ: Because the law requires that we publish lists for time goals and ranges for time goals for the two categories you mentioned. The judges set the sentence and eligibility in the State Prison. We have no jurisdiction over that.

SENATOR SKEVIN: I can't see why you couldn't provide the information we asked for, Mr. Dietz.

MR. DIETZ: I will.

SENATOR SKEVIN: Let me yield to Senator Russo.

SENATOR RUSSO: Senator, I just wanted to ask you to add to your request a breakdown of the average number of years, regardless of sentence, that these murderers serve before being paroled. Then we will break it down by sentence. But if you could add that to the formal request that we are submitting, Senator Skevin, it would be helpful.

SENATOR SKEVIN: Is that understandable, Mr. Dietz? Do you understand our request?

MR. DIETZ: Senator, may I ask so that there is no misunderstanding, because it is obvious that you have created an adversary and we are not trying to be an adversary ---

SENATOR SKEVIN: Mr. Dietz, I just asked a simple question. Do you understand the question?

MR. DIETZ: I understand what I perceive the Senator has asked for, but

would you please give it to us in writing? And I will be glad to respond specifically to every point you ask for.

SENATOR SKEVIN: We have asked for this before, Mr. Dietz. It would be very, very helpful if we knew how many murderers, rapists and others, by categories, have been rearrested and charged with the same or similar crimes of violence. That is something that we need to determine how effective our parole proceedings are. That is the information that we want and we need. I will get Mr. Tumulty to put that in writing.

MR. DIETZ: Senator, we have been in touch with Mr. Tumulty. I thought we had responded to everything that you wanted. I sincerely believed that.

SENATOR RUSSO: Consider this additional request and see that we get it.

MR. DIETZ: We'll get it, no question on that.

SENATOR SKEVIN: Mr. Dietz, let me, if I might, try to get a clear picture as to just how our parole system is implemented. Most people, I believe, have the image of "a parole board" sitting in a rather auspicious chamber to hear convicts plead for release. Perhaps we can make these statistics more understandable in terms of an individual case. Am I correct to say that the parole procedure begins with the assignment of a hearing officer?

MR. DIETZ: Yes, sir.

SENATOR SKEVIN: Who hires that hearing officer?

MR. DIETZ: The hearing officer is employed by the Board. The Chairman hires the individual.

SENATOR SKEVIN: That is you.

MR. DIETZ: Yes.

SENATOR SKEVIN: Now, if the hearing officer determines that there are no grounds for denial of a parole, what does he do next?

MR. DIETZ: He refers the case to a certifying Board member. That could be any one of the Board members on the panel. And we usually rotate.

SENATOR SKEVIN: And is that ever you?

MR. DIETZ: Sure, it could be.

SENATOR SKEVIN: In other words, there are cases when a hearing officer appointed by you reports back to you; and if you agree with the hearing officer's recommendation that there are no grounds for denial, the inmate is released. Isn't that correct?

MR. DIETZ: If I certify parole.

SENATOR SKEVIN: Isn't it correct that he is released?

MR. DIETZ: If parole is certified.

SENATOR SKEVIN: By a hearing officer and your confirmation.

MR. DIETZ: A Board member must certify.

SENATOR SKEVIN: And what we are saying here is that the concept of a Parole Board acting as a group comes to a single individual appointed by you who reports to you; and if you agree with your own appointee, then the criminal is released? Is that substantially correct?

MR. DIETZ: Senator, they are not all my appointees. They were there before.

SENATOR SKEVIN: I am just asking: Is that correct, Mr. Dietz? Again, we just want to know yes or no is that correct?

MR. DIETZ: Technically, it could be.

SENATOR SKEVIN: How many cases technically where it could be has this occurred under your tenure?

MR. DIETZ: I have no idea, Senator.



SENATOR SKEVIN: You have no idea. Would you provide us with those statistics please?

MR. DIETZ: Yes.

SENATOR SKEVIN: Would you argue with me that that has occurred more than 50 percent?

MR. DIETZ: Probably very close to 50 percent because the panel members would be cutting up about a quarter.

SENATOR SKEVIN: That would involve all sorts of crimes. Isn't that correct?

MR. DIETZ: Yes.

SENATOR SKEVIN: Serious crimes?

MR. DIETZ: Whatever was referred.

SENATOR SKEVIN: Whatever was involved. So that involves a two-party situation or two-party system. Did that happen in the case of Morgenstein and Augustine?

MR. DIETZ: No. Morgenstein's case was referred to panel and I believe Augustine's case was referred to panel also, yes, sir.

SENATOR SKEVIN: And that panel consisted of two?

MR. DIETZ: Two members, yes, sir.

SENATOR SKEVIN: Not the entire board of six plus you?

MR. DIETZ: No, sir.

SENATOR SKEVIN: If the hearing officer does not find grounds for denial for parole, would it be unfair to say that the parole is automatically granted?

MR. DIETZ: No, not at all.

SENATOR SKEVIN: So the parole is automatically granted?

MR. DIETZ: No, it is not automatically granted.

SENATOR SKEVIN: If the hearing officer doesn't find any grounds for denial and then certifies to you and you agree with the hearing officer, that person can be paroled at that time; isn't that correct?

MR. DIETZ: Senator, - I don't know how to say this - my remarks today that I wrote explicitly explain all those things. You are using the wrong word, Senator. The word is that he recommends. He doesn't certify.

SENATOR SKEVIN: If he recommends and you agree, the inmates is released; isn't that accurate?

MR. DIETZ: Any Board member reviewing the case - if I am the Board member, yes, if I certify. The word is I must certify.

SENATOR SKEVIN: Isn't it correct to say that you do this in most cases involving hearing officers that you hire? Isn't that correct?

MR. DIETZ: Fifty percent perhaps. I don't know whether it is most.

SENATOR SKEVIN: Could you give us some statistics about your involvement on this one-on-one situation in terms of the panel and yourself?

MR. DIETZ: Sure.

SENATOR SKEVIN: Do you know any cases where the assigned members of the Board have failed to concur with the hearing officer's recommendation?

MR. DIETZ: I know of mine.

SENATOR SKEVIN: How many?

MR. DIETZ: I would say normally it would probably be somewhere around 10 or 15 percent.

SENATOR SKEVIN: Of the 50 percent that you mentioned before?

MR. DIETZ: Of the total number, meaning all the Board members, I would think it runs about 10 percent of those recommended. But understand that the hearing officer does not recommend every one because the panels obviously have cases that

they hear. I would say it is about 10 percent.

SENATOR SKEVIN: The statute states that the hearing officer should determine that there is additional relevant information to be developed or produced at a hearing. Are you familiar with that requirement?

MR. DIETZ: Sure.

SENATOR SKEVIN: How can a hearing officer determine that no such information can be developed or produced at a hearing, particularly when we come across cases where some aspects of the requirements for public notice are not even met? How can a hearing officer make that determination if the requirements for public notice are not even met? Mr. Dietz, it is a simple question.

MR. DIETZ: The public notice requirement does not go to the hearing. It is not the material that is discussed at the hearing.

SENATOR SKEVIN: As an example, the other members of the Board are not even informed of pending paroles.

MR. DIETZ: Senator, the Board has met in executive session. We are taking steps to change those procedures. We are a new agency. We are only ten months into operation. You are asking us to divine out every conceivable circumstance that can happen. Some of the suggestions that you have made are very, very important and we are going to make some changes - no question about it - and, hopefully, with the Legislature's support where statutory change is required.

SENATOR SKEVIN: I have no further questions.

Senator Graves?

SENATOR GRAVES: They are lawyers; I am not. I sit here as a lay person. I guess that is why I write these crazy laws that I feel we have to have to protect society from those in the judicial system and your particular system.

We are here because there is a bottom line in the law that says after you have served a certain number of years, you will be eligible for parole. That is because the sentencing person or persons when institutionalizing someone says, you must serve a certain length of time before you are even eligible for any consideration. That is when the human equation comes in. This is where you fit in as an individual. It seems that you have interpreted the law or the meaning of a sentence to be: upon the minimum time of incarceration required, that person's performance on a day-to-day basis is determined by the evaluation of the warden or the institutional keeper. This is the part that I can't understand.

MR. DIETZ: You see, the problem that has to be faced in this is that I am called upon to defend 2A, the old criminal code. All the cases that the Senator is talking about are the aberrations of the law, the injustices and the horrors that happened under that old system. Today, under your 2C that has been placed into effect by this Legislature, those cases could never happen. The judge would have the power to do something. It wouldn't be a Trantino eligible after 14 years; it would be 50 years.

SENATOR GRAVES: Then why do you want to take this on your shoulders and become the guidance counsellor for those who have offended society in the harshest of ways? The two cases we are talking about in Bergen County weren't kids that had been led astray and got involved in a particular crime that they hadn't given serious thought to.

It is a fact that they were crimes against society, the worst that could be committed. In one particular case, it was a police officer. In the other, it was a neighborhood girl who had done nothing in her entire life to offend society. The only mistake that girl ever made was being born.

All of a sudden, you find within the law a shortfall and you make a decision

giving them the benefit of the doubt. What I can't understand from a layman's point of view is why you want to give them the best of the law instead of the worst of the law. Why do you force people like me to write mandatory laws? Why do you force people like me to override a governor's veto? Why do you force people like me to go to a fellow legislator and say, "Look, I don't care how close you are to the Governor or how comfortable you are. . ." I know in the case of John Russo, he said he agonized over this because of his practice in the court system, itself. And he joined my side in this particular matter.

But we are doing these things because we have to hold society safe from individuals like you. It is not the laws ---

MR. DIETZ: Senator, it is not people like me. Only five years ago with Senator Hagedorn, who is present today, I appeared at a meeting of a similar Senate committee where we had reduced paroles 19 percent because we felt exactly as you do.

On the last page of my report, if I had been given the privilege of reading that today to you, it says that people aren't automatically released. What is going to happen is that there is going to be a diminution of paroles of people that may have served the punitive aspect of their sentence but where we find that there are no resources out there. We have already said that this is going to have a terrible impact. We have never compromised that.

One of the things that you have done - I have said it a thousand times and I will say it once today again --- this parole law took the con game out of parole. What used to happen before under the old law is that a con would go out, he would get a couple of packs of cigarettes and get a certificate. The SCI went through those abuses. Their reports are replete --- What we did was said, it's not up to you guys to decide what is going to happen. We are going to monitor - we are going to keep track - and if you do anything bad, we are not going to wait for your parole hearing. In 1500 cases, as the report shows, this past year there were institutional misbehaviors of such a serious nature that in 25 percent of them the Board extended - power that you gave us -- extended the parole eligibility. We didn't wait until the actual hearing. You gave us the power to say, hey - instant, right away - you are getting extra time and we are not fooling around.

It depends on what questions you ask. You can ask questions that make any person appear to be whatever you want them to appear to be. I think that this Board has been just super in trying to get a very difficult concept across fairly and with the full legislative intent. Maybe we both missed the point - the Legislative and the Executive Branches. Maybe the the courts aren't in tune with us. But you have even again done something that is magnificent. You have established a Criminal Disposition Commission where for the first time we are all talking to each other. This has only been in existence six months - seven months.

SENATOR GRAVES: But the papers relate that you don't even talk to your fellow commissioners.

SENATOR SKEVIN: Your commissioners don't even get notice of the parole applications.

MR. DIETZ: Last time, as Senator Skevin well knows, Commissioner Fauver sat in a chair in a similar situation as I am in now, and said, Senators, the Board needs more members. They need more resources." He said that. It is part of the record.

SENATOR GRAVES: You always make the excuse that something isn't presented to you. Then why are you giving those who go against society the benefit of the doubt and you say there is not enough money.

MR. DIETZ: Senator, let me tell you something.

SENATOR GRAVES: A poll has just been completed in the State of New Jersey that has great credibility where about a thousand people were interviewed for 40 minutes. Do you know what the number one concern was of the people polled? It was that the people of this State want mandatory sentencing. They want mandatory sentencing because of a compassionate judicial system and now, as Senator Skevin is highlighting here today, a compassionate system of government that you represent. You force us, in order to hold the public safe from people such as you, people who have that compassion, to strip you of those rights. It is a shame that we have to do it, that four Senators have to sit here today because of their concern in this matter.

MR. DIETZ: May I make this part of the record? This is a sample of denials of parole - a random sampling of people who committed serious crimes.

SENATOR GRAVES: Well, what do you consider serious?

MR. DIETZ: Everything you mentioned, Senator.

SENATOR GRAVES: Murder and rape have to be at the top.

MR. DIETZ: Senator, these old cases we are talking about could never happen. Your laws today do protect. A case coming before ---

SENATOR GRAVES: The new law protects society, the new law we just passed and overrode the Governor on. That is the only thing that is really protecting the public - mandatory sentencing that keeps society safe from people like you.

MR. DIETZ: Senator, it is not people like me. We execute the laws you pass. You have a situation where we can't act ex post facto. I wish I could, but I can't. But also now a judge can sit up there and give a mandatory 25 years where there is no parole eligibility. You have done everything you can do.

SENATOR SKEVIN: Mr. Dietz, you could have voted the other way on Trantino and Trantino would still be there. You know that.

MR. DIETZ: Senator, Trantino still is there. He has not been removed. Are you aware of that?

SENATOR SKEVIN: I know, but you voted to release him.

MR. DIETZ: Sir, my vote kept him in.

SENATOR SKEVIN: Your voted released him.

Would you provide us with the statistics that we asked for originally, Mr. Dietz?

MR. DIETZ: Absolutely, Senator.

SENATOR SKEVIN: Mr. Tumulty will put it in writing.

MR. DIETZ: Thank you very much.

SENATOR SKEVIN: So the next hearing we will get the statistics that you provided for juveniles, but did not provide as far as adults were concerned.

MR. DIETZ: Well, you have them for young adults.

SENATOR SKEVIN: Yes. But you didn't provide the statistics for the State Prison, for the adult murderers, sex offenders, rapists, etc.

MR. DIETZ: So there is no misunderstanding, adult is broken down into two classes.

SENATOR SKEVIN: I want to know about the 2,572 people that were paroled. How long did they serve and what were their crimes? How many were rapists, how many were sexual offenders, how many were murderers, just as you provided for the youthful offenders?

Any further questions? (No questions.)

(Written statement and other data submitted by Mr. Dietz can be found in the appendix, beginning on page 1X.)

SENATOR SKEVIN: Assemblyman Bate.



A S S E M B L Y M A N   W I L L I A M   J .   B A T E: Mr. Chairman, I have a statement from Congressman James Florio, which I would like to read.

"Mr. Chairman and members of the Sub-committee, I wish to thank you for the invitation to testify this morning on a subject matter of great concern to us all.

"The paroling process--in fact, the entire spectrum of the criminal justice process from arrest to parole--is one that is viewed by the public, and especially the victim, with much uneasiness and much apprehension. New Jersey, in the last few years, has made great strides to update its criminal and parole laws, which in turn have rightfully resulted in stiffer penalties and in longer jail sentences. Despite more uniform parole criteria, the public continues to be no more than taxpaying spectators sitting outside an arena in which they are rightfully entitled to a real voice.

"To address these obvious inequities I submit that what is needed is a Victim and Public Bill of Rights grafted onto the paroling process. It must be a clear statement of legislative intent that will definitely guarantee that the public's business will not be a closed door exchange between the parole board and the prisoner alone. That will guarantee that the public and the victim will have legitimate access to the system.

"To that end, I offer the following proposals which I believe will guarantee that the public's right to know and the victim's and the public's right to respond will be absolute:

"One: That each decision of the Parole Board involving a recommendation for release of any inmate convicted of a crime of the first degree, second degree, or any crime involving the use of violence be made public, that reasons be given for the paroling decision, and that these reasons be made public as well; and

"Two: That the Prosecutor or the Attorney General--as representatives of the public and the victim, or the victim's family in the event of a homicide--shall have the right to appeal this decision to the full Board within a thirty day period; and the right of standing, as a party to the parole proceedings, to appeal to the appellate division, or engage in whatever lawful action they deem appropriate in order to prevent manifest injustice, or to prevent a parole release not consistent with the public interest or the sentence imposed;

"Three: That a copy of the Notice of the Decision forwarded to the prosecutor or the Attorney General be likewise forwarded to a newspaper of general daily circulation in the same county as the prosecutor--one newspaper in each county to be designated for this purpose each year by the Secretary of State; and

"Four: I concur with those who have recommended that the criteria for release consideration be tightened. In this regard, I would propose that all those who the Parole Board determines would otherwise qualify as 'Career Criminals'--whether they are sentenced as such or not--be considered for parole under a modified set of criteria, which would emphasize their past record on the street, not just their prison adjustment, in determining whether or not they are fit to return to society. It seems ludicrous to me--offensive to the collective public 'common sense'--to ignore, as part of the paroling decision that person's past record. A repeat offender-pickpocket must not be treated the same as a repeat rapist.

"Finally, parole is a part of our criminal justice system. We must review it, not in isolation, but as a component of the system. Decisions made by our law enforcement officials, our judges, corrections staff and the Parole Board affect each other.

"Our efforts should be focused on getting all parts of the criminal justice system to work to take serious and violent offenders off the streets and to keep them off. The parole process plays an important role in that process, and we must insure that it works in conjunction with the other parts of our criminal justice system." Thank you.

SENATOR SKEVIN: Thank you, Assemblyman. Senator Graves, do you have any questions?

SENATOR GRAVES: No questions.

SENATOR SKEVIN: Senator Hagedorn? (Not Present) Mr. Robert Personette?

ROBERT PERSONETTE: Good morning.

SENATOR SKEVIN: Mr. Personette, I know of your background in parole under the old system and since Senator Hagedorn is not here at this moment, I have asked you to come out of order on our witness schedule to give us your comments and comparisons between the prior system and the present system and any other comments you may have on the problems here in Bergen County and throughout New Jersey.

MR. PERSONETTE: I am a member of the Board of Institutional Trustees at Clinton, the Women's Correctional Institution at Clinton, commonly referred to as Clinton Farms. Next month, I'll be on the Board approximately 17 years.

Under the old law, the members of the civilian boards, as we're called, had the authority to do paroling with regard to young adults--at that time it was under the age of 30--who were given an indeterminate sentence as opposed to a minimum-maximum sentence. The State Parole Board handled the min-max where the court determined it would be a two to five year sentence, whereas we would handle the paroles for the indeterminates not to exceed five years.

Under that setup, we would have the capability of paroling at any point in time that the Board of Trustees that the individual was capable of release. In addition to that, it was about five years ago that the Supreme Court made the determination that when an inmate comes initially with an indeterminate sentence, he should be given a determination as to an approximate period of time that he would spend in the prison. That was referred to as a "time goal" and as each inmate came in, we would make a determination of what that time goal would be.

We had the capability, during the time of the incarceration of the individual, to increase or decrease that time goal, depending on the way in which that inmate responded to the prison system. We used it frequently as a means by which we could help an inmate pattern a better way of learning, possibly. We might give to an individual a five year time goal where the judge might have given her seven to ten years. We might give her five years, with reviews each year. After one year, we might find that she had reduced the time goal by one year.

The realization that this happens among the balance of the population created, I believe, better patterns of behavior. Now, a five year time goal would be rather excessive at the women's prison. Most of the sentences are less than that.

Under the present system, they have eliminated the power of the citizens' boards to grant parole and it is all vested now in the central Parole Board, under Chairman Christopher Dietz. So is the determination of time goals.

Now, the time goals, although it is an indeterminate sentence, also follow a similar burden under the new law as it does in the penal code. The only restriction, I believe, is that someone who has an indeterminate, their minimum time for their time goal should not exceed the minimum allowed under the penal code for a min-max sentence so that, ostensibly, we now created, rather than an indeterminate, something

which is very like a min-max sentence.

Now, my understanding of the need for change--and I think this is very imperative in your deliberations on what to do with the parole process--is that this was established, ostensibly, for fairness. It is not fair to have various citizen parole boards whereby different decisions could be made with regard to people charged with the same crime. So, it looked toward fairness to prisoners. It is similar to the penal code that tried to establish the same criteria, to give fairness. But, I don't think that fairness should be directed toward the prisoners. I don't think we should look toward fairness among criminals. We should look toward fairness between a criminal and society, what is fair in that context. I don't think that criminals, once they have committed a crime, have any rights to fairness. I think you have to prove yourself. I think, throughout the prison system, they should be given the opportunity to prove themselves. I believe that to be fairness. I believe that if they are given the opportunity of reducing their sentence by good behavior and by good patterning, these in turn can be carried outside the institution and I think we have done that at Clinton.

I believe that you've got to have the incentive to work. To give a man or a woman a time goal of a specific period of time, so long as he doesn't do bad or so long as the State can't prove that he's done bad, he's going to get out. He doesn't have to work toward improvement. Now, working toward improvement is more than just having a good prison record. It is a matter of establishing that initially and then taking that out into the public and being able to relate better because they're patterned better. It is very difficult, I think, to understand the mind of a person who has committed a horrendous crime or crimes. Now, I'm not talking about allowing these people greater freedom. As a matter of fact--and we've spoken of the Trantino matter--when a man has spent years in prison, 16, 17 years, which was the period of time when charged with homicide, first degree murder, you're dealing with a society which is impossible to conceive of. You're dealing with people, when an inmate comes in, who is obliged to survive. He survives by assuming the same attitude as the balance of the prisoners. He has to be deceitful, he's got to be dishonest, he's got to be able to do what they do. He can't be rejected. He could be beaten or harmed. But, you're dealing with a society in prison which is so different than the society that that person is going out to that you can't expect that that man is going to go out and be able to adjust after 16 years of the prison environment. That has to be taken into consideration when a parole is granted.

More so is what was the attitude during the commission of the crime. Again, with Trantino, we had a gentleman who made two police officers take their clothes off, kneel down, and he shot them. Now, what kind of a mind, anti-social behavioral mind, can commit that act?

Some people in the prison system think I'm a liberal because I want to get people out soon. But, I'm not desirous of getting people out whose initial attitude is of that nature. If you can find such an anti-social behavior, not just the shooting, but the attitude of the criminal and add to it the kind of system he is going into, he already has the potential to kill, initially, and he enters into a system which is part of that system. Can we expect that that kind of an individual could come out without killing his propensity to kill? I think the proof has to be on his side, not on the side of the State to disprove that he has that capability anymore.

Gentlemen, when a man is confined to a society of that nature whereby everything is determined for him, he's going to act more properly than on the outside where things are not so structured. He's going to come out and he's going to act

properly there so that the Parole Board can say, "Well, he's done well in the situation." But, invariably, they will do better in that situation. We have people who want to go back to prison because of the fact that they feel better under a structured environment.

What I'm trying to say is that when it comes to heinous crimes, I'm more in favor of saying, "You've really got to do an awful lot to prove yourself." I don't believe in giving maximum sentences or minimum sentences. If I had it my way, they would all be indeterminates only because we can adjust and see what's happening to these individuals during the course of their incarceration and, with our hardened criminals, the ones that commit that type of crime, I have no compunction with leaving them there for the rest of their lives. But, in the determination of fairness among criminals, as was the intent with the penal code and the Parole Bill, you're lumping together everybody.

Now, this becomes a rather ridiculous situation. We have a girl presently confined to Clinton who worked for a company and didn't feel as if she was making enough money and went on welfare besides. Her income raised sufficiently so that she could live on that income without welfare so she stopped taking welfare. I believe it was about two years when the authorities discovered this, tried her, found her guilty and sent her to prison. Now, her children had to go on welfare and we're paying her support in the prison, which costs more than what she took in welfare. Now, that woman probably will never again commit a crime if she were put on probation or if we had the capability of paroling her. What we did is that we gave her day parole. Her employer is willing to take her back. So, she drives to work everyday from the prison.

There is no way of defining the law or being able to categorize the law sufficiently to take these cases out and to say that these cases are dissimilar than the rest. You've got to give the responsibility to the people who are involved in the situation so that they can make that determination.

So, in a comparison to the laws, before, we had the capability of better adjusting people to come out into society or to keep them there. We had the determination of whether or not they were capable of leaving. It was up to them to prove their capability.

The law, as it exists, creates greater burdens upon our system. We presently have, I believe, about five and six thousand inmates in our prisons today. I believe the juveniles comprise approximately one thousand. The law requires that they be interviewed quarterly. That means four thousand interviews during the course of the year. There are two members of the Parole Board that handle those four thousand interviews. We feel, as an Institutional Board of Trustees, that the best way of handling these cases, if we accomplish the goal of saying that we're not dealing with fairness among criminals, but fairness to society--that's the basic difference in philosophy, if you're speaking of fairness to deal with the prisoner rather than fairness to society because I don't think fairness should have to be categorized there. Dealing with the institutional boards of trustees, having them continue with their paroling authority, helping the Parole Board and using the Parole Board, possibly as an appeal procedure if an inmate is dissatisfied with a determination made by the institutional board, we're in a much better position. First of all, cost-wise, I heard Mr. Dietz testify before that they need more personnel. Well, what better personnel can they have than with people who have many years of experience in paroling to do that--and they're not getting paid for it either--or bring it to their jobs, as you do as part-time senators, although you work full-time most of the time, or bring outside experiences

to give you greater capability. You're not so institutionalized that after a while you have nothing to bring to your job. For example, you always have more because you're working outside of just being a senator. We do too. Citizens' boards all have members who have other functions to perform that they bring with new expertise, new ideas, new innovations. But, most of all, what they're bringing is experience and elimination of cost.

Now, if the sole purpose of eliminating the citizens' boards is because of this fairness, that is not practical because fairness doesn't exist because, again, we're talking about fairness to society not fairness to the prisoners. And, when you lump it all together and come with the balance of the penal system where those people are in it, the four or five thousand other inmates, you have a pretty horrible situation developing.

I think that people say, "Yeah, give them mandatory sentences," and if you watch the swing between harshness and liberality, you will probably find--and I've not done any research on this, I'm only speculating--you will probably find that the demand for punishment is when the economy is bad and people are hurting and they're lashing out, as opposed to the good times when everybody is going to be a liberal and say, "Let's see how we can help these people." We get that swing, but everybody shouldn't be involved in that swing, not all inmates because there are many people who could be out of the institution, who are better off out of the institution, where the State is better off not having them there, where they can be paroled earlier. We can relieve our prison system tremendously if we had the capability of giving better parole, shorter terms, shorter time goals. If the institutional boards of trustees had that capability, we could resolve an awful lot of problems in the prison situation as it exists today, not just here, but throughout the United States. But, I say that you can eliminate an awful lot of costs by allowing that kind of procedure where the institutional boards of trustees do the determination of both time goals and of parole and having the full Board as an appellate body. I believe that would eliminate an awful lot of problems. But, I don't believe that to require all mandatory sentences should be your goal.

When I first came to Clinton, the average time spent was approximately three years by an inmate. We've gotten that down substantially. I'm not talking about homicides, but the balance of the crimes. We're down to approximately a year. Mr. Dietz did a review of recidivism. How valid it is, I don't know, but I believe he came up with a figure of about four or five percent at Clinton. If that's a fact, it is probably the lowest recidivism rate throughout the United States and if it is a fact, that would attribute it to the fact that we've gotten the people out before they became accustomed to the prison system. When you are afraid of it, you're not going to want to come back. But, once you've made that adjustment to it, then you're not afraid to come back anymore and that's a big problem, a big determination. I'm not, again, talking about the homicides or the horrendous crimes. That's a whole different category. But, unfortunately, we lump it all together. We lump the ones that should be out among those that shouldn't. I am absolutely sure that there is a point in time after which they don't care anymore. As a matter of fact, there is a certain amount of solace, a certain amount of acceptance to the prison system. As I said before, there are some who want to come back and I think that we are creating such a horrible problem for ourselves and we're going to create a greater recidivism rate by keeping them longer than they should be kept. If we just consider these people as being punished, we're receiving greater punishment than they are because our crime



rate is going to get even worse. We can't keep them in there beyond that point in time. When we find that someone has reached that point, as we did before when we were handling paroles, if they've reached that point where if they stay any longer it is going to be detrimental and all that they've accomplished will be going down the drain, then we would attempt to have those people paroled. That's all I wanted to say, gentlemen.

SENATOR SKEVIN: Thank you, Mr. Personette, for your insight and your input. It certainly made an impression on me and it certainly will be brought to the attention of our entire committee through this transcript. Again, I want to thank you personally for taking time out from your busy schedule. Thank you very much. Stanley Reeck?

S T A N L E Y R E E C K: I am Stanley Reeck and I reside at Cottage Court in Clifton, New Jersey.

SENATOR SKEVIN: Mr. Reeck, you called me personally to testify at this hearing because of your personal involvement with the Augustine parole and we went into the question of notice and adequate notice. Of course, you heard about it through the newspapers and were able to be involved. Of course, you heard Senator Russo's suggestion about notice to the victim or the victim's family to provide input and perhaps we're unique in this situation in that you will be able to give us your input and your reaction to this because you were very much involved due to your daughter's death in the Augustine murder. So, we would appreciate your comments and your input.

MR. REECK: Well, I'm very, well, not upset, but annoyed at Augustine being released. In fact, it was three months short of six years. I protested to Mr. Dietz and I wrote a letter to him. He had it today and he showed it to me. I believe that he should be back in there again. I don't think he's ready for society.

As far as Senator Russo's suggestion is concerned, I go along with his suggestion of advising the people of upcoming releases, so to speak, and I think he has a very good point there. But, as far as my family is concerned, we went through an awful lot. I don't know whether you would call it harassment or not, but, through the media, the newspapers, they constantly named my grandson and granddaughter in that and it was very annoying to me and, I'm pretty sure, to Noreen's mother. I can't say too much more about it.

SENATOR SKEVIN: Do you feel, Mr. Reeck, that hearing from you and your family, that the Parole Board would get some idea of the heinous type of crime this was and the effect that it had on your family, if you were given that type of opportunity to speak?

MR. REECK: Well, hopefully, yes. As far as Senator Graves was concerned about the number of people on the panel, it is ridiculous to have two people, as opposed to five or seven or whatever the number should be. It is downright ridiculous, as far as I'm concerned.

SENATOR SKEVIN: Do you wish to comment any further about the effect it had on your family or the people involved?

MR. REECK: Well, I'm very close with my daughter. Unfortunately, my wife and I are separated. But, it was tough on her because of her being Noreen's twin and they had a very close relationship and, of course, things were not brought out in that trial that should have been brought out. As far as that hearsay evidence that was supposed to have taken place, these people that are in jail in the case of Augustine, they could plea bargain and get a new trial in a county other than

Bergen County. I can't see that one at all. A judge from Clark tells Augustine that he could have another trial because of a piece of evidence that they called hearsay at the trial of Augustine in '75 or '76 and there you go. I say that these guys in jail have more rights than we have on the outside and I don't like it. That's all I have to say.

SENATOR SKEVIN: Thank you very much for coming, Mr. Reeck. Is there any other member of the public who would like to testify before this committee?  
(No Response) All right, this committee will adjourn the meeting now until further notice and until we have received adequate statistics from Mr. Dietz, the Chairman of the Parole Board. Thank you all very much.

(Hearing Adjourned)



STATEMENT OF CHRISTOPHER V. DIETZ  
CHAIRMAN OF THE NEW JERSEY STATE PAROLE BOARD

SEPTEMBER 10, 1981

Thank you for the opportunity to address you today. My remarks will include reference to several topics of interest to you. They review the Board's activity since inception, containing an explanation of the Board's decision-making processes and the procedures utilized in the parole decision making, and an analysis of recidivism this past fiscal year.

Background and Current Activities

The New Jersey State Parole Board was first created in 1948 by an act of the State Legislature. In December of 1979, after extensive research, discussion, and public hearings spanning a two-year period, the Legislature restructured the Board to establish a unified paroling authority for all correctional institutions in the state. This new Act is viewed by many as model legislation. It accomplished several things, among which were the unification of hitherto decentralized paroling authority under one Board and a re-affirmation of our State's policy that parole is, and remains, a privilege and not a right.

The Parole Board is now composed of a Chairman and six Associate Members who are appointed for terms of six years by the Governor with the advice and consent of the Senate. The members serve overlapping terms and are subject to re-appointment. Members devote their full time to the duties of the Board. Each appointee must be of recognized training or experience in law, sociology, criminal justice, juvenile justice, or related branches of the social sciences.

The Parole Board is divided into three two-member panels: Prison, Youth, and Juvenile. This establishes expertise in each area. The Governor must designate, at the time of appointment, two associate members to serve on the panel for juvenile commitments. The remaining four associate members are appointed by the Governor to panels on adult sentences. The Chairman assigns two of the associate members to a panel on prison sentences and the remaining two associate members so appointed to a panel on young adult sentences. The Chairman is a member of each panel.

We are a new Board, just beginning to implement the Parole Act of 1979. Our total responsibility commenced only ten months ago in November, 1980. The new law envisioned a phased implementation. Fiscal year 1980-1981 provided us with the first opportunity to develop a track record, to gather statistics, and to evaluate both the new Act and its impact critically.

During fiscal year 1981, the Board conducted approximately 18,000 reviews of parole matters. These ranged from reviews to full parole hearings and appellate action. However, the statistics for this past fiscal year do not reflect full year data for all panels because of the phased implementation.

I would like to respond briefly to the issue of parole release which appears to me to be one central barometer of our activities, although perhaps not the most important one. During the years 1975-1979, parole release rates in New Jersey were fairly constant at the rate of approximately 3,900 per year. While there were minor accelerations in 1978 and 1979, there was a significant increase in 1980. Releases in 1980 ran at approximately 4,100. Our reports to the Committee indicate that there were several reasons for this, particularly those associated with the implementation of the new Penal Code and Parole Act. These reasons were explained in our report to you dated August 25. However, in 1981, overall release rates dropped significantly from 1980 levels. This was at least partially due to the expected return to previous levels, but it was more significant than anticipated. The most noticeable difference can be seen in young adult cases. Simply stated, the Board considers aggravating factors such as previous record, weapons, or parole/probation failure more seriously than was previously the case.

During fiscal year 1981, the new Board released approximately 3,000 individuals. Insofar as some of the panels have not operated since the beginning of the fiscal year but assumed jurisdiction in November of 1980, we would project total releases in fiscal year 1981 would have been approximately 3,350. This is a significant drop from the fiscal year 1980 level. The Board obviously has taken a tough position on the granting of parole release, and the statistics bear this out. This appears to put us



somewhere between a rock and a hard place. On one hand, some critics claim the Board is responsible for overcrowding. Others claim we have opened the floodgates. Obviously, all our critics can't be right. The Board has, to the best of its ability, carried out responsibly the legislative mandate. The new law is far from liberal.

This is not to say we can't help with overcrowding. For example, we have identified a number of individuals who could be released to a supportive alternative residential environment, but the dramatic lack of such facilities means that they must remain incarcerated. But parole must not be used as the instrument to ease overcrowding. Cases must be decided in terms of the risks they represent to society, not in terms of the lack of bed space.

Clearly, society must be protected from the violent criminal. We carefully review each case. Inmates have their hearing before the Board when they have reached their eligibility date. But the Board has seen them and monitored their activity long before this point. Each inmate, upon admission to an institution, is advised of what is expected to achieve parole. Recommendations for program participation are encouraged in view of past records.

This eligibility is not automatic. Pursuant to N.J.S.A. 30:4-123.52(a), the Board is empowered to delay an inmate's parole eligibility based upon institutional misbehavior. Hearing officers of the Board review such infractions to determine if an inmate's term should be increased as a result of the infraction. If, in the opinion of the hearing officer who is reviewing the case, an increase is appropriate, the hearing officer will refer the case to the appropriate Board Panel. But this increase takes into mitigation any loss of commutation time imposed by the Department of Corrections.

The following is an example of how an inmate's eligibility date would be affected if he receives a serious infraction. Assuming a date of sentence of September 1, 1981 with no jail credits, an inmate serving a five-year term has a parole eligibility date of May 1, 1983. If he earned 90 work and minimum credits, his actual parole eligibility date would be January 31, 1983. He would, therefore, tentatively be

scheduled for a preliminary parole hearing in October, 1982. However, if on August 15, 1982, he was charged and found guilty of a serious infraction and the institution penalized him with 15 days in segregation and 120 days loss of commutation time, the Board's hearing officer reviewing the case could recommend the addition of up to 9 months. Since the institution has already penalized him 4 months with the loss of commutation credit, the additional term would be adjusted to a net of 5 months. With this loss of credits and the imposition of additional time, the inmate's initial parole hearing could be postponed until July, 1983. It should be noted that the Board has reviewed approximately 1,500 infractions since September of 1980 and has increased eligibilities in 25% of these cases. This is one example of how the Board is deeply involved in monitoring an inmate's progress through the corrections system. This is an essential component of our responsibility and the basis upon which ultimate release decisions are rendered.

#### Decision Making

There have been and always will be cases with heavy emotional consideration. The system of justice in these United States is not perfect. But, we feel it is as good if not better than others in the world. There will always be allegations of miscarriage of justice both to the victim and the offender, but we are no more than human. It is in these difficult instances that objectivity is the safeguard for our system of law. Three branches of government check and balance each other. The legislature defines criminal activity and prescribes penalties. The executive prosecutes these activities, and the courts determine guilt and punishment. Parole has traditionally represented society's belief that each offender has the capacity to change for the better. To the degree that such effort is made and achieved by an inmate, he has earned the right to return as a law-abiding productive citizen once the punitive aspect of the sentence has terminated. To the prisoner who believes he has a right to prey on society, parole is there to bar his return.

In 1979, the Legislature passed a new Penal Code. The net result is the removal of inequities and longer and tougher sentences. This is entirely appropriate given

the seriousness of the crime problem we face as a state. The Code specifies that once an offender has served a portion of one of these sentences, he is "eligible" for parole at a defined interval. Judges now control how much time will actually be served on the sentence they established. This clearly and properly places the authority and responsibility for determining time served with the judge.

It is not the Board's responsibility, nor should it be, to try the case over again for a second time. It is, however, the Board's responsibility to use reasoned judgment as to whether the individual represents a substantial risk to society in each release decision. It is important to emphasize that parole has never been a "right" but rather a privilege to be earned by the inmate. He proves his readiness during the period of confinement. His failure to do so easily refutes parole consideration. The concept makes sense. It does not mean that the inmate automatically goes on the street when he is eligible. The Board has more than sufficient resources to establish and justify parole denial. More than ever before, this new system denies the inmate the opportunity to con his way out of prison.

At the time of eligibility, the inmate has either already demonstrated that he has made an attempt to change by virtue of his activities or he is denied parole. The Board does not dream up reasons for denial but produces its own monitored documentation. The proof this system is working is that there are 1,400 less paroles this year than last year before full implementation.

#### Procedures

As has been noted, the process of administering the law is as important as the law itself. The procedures we use in making decisions are detailed in the Administrative Code which were recently reviewed by the Assembly Judiciary Committee.

We have always welcomed public scrutiny. We are among the few paroling authorities who conduct annual public meetings to solicit citizen input.

Pursuant to statute, the Board is divided into separate State Prison, Young Adult, and Juvenile Panels. Depending on the type of sentence received, inmates come under

the jurisdiction of one of these three Panels. The panel approach makes sense for a number of reasons. In the first place, Panel Members are chosen primarily for their expertise in a particular area. The advantages are easily seen: Each Panel develops and refines its expertise. The staggering workload is evenly distributed. Given this workload, it would literally be impossible for the full Board to consider all serious offenses. More than ever before, judges are sentencing only the most serious offenders to prison because of space restrictions. Within 90 days of admission to confinement, an inmate is advised of how much time he will spend in prison prior to parole eligibility and what he can do to assure his return to society. He is monitored by Board representatives no less than once a year and usually more often.

When an inmate is 120 days away from eligibility, a notice is sent to the judge, prosecutor, and press to solicit any appropriate input. Thirty days are allowed for response. Between the 90 and 60-day interval, a preliminary hearing is scheduled before a hearing officer and either a recommendation for parole is made or the case is referred to a Panel. If a recommendation is made, the case is reviewed by a Board Member who either certifies parole or also may refer to a Panel. If the case is referred to a Panel, a hearing is scheduled between the 60 and 90-day interval. At each of the hearings, comprehensive reports are reviewed. These reflect the past and present activity of the inmate and assesses future parole plans. At any point, an individual member participating in the decision may petition the full Board, or the full Board on its own motion may review any action of a hearing officer, Member, or Panel and make its own final determination from which appeal can only be taken to the Appellate Division. This provides a fail-safe mechanism, one not available in other states.

#### Recidivism

Attached is a chart representing statistics compiled by the Department of Corrections, Bureau of Parole, for this past fiscal year. I am pleased to report that recommitments from parole status as a result of revocation dropped a full percentage point from 11% to 10%. Out of 13,550 parolees, 1,375 were returned to prison. Of this

1,375, only 552 committed new offenses and 823 were returned for technical violations. The Board revokes for technical violation when the risk of committing a new crime is evident.

I regret to inform you that there has been a serious reduction in the budget of the Parole Bureau. This is aggravated further by the loss of LEAA funds for field resource teams. The net effect is that caseloads have increased and the ability to intensively supervise parolees reduced. This will most certainly be reflected in further reduction in parole at substantial disproportionate cost to the taxpayer. To house a prison inmate in a county jail facility costs \$1,000 a month.

The inmates affected will be those who are functionally illiterate as a result of social promotions, the emotionally disturbed and retarded as a result of abuse or organic damage, and the seriously addicted who require counseling, vigilance, and urine monitoring to assure no return to substance abuse. These are societal failures for which our system must assume some responsibility. They do not have life sentences. They will return to society when their sentence expires, either again to criminal activity or with the hope and prospect for law-abiding productive citizenship. They need the opportunity to earn their return to the community. Society has a vested interest in their success.



NEW JERSEY DEPARTMENT OF CORRECTIONS

BUREAU OF PAROLE

NUMBER AND PERCENT OF VIOLATORS

BY DISTRICT AND SEX

BASED ON TOTAL NUMBER SUPERVISED

- FISCAL 1980-1981 -

MALE

| District                          | Total Number Supervised During Year* | Number and Percent of Violators |      |                            |       | TOTALS |          |
|-----------------------------------|--------------------------------------|---------------------------------|------|----------------------------|-------|--------|----------|
|                                   |                                      | Committed or Recommitted        |      | Returned as Technical Vio. |       | Number | Percent. |
| 1. Clifton                        | 1,680                                | 88                              | 5.2% | 57                         | 3.3%  | 145    | 8.6%     |
| 2. East Orange                    | 1,594                                | 57                              | 3.5% | 93                         | 5.8%  | 150    | 9.4%     |
| 3. Red Bank                       | 2,056                                | 64                              | 3.1% | 138                        | 6.7%  | 202    | 9.8%     |
| 4. Jersey City                    | 1,484                                | 50                              | 3.3% | 105                        | 7.0%  | 155    | 10.4%    |
| 5. Elizabeth                      | 1,123                                | 54                              | 4.8% | 79                         | 7.0%  | 133    | 11.8%    |
| 6. Trenton                        | 1,249                                | 39                              | 3.1% | 130                        | 10.4% | 169    | 13.5%    |
| 7. Camden                         | 1,384                                | 88                              | 6.3% | 111                        | 8.0%  | 199    | 14.3%    |
| 8. Atlantic City                  | 967                                  | 55                              | 5.6% | 43                         | 4.4%  | 98     | 10.1%    |
| 9. Newark                         | 1,361                                | 51                              | 3.7% | 30                         | 2.2%  | 81     | 5.9%     |
| 10. Central Office (Special File) | 114                                  | 0                               | 0%   | 2                          | 1.7%  | 2      | 1.7%     |
| TOTAL MALE                        | 13,012                               | 546                             | 4.1% | 788                        | 6.0%  | 1,334  | 10.2%    |

FEMALE

|                                   |        |     |      |     |       |       |       |
|-----------------------------------|--------|-----|------|-----|-------|-------|-------|
| 1. Clifton                        | 79     | 0   | 0%   | 2   | 2.5%  | 2     | 2.5%  |
| 2. East Orange                    | 69     | 2   | 2.8% | 4   | 5.7%  | 6     | 8.6%  |
| 3. Red Bank                       | 77     | 1   | 1.2% | 11  | 14.2% | 12    | 15.5% |
| 4. Jersey City                    | 60     | 0   | 0%   | 6   | 1.0%  | 6     | 1%    |
| 5. Elizabeth                      | 58     | 3   | 5.1% | 7   | 12.0% | 10    | 17.2% |
| 6. Trenton                        | 58     | 0   | 0%   | 4   | 6.8%  | 4     | 6.8%  |
| 7. Camden                         | 41     | 0   | 0%   | 0   | 0%    | 0     | 0%    |
| 8. Atlantic City                  | 28     | 0   | 0%   | 0   | 0%    | 0     | 0%    |
| 9. Newark                         | 60     | 0   | 0%   | 1   | 1.6%  | 1     | 1.6%  |
| 10. Central Office (Special File) | 8      | 0   | 0%   | 0   | 0%    | 0     | 0%    |
| TOTAL FEMALE                      | 538    | 6   | 1.1% | 35  | 6.5%  | 41    | 7.6%  |
| GRAND TOTAL                       | 13,550 | 552 | 4.0% | 823 | 6.0%  | 1,375 | 10.0% |

\*Figures include inter-office transfer of cases. Also as County Jail cases have not been differentiated between male and female by District report these figures are included in the male count.

PERCENTAGE OF RETURNS TO INSTITUTIONS  
 BASED ON TOTAL NUMBER SUPERVISED  
 BY DISTRICT

| DISTRICT                          | Total<br>Number<br>Supervised | Committed<br>or Reco-<br>mitted | Technical<br>Violators | Total |
|-----------------------------------|-------------------------------|---------------------------------|------------------------|-------|
| 1. Clifton                        | 1759                          | 5%                              | 3.3%                   | 8.3%  |
| 2. East Orange                    | 1663                          | 3.5%                            | 5.8%                   | 9.3%  |
| 3. Red Bank                       | 2133                          | 3.0%                            | 6.9%                   | 10.0% |
| 4. Jersey City                    | 1544                          | 3.2%                            | 7.1%                   | 10.4% |
| 5. Elizabeth                      | 1181                          | 4.8%                            | 7.2%                   | 12.1% |
| 6. Trenton                        | 1307                          | 2.9%                            | 10.2%                  | 13.2% |
| 7. Camden                         | 1425                          | 6.1%                            | 7.7%                   | 13.9% |
| 8. Atlantic City                  | 995                           | 5.5%                            | 4.3%                   | 9.8%  |
| 9. Newark                         | 1421                          | 3.5%                            | 2.1%                   | 5.7%  |
| 10. Central Office (Special File) | 122                           | 0%                              | 1.6%                   | 1.6%  |
| TOTAL                             | 13,550                        | 4.0%                            | 6.0%                   | 10.0% |

PERCENTAGE OF RETURNS TO INSTITUTIONS  
 BASED ON TOTAL NUMBER SUPERVISED  
 THREE-YEAR COMPARISON

| Committed or Recommitted |      |      | Technical Violations |      |      | Total |       |       |
|--------------------------|------|------|----------------------|------|------|-------|-------|-------|
| 1979                     | 1980 | 1981 | 1979                 | 1980 | 1981 | 1979  | 1980  | 1981  |
| 3.3%                     | 2.4% | 4.0% | 7.9%                 | 8.5% | 6.0% | 11.2% | 11.4% | 10.0% |



**NEW JERSEY STATE PAROLE BOARD**  
POST OFFICE BOX 7387 WHITTLESEY ROAD  
TRENTON, NEW JERSEY 08628  
TELEPHONE NUMBER: (609) 292-4257

CHRISTOPHER DIETZ  
CHAIRMAN

SALLY G. CARROLL  
LUIS H. GARCIA  
RICHARD B. GOLDMAN  
LEROY J. JONES  
JANICE S. MIRONOV  
GLORIA E. SOTO  
ASSOCIATE MEMBERS

August 25, 1981

Mr. John J. Tumulty  
Aide to the committee  
Senate Judiciary Committee  
CN-042  
State House  
Trenton, New Jersey 08625

Dear Mr. Tumulty:

In response to your letter of May 29 and as a follow-up to our letter of June 2, we are enclosing the draft version of the Statistical Overview section of the Board's annual fiscal year report.

Since this represents a draft version, we may make revisions in the information presented prior to final publication. Copies of the final report will be distributed to the Legislature in accordance with N.J.S.A. 30:4-123.48(f).

Please contact me if we may clarify this information.

Sincerely,

STATE PAROLE BOARD

  
Christopher Dietz  
Chairman

CD:TRS:fjd  
Enclosure

SPB

## STATISTICAL OVERVIEW

During fiscal 1981, the State Parole Board conducted approximately 18,000 reviews of inmate and parolee cases. These ranged from full parole hearings to office reviews of previous action.

Because of the phased implementation of the Parole Act of 1979, statistics for this fiscal year do not reflect full year data for most juvenile and young adult panel actions. The exception are Tables V and VI, which reflect statistics on parole eligibility terms (or "time goals") established.

Comparative data for previous years is lacking due to changes in policy and procedure caused by the Parole Act, notably the new jurisdiction over juvenile and young adult cases and the new hearing procedures applicable to all cases. It is noted that multi-year data which is presented may not be comparable with data from the current fiscal year.

## PRISON OVERCROWDING

Considerable attention has been focused on the high rate of increase in the prison population in 1981. On April 30, 1980, there were 6,618 inmates in state facilities. By September 30, 1980, this had declined to 6,039, a decline due primarily to aspects of the Parole Act noted below.

However, during late 1980 and in 1981, population rose as the impact of the new Penal Code began to be felt. The proportion of all defendants receiving prison terms increased from 13% to about 22%, while those receiving youth indeterminate sentences remained roughly constant at about 10% to 11%. Thus, a huge increase in prison admissions occurred. During the first six months of 1981, the state's courts sentenced as many defendants to State prison as they would normally sentence in an entire year. Although the proportion of indeterminate sentences remained roughly the same, an increase in defendants sentenced has resulted in somewhat more indeterminate admissions.

At the same time, as outlined below, parole releases in the Youth Complex declined. Consequently, the increase in overall correctional population is particularly marked. On December 31, the state inmate population had increased to 6,423, a small increase from September's 6,039 level. By June 30, 1981, however, the population had risen to 7,637, an increase of 19% in six months.

### Parole Release Trends--1980

Parole release rates in New Jersey were fairly consistent in the period from 1975-1979. During this period, approximately 3,900 inmates were paroled annually from state correctional facilities. By 1978 and 1979, this rate had risen to about 4,100 inmates. However, in 1980, there was a significant increase in the number of inmates paroled. As noted below, this jump was experienced almost exclusively in the prison complex.

Parole Release Rates - Prison Complex

|                | <u>1978</u> | <u>1979</u> | <u>1980</u> |
|----------------|-------------|-------------|-------------|
| Total          | 4,100       | 4,092       | 4,743       |
| Prison Complex | 1,359       | 1,271       | 1,835       |
| Others         | 2,741       | 2,821       | 2,908       |

By reviewing monthly statistics, it becomes apparent that the rise in parole releases was particularly significant during the months of May, June, July, August, and September. In fact, even the small rise noticed outside the prison complex during this time is likely due to prison inmates housed in the Youth Correctional Complex.

1980 Release Rates

Monthly Averages (1980)

|                | <u>Jan.-Apr.</u> | <u>May-Sept.</u> | <u>Oct.-Dec.</u> |
|----------------|------------------|------------------|------------------|
| Total          | 336              | 490              | 317              |
| Prison Complex | 105              | 218              | 109              |
| Others         | 231              | 272              | 208              |

This rise in parole release rates occurred immediately after the effective date of the Parole Act on April 21, 1980. The specifics of the rise were due to several provisions of the Act:

1. Under the Act's provisions, parole release, if approved by the Board, must become effective "as soon as practicable after the (parole) eligibility date" (N.J.S.A. 30:4-123.55(b) and (d)). This required the Board to accelerate release dates. Under previous practice, the Board established parole release dates approximately three to four months after a parole hearing, which was scheduled one month prior to parole eligibility. Hence, this provision, resulting in reduction of 2-3 months in time served, should have resulted in 300-400 additional parole releases in 1980.
2. Multiple offenders, who made up approximately 25% of the inmate population under Title 2A, received a minor reduction in their eligibility dates under the provisions of N.J.S.A. 30:4-123.51(j). The Board implemented this provision during May and June of 1980, and a review of hearing caseloads indicates that approximately 100 additional parole releases resulted.
3. During 1980, the three-judge resentencing Panel resentenced a significant number of prison inmates under Title 2C. The precise effect of this action on parole releases is uncertain; however, a certain number of inmates were made eligible for parole release in 1980 when they would not normally have been eligible.
4. The implementation of a monitoring system with presumptive parole appears to have generated the necessary documentation and, as a result a ten percent increase in the parole of those eligible has occurred. It would be impossible to identify each case individually but it is estimated that perhaps 100-200 cases were affected.

In summary, there are several distinct factors which produced a rise in parole release rates in 1980 above and beyond what it would normally have been. A normal rate of 4,100 paroles would have been expected; instead, the implementation of the new Act increased this by about 650. However, each factor contributing to this increase was a "one-shot" implementation effect of the Act. Therefore, the rate would normally have been expected to drop again in 1981.

#### Parole Release Trends--1981

During 1981, overall parole release rates dropped from 1980 levels. This is at least partially due to an expected decline to levels similar to 1978-1979. However, the decline has been even more significant than would have been anticipated. Available data suggests that the decline in release has been most noticeable in the Youth Correctional Complex, as noted below:

#### Parole Release Rates - Youth Complex

|               | <u>1978</u> | <u>1979</u> | <u>1980</u> | <u>1981*</u> |
|---------------|-------------|-------------|-------------|--------------|
| Total         | 4,100       | 4,092       | 4,743       | 3,334        |
| Youth Complex | 2,270       | 2,276       | 2,171       | 1,500        |
| Others        | 1,830       | 1,816       | 2,572       | 1,834        |

Examination of this data suggests that parole releases outside of the Youth Complex are running at about expected levels based upon historical data. In the Youth Complex, however, the rate during the first six months has been down by 300-400 inmates. If sustained over an entire year, a reduction of 700 parole releases could result.

Those statistics are confirmed by Departmental data on the number of adult indeterminate inmates. As of April 2, 1980, there were 1,180 adult indeterminate cases; as of July 8, 1981, 1,698 adult indeterminate inmates were housed. Most of this increase, of course, has been due to the declining parole release rate in 1981. In other words, fewer inmates were paroled.

Under the new Parole Act, the State Parole Board, rather than the Institutional Classification Departments and the Board of Trustees, has parole jurisdiction over youth cases. There has been a significant increase in the amount of time served for these cases; consequently, the parole rate has declined and will continue to remain low until the average time served by indeterminate cases has stabilized. It currently appears that the typical youth inmate will serve about 14-15 months.

Since there is no comparative statistical data for the period prior to the new Parole Act, it is impossible to determine the reasons for this increase. It is clear that the Parole Board is treating aggravating factors such as prior record, weapons, or parole/probation failures more seriously than was previously the case. Further, time reductions for program participation are utilized less. Finally, there is evidence that sentences have increased in length due to the presumptive terms under the Penal Code and that defendants' records and offenses have gradually

\* Projected on the basis of 6 months of actual data.



grown more serious. In any case, the decrease in parole rates here appears to be temporary and it is expected that release rates will begin to stabilize at levels similar to those in the past at about the end of 1981.

#### Summary

Overall, it appears that the impact of the new Parole Act has been largely neutral as far as prison population is concerned. The major trends have included a slight decline in the average time served in the prison complex and an increase in average time served in the youth complex. An additional 650 inmates were released in 1980 and, if current trends continue, 700 fewer inmates will be released in 1981. In terms of policy implications, the formerly large gap between time served in the prison and in the youth complex has narrowed, although the gap is still present.

#### PAROLE RECIDIVISM

During fiscal 1981, the State Parole Board revoked parole in a total of 884 cases. This represents only a partial total for young adult and juvenile cases since the Board had jurisdiction over these cases for only part of the fiscal year. However, projecting on the basis of actual statistics, it would appear that 1100 cases would have been revoked during the full fiscal year. This represents about 27% of the 4100 inmates paroled yearly.

Generally, parole may be revoked for new criminal conduct or for so-called "technical" parole violations such as failure to report to the parole officer. During fiscal 1981, 46% of the cases revoked by the Board were revoked for criminal conduct while the remaining 54% were revoked for technical violations. Of every 100 inmates paroled, perhaps 12 or 13 will have their paroles revoked for new criminal conduct. Of this number, 5 or 6 will be guilty of crimes against persons.

Research studies have documented that three variables correlate with recidivism: age, family stability and crime committed. Parolees who are older, have greater family stability (usually measured by marriage) and have committed more serious offenses are less likely to recidivate than their counterparts. Thus, parolees from the State Prison complex have lower recidivism rates than parolees from the juvenile and youth complexes.

Board statistics indicate that the typical parole violator is arrested eight months after having been paroled. Relatively few parolees who have been on parole for 18 months or two years violate parole.

TABLE I

SUMMARY OF ACTION

|   |      |        |
|---|------|--------|
| Initial Parole Hearings - Adults (3267)           |      |        |
| Recommended for Parole                            | 1999 |        |
| Referred to Panel                                 | 1081 |        |
| Deferred  | 187  |        |
| Panel Parole Hearings - Adults (1340)             |      |        |
| Parole Approved                                   | 420  |        |
| Parole Denied, Serve Maximum Term                 | 42   |        |
| Parole Denied                                     | 386  |        |
| Deferred, Pending Decisions                       | 492  |        |
| Juvenile Parole Reviews                           | 2550 |        |
| Review of Previous Board of Trustee Actions (876) |      |        |
| Juvenile Panel                                    | 254  |        |
| Young Adult Panel                                 | 622  |        |
| Parole Eligibility Terms Set (2136)               |      |        |
| Juvenile Panel                                    | 1060 |        |
| Young Adult Panel                                 | 1076 |        |
| Parole Revocation:                                |      |        |
| Continued on Parole, no Revocation Hearings       | 349  |        |
| Prosecutors' Applications                         | 205  |        |
| Declaration of Delinquency                        | 1662 |        |
| Revocation Hearings                               | 1016 |        |
| Parole Rescission Hearings                        | 81   |        |
| Parole Discharge Decisions (255)                  |      |        |
| Granted   | 177  |        |
| Denied  | 78   |        |
| Executive Clemency Recommendations                | 42   |        |
| Modifications of Parole Decisions *               | 238  |        |
| Special Review of Cases (Adults)**                | 4525 |        |
| Total   |      | 18,542 |

\*Incomplete Records

\*\* Estimated. Includes reviews of institutional infractions, initial case evaluations for State Prison inmates, and reviews of additional sentences for youth complex inmates.

TABLE II

PAROLE HEARINGSState Prison Panel

| Institutions   | <u>Initial Hearings</u> |                      |       |       | <u>Panel Hearings</u> |                  |                   |       | Parole<br>Releases<br>Established | Cases *<br>Decided | %     |
|----------------|-------------------------|----------------------|-------|-------|-----------------------|------------------|-------------------|-------|-----------------------------------|--------------------|-------|
|                | Parole<br>Recommended   | Referred<br>to Panel | Defer | Total | Parole<br>Approved    | Parole<br>Denied | Defer/<br>Pending | Total |                                   |                    |       |
| State Prisons: |                         |                      |       |       |                       |                  |                   |       |                                   |                    |       |
| Clinton        | 105                     | 43                   | 1     | 149   | 21                    | 13               | 15                | 49    | 117                               | 130                | 90%   |
| Leesburg       | 508                     | 168                  | 45    | 721   | 72                    | 77               | 54                | 203   | 547                               | 624                | 87.7% |
| Rahway         | 316                     | 241                  | 40    | 597   | 106                   | 98               | 70                | 274   | 389                               | 487                | 79.9% |
| Trenton        | 217                     | 181                  | 27    | 425   | 66                    | 66               | 71                | 203   | 260                               | 326                | 79.8% |
| Youth Complex: |                         |                      |       |       |                       |                  |                   |       |                                   |                    |       |
| Annandale      | 62                      | 29                   | 2     | 93    | 13                    | 7                | 13                | 33    | 71                                | 78                 | 91.0% |
| Bordentown     | 92                      | 58                   | 26    | 176   | 26                    | 25               | 21                | 72    | 105                               | 130                | 80.8% |
| Yardville      | 51                      | 26                   | 3     | 80    | 11                    | 10               | 10                | 31    | 56                                | 66                 | 84.8% |
| TOTALS         | 1,351                   | 746                  | 144   | 2,241 | 315                   | 296              | 254               | 865   | 1,545                             | 1,841              | 83.9% |

16x

\*Excludes all cases where disposition was made after an initial or panel deferral and all pending cases. Since a substantial proportion of deferral cases result in a parole denial, the overall parole approval rate is probably lower than the 84% quoted here. It is estimated that the overall approval rate is approximately 78%.

TABLE IV  
COUNTY PAROLE HEARINGS  
MULTI-YEAR TRENDS

| <u>Fiscal Year</u> | <u>For Parole</u> | <u>Parole Denied/<br/>Serve Maximum<br/>Sentence</u> | <u>Cases<br/>Decided</u> | <u>Percentage<br/>Approved</u> | <u>Deferred<br/>Decisions</u> |
|--------------------|-------------------|--|--------------------------|--------------------------------|-------------------------------|
| 1980-1981          | 134               | 51   | 185                      | 72.4%                          | 27                            |
| 1979-1980          | 175               | 87   | 262                      | 66.7%                          | 8                             |
| 1978-1979          | 131               | 128  | 259                      | 50.6%                          | 1                             |
| 1977-1978          | 84                | 116  | 200                      | 42.0%                          | 0                             |
| 1976-1977          | 63                | 82   | 145                      | 43.4%                          | 2                             |
| 1975-1976          | 41                | 23   | 64                       | 64.1%                          | 2                             |
| 1974-1975          | 25                | 47   | 72                       | 34.7%                          | -                             |
| 1973-1974          | 61                | 39   | 100                      | 61.0%                          | -                             |
| 1972-1973          | 52                | 62   | 114                      | 45.6%                          | -                             |
| 1971-1972          | 36                | 30   | 66                       | 54.5%                          | -                             |
| 1970-1971          | 32                | 14   | 46                       | 69.6%                          | -                             |

TABLE V

## PAROLE ELIGIBILITY TERMS (TIME GOALS) ESTABLISHED

YOUNG ADULT PANEL

| <u>OFFENSE</u>            | <u>CASES</u> | <u>%</u> | <u>RANGES<br/>(MONTHS)</u> | <u>AVERAGE<br/>(MONTHS)</u> |
|---------------------------|--------------|----------|----------------------------|-----------------------------|
| Murder                    | 7            | .6%      | 74-90                      | 77.4                        |
| Manslaughter              | 14           | 1.3%     | 20-48                      | 36.4                        |
| Kidnapping                | 6            | .6%      | 32-56                      | 44.5                        |
| Aggravated Sexual Assault | 32           | 3.0%     | 12-52                      | 31.0                        |
| Arson                     | 11           | 1.0%     | 12-40                      | 24.5                        |
| Armed Robbery             | 146          | 13.4%    | 14-48                      | 24.1                        |
| Robbery                   | 181          | 16.5%    | 12-48                      | 21.6                        |
| Assault                   | 78           | 7.3%     | 10-34                      | 19.6                        |
| C.D.S.                    | 114          | 10.6%    | 5-29                       | 14.9                        |
| Burglary/Stolen Property  | 333          | 31.0%    | 6-30                       | 14.4                        |
| Theft/Larceny             | 80           | 7.4%     | 6-22                       | 14.1                        |
| Weapons                   | 30           | 2.8%     | 6-34                       | 12.5                        |
| Forgery/Embezzlement      | 14           | 1.3%     | 6-22                       | 12.5                        |
| Auto Theft                | 17           | 1.6%     | 3-18                       | 11.9                        |
| Other                     | <u>13</u>    | 1.2%     | <u>3-20</u>                | <u>13.5</u>                 |
| TOTAL                     | 1,076        |          | 3-90                       | 18.7                        |

PAROLE ELIGIBILITY DATES (Time Goals)

JUVENILE PANEL

| <u>Offense</u>              | <u>Cases</u> | <u>%</u>    | <u>Ranges<br/>(months)</u> | <u>Average<br/>(months)</u> |
|-----------------------------|--------------|-------------|----------------------------|-----------------------------|
| Murder                      | 18           | 1.6%        | 26-73                      | 51.5                        |
| Manslaughter                | 1            | .1%         |                            | 26.0                        |
| Sexual Assaults             | 31           | 2.9%        | 15-26                      | 20.0                        |
| Assault                     | 111          | 10.4%       | 5-30                       | 15.9                        |
| Arson                       | 16           | 1.5%        | 6-26                       | 15.1                        |
| Robbery                     | 217          | 20.5%       | 1-32                       | 14.2                        |
| Weapons                     | 31           | 2.9%        | 7-19                       | 12.5                        |
| Theft/Stolen Property       | 125          | 11.8%       | 5-15                       | 11.2                        |
| C.D.S.                      | 14           | 1.3%        | 7-18                       | 11.9                        |
| Burglary                    | 294          | 27.8%       | 1-19                       | 11.4                        |
| Escape                      | 16           | 1.5%        | 1-16                       | 8.8                         |
| Fourth Degree Offenses      | 59           | 5.6%        | 1-14                       | 9.3                         |
| Disorderly Persons Offenses | 92           | 8.7%        | 1-10                       | 5.9                         |
| Other                       | <u>35</u>    | <u>3.2%</u> | <u>1-26</u>                | <u>11.0</u>                 |
| TOTAL                       | 1,060        | 100.0%      | 1-73                       | 12.8                        |



PAROLE REVOCATION DECISIONS

State Prison Panel

|                                  | <u>80-81</u><br>(392) | <u>79-80</u><br>(471) | <u>78-79</u><br>(361) | <u>77-78</u><br>(216)              | <u>76-77</u><br>(240) |
|----------------------------------|-----------------------|-----------------------|-----------------------|------------------------------------|-----------------------|
| Final Revocation Decisions       |                       |                       |                       |                                    |                       |
| Continued on Parole              | 32                    | 68                    | 63                    | 24                                 | 39                    |
| Revoked - Reparole               | 7                     | 73                    | 58                    | 50                                 | 36                    |
| Revoked - Eligibility Term       | 219                   | 155                   | 140                   | 113                                | 109                   |
| Revoked - Serve Maximum          | 134                   | 175                   | 100                   | 29                                 | 56                    |
|                                  | <u>Number</u>         |                       | <u>%</u>              | <u>Avg. Elg.<br/>term (Months)</u> |                       |
| Basis for Revocation (1980-1981) |                       |                       |                       |                                    |                       |
| Non-Criminal                     | 210                   |                       | 53.6%                 | 11.4                               |                       |
| Criminal                         | 182                   |                       | 46.4%                 | 18.4                               |                       |

Young Adult Panel

|                            | <u>1980-1981</u><br>(414) |          | <u>%</u><br>-                      |
|----------------------------|---------------------------|----------|------------------------------------|
| Final Revocation Decisions |                           |          |                                    |
| Continued on Parole        | 20                        |          | 4.8%                               |
| Revoked - Reparole         | 9                         |          | 2.2%                               |
| Revoked - Eligibility Term | 359                       |          | 86.7%                              |
| Revoked - Serve Maximum    | 26                        |          | 6.3%                               |
|                            | <u>Number</u>             | <u>%</u> | <u>Avg. Elg.<br/>term (Months)</u> |
| Basis for Revocation       |                           |          |                                    |
| Non-Criminal               | 266                       | 64.3%    | 7.4                                |
| Criminal                   | 148                       | 35.7%    | 11.4                               |

Juvenile Panel

|                            | <u>1980-1981</u><br>(146) |          | <u>%</u><br>- |
|----------------------------|---------------------------|----------|---------------|
| Final Revocation Decisions |                           |          |               |
| Continued on Parole        | 16                        |          | 11.0%         |
| Revoked - Reparole         | 8                         |          | 5.5%          |
| Revoked - Rehear           | 104                       |          | 71.2%         |
| Revoked - Serve Maximum    | 18                        |          | 12.3%         |
|                            | <u>Number</u>             | <u>%</u> |               |
| Basis for Revocation       |                           |          |               |
| Non-delinquent             | 51                        | 34.9%    |               |
| Delinquent                 | 95                        | 65.1%    |               |

NOTE: The 1980-1981 juvenile and young adult panel action reflects partial fiscal year statistics. The revocation portions of Parole Act of 1979 were implemented for cases originating on or after August 4, 1980; therefore, the juvenile and young adult panels did not begin to render revocation decisions in normal numbers until approximately December, 1980.

PAROLE RESCISSION HEARINGSState Prison Panel

|                             | <u>80-81</u> | <u>79-80</u> | <u>78-79</u> | <u>77-78</u> | <u>76-77</u> |
|-----------------------------|--------------|--------------|--------------|--------------|--------------|
|                             | (49)         | (138)        | (171)        | (110)        | (94)         |
| Rescission Hearings         |              |              |              |              |              |
| Continue Original Release   | 3            | 22           | 52           | 24           | 18           |
| Continue - New Release Date | 20           | --           | --           | --           | --           |
| Rescind - New Release Date  | 8            | 69           | 76           | 57           | 44           |
| Rescind - New Term          | 18           | 34           | 33           | 21           | 27           |
| Rescind - Serve Maximum     | 0            | 13           | 10           | 8            | 5            |

Young Adult Panel

|                            | <u>1980-1981</u> |
|----------------------------|------------------|
|                            | (27)             |
| Rescission Hearings        |                  |
| Continue Original Release  | 1                |
| Continue - New Release     | 3                |
| Rescind - New Release Date | 5                |
| Rescind - New Term         | 18               |
| Rescind - Serve Maximum    | 0                |

Juvenile Panel

|                             | <u>1980-1981</u> |
|-----------------------------|------------------|
|                             | ( 5)             |
| Rescission Hearings         |                  |
| Continue Original Release   | 0                |
| Continue - New Release Date | 0                |
| Rescind - New Release Date  | 3                |
| Rescind - New Term          | 1                |
| Rescind - Serve Maximum     | 1                |

TABLE III

PAROLE HEARINGS

Young Adult Panel \*

| Institutions | <u>Initial Hearings</u> |                      |       |       | <u>Panel Hearings</u> |                  |                   |       | Parole<br>Releases<br>Established | Cases **<br>Decided | %     |
|--------------|-------------------------|----------------------|-------|-------|-----------------------|------------------|-------------------|-------|-----------------------------------|---------------------|-------|
|              | Parole<br>Recommended   | Referred<br>to Panel | Defer | Total | Parole<br>Approved    | Parole<br>Denied | Defer/<br>Pending | Total |                                   |                     |       |
| Annandale    | 194                     | 86                   | 12    | 292   | 29                    | 33               | 62                | 124   | 183                               | 216                 | 84.7% |
| Bordentown   | 157                     | 108                  | 15    | 280   | 24                    | 28               | 82                | 134   | 147                               | 175                 | 84.0% |
| Clinton      | 17                      | 4                    | 1     | 22    | 1                     | 1                | 5                 | 7     | 15                                | 16                  | 93.8% |
| Yardville    | 143                     | 66                   | 8     | 217   | 14                    | 19               | 69                | 102   | 123                               | 142                 | 86.6% |
| TOTALS       | 511                     | 264                  | 36    | 811   | 68                    | 81               | 218               | 367   | 468                               | 549                 | 85.2% |

\* Action from November, 1980 to July 30, 1981

\*\* Excludes all cases where disposition was made after an initial or panel deferral and all pending cases. Since a substantial proportion of referral cases result in a parole denial, the overall parole approval rate is probably lower than the 85% quoted here. It is estimated that the overall approval rate is approximately 78%.



