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Parole Revocation in North Carolina: The Arrest of a Parole Violator

Robert J. Robbins Jr.

of statutory construction, the legislature must make up for its shameful failure to provide guidelines to be followed by the agency which acts under these statutes. This has partially been done in the instance of G.S.96-14(3), but the amendment or re-writing must go much further. In terms of judicial conduct, the courts must be willing to impose standards that narrow the statutes in all subsequent cases rather than merely resolving particular disputes. In terms of equity, the whole system must begin to reflect the original purposes of providing benefits to individuals who are genuinely unemployed through no fault of their own.

The alternative to these proposals is a growing unemployment rate, a bankruptcy of revenues provided for these benefits, and a growing distrust and less of respect on the behalf of disadvantaged citizens towards the administrative agencies, the legislature, and the courts. In conclusion, revolutionary changes are needed to dissipate revolutionary reaction.

M. ALLEN MASON

Parole Revocation In North Carolina: The Arrest of a Parole Violator

At one time, Parole revocation received little attention from the courts or the legal profession as a whole. However, during the nineteen-sixty's an era of social awareness was produced which brought on an in depth examination of criminal procedure. During that period the once forgotten area of post-conviction criminal procedure, including parole revocation, was being considered by the courts in a large number of decisions. This awakening to problems of due process in parole revocation procedures culminated in *Morrissey v. Brewer*,[1] wherein; the Supreme Court finally delineated the procedures due to parolees in the revocation hearing.[2]

The focus of this comment will be on the procedure employed by North Carolina in arresting a parole violator. First a description will be given of the parole system in existence in North Carolina. Then a detailed picture of the arrest procedure will be presented, with atten-

* The author worked as a research intern with the North Carolina Parole Commission during the summer of 1974.

1. 408 U.S. 471 (1972).

2. *Id.* at 489.

tion to implications of *Morrissey* that Fourth amendment rights may be extended to parolees. Also a survey of case law in North Carolina and other jurisdictions will be employed to analyze questions left unanswered by *Morrissey* and possible future changes in North Carolina procedure.

I.

The North Carolina Parole System, a phamphlet published by the Board of Paroles,[3] defines paroles as:

> . . . [T]he release of an inmate from a penal or correctional institution, after he has served a portion of his sentence, under the continuing custody and supervision of the Board of Paroles and under conditions that permit his re-incarnation in the event he violates the terms and conditions of his parole.[4]

The phamphlet goes on to state that parole is not a right, nor an act of clemency.[5] However, one of the early cases dealing with parole in North Carolina defined it as a form of conditional pardon.[6] A more recent case[7] merely stated: "(T)he conditions of parole are a restraint on . . . liberty not shared by the public generally."[8] It is apparent that at least as far as the courts are concerned, parole is some form of privilege to be conferred on a person serving a prison term as the State sees fit.

The purpose of parole is to bridge the gap between prison life and the return to society as a free citizen. Parole is considered a rehabilitative procedure rather than a controlling or retributive device. The goal of parole is to return the prison inmate to society as a law-abiding member of society who is engaged in honest employment.[9]

In North Carolina the legislature has created a Parole Commission[10] composed of five members appointed by the Governor.[11] The Commission is entirely separate from the Correction Department except that the Correction Department supplies the Commission with clerical and other services.[12] However, the Department of Correction has complete control and authority over parole officers who now are part

3. The North Carolina legislature changed the name of the Board of Paroles to the Parole Commission, effective July 1, 1974. N.C. GEN. STAT. § 143B-266 (1973).

4. BOARD OF PAROLES, THE NORTH CAROLINA PAROLE SYSTEM, at 5 (1969).

5. *Id.*

6. State v. Yates, 183 N.C. 753, 756 111 S.E. 337, 338 (1922).

7. State v. Rhinehart, 267 N.C. 470, 148 S.E.2d 651 (1966).

8. *Id.* at 480, 148 S.E.2d at 658; *see also,* Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

9. *See,* Pharr v. Garibaldi 252 N.C. 803, 115 S.E.2d 18 (1960).

10. N.C. GEN. STAT. § 143B-266 (1973).

11. N.C. GEN. STAT. § 143B-267 (1973).

12. N.C. GEN. STAT. § 143B-267 (1973).

of the Division of Adult Probation and Parole.[13]

Under G.S. Sec. 148-57 the Parole Commission is authorized to establish rules and regulations as to the review and investigation of prisoners' cases who are eligible for parole.[14] As to criteria for granting parole there is no set standard. Except for vague general guidelines set out in the statute, each Commissioner uses his own discretion in deciding whether a prisoner is ready for parole.[15] However, every inmate is eligible for parole after serving one-fourth of his sentence if it is determinate. If he is serving an indeterminate sentence, he is eligible after serving one-fourth of his minimum sentence.[16] Persons serving a life sentence are eligible for parole after serving twenty years.[17]

Once released on parole, a parolee is placed under the supervision of a parole officer. His release order must designate his residence and place of employment.[18] This is absolutely essential prior to his release.[19] The parole officer makes contact with the parolee once every thirty days to check on his adjustment. He also checks with the parolee's employer and with the local law enforcement officers to find if there are any criminal charges pending against the parolee.[20]

When the parolee is released, a copy of the rules of parole[21] is read to him and he is asked to sign a copy of the rules certifying that he understands them and will obey them.[22] If the parolee breaks any of the rules, he is said to have committed a technical violation of parole for which his parole may be revoked. As a general practice the commission of one technical violation does not justify revocation. However, flagrant or continued violation of the rules will lead to the revocation of parole and to the return of the parolee to prison.

If a parolee is convicted of a crime, the revocation of his parole is discretionary with the Parole Commission.[23] If his parole is revoked, the Parole Commission has the authority to determine if his new sentence shall run concurrently or consecutively with his original sentence.[24] The validity of this law was upheld in *Jernigan v. State*[25]

13. N.C. GEN. STAT. § 143B-264 (1973).
14. N.C. GEN. STAT. § 148-57 (1973).
15. N.C. GEN. STAT. § 148-57 (1973).
16. N.C. GEN. STAT. § 148-58 (1973).
17. N.C. GEN. STAT. § 148-58 (1973).
18. N.C. GEN. STAT. § 148-61 (1935).
19. *Supra* n.4, at 14.
20. *Id.* at 26.
21. *Id.* at 25.
22. *Id.*
23. N.C. GEN. STAT. § 148-62 (1973).
24. N.C. GEN. STAT. § 148-62 (1973).
25. 270 N.C. 556, 184 S.E.2d 259 (1971).

in which it was stated that this was not a criminal law to which the power to sentence belonged to the courts.[26]

II.

PAROLE REVOCATION: PAROLE ARREST PROCEDURE IN NORTH CAROLINA

Against the backdrop of this brief outline of the parole system in North Carolina, a detailed view will be given of the arrest procedure used to retake parole violators in North Carolina. The arrest process can be broken down into two steps. The first step in the process can be designated as the pre-arrest stage. It is comprised of all the events that lead up to the arrest of the parolee by a parole officer or by law enforcement officials. The second stage is the arrest itself and all the circumstances that surround it.

A. *Pre-Arrest*

The revocation procedure is begun by the commission of a technical violation or a violation of the criminal laws. In the case of a technical violation, it is within the discretion of the parole officer to report the violation and to commence further revocation action, or to simply reprimand the parolee himself and end the revocation process at this point. In the case of a criminal charge being lodged against the parolee, a parole officer will file an Emergency Report describing the circumstance of the charge with the Parole Commission. It is then in their discretion whether to proceed with the revocation process. Except in the case of minor traffic violations and other misdemeanors, the Commission will usually proceed to a preliminary hearing. At this stage, a number of problems exist with the present procedure in North Carolina. These problems deal with the Fourth Amendment rights of parolees. The Supreme Court in *Morrissey* made no mention of these problems.

Controversy exists as to the right of parolees to be protected from unwarranted searches and seizures. There is no firm North Carolina policy as to the rights of a parole officer to search a parolee without a search warrant and to seize evidence against him. Nor have the North Carolina courts ever been called to decide if a parolee is protected under the Fourth Amendment from illegal searches and seizures. However, a North Carolina case has dealt with illegal searches and seizures of a person who is under a suspended sentence.[27] In that

26. *Id.* at 563, 184 S.E.2d at 263.
27. State v. White, 264 N.C. 600, 142 S.E.2d 153 (1965).

case the court upheld the revocation of a suspended sentence even though the evidence used was gained by a warrantless search. A distinguishing factor of this case from the search and seizure of a parolee is that as a condition of the suspended sentence, the plaintiff agreed to the right of law enforcement officers to conduct a warrantless search.

Cases in other jurisdictions are split on Fourth Amendment rights of parolees. The majority view is that they have none. A leading California case, *People v. Hernandez*,[28] affirmed this position in stating that parole officers did not need probable cause to search a parolee's automobile. In *Dimarco v. Greene*[29], a sixth circuit case, the court stated that the "[f]act that search of automobile turned up evidence used to convict parolee of crime of possession of burglary tools, which was unrelated to his arrest for parole violation did not render search unlawful."[30] Another federal court added that, "(s)uch a search could become 'unreasonable' only if made too often or if made at an unreasonable hours or if prolonged for other reasons establishing arbitrary or oppressive conduct by the parole officer."[31] Numerous other opinions serve to reinforce the idea that parolees have no Fourth Amendment protections.[32]

A minority of cases have taken the view that parolees do indeed enjoy the rights afforded by the Fourth Amendment.[33] In *Martin v. United States* the court stated: "There is no doubt that the Fourth Amendment protects all persons suspected or known to be offenders as well as innocent and it unquestionably extends not only to persons but also houses of persons . . . ."[34]

A related problem is the application of the exclusionary rule to evidence seized in a warrantless search. In *United States v. Fitzpatrick*[35] the court held: ". . . [T]he exclusionary rule is not applicable in a parole revocation proceeding."[36] Several other cases dealing

28. 229 Cal. App. 2d 143, 40 Cal. Rptr. 100 (3rd Dist. 1964), *cert. denied* 381 U.S. 953 (1965), *noted in* 22 STAN. L. REV. 129 (1969).

29. 385 F.2d 556 (6th Cir. 1967).

30. *Id.* at 557.

31. United States v. Fallette, 282 F. Supp. 10, 13 (S.D.N.Y. 1968).

32. *See, e.g.*, United States *ex rel.* Santos v. New York State Board of Parole, 441 F.2d 1216 (2d Cir. 1971); People v. Kansas, 14 Cal. App. 3d 642, 92 Cal. Rptr. 614 (1971).

33. *See, e.g.*, Brown v. Keaney, 355 F.2d 199 (5th Cir. 1966); Martin v. United States, 183 F.2d 436 (4th Cir. 1950). *See also*, People v. Bremmer, 30 Cal. App. 3d 1058, 106 Cal. Rptr. 797 (1973) (a warrantless search of a probationer by police officers pursuant to conditions of probation is constitutional only when activities suggest resumption of prior misconduct or when limited search or frisk is independently justifiable).

34. 183 F.2d 436, 439 (4th Cir. 1959).

35. 426 F.2d 1161 (2d Cir. 1970).

36. *Id.* at 1163.

with probation revocation have reached the same conclusion.[37]

B. *Arrest*

The official procedure for North Carolina parole officers to follow in the performance of their job is outlined in the "Parole Manual."[38] In Chapter six, "Parole Supervision," the procedures for the arrest of a parole violator are set out.[39] Statutory authority for these procedures is found in North Carolina General Statutes 148.61.1(b) which now reads in part,

> The Parole Commission may, in its discretion, enter an order revoking a parole conditionally or for a temporary period of time. Upon issuing such order of conditional or temporary revocation, such parolee may be arrested without warrant by any peace officer or parole officer. After such conditional or temporary revocation of parole, the parolee shall be held for a reasonable length of time during which the Parole Commission shall determine whether or not the conditions of said parole have been violated. . . .

The arrest process is set into motion by a parole officer filing a violation report[40] against a parolee alleging that the parolee has violated a criminal law or violated the conditions of his parole. When to file the report or upon what amount or type of information the report should be based is not detailed in the "Manual." Rather, this is left up to the parole officer's discretion. Therefore, a great disparity exists among parole officers as to when a parolee's actions warrant the filing of a violation report. This lack of formal guidelines has led to allegations of denial of equal protection to all parolees. However, this policy can be justified on the grounds that each case is unique and only the parole officer who is supervising the case is in a position to judge when the parolee may become a menace to society and is about to return to criminal habits.

Once the parole officer has exercised his discretion to file the violation report, he has several different ways open to him to file the report. He can forward a written or dictated report to the Supervision office by mail asking for temporary revocation and warrant for arrest.

However, this process takes several days. If the parole officer deems the situation to require prompt action he can call the Supervision office and ask for a temporary revocation order and later file a written

37. *See, e.g.*, United States v. Hill, 447 F.2d 817 (7th Cir. 1971); People v. Denne, 141 Cal. App. 2d 499, 297 P.2d 451 (1956). *See also* R. Singe, *Morrissey v. Brewer: Implications For the Future of Correctional Law*, 1 PRISON L. RPTR. 287 (1972).

38. BOARD OF PAROLES, PAROLE MANUAL, 1973.

39. *Id.* at 246-26.

40. The violation report is designated as P.B.14.

dictated report.[41] After the violation report is filed and the chief parole officer believes that it has substance to it, it is then brought to the attention of the Commission. The violation report is reviewed by the members of the Commission and upon the facts in it, they decide whether or not a temporary revocation order and warrant for arrest should be issued. A majority of the Commissioners[42] must sign the order and warrant it to be valid.

Next the order and warrant must be sent to the parole officer before he can make an arrest of a parolee. This may be sent by regular mail, which takes several days before delivery or, if the Commission decides the situation is an emergency, the order and warrant can be sent by telegram or through the Police Informational Network.

As soon as the parole officer receives the order for temporary revocation and warrant for arrest, he proceeds to arrest the parolee. The "Manual" is completely silent on what procedures should be followed in effecting the arrest. Each parole officer adopts his own methods for carrying out the arrest. Also, no provision is made in the "Manual" for the training of parole officers in arrest procedures or the legal aspects of an arrest. This lack of official procedure and training has drawn justified criticism. It has left the parole officer, who does not have a law enforcement background, in the dark about what to do. It also leads to practices which may be unconstitutional and subject to challenge in court. The parole officer's lack of training can lead to injury to the general public because of incorrect procedures being followed.

In conjunction with this issue is the matter of proper protective equipment needed by a parole officer in making an arrest. It is the present policy of the Commission to discourage and generally not allow parole officers to carry firearms or other protective weapons. Policy is silent on the carrying and using of such restraining equipment as handcuffs.

Generally, once the parole officer has received the temporary revocation order and warrant, his first problem is locating the alleged parole violator. Because of the time period that often elapses between the filing of the violation report and the issuance of the order and warrant, the parolee is often difficult to locate or he has absconded. If the parole officer locates the violator, he must then approach him in a manner which does not arouse suspicion or incite the parolee to violence or absconding. Next the parolee is usually told he is being arrested and for what reasons. Often though the parole officer only

41. This may be either an interim or emergency report.

42. At present a majority is three members on the Commission composed of five members. See, N.C. GEN. STAT. § 143B-266 (1973).

states that he wants to talk to the parolee or that they should go for a ride and talk. This is usually done when the parole officer feels that if the parolee knows he is going to be arrested that the parolee will react violently and attempt to flee. No matter how well founded the parole officer's reasoning may be, this type of subterfuge may be open to constitutional attack. Once the parolee has been told that he is being arrested, he is sometimes informed of his legal rights, but this is not so in a majority of the cases. While a parolee is not entitled to the same rights as an ordinary citizen, he is entitled to some minimal rights such as the right to remain silent. Following the advising of the parolee of his rights, he is then restrained by handcuffing or in most cases simply placed in the car and then transported to the nearest prison unit or jail. Upon arriving at the unit or jail, the parole officer must present a temporary revocation order and warrant before the violator is locked up. After this has taken place, the violator is held without privilege of bail. Also, the violator is not brought before a magistrate to be advised of his rights and to be given a bail hearing. This is contrary to the procedure followed when a citizen is arrested. However, prior to the preliminary hearing, the parole officer furnishes the violator with both a copy of the charges filed against him and a list of the adverse witnesses that may appear against him at the preliminary hearing. At this point the arrest procedures are complete and the revocation process is set into motion.

One other area of arrest procedures which should be dealt with is "parole holds."[43] Generally, a parole hold is defined as arresting a parolee for a technical violation or minor violation of the criminal statutes and detaining him in jail for a short period of time for punishment as an alternative to initiating the revocation process. Also, sometimes a parole hold is instituted so that the parole officer may investigate the allegations against the parolee and if they are not substantiated the parolee is released. In North Carolina the "Parole Manual" makes provision for this type of action. It states:

> [A] temporary revocation of parole order is used to detain a parolee in a local jail for disciplinary purposes, or to detain him without privilege of bond for investigation when he has committed a new crime, or when he has been suspected of having committed a new crime . . .[44]

However, present policy does not allow detention for purely disciplinary purposes but only for investigative purposes.[45]

43. *See* G.S. 148-61.1(b) (1973), for statutory authority to conduct an investigative hold in North Carolina.

44. *Supra*, PAROLE MANUAL, at 246-25.

45. Interview with Mr. Hodge, Chief Parole Officer, in Raleigh, N.C., July 11, 1974.

There is no case law in North Carolina dealing with the arrest of parolees. Generally the parole process, including the revocation procedure is stated as being purely administrative.[46] This view is expressed in North Carolina in *Jernigan v. State*.[47] The label of administrative process instead of judicial process has been one of the main reasons that parolees aren't given the same due process as other citizens.[48] This is reflected in the arrest procedure that is normally applied to parolees.

Two recent California cases allow the arrest of a parolee without a warrant.[49] However, most courts have focused on the quantum of evidence necessary for issuance of an arrest warrant and also the time in which it may be executed. Courts have almost unanimously agreed that a parole violator warrant can be issued on reliable information, which may be less than the probable cause needed for the issuance of a warrant against an ordinary citizen.[50] Also the paroling authority may base its decision to issue a warrant upon hearsay evidence and it is not bound by the exclusionary rule of evidence.[51] However, one court has held that the paroling authority must have some reliable information that the parolee has violated the conditions of his parole before issuing a warrant of his arrest.[52]

Another area concerning arrest warrants for parole violators that has concerned the courts is the length of time after the warrant has been issued until it is executed. Generally, the courts hold the execution of the warrant must be pursued with reasonable diligence and dispatch but the time period will vary according to the circumstances of each case.[53] One court has held that twelve months was not an unreasonable delay.[54] It has been common practice not to execute a warrant on a parole violator who has been convicted and sentenced in another jurisdiction until he is released from that sentence. However, in the

46. *See* Morrissey v. Brewer, 408 U.S. 471, 480 (1972).

47. 279 N.C. 556, 560, 184 S.E.2d 263, 265.

48. For a discussion of other theories advanced to deny parolee due process of law, *see* Comment, *The Impossible Dream?: "Due Process Guarantees for California Parolees and Probationers,"* 25 HAST. L.J. 602 (1974).

49. People v. Villoreal, 262 Cal. App. 2d 442, 68 Cal. Rptr. 600 (1968); State v. Arguello, 244 Cal. App. 2d 413, 53 Cal. Rptr. 245 (1966), *cert. denied* 386 U.S. 968 (1967).

50. *See, e.g.*, Story v. Rimers, 97 F.2d 182, 68 App. D.C. 325, *cert. denied* 305 U.S. 595 (1938); U.S. v. Fitzpatrick, 416 F.2d 1161 (2d Cir. 1970). For a *contra* position see 46 WASH. L. REV. 175 (1971).

51. Bailey v. State, 494 P.2d 252 (Okla. 1972).

52. U.S. *ex rel.* De Lucia v. O'Donovan, 82 F. Supp. 435 (D.C. Ill. 1948), aff'd 178 F.2d 876 (1949).

53. *See*, Shelton v. U.S. Board of Parolees, 388 F.2d 567 (D.C. Cir. 1967).

54. Lavendera v. Taylor 234 F. Supp. 164 (D.C. Kan. 1964).

recent case of *Sutherland v. District of Columbia Board Paroles*[55] the court held that it was unreasonable to maintain a detainer against a parolee until he finished service of a ten year sentence in another jurisdiction. The court further ordered a prompt execution of the warrant and that the parolee be given a revocation hearing as soon as possible. This case has great implications toward changing the procedures concerning execution of warrants and detainers followed by many jurisdictions, including North Carolina.

The courts have also stated that a parole violator warrant may be issued after the term for parole has expired.[56] Also, a Federal Court has taken the position that the execution of the warrant may await the outcome of pending criminal charges and the subsequent sentence entered thereon without amounting to an unreasonable delay.[57]

Another point concerning the validity of parole violator warrants is that one federal court has held that an admitted parole violator's rights are not violated by failure of the arrest warrant to contain a statement of reasons for seeking parole revocation.[58] Therefore, the warrant need only name the alleged violation and contain a general statement that he has violated the terms of his parole for it to be valid. The practice in North Carolina is not to state the specific reasons or grounds on which the warrant is sought.

After the arrest is completed several attendant problems arise. One is whether a parolee should be given his *Miranda* rights,[59] and another is whether a parolee should be eligible for bail while awaiting his preliminary hearing or his final revocation hearing. In North Carolina, it is not mandated by Commission policy that parolees be given the *Miranda* rights after arrest and before questioning. No case has ever arisen on this point in North Carolina.

Three jurisdictions have ruled that the *Miranda* warnings should be extended to a parolee where the parole officer questions him after his arrest and law enforcement officers had not previously given the parolee the required warnings.[60] However, a recent Ohio appeals

55. 356 F. Supp. 270 (D.D.C. 1973). *Contra* Simon v. Mosely 452 F.2d 306 (1971); Galloway v. Attorney General 451 F.2d 357 (1971).

56. *See, e.g.*, Barr v. Parker 453 F.2d 865 (1971).

57. Id. at 867.

58. Starnes v. Markley 343 F.2d 535 (7th Cir. 1965), *cert. denied* 382 U.S. 908, *rehearing denied* 382 U.S. 949 (1965).

59. In Miranda v. State of Arizona, 384 U.S. 436, (1966) the Supreme Court ruled that evidence gained by police officers prior to warning a suspect of his constitutional rights is inadmissible in court. These warnings consist of the right to remain silent, that anything a suspect says can be used against him, that if he starts answering questions he may stop at any time, that he is entitled to counsel and if he is indigent that counsel will be appointed for him.

60. State v. Williams, 486 S.W.2d 468 (Mo. 1972); State v. Lekas, 201 Kan. 579,

court ruled that a parole officer need not give a parolee his *Miranda* rights when questioning him after police had earlier given the parolee his rights at the time of the arrest.[61]

The majority of courts have ruled that the *Miranda* warnings do not extend to parolees.[62] Courts have relied on the fact that a parole officer is not considered a law enforcement officer, but that he is more like a counselor.[63] Also, courts have relied on the theory that the parolee is in the constructive custody of the parole officer at all times and that by accepting parole or probation he has waived his constitutional rights.[64] It must be concluded at this time that parolees in North Carolina probably will not be given the *Miranda* warnings after arrest because of the strong majority of courts ruling against this.

A further problem that springs out of the arrest of parolees is whether they should be allowed bail pending their preliminary hearing. At present, the parole violator warrant-temporary revocation order has a provision that specifically states that a parole violator is not eligible for bail. This provision has never been challenged in the North Carolina courts.

A recent Illinois court, while stating that parolees do not have a constitutional right *per se* to bail, ruled that since Illinois statutes allowed bail for probationers, under the Equal Protection clause of the Fourteenth Amendment parolees were also entitled to bail while waiting for a revocation hearing.[65] This case has great implications for North Carolina because North Carolina statutes provide probationers with an opportunity to post bail.[66]

> In *Morrissey v. Brewer*, Justice Douglas, dissenting in part, stated: (i)f a violation of a condition of parole is involved rather than the commission of a new offense, there should not be an arrest of the parolee and his return to prison or the local jail. Rather, notice of the alleged violation should be given to the parolee and a time set for a hearing.[67]

442 P.2d 11 (1968); People v. Gastelum, 237 Cal. App. 2d 205, 46 Cal. Rptr. 743 (1945).

61. State v. Gallagher, 36 Ohio App. 2d 29, 301 N.E.2d 888 (1973). *See*, Note *Criminal Law—Evidence—Admissibility of Statements to Parole Officer—Miranda Warnings*, 7 AKRON L. REV. 382 (1974).

62. State v. Johnson, 202 N.W.2d 132 (N.D. 1972); Nettles v. State, 248 So. 2d 259 (Fla. App. 1971); Gilmore v. People, 171 Colo. 358, 467 P.2d 828 (1970); People v. Ronald W., 24 N.Y.2d 732, 249 N.E.2d 882, 302 N.Y.S.2d 260 (1969).

63. People v. Ronald W., 24 N.Y.2d 732, 734, 249 N.E.2d 882, 883, 302 N.Y.S.2d 620, 621 (1969).

64. Nettles v. State, 248 So. 2d 259, 260 (Fla. App. 1971).

65. United States *ex rel.* Dereczynski v. Lengo, 368 F. Supp. 682 (N.D. Ill. 1973).

66. *See*, G.S. § 15-200 (1961).

67. 408 U.S. at 497 (and footnotes included therein).

Justice Douglas' dissent has not been followed by the Federal courts. One year after the *Morrissey* decision a federal court in *United States ex. rel. Manson v. Amica*[68] stated that the Constitution did not guarantee the right of bail to parolees pending a revocation hearing. Also, a recent California decision denied bail to parolees seeking release from detention.[69]

Under unique circumstances, another federal court in *United States v. Dziedzic*[70] ruled that a parolee should be allowed bail while awaiting a hearing to determine his early release. A federal court had previously reimposed a ten year sentence on the parolee but had recommended that the parolee be given an early release by the parole board and that he remain free on bail pending the hearing. The parole board refused this and the parolee appealed to the circuit which granted his bail.

While courts have not been favorable to granting bail to parolees, several jurisdictions provide by statute the right of bail for parolees.[71] The Georgia statute provides for release of the parolee on his own recognizance by the hearing officer prior to his preliminary hearing.[72]

It does not appear that North Carolina will alter its present procedure any time in the immediate future unless forced to do so by court action.

One final procedure that merits some attention is the "parole hold".

> When a parole agent or other representative of the administrative component of a parole system causes a parolee to be placed or retained in custody, without action by the quasi-judicial decision making component of the system, a "parole hold" is said to have been placed.[73]

A parole hold is usually employed as a disciplinary action or as a means of detaining the parolee for investigation of alleged charges.

In North Carolina the parole hold is not used as a disciplinary action by Commission policy. However, it is used on an infrequent basis as a means of detaining the parolee for investigation. This practice has never been judicially examined in North Carolina.

The use of the parole hold has been examined in one California case,

68. 360 F. Supp. 1344 (W.D.N.Y. 1973).

69. *See, In re* How, 10 Cal. 3d 21, 513 P.2d 627, 109 Cal. Rptr. 573 (1973).

70. 483 F.2d 246 (1973).

71. North Carolina Parole Commission, Survey of the Arrest Powers of a Parole Officer and the Revocation Process (July, 1974). According to a recent survey of other paroling authorities conducted by the North Carolina Parole Commission, eight other states allow parolees a bail hearing.

72. GA. STAT. 77-518(1)(vii, viii) (1970).

73. Comment, *Parole Holds: Their Effect on the Rights of The Parolee and The Operation of the Parole System*, 19 UCLA L. REV. 759 (1972).

People v. Denne.[74] The court affirmed the legality of the parole hold when it stated:

> It is unnecessary for a parole officer to "arrest" a parolee who is already his prisoner and who is at all times in *custodia legis, the administration of the parole system must be realistic and not strangled in technical niceties.* A parole officer's physical apprehension of his prisoner for suspected violation of parole is not an 'arrest' in the sense that a peace officer arrests a private individual suspected of a crime but a mere transfer of the subject from constructive custody into actual or physical custody. . . .[75] (emphasis added.)

The ruling of this court in the wake of the *Morrissey* decision[76] which dealt a severe blow to the custody theory is now suspect. Such a parole hold would indeed inflict a "grievious loss" on the liberty of a parolee and would be subject to some due process restraints.[77]

III.

IMPLICATIONS FOR THE FUTURE

In the celebrated case of *Morrissey v. Brewer*[78] the Supreme Court extended due process safeguards to a limited extent to parolees.[79] However, the court stated:

> We begin with the proposition that the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations.[80]

The court then countered this by saying:

> We see therefore that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others.[81]

It is the feeling of most observers of the Supreme Court that the latter statement points to expanding rights for parolee.[82] Surely the extension of Fourth, Fifth, Sixth, and Eighth Amendments rights to a certain degree to parolees would not materially interfere with the administration of parole. In fact, the extension of these rights may reinforce

74. 141 Cal. App. 2d 499, 297 P.2d 451 (1956).
75. *Id.* at 510, 297 P.2d at 458.
76. 408 U.S. 471 (1972).
77. *Id.* at 482.
78. 408 U.S. 471 (1972).
79. *Id.* at 489.
80. *Id.* at 480. *Cf.* Mempa v. Rhay 389 U.S. 128 (1967).
81. *Id.* at 482.
82. *See* R. Singe, *Morrissey v. Brewer: Implications For the Future of Correctional Law*, 1 PRISON L. RPTR. 287 (Aug. 1972) (Mr. Singe is the director of the National Center for Correctional Law).

the central idea of parole that it is a rehabilitative process and not one of retribution and enforcement. It appears likely that the courts will move slowly in this area until another significant case on parolee rights reaches the Supreme Court.

As an indication of how the Supreme Court might rule in such a case attention should be given to *Gagnon v. Scarpelli*.[83] In this case the Supreme Court extended the right of counsel to probationers and parolees in revocation hearings.[84]

CONCLUSION

It is most likely that the North Carolina Parole Commission will not change its present procedures unless prompted to do so by court decision. The first area that is likely to see change is that of warrantless search and seizure. This practice is taboo in North Carolina and is rarely if ever employed.

North Carolina, by Commission policy, always uses an arrest warrant and it has been adamant on this point. However, it appears that no attempt will be made to direct parole officers to give parolees their *Miranda* rights. Furthermore, it is not likely an exclusionary rule will be instituted to keep any evidence gained by an in-custody interrogation, where the parolee is not advised of his rights, out of the revocation hearing.

The Commission shows no willingness to extend the privilege of bail to parolees unless directed to do so by a court decision. Furthermore, the Commission has decided that in view of the *Morrissey* decision, the use of a parole hold for disciplinary reasons is unconstitutional.

Finally, the North Carolina Parole Commission is in total compliance with present Supreme Court and State court rulings and the commission seems content with its present procedure.

ROBERT J. ROBBINS, JR.

The Law and Legal Impact of Contraceptive Use by Minors In North Carolina

Present North Carolina law, G.S. 90-21.1, makes unlawful the medical treatment of a minor without parental consent, by a physician,

83. 411 U.S. 778 (1973).
84. *Id.* at 787.