

# Thoughts on the Future of Parole

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*Remarks delivered at  
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## **Dear friends:**

It is quite wonderful to be giving a talk at the Vera Institute of Justice. I first started working for Vera twenty-nine years ago. The six years I spent at the Institute, and the relationships I have had with the Vera family over my entire career, have shaped my thinking and my life's work more than I can describe. The Vera Institute of Justice continues to be a beacon for common sense and constructive innovation in a world that needs both. So, I pay my respects to a great institution and express my thanks for being a member of the Vera family.

The title of my talk is "Thoughts on the Future of Parole." When thinking about the future of parole, I have come to this conclusion: It's time to end parole as we know it.

I come to this conclusion reluctantly. Parole boards and parole officers are frequently maligned and vastly under appreciated. Both aspects of the classic parole model – (1) the decision by parole boards to release someone from prison, and (2) the work of parole officers in supervising those who have been released – have been critiqued as ineffective, castigated as capricious, and caricatured as naïve remnants of an earlier era when indeterminate sentencing reigned supreme and the goal of rehabilitation was the foundation of our sentencing philosophy.

So, for those of us who value public service, it is natural to come to the defense of institutions and individuals such as these who are frequently under attack and are trying hard to do their best under adverse conditions.

Yet the problem is not with them, but with the task we have asked them to do. This morning, I would like to return to the proverbial "square one" – to think critically about the two functions we have asked parole to serve, namely, determining the timing of the prisoner's release, and supervising the released prisoner for the remainder of his sentence.

As we spend time on square one, I ask you to put aside our accepted notions of who does what in the criminal justice process. I hope we can begin with a clean slate and imagine different ways of doing the work of justice.

## **I. The Release Process.**

An examination of Figure 1 reveals that release by parole boards is no longer the dominant method for deciding when a prison term ends. In 1976, 65 percent of the prisoners released from state prisons in America were released by decisions of parole



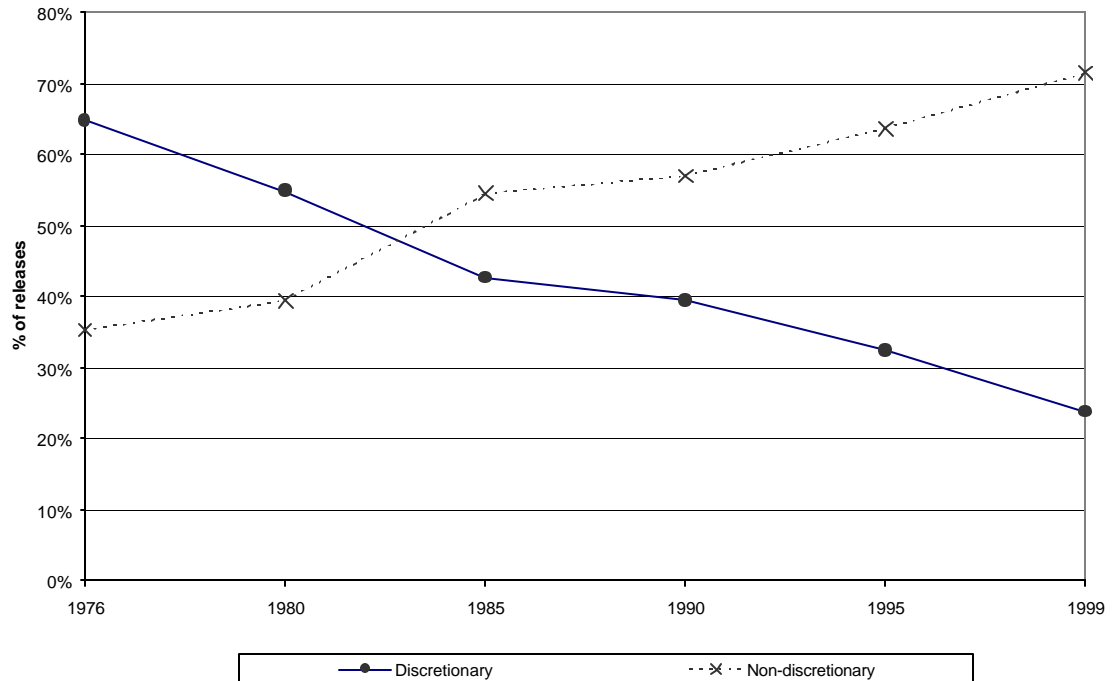
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boards. By 1999, that percentage had declined to 24 percent, and is likely to decline even further, reflecting changes in our sentencing statutes.

Figure 1. Share of Prison Releases by Method of Release  
1976 - 1999



Some commentators would look at that trend and argue for the restoration of parole boards, for the return to an earlier era. For three reasons, I will not make that argument.

First, as a matter of principle, I have concluded that the executive branch of government should not decide the length of a prison term<sup>1</sup>. The research showing that release rates often decline closer to election time -- and can vary dramatically between gubernatorial administrations -- shows that parole board decisions are high sensitive to the pressures of the political environment. Prison terms should not be determined by shifting political winds.

Second, the experience with parole boards has convinced me that their decisions are too susceptible to organizational manipulation and arbitrary exercise of discretion to provide a pillar for a coherent system of justice. Finally, as a matter of political judgment, I find it hard to imagine a scenario under which discretionary release through parole boards can be revived in this country. So, I do not argue for a revival of parole boards as a mechanism for making release decisions.

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<sup>1</sup> I make a distinction between parole release and other executive branch release decisions such as clemency, pardons, compassionate releases, etc.

You may well disagree with my reasoning, but this morning I want to focus on a different issue where I hope consensus is possible.

By writing parole boards out of the release decision, our sentencing reforms over the past 25 years have eliminated a valuable role they played, namely overseeing the process of preparing prisoners for reentry. Clearly that task is principally the responsibility of the department of corrections, another executive branch agency. But parole boards, as separate entities authorized to review individual cases for release eligibility, have served an important oversight function. They have continually asked two questions, “Is this prisoner prepared to return home?” and “What is the plan for his supervision and support once he is released?” My assumption, subject to proof, is that this oversight activity has held corrections administrators accountable, to some degree, for preparing inmates for reentry and creating a plan for their return to the community.

This is the kernel of a good idea that I would like to salvage from the demise of parole.

These days, I view matters of sentencing philosophy through the lens of “reentry.” I find it useful to focus on the fact that, with the exception of those few who die in prison, all prisoners come back home. It does not matter whether they are sentenced under indeterminate or determinate sentencing schemes, released by parole boards or by operation of law, they all return to live again in free society.

From this perspective, however, it matters a lot whether individual prisoners are prepared for that journey home. It matters a lot whether the network of supervision and support is in place when they are released<sup>2</sup>. My exploration of the reentry domain has convinced me that, as a society, we have failed to meet this fundamental challenge. I am not saying that in some prior golden age, we did this well. But, it is clear to me that we are not doing it well now.

If you agree with me that preparation and transition planning matter, then we should think about whether we want to entrust that preparation solely to corrections agencies. I think the answer is no. Their priorities will always tilt in the direction of construction and security. If we were to create a robust oversight mechanism, which government institution would get the assignment?

My heretical proposition is that we assign this oversight role to two entities – sentencing commissions and sentencing judges. In this new world, sentencing commissions would take on the task of developing standards for the reentry process, and

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<sup>2</sup> See report by Vera Institute of Justice titled, "Why Planning for Release Matters" by Marta Nelson and Jennifer Trone, October 2000.

holding departments of corrections accountable for meeting those standards<sup>3</sup>. Sentencing judges would be expected to create and review reentry plans for each person sent to prison, just as they now approve supervision plans for those on probation. As we will discuss in a minute, this sentencing reform would also create reentry courts so that judges could oversee the period of transition after prison.

How would this work? Let's make this real by imagining the following statement by a sentencing judge in a determinate sentencing state.

John Jones, I have concluded that I must sentence you to prison. Because we are a determinate sentencing state, I must sentence you to a term of five years, given your crime and your criminal history. If you demonstrate good behavior in prison, that term may be reduced by five percent, or three months, for good time credit. Whether you are released in five years, or four and a three-quarter years, depends on you. Whenever you are released, you will face new challenges, the return journey to life outside of prison. While you are in prison, you should begin preparing for that journey. In reviewing your presentence report, I note that you need assistance in the following areas – you should receive drug treatment, earn your high school diploma, and participate in a job-training program. Therefore, I have directed that the department of corrections provide you appropriate opportunities to participate in those programs. Over the next few years, the department and you may modify your reentry plan, and I expect to be notified of those changes.

But there is much more involved than just attending programs in prison. For you to have a successful return home, you will need to reconnect with your family, get a job, transfer your medical care to a community clinic, stay off drugs, and stay out of trouble. You have recently been introduced to Ms. Smith, the reentry liaison who works for a new entity, called the Community Justice Corporation and is assigned to my courtroom. While you serve your sentence she will have contact with the prison and with you to see how you are doing in preparing for your return. Because our state believes that successful reentry is important, you will be brought back to this courtroom about three months before your release. I expect that my orders regarding your in-prison programs will have been carried out. I will also review your discharge plan to see whether those connections in the community have been made. If not, then I will direct the appropriate agencies to make them happen.

So, Mr. Jones, I, or some other judge, will see you again in about four and a half years. Between now and then, I will get progress reports on

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<sup>3</sup> Legislatures could conceivably play this role as well, but sentencing commissions are much better positioned.

your prison experience. In the meantime, you, your family and friends, the department of correction, the reentry liaison and a network of community agencies will be preparing for your return home. We want you to succeed.

Impossible, you might say. But a version of this colloquy is now taking place every day in the reentry court in Richland County, Ohio. There, under a pilot program, the presentence report for prison-bound defendants is translated into a reentry plan, the Ohio Department of Rehabilitation and Corrections provides the program services indicated, a newly created court-based position of “reentry liaison” visits prisoners once a month while they are in prison, the prisoner is brought back to the sentencing judge at the time of release and appears once a month in a reentry court.

What would it take to make this standard practice in a state? The sentencing commission, working with the legislature, would have to amend the sentencing laws to authorize creation of a reentry plan, establish mandatory judicial review of the reentry plan, develop a checklist of things to be done prior to release, and reorient the administrative supports for judges, prisons and post release agencies to carry out this new set of relationships. The sentencing commission would also have to develop a set of standards and outcomes for prison programs and require the department of corrections to report on its progress in meeting those expectations.

What are the obstacles? It is clearly a new role for judges, a new degree of transparency for prisons, and a new dimension of accountability for the entire criminal justice system. Judges will argue they are too busy now; corrections managers will resist judicial oversight; the public will be concerned that prisoners may get services that other needy populations are not getting; state legislatures will not want to pay for it. But to these concerns, I say, simply, remember we are in the world of square one. I think we could achieve significant reductions in prison costs, new crimes and substance abuse, while increasing the productivity of returning prisoners. So, if we focus on our goals and keep these positive outcomes in view, I think these obstacles can be overcome<sup>4</sup>.

In short, I propose that we end the role of parole boards in making release decisions, but borrow a page from the parole playbook and create a system of oversight of the preparation for reentry.

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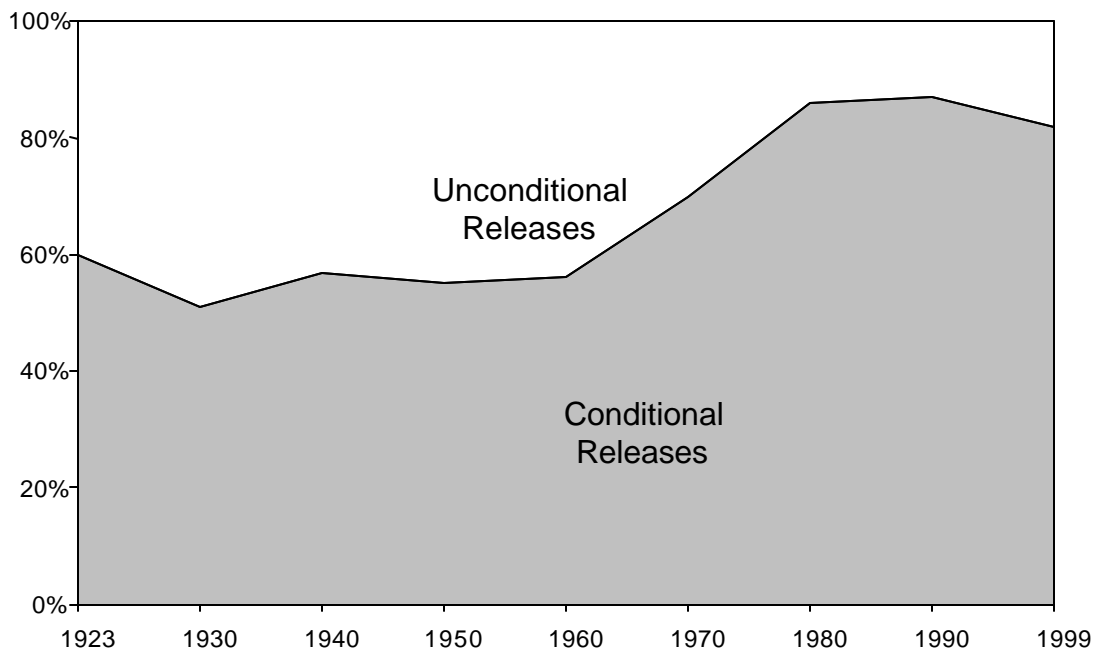
<sup>4</sup> Even though I am not an advocate for parole as a mechanism of release, I should point out that this new approach could be implemented in any sentencing scheme, even in states that retain parole. For determinate sentencing schemes, which now account for three of four releases, this kind of judicial oversight of reentry preparation could be superimposed without disturbing the legislative judgment regarding sentencing policy. For indeterminate sentencing schemes, which account for one in four releases, the sentencing judge could still be empowered to order reentry plans, and the parole board’s role could be enhanced.

## II. The Reintegration Process

Let's turn our attention to the second part of the parole function, the supervision of released prisoners.

We should start by recognizing that about three-quarters of the prisoners now being released from state and federal prison are released to parole supervision, which goes by different names in different states. (See Figure 2.) So, even though the nation has turned away from parole as a method of release, we still release most prisoners to some form of supervision.

Figure 2. Share of Prison Releases by Conditional and Unconditional  
1923 - 1999



Yet that leaves one quarter of all returning prisoners with no supervision. This year, our prisons will release about 150,000 individuals unconditionally, just about the same number as we released in total during 1975. They have no legal status; they report to no parole officer; they observe no special conditions. For them, the question is not whether parole should be abolished; the question is why it doesn't exist.

Perhaps some of those individuals require neither supervision nor transitional services. Think of a prisoner who finishes a one-year mandatory minimum who has

family, job, home and a supportive network waiting for him. Should he get no transitional support? Perhaps some of them are in dire need of both supervision and services. Think, for example, of a mentally ill prisoner whose term has expired. Should no one be responsible for helping his transition home? Perhaps some of them pose particular risks to society, and require close supervision by a government agent with law enforcement powers. Think, for example, of a violent individual who has been in solitary confinement, has been denied parole, but has maxed out and must be released. Should no one be responsible for supervising him after he gets out of prison?

These are very difficult questions. While I do not pretend to have answers to all of them, I am troubled by conversations I have had with a number of high ranking corrections managers over the years. They frankly acknowledge that, whatever we might think about the adequacy of their efforts to prepare prisoners for release, they feel the least obligation to prepare those who are released unconditionally. Some said they have no special obligation to secure employment, notify family, arrange for drug treatment, provide identification, or find housing for those prisoners who are simply released. They have no obligation to notify the police or anyone else. In this view, the prisons have done their job in keeping the prisoners safe and the state's responsibility ends when the prisoner leaves the prison grounds.

Clearly this is unsatisfying. It seems to me that, as a matter of principle, the government has an obligation – to the prisoner, his family, his community and the general public – to facilitate a smooth and safe transition for every returning prisoner.

Let's put some flesh on this skeleton. What does it mean for the government to take on this responsibility?

I started this talk with the words, "It's time to end parole as we know it," consciously adapting the rallying cry of welfare reform. I am fascinated by the parallels between welfare reform and what I see as the emerging contours of an era of justice reform. I think these parallels help us answer this question.

The welfare reform movement has been characterized by three innovative ideas. First is the concept of devolution, the idea that governmental decisions should be moved closer to the communities directly affected by those decisions. Second is the idea that reform can be accelerated through financial incentives, the notion that government should set performance goals and share the savings if those goals are met. Third is the focus on moving the client to a state of greater independence, through a mix of traditional and nontraditional interventions. All three of these ideas apply to the work of justice reformers, particularly as we envision a world beyond parole.

Let's look at the last of these first. I think the goal of everyone involved in the reentry process – the individual prisoner, his family, his community and the agencies of

government – should be to improve the chances of successful reintegration for each returning prisoner. This means re-establishing (or, as the case may be, establishing) positive connections between the returning prisoner and his family, the world of work and the institutions of community.

Embracing this goal does not diminish the importance of a second goal, crime reduction. But we should recognize that reintegration is a separate objective. Improving reintegration outcomes may or may not be associated with crime reduction, but these are ultimately the more important goals. The literature on desistance shows that the crime producing years pass, and most ex-offenders live long lives after their criminal careers are over. So for millions of ex-felons amongst us who live crime free lives, the policy question is whether they are productive members of our society.

Focusing on these two goals – reintegration and crime reduction – requires us to focus intensely on the days, weeks and months immediately following the release from prison. This period poses the greatest risk of failure. Rearrest rates are high. Rates of relapse to substance abuse are high. Rates of homelessness are high. As was wonderfully documented by the Vera report entitled, “The First Month Out,” the time right after release is disorienting, fraught with danger, and poorly managed.

When we look at this state of affairs from the safety of square one, this seems quite strange. In the period of time up to the prisoner’s release, New Yorkers spend about \$2,400 a month on each prisoner. He has adequate health care, a roof over his head, three meals a day, lots of supervision, access to a library, perhaps access to programs to deal with his needs. Without painting a rosy picture of prison life, we must acknowledge that certain basics are taken care of. Yet on the day of his release, we spend from zero dollars (for unconditional releases) to about \$265 a month (about one-tenth the prison costs) in criminal justice dollars for an average parolee in New York. Most of this expenditure goes for supervision. Little of it goes for housing, medical attention, drug treatment or other programs, or work, although released prisoners often consume significant public dollars when they show up at homeless shelters, get rearrested, or access benefits and social services.

Let’s imagine a world in which we spent the same amount of money per month during the first three months after release as we do for the three months prior to release. This would cost about \$7,000 for every prisoner returning home. We now spend almost that amount for the entire period of parole supervision in New York, but let’s front-load this expenditure to the first three months back in the community. This money would support transitional housing, if needed, employment if no other job could be found, drug treatment, medical attention, family counseling – in short, whatever was required to increase the odds of successful transition. Part of this money would also fund a

community-based support network. This network would include case managers serving as advocates for the returning prisoner, and an organization of ex-offenders who had gone straight and could provide invaluable guidance to the latest returning prisoner.

What is the goal of these activities? To help the returning prisoner make the transition to the free world, get back on his feet, find the positive support systems that might work for him, stay out of crime, stay sober and increase the chances of successful reintegration. Not everyone will need this kind of support; some may need it more than others; some may reject it and quickly return to a life of anti-social behavior.

You will note that I have said nothing about the remainder of the prison sentence, the conditions of supervision, or revocations of parole. I think it is appropriate to require that returning prisoners abide by some conditions of their release. These conditions should be few in number, readily enforceable, supported by strong research, and strictly tied to the two goals of reintegration and crime reduction.

But what should we do if these conditions are not met? Our current answer to this question is very unsatisfactory. In most states, we say that a parolee may be returned to prison for the remainder of his sentence if he violates a condition of his parole. We have created a second sentencing system, one where there is no relationship between punishment and offense. This sentencing system is even more arbitrary and opaque than the system of indeterminate sentencing that attracted the critique of liberals and conservatives thirty years ago. This sentencing system now sends over 200,000 people to state prison each year, over a third of all prison admissions<sup>5</sup>.

I have a solution in mind, but won't dwell on it this morning. In short, I believe we should apply the principles of structured sentencing to this backend sentencing – to state clearly the behaviors that warrant revocation of parole, the reasons for upward and downward departures, and the sanctions that may be imposed for each violation. I also believe that backend sentencing is best administered by a judge sitting in a reentry court, not an agent of the executive branch.

Yet even these reforms would miss a more fundamental point. Why is there any state prison time left to be served? If someone violates these new conditions of release, and the violation warrants the deprivation of liberty, why not sentence the individual to the local jail? Why do we hold onto the antiquated belief that time is still “owed” to the state?

In my view, there are only two reasons to deprive someone of liberty after he has been released from prison. First, if he has committed a new crime, in which case that

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<sup>5</sup> In the next few months, my colleague Sarah Lawrence and I will publish a report on parole revocations, supported by a grant from the Open Society Institute.

crime should be prosecuted like any other crime, not under the guise of a parole violation. Second, if he has failed to abide by a critical component of a transition plan, such as attending drug treatment program, staying away from an intimate partner if there is a history of abuse, working at an approved job or staying drug free. I would cap these sanctions at a low level, perhaps five days in jail, and cap the exposure to these sanctions to the first three months after release from prison, renewable in three month extensions up to a year, upon a showing that continued judicial supervision is needed to reduce the public safety risk. By considerably shortening the period of transition between three and twelve months, we could take all the money now spent on parole, front load it, and create, in effect, a system of intensive transitional support, with focussed supervision.

After this period of time, this mix of intensive support and supervision would be over and the individual would be free to get on with his life, subject only to any ongoing prohibitions imposed at the time of sentence (e.g., bars on employment or requirements to register as a sex offender).

So the first lesson from welfare reform is that justice reform should focus on the transition to independence. Because the critical period is the time right after release from prison, resources should be focused there, and reintegration, as well as recidivism reduction, should be the goal.

The second lesson from welfare reform is that the government should establish financial incentives for successful innovation. The application of this lesson to our discussion is clear. I would argue that a front-loaded system of transitional support, with reduced exposure to new deprivations of liberty, overseen by a reentry court, would reduce the flow of parole violators being sent back to prison. If this happens, then these savings should be made available to the communities that are experimenting with this justice innovation. In the welfare reform experience, this kind of financial incentive resulted in important and effective new programs that moved hundreds of thousands of welfare recipients off the welfare rolls. I think the justice reform I have outlined could have similar results, moving more ex-prisoners to productive pathways of social reintegration.

I close with some thoughts on the third lesson of welfare reform – the lesson of devolution, the idea of moving responsibility for government functions closer to the people affected by them. To illustrate the power of this idea, I draw upon work by Eric Cadora of the Open Society Institute, Joel Copperman of CASES, and Todd Clear at John Jay College. They examined the distribution of community supervision in one Brooklyn neighborhood, Bedford Stuyvesant, as defined by the boundaries of the 79<sup>th</sup> and 81<sup>st</sup> precincts. About 1200 people live in those precincts under the supervision of the Division of Parole, a state agency. At a level of 75 cases per parole officer, this translates

into a cadre of sixteen parole officers. Another 1800 residents are under the supervision of the Department of Probation, a city agency. If we add those who are on juvenile probation or under pretrial supervision, the supervision caseload approaches 4,000 individuals, in a community with a population of 44,500 residents over age 18.

From a community perspective, these legal and organizational distinctions make little sense. Why should the dozens of individuals on one block who are under criminal justice supervision report to half a dozen different agencies and probably a dozen different agents? More important, from a theoretical perspective, this way of organizing community supervision misses a critical point, namely that the best way of accomplishing the purposes of supervision – promoting positive behavior, preventing crime and other antisocial behavior, and supporting the processes of reintegration – is to draw heavily on the resources of community (families, churches, local employers) and be acutely attentive to the risks of community (drug markets, gangs, family violence, crime opportunities).

It strikes me that the best way to accomplish the social goals of reintegration and crime reduction is to create a new entity, located in the community, to oversee all community supervision. Let's give it a name: the Community Justice Corporation. It could be a public agency or a private-public benefit entity. It would act on behalf of the criminal justice system, primarily the courts that oversee most community supervision. In my vision of reentry courts, this intermediary would also oversee the transition period of returning prisoners. It would leverage the assets and risks of community, acting in a problem-solving mode to achieve the outcomes of adherence to conditions of supervision, crime prevention generally, and reintegration of offenders, particularly those returning from prison. It would be funded partially by money now spent on traditional supervision, augmented by savings from reduced incarceration, and further augmented by blending funds from housing, drug treatment, workforce development and social service programs.

This is a justice version of devolution – the transfer of responsibility for a critical function from the state to a community-based organization, working under the auspices of the courts. It is also the community corrections version of the community policing experiment. I would hope that, by bringing this government function closer to the community and engaging the community in new problem solving activities on the challenges of prisoner reentry, we could restore the public's faith in parole, under the new name of community justice, just as public confidence in the police has been enhanced by community policing.

In closing, let's imagine how this new system of support and supervision might work. A few moments ago, we met John Jones who received a five-year prison sentence. Because he is a resident of the 79<sup>th</sup> Precinct, he begins working with his reentry liaison from the Bedford Stuyvesant Office of the Community Justice Corporation the day he is

sent to prison. As his release date draws closer, that work intensifies. He is transferred to a prerelease facility closer to his community. The reentry liaison makes sure he has housing, a job, drug treatment, family and peer group support. If need be, these services are paid for by the Corporation. The reentry liaison knows Bedford Stuyvesant well. He works there; he only supervises individuals who live there. He knows the community organizations and individuals that can be helpful. He knows the risks like the back of his hand.

When John is released from prison, he is brought to the reentry court (ideally located in Bedford Stuyvesant), where the judge reiterates the expectations under the reentry plan. In the court are his reentry liaison, family, service providers and others who are committed to working with John. He returns to court once a month for three months and is in frequent contact with his reentry liaison. The court monitors his progress. If he is rearrested, all bets are off. If he fails to meet a condition of his transition plan, he is subject to a series of graduated sanctions that the judge must apply, up to five days in the local jail. If he poses a serious crime risk, his transition period may be extended, up to a year. If he completes his transition plan, there is a court ceremony commemorating his accomplishment. At this ceremony, he will be given an application to restore his right to vote.

I realize this is an ambitious vision of justice reform. But remember we are speaking from the safety of square one. More to the point, remember we are speaking against the backdrop of welfare reform. We have ended welfare as we knew it. We can also end parole as we know it. We simply need to find common ground and common purpose. For me, the common ground is the focus on the realities of prisoner reentry. And the common purpose is to reduce our nation's reliance on incarceration, while promoting successful reintegration of returning prisoners, and enhancing community safety. I think we can accomplish all three of those worthy goals.

Thank you.