Parole's Fifth Dimension

by Oliver Giola West, Jr.

"Do you think that there are things which you cannot understand, and yet which are; that some people see things that others cannot?"
—Dr. Van Helsing in Bram Stoker's Dracula.

The Fifth dimension will show realism and experience, in how the Board of Parole has (1) fundamentally misunderstood the limitations of its administrative power and (2) by double-counting a judicial structured imposed sentenced placed on an offender for a particular felony.

First, the role of the Parole Board is not to resentenced an offender according to the personal opinions of its members, but to determine whether, as of that moment, given all the relevant statutory factors, s/he should be released. Second, double-counting deals with the Board of Parole denying parole to an eligible offender based on identical factors that were previously assessed by the sentencing court during the offender's initial sentenced.

Although incarceration is based upon four components. The below illustration shows, the passage of time (the fifth dimensional component) being infused with the four components of incarceration; namely, (1) rehabilitation, (2) isolation, (3) incapacitation and (4) deterrence. The passage of time is the individual's *sole* choice of personal responsibility to change his criminal behavioral-psyche. These are the cardinal components to be determined, (i) if an offender is released, s/he will live and remain at liberty without violating the law, and (ii) one's release is compatible with the welfare of society. These two latter principles are exclusively for the offender's decision, and is not for the Board of Parole to vaguely predict or decide—who will or who will not commit a criminal offense when released.

Rehabilitation
Isolation
Incapacitation
Deterrence
} With The Passage of Time.

Unfortunately and realistically speaking, the Board of Parole (from interrogatories submitted to the then former governor and interim chairperson of the Board of Parole, in a federal civil rights action[1]) does not have an idea to the meaning of the language incorporated in Executive Law § 259-i(2)(c)(A); that is,

> *Discretionary parole release on parole shall not be granted merely as a reward for conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.*

Since the Board of parole, has the *sole* discretion to release a prisoner—and this entity is presumed to follow the rule of law under its parole statute. Thus, for anyone who thinks parole release is actually based on the rule of law—has suffered from a shared-delusional-disorder (SDD). Strange as it may seem, a prisoner can expect to be awarded parole release when the Board of Parole has decided when an individual has served enough time for one's criminal offense. This reality must be understood because the Board of Parole thinks of those who are incarcerated—as criminals whether they're violent or non-violent offenders.

Strange as it may seem, a prisoner can expect to be awarded parole supervision when the Board of Parole has decided an individual has served enough time for one's criminal offense.

Historical Analysis On Parole In General

Unintentionally, the State of New York Legislature had exacerbated the parole problem, when parole was initially under the previous Correction Law § 213, and transfered to Executive Law § 259-i(2(c)(A) with some of its spilled-over incomprehensible language, from the previous statute of § 213, and incorporated into the current parole statute § 259-i(2)(c)(A).

Currently the legislator's have not addressed the problems that have been continuously wasting scarce judicial resources in litigation by prisoners and prisoners' lawyers challenging parole decisions in our courts.

For an excellent illustration, thirty-five years ago, a class action was filed by incarcerated men challenging the incomprehensible language of the former parole statute, in a federal court. The federal court ruled in favor of the prisoners* and held, the incomprehensible language outlined in Correction law § 213 was unconstitutional and violated the equal protection of the law—because the language could not be understood in its common language; that is, what is the meaning, if any, concerning: (a) "But, only if the board of parole is of the opinion that, there is reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and (b) That his release is not incompatible with the welfare of society, is equally amorphous."

Unfortunately, the legislature had abolished, the previous parole statute under § 213 and, reenacting the current parole statute under § 259-i(2)(c)(A)—missed the remnants of the incomprehensible language outlined in the previous parole statute which had also been transferred into the current parole statute. This incomprehensible language read as follows: (i) But, only If the board of parole is of the opinion that, there is a reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and (ii) That his release is not incompatible with the welfare of society. This language, in itself, has made it very difficult, for an eligible candidate to be awarded parole release. Also, it is understood why courts have realized and held the following, " the statute does not, however, guide the Board regarding how much weight it should assign to each factor," under § 259-i(2)(c)(A). Therefore, (1) the current-state-of-affairs will continue to be an up-hill struggle, in challenging parole decisions in courts, and (2) the legislators must revise the current parole statute.

Also it can be understood why the federal court had ruled in favor for prisoners concerning the incomprehensible language, in the previous parole statute, which is definitely, instructive and applicable, to the current parole statute. The federal court stated:

> . . . .those statutes which, without explanation of the possible application of their standard, would fall in the impermissbly vague group. . . In such instances, the court must extrapolate [the statute's] allowable meaning from the interpretation of the statute govern by those charged with enforcing it. This is particularly true where, as here, state courts have left an open field to the administrators to the exercise unfettered discretion in the application of the statute."

Unquestionably, the above federal court had, realized the realistic-realism to the dilemma and understood that, state courts must extrapolate the allowable meaning from the interpretation of the parole statute govern by parole commissioners charged with enforcing it —since courts have left an open field to the administrators to the exercise unfettered discretion in the application of the parole statute. This truth is applicable under the current parole statute because courts have held on several occasions the following; that is, the statute does not, however, guide the Board regarding how much weight it should assign to each factor.

Therefore, it is apparent when sixty to ninety—violent and non-violent felons—having mitigating factual circumstances to their particular crimes—when appearing before the parole board and being denied parole on identical (i) boiler-plate specious language, which extend their sentences to an additional twenty four months. This practice is contrary to the rule of law.

Solution To The Parole Problem

The sad state-of-affairs on parole, generally, must be taken back to the legislature. In this situation, the legislators would have to reestablish a clear understanding of the limitations of the Board of Parole's power. Thus, the solution to this problem can be resolve in this manner: All prisoners and prisoners' lawyers must make a collected and concerted effort to challenge, the incomprehensible language in the current parole statute under § 259-i(2)(c)(A)—as opposed to, parole-denial challenges being based on divergent issues. In this instance, the courts being bombarded with parole challenges —would say, enough-is-enough; thereby, the courts would send a clear message, for the legislators to act.

* Cicero v. Oligiati, 410 F.Supp. 1080 (S.D.N.Y. 1976).