1926

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MINNESOTA LAW REVIEW

Journal of the State Bar Association

VOLUME 10 MAY 1926 No. 6

INDETERMINATE SENTENCE AND PAROLE IN MINNESOTA

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Lawyers are said to have a nose for facts. It is supposed to be a maxim with them that they must first learn the facts and draw their conclusions afterward. The writer, therefore, welcomes the opportunity offered by the MINNESOTA LAW REVIEW for presenting to the legal fraternity of Minnesota the true situation regarding the indeterminate sentence law and the operations of the Board of Parole.

THE system of Indeterminate Sentence and Parole is not new. Neither was it born in the minds of hair-brained theorists. Boards of control and other governing bodies, wardens and superintendents of prisons, prison physicians and chaplains, judges of criminal courts—persons who have dealt face to face with inmates of penal institutions—are among the chief advocates of the system.

A parole law is in force in some form in practically every state of the Union. It is part of the penal system of the United States also. It is in operation in England. It meets with support of leading responsible statesmen in that country. So late as last summer, such men as Lord Haldane, formerly Secretary for War, and later Lord Chancellor of the Realm, Lord Cave, the present Lord Chancellor; the Lord Chief Justice of England; the Earl of Oxford and Asquith, who, before he was Prime Minister, served as Home Secretary in a number of cabinets; and Sir William Joynson-Hicks, the present Home Secretary in the Baldwin government, expressed themselves as favorable to the system as now in use in their country and some of them strongly advocated its extension.

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The parole system has been abused in some states, but in practically every instance this has been due to the influence of politics. It has been subject to no greater or more frequent abuse, however, than other institutions for dealing with criminals, not excepting the courts, though the reasons for the abuse may be different. Agencies for apprehending, prosecuting and convicting violators of law are far from perfect in America, and a system for sentencing offenders by a tribunal known as a Board of Parole, such as we have in Minnesota, is open to similar hurtful influences.

The parole system was first adopted in Minnesota thirty-seven years ago when the reformatory for men was established at St. Cloud in 1889 In 1911 the plan was further developed and was extended to all the penal institutions. For fifteen years it has been in operation with but a single substantial change, due to an amendment adopted by the legislature in 1917

The present law was drawn by a commission selected for the purpose. It was composed of representative judges, prison officials, attorneys, educators, journalists and other citizens of intelligence and public spirit, who studied the various plans in force in other states and who, as a result of this prolonged and careful inquiry, proposed a statute which was enacted into law and became effective April 20, 1911.

The Minnesota Board of Parole is constituted of five members, four serving ex-officio, and a citizen-member appointed by the governor The member of the State Board of Control who is senior in consecutive service on that body becomes, by a provision of the statute, chairman of the Board of Parole. The State Board of Control has charge of all of the public institutions of the state, including their discipline as well as the selection and organizing of their officials. The reasons for making a member of this Board a member of the Board of Parole also, are apparent. The other three ex-officio members of the Board of Parole are the heads of the three penal institutions—the warden of the penitentiary, and the superintendents of the two reformatories. Each of these is eligible to pass on cases arising in his own institution only The chairman and the citizen member sit—at all the institutions. The heads of the three penal institutions are appointed by the Board of Control and their terms of service are indefinite. Membership on the State Board of Control, which qualifies, in part, for membership on the Board of Parole, is by appointment of the governor for a term of six years. The citizen-member of the

Board of Parole also is appointed by the governor for a like term of six years. This means that no governor has opportunity to reappoint any person to one of these positions. To make such a reappointment possible, it would be necessary for a governor to be elected four times, which has never occurred in the history of our state.

The purpose of all this is manifest. It was designed to keep the Board of Parole free from politics, and to relieve its members from a tempting sense of obligation to the appointing power. It can be stated truthfully that this purpose has been secured. The smell of politics has never been detected on the garments of this Board. Among all the criticisms leveled against it in the entire fifteen years of its service no responsible person has ventured to charge that the Board of Parole has ever been swayed by political, social, or business considerations. The personnel of the Board has changed, and will be changing from time to time, but any proposed modifications in its constitution should be scrutinized carefully to determine whether such alterations might not expose the Board to influences that would eventually impair, if not entirely destroy, its usefulness.

The indeterminate sentence, as every lawyer knows, and as the name implies, is a plan by which an offender is committed to a penal institution for an indefinite period. There is a limit fixed by statute, called the maximum. Under the amendment of 1917, the court has authority, at its discretion, to reduce this maximum; but within the maximum, either as fixed by the statute or named by the court, the Board of Parole has power to determine the time and the conditions of a prisoner's release. No court in Minnesota can fix definitely the length of time any offender must serve in a penal institution, but can only name a maximum if it chooses to do so, beyond which the offender may not be held. The idea so prevalent in the mind of the general public that the court sentences an offender for a definite term of years, and that the Board of Parole reduces this sentence, is, of course, an entire misconception.

Contrary to another impression which seems to prevail somewhat generally, the Board of Parole has nothing whatever to do with clemency. It is a sentencing body and its function is to administer justice. It does precisely what the judges of the district court did under the former system, except that they sentenced offenders before their commitment to the penal institutions, where-

as the Board of Parole sentences them after their commitment. In fact, the sentence of the Board of Parole comes at the termination of the period of imprisonment instead of at its beginning. Further, the Board of Parole sentences all individuals committed, except life prisoners. The Board of Pardons can cancel or modify the sentences assessed by the Board of Parole, just as it could change the sentences imposed by the courts under the former system.

The tribunal which exercises clemency under the Minnesota law is the Board of Pardons, and not the Board of Parole. The Board of Pardons hears only those cases which are brought to its attention specially If there has been a miscarriage of justice, or if new evidence has been discovered, or if the normal administration of the law in any particular case appears to be unduly harsh, it is the Board of Pardons and not the Board of Parole which decides the matter.

The Board of Parole, on the other hand, hears the case of every inmate except those committed for life. No application is necessary Under the rules of the Board, pursuant to the provisions of the statute, every inmate has the right to have his trial considered at stated times. He requires no attorney; indeed no attorney is permitted to appear for him. The man is not on trial and issues determined by the trial court are not under review The Board of Parole never permits the question of guilt to be raised. It never goes behind the court records. It assumes that the inmate has been properly convicted and justly committed. The Board of Parole has no qualifications for entering into such matters. It would be intolerable if such a tribunal should undertake to overturn the determinations of fact, to say nothing of law, after a court, with the greatest care and under the rules of legal evidence, and with the case of the defendant presented by competent counsel and his rights protected both by counsel and the court, and with all the means for appeal and for correction of possible errors available, has made the commitment to a penal institution. So far as the man's guilt is concerned and the justice of his incarceration, the business of the Board of Parole begins when the doors of the institution have closed upon him, and not before, though the inquiries of the Board as to his character, associations and conduct, apart from the particular offence for which he has been tried, reach clear back to the day of his birth, perhaps further It cannot be stated too strongly that after time limits have

expired which take the question of guilt out of the hands of the courts, an offender's recourse is the Board of Pardons and not the Board of Parole.

It may be asked why should such a body as the Board of Parole, and not the courts, thus fix the sentences of offenders and the conditions of their release. There were three reasons which controlled the thinking of the commission which drafted the law, and these reasons still apply.

The first is, the distressing differences in the sentences assessed by the courts in different districts and even by different judges in the same district. This has a bad effect on the inmates of the institutions and eventually on society itself, because of the state of mind in which some of these inmates go out. Courts are human. Occupants of the bench are held in higher regard, perhaps, than any other class of public officials, and rightly so; but like all other men it is impossible for them to throw off individuality of temperment, training, association and the whole background of their lives. However honest and conscientious any man may be, and however earnestly he strives to do so, he cannot separate himself entirely from these influences. The court in one district may be severe with offenders against laws of property. Perhaps the same court is lenient toward sex offences. In the next district, it often happens that the very reverse of this prevails. The consequence is that two persons of similar character convicted of the same crime, under practically the same circumstances, may come to the penal institution, one with a long sentence that expresses the extreme of severity and the other with a short sentence expressing marked leniency. This happened frequently under the former system when the judges pronounced definite sentences, and it is one of the hurtful results of the present provision of the law which permits the courts to fix a lower maximum than that named in the statute. When those who get the hard sentence come in contact with others, no worse than themselves, who receive short sentences, or a greatly reduced maximum, the former are filled with bitterness and rage, not because they are being punished, but because they believe the state has been unjust. They conclude that the much lauded principle of equality before the law is a farce and that the tribunals of justice are making fish of one and flesh of another.

Those who have been committed to penal institutions, especially the less desirable ones, are usually willing to "take their

medicine." They have the gambling spirit, they have played a game and lost. They know they must pay and are willing to pay, but they are simply infuriated when they feel that the state has not dealt fairly with them as compared with the treatment accorded other persons of like character under precisely the same circumstances. Often this is the reason that men who otherwise might go back into society and try to live a law-abiding life, are confirmed in their criminality and determine to get even with the community which, as they view it, has first bound them hand and foot and gagged their tongues and then proceeded to visit upon them a treatment from which others, in precisely the same moral and legal plight as themselves, are spared.

This is a psychology of which persons not in contact with the inmates of penal institutions know very little, if anything. Its damaging influences can scarcely be measured and in the long run society has to pay the price.

It was deemed best by those who framed the Minnesota statute and enacted it into law, that the time served by all offenders committed to the penal institutions of the state, should be fixed by a single tribunal and that this tribunal should be plural in its membership, so that the effect of personal idiosyncrasies and individual characteristics and prejudices on the part of its members, might be reduced to a minimum. This latter is one reason, as all lawyers well know, that the membership of appellate courts is plural.

The second reason that fixing sentences was made a duty of the Board of Parole, is that the courts and the prosecuting authorities do not have adequate facilities for learning about the former history of many offenders. Even in rural communities a number who are brought before the courts for trial are strangers. In almost every instance such persons will lie about their past, if they believe doing so will secure for them more lenient treatment. The result was, under the former system, that many old offenders and repeaters received short sentences, and even now, as the records of the institutions abundantly show, it is a very common thing for men, with rather extensive prison records, to appear at the institutions with commitments calling for reduced maximums.

The Board of Parole on the other hand has facilities for ascertaining the records of inmates. Besides, it has abundance of time in which to make investigations. With finger prints, Bertillon measurements, and the National Bureau of Identification at

its disposal, and with clerical force that permits of extensive correspondence, the Board of Parole can secure the facts regarding the previous history and the general character of offenders. In practically no instance does an inmate come under the scrutiny of the Board without the truth concerning him finally becoming known.

The third reason for charging the Board of Parole with responsibility for terminating sentences, is that the court cannot possibly forecast the reaction of the inmate to the discipline of the institution. It is unfair to ask a judge to make a guess on this subject. Experience shows that some men when admitted to an institution grow steadily better, while others grow steadily worse. Some show qualities which did not come out in the trial. Some who make a good showing before the court prove to be a positive menace in their spirit and general influence on other inmates and give convincing evidence that their confinement should be prolonged. Sometimes the opposite of this is true. In any event the Board of Parole has both time and opportunity to learn about these things and can be held responsible accordingly

The Board of Parole holds in high regard the opinion of the trial judge and in every case desires an expression of his views and those of the prosecuting attorney. In many instances where such statements and recommendations do not accompany the commitment papers, the Board presumes to write inviting them. While sometimes the Board feels warranted in detaining an inmate after court and prosecuting authorities have favored his release, the writer does not recall a single instance of the release of an inmate against the positive recommendation of the court which committed him.

Three methods are used in sentencing inmates of the penal institutions of Minnesota.

FIRST—A certain number are paroled. These are persons whose domicile is within the State, although not all citizens of Minnesota receive paroles.

SECOND—Conditional discharges—those whose domicile is outside of the State of Minnesota.

THIRD—Continued confinement in the institution until the legal maximum sentence has been completed.

Only thirty per cent of those eligible to parole have been dealt with according to this first method. From the date when the present law went into effect, April 20, 1911, to January 1, 1926,

5,786 persons were eligible to be paroled. Of this number only 1,718 received parole. Judged by these figures, it will be seen that the title which the state gives to the Board, namely "State Board of Parole," is really a misnomer. It would have contributed to a clearer understanding of the function of this tribunal had it been called a Sentencing Board, or by some other name, which would indicate its principal office in dealing with offenders.

Parole is nothing more nor less than "testing" of an inmate's conduct outside of the institution and under as favorable conditions as can be created for him before the State removes from him entirely its hand of penal authority An inmate on parole is just as truly a prisoner as one who is behind the bars. He is still a ward of the state. He is subject to be returned to the institution without other legal process than the Board's warrant. The Board is the sole judge of his conduct, and whether, under the circumstances, it is wise to re-incarcerate him.

An inmate who is paroled is not released until a job has been secured for him, and this latter task is the responsibility of the Board. Representing the state, the Board enters into an agreement with the man's employer. This agreement stipulates the character of the work to be done, the hours and the wages. If the man has no home the Board supervises the selection of his boarding place. He is under strict surveillance all the time. He must report in writing once a month, giving minute details as to how he occupies his time when not at work, and how he spends his money These reports must be signed by his employer, also by his advisor, in case there be one. The employer is told, under ban of confidence, everything which the Board knows about the man. Being still a prisoner, the discipline prescribed for a paroled inmate is strict. There are certain places which he must not visit, certain habits which he must not indulge—such as drinking —certain kinds of people in whose company he must not go; he must not leave his employment without permission of the Board. If he violates any of these, or other rules of the Board, he is subject to be returned to the institution and there to continue serving his sentence inside the walls, instead of outside. His further confinement in the institution is not a penalty for having violated the Board's rules while on parole, but an extension of the penalty for the crime for which he was committed, from which penalty he had not been discharged by a grant of parole.

An inmate on parole may be discharged after a period of thorough testing, or he may be continued under supervision, but as a prisoner of the state, until the legal maximum sentence has been completed. This period of testing is rarely less than one year, it may be for a much longer time, and often is.

If a paroled inmate commits another offence against the law, he is not only immediately subject to be returned to the penal institution, but the Board uses every effort to have the prosecuting authorities secure conviction for this new offence. He goes back, therefore, continuing to serve his sentence for the original offence, with the new sentence also hanging over him and to be served after he has been discharged from the first one, either by expiration or by action of the Board.

The second method of terminating sentences, namely, by *conditional discharges outside of the state,* is commonly resorted to in instances where the offender does not belong in Minnesota. Such persons have nothing to hold them here. Their relatives and most other ties are beyond our borders and experience shows that with them parole within our state is not satisfactory. They are likely to run away. Accordingly, the Board keeps them in the institutions for a longer time than they would be detained otherwise, and then discharges them on condition that they go to their domiciles and not return to Minnesota until the legal maximum of sentence has expired. The penalty for violation of this condition is immediate return to the institution as soon as apprehended. The attorney general has given the Board an opinion that it has authority to impose such conditions and to enforce them, based upon a rather sweeping, unanimous decision of the supreme court of Minnesota rendered a few years ago. The Board does not send an inmate to any point outside of Minnesota where he may choose to go, but to his domicile, and the fear of the consequence of violating this condition has proved quite effective.

The third method of determining the limit of sentence is for the Board deliberately to *keep inmates in confinement until their maximum terms expire.*

As indicated above, only 30% who are eligible for parole ever receive one. Furthermore, one-third of all the inmates serve their full maximum terms. This includes some who are prisoners on parole, but the great majority of them are those who are never released from the institution from the day of their entrance until their final discharge by expiration of the maximum. The common

term for the maximum which one hears on the street is "the limit." Not many courts under the old plan ever gave "the limit," to one-third of the persons sentenced, but under the indeterminate sentence now in force, and as administered by the Board of Parole, one-third of all those committed to our penal institutions continue to be prisoners of the state until "the limit" has been reached.

In dealing with offenders the chief purpose which the Board has in view, is the protection of society There seems to be a general impression abroad that the principal object of the Board is the reformation of the criminal, but this is not the fact. This would make something that is only incidental and auxiliary, the dominant and controlling end. The purpose of the law is clear, and the purpose of public opinion behind the law is equally clear, and the Board tries conscientiously to achieve both.

Protection of the public, however, is something that is secured by very complex methods, and among these the re-establishment of offenders as law-abiding citizens who are capable of such results, is one of the most certain means of safeguarding public order and personal rights. From among the thousands of persons in the penal institutions of the United States, a veritable stream is flowing out into free life every day This would be true under any system, even if every prisoner were detained the full maximum time. The population within the institutions is changing constantly, and the personnel of this mass of people coming out, changes also. The security of the public depends in no small degree upon the mood, purpose and character of those who are liberated. What will they do when they come out, is a question which cannot be ignored.

Those competent to express opinions in such matters—judges of criminal courts, superintendents and wardens and others in like favorable position to know all the facts—tell us that not more than 25% of those committed to penal institutions have made up their minds to be enemies of society and have committed crime simply because they are thoroughly bad. Others believe that only 10% of all inmates belong to this class, and opinions shift between the two figures, but no one, so far as the writer knows, places the percentage above 25. We know what to do with these purposeful foes of order They must be kept in confinement for the sake of law-abiding people and for their own sakes.

But what about the remaining 75%? They have been justly confined. The writer, during eleven years experience with such

persons, has never yet seen one who has been committed unjustly. But the members of this latter group were imprisoned because they had proved weak or because their offences have been the result of passion or unusual temptation—something in their mental make-up or in their moral constitutions, in their associations or want of advantages or in their family relations, has caused them to go astray. These conditions do not relieve them of personal responsibility, to be sure. But they are where they are for other reasons than because they have deliberately planned to be a menace.

For this class, which constitutes a great majority of prison population, something beneficial can be done. A penal institution is not a good place to reform anybody, but on the other hand it is not a place for wreaking vengeance. Apart from the restraint which imprisonment imposes upon the offender and its deterrent effect upon himself and upon hundreds of others who are tempted to commit like breaches of order, very wholesome results follow in thousands upon thousands of cases where the will is not thoroughly set to do evil. If you can bring these persons out of the prisons after a suitable time and can re-establish them in their places in society as citizens who show regard for peace and order, you have rendered the greatest service to the public possible. Many of these men learn trades while in confinement. Through the efforts of the authorities their moral relations are improved, often their family connections are stabilized and the whole state of their lives changed, sometimes, so that they have new motive and encouragement for doing right. Any plan which will yield reasonable assurance that a good proportion of this three-fourths of prison inmates will never go back, has accomplished something of the highest importance for the safety of society. The records go to show that such a result is being achieved, particularly here in Minnesota.

The protection of society involves the question of the families of these men, and an important feature of the Board of Parole's activities is to arrange, under authority of the State Board of Control, for such care of all dependent families as will guarantee wholesome food, warm clothing and adequate shelter, together with attendance at school until the children are sixteen years of age. When the state takes the breadwinner away from the family for a period of years, however justly and necessarily, but leaves his children to wander on the streets, or take care of them-

selves, it is not making very adequate provision for its own safety Some appear to believe that the protection of society is a problem which relates only to the criminal himself, and that a sufficient solution is to keep him behind the bars for a long period. Would that it were so simple! The Board believes that the problem is not simple, but very complex, and protection of the public by all the various means at the Board's command is the guiding star of its policy

The Board of Parole has been criticized for being too lenient. Figures already referred to above show the falsity of this impression, but there are many others to the same effect, which may be quoted.

An inmate must serve approximately one year before appearing before the Board of Parole. The exact time of this first hearing is determined by a system of markings for conduct. Furthermore, it is only in the rarest instances that anyone is paroled or discharged at his first appearance—probably not in one percent of the cases. The result is that more than ninety-nine percent of the inmates must serve one year and six months actual time, at least. At the Prison and the Women's Reformatory where the law provides for good time allowance, this is equivalent to a sentence, if imposed in court, of more than twenty-two months.

The reason for such a policy is that the courts have authority, when the maximum does not exceed ten years, to suspend sentence and place the offender on probation. The Board assumes that this power is exercised where circumstances justify Experience seems to show that, when a person is actually committed to a penal institution, he should be kept more than one year, at the very least, if much benefit is to accrue to himself or to anybody else by reason of his incarceration. The exceptions are practically negligible and only prove the rule.

The attorney-general has held that minimum sentence provisions of former laws were repealed by the statute of 1911. The rules and practice of the Board of Parole in the respect just referred to, are to be judged in the light of this fact.

Comparative statistics taken from the records of the State Prison at Stillwater for the five years preceding the application of the indeterminate sentence law in that institution, 1907-1911, and for the five year period closing June 30, 1924, are informing. During the first of these periods the trial judges sentenced to definite terms those committed. During the second period the

sentences were fixed by the Board of Parole under the indeterminate sentence law. These figures are as follows

Sentenced		
		Robbery—All Degrees
By Courts	1907-1911	3 years, 11 months, 13 days
By Parole Board	1920-1924	4 years, 1 month, 10 days
		Larceny—All Degrees
By Courts	1907-1911	1 year, 9 months, 25 days
By Parole Board	1920-1924	2 years, 7 months, 18 days
		Burglary—All Degrees
By Courts	1907-1911	2 years, 0 months, 21 days
By Parole Board	1920-1924	2 years, 7 months, 2 days
		Forgery—All Degrees
By Courts	1907-1911	1 year, 8 months, 19 days
By Parole Board	1920-1924	2 years, 11 months, 12 days
		Assault—All Degrees
By Courts	1907-1911	2 years, 2 months, 0 days
By Parole Board	1920-1924	2 years, 6 months, 2 days
		Against Chastity—All Degrees
By Courts	1907-1911	2 years, 11 months, 23 days
By Parole Board	1920-1924	3 years, 1 month, 20 days

The above table shows that in every class of crime for the two periods compared, the Board of Parole kept inmates in prison longer, on the average, than they were kept under the definite sentences imposed by the courts, according to the previous law. In addition to these longer terms imposed by the Board of Parole, some inmates had to serve their parole also, under supervision, subject to return to the institution at any time, for the figures given above take no account whatever of the periods of parole.

This is an answer to the charge made so frequently, and irresponsibly, both by word of mouth and in the public press, that the Board of Parole accords to offenders greater leniency than they received under the former system.

An amendment to the indeterminate sentence law of Minnesota was passed in 1917 This amendment gave to the trial courts authority to fix a lower maximum sentence than that stipulated in the statute. During the past four or five years the judges have used this discretion in more than one-third of the cases—earlier in about one-fourth of the cases. It is not an uncommon thing for

the maximum thus to be reduced to one year or less. In some cases it is as low as six months. This, of course, makes practically impossible any earlier release of the inmate on parole and effective supervision of him. Sometimes the maximum is not reduced to such a low point, and parole with supervision is possible, but the psychological effect upon the offender himself, and upon his fellow inmates, is almost invariably unwholesome.

In many instances where the maximum sentence has thus been reduced, leniency has been secured by deception or by other imposition upon the court. The records of the institutions show that it is almost a weekly occurrence that old timers and repeaters receive such undeserved consideration. Bad men, whose records were unknown to the court, are going out right along because they have succeeded in concealing the facts about themselves and inducing the courts to make decisions on the last particular offence only, without taking account of previous ones, or of the offender's whole background of character and conduct, none of which was revealed.

Again it should be said that this is no reflection upon the courts, but only criticism of the system which unnecessarily subjects the judges to strong pressure to take steps in all good faith, and with the most worthy motives, when they are not always prepared to do so with that full knowledge of the facts to which they are entitled.

There was but one reason for the adoption of this amendment of 1917 giving the courts discretionary authority to reduce maximum sentences. The reason was that the Board of Parole was thought to be keeping inmates in prison too long. The amendment was designed to limit the Board's authority to do this. It is a very significant fact that the only substantial change in the parole law during the fifteen years it has been in force, was occasioned by a sentiment that the Board was too severe.

How many offenders on parole make good? This is a question frequently asked. In Minnesota the answer is, about four out of every five. Twenty per cent must be taken back to the institutions for additional confinement. But according to the records for the past few years, of those returned to the institutions, only one in four goes back for committing another crime. In other words, of *all paroled offenders,* 20% are returned, but only 5% become repeaters. These are men with whom every other worthy and uplifting agency of society has failed—the

home, the school, the church, the press, the government. Then they are taken in hand, and the Board of Parole must deal with them. Of those which it decides to try under supervision, and to whom it votes parole, only *one in twenty* commits another felony. Fair-minded people will decide whether this is relative success or utter failure.

The hearings of the Board are held in private because the inmate is not on trial and because it is necessary to put him at his ease and induce him to tell everything that is in his mind. A public hearing would defeat this purpose in almost every instance.

Much of the Board's information about these men is confidential. The files, in practically every case, contain statements made by bankers, merchants, teachers, lawyers, physicians clergymen and other prominent citizens who are acquainted with these men and know their characteristics and who have been asked to express their opinions, under the ban of confidence. To these records the Board of Parole gives any responsible, official person ready access—judges, or other court officers, members of the legislature, state officials, and all attorneys who, of course, are officers of the courts and who understand the nature of a professional confidence; but others are not permitted to see these records if they have no official interest in a case.

The Board of Parole declined recently to make changes in its rules partly because alterations which it had been considering for more than a year had no bearing whatever on criticism leveled against the Board, but chiefly because some of the changes that were asked would have been clearly illegal, and others, in the opinion of a majority of the Board, would probably have resulted in unfairness and injustice in the application of the law.

Members of the Board of Parole are asked frequently to give the facts in the so-called Schiban case. This man was born in Galicia, now a part of Poland. He came to Canada eighteen years ago, where he had two brothers. He was an ignorant man and a little subnormal mentally, a rough, coarse individual who worked for eight years in the mines and woods of Canada. He drifted into the United States about ten years ago and, after a few months' work in lumber camps, appeared at Bridge Square in Minneapolis with some companions. This was in pre-prohibition days, and saloons were plentiful. Most of his money was soon gone and in a quarrel, a lumberjack fight, one of the parties lost nine dol-

lars, and Schiban was accused of taking it. He was arrested, charged with robbery in the first degree, and convicted. He was sentenced by Judge Horace D. Dickinson to an indeterminate sentence with a maximum of forty years.

After being in the prison for more than a year Schiban showed signs of insanity A commission appointed by the Probate Court of Washington County adjudged him insane and he was sent to the State Hospital at Rochester. After being in the asylum more than a year, he was sent back to the prison as "recovered." After four years of confinement it was decided by the Board that he should be released. The War was on and it was impossible to deport him to Galicia, which had been a part of Austria. He had never become a citizen of Canada, though his two brothers were there and he had lived there for eight years. The Board of Parole granted him a discharge to go to Canada. The Board was not then aware of its full authority with regard to these discharges, as that authority has been defined later by opinions of the attorney general.

Schiban went to Canada but he did not remain long, succumbing to the lure of the states. More lumber camps and another visit to Minneapolis, and he was in trouble again. This time a man was held up and a gun used. The defense was insanity, doubtless because he had been in an insane asylum for a short period.

The court exercised scrupulous care in dealing with the case. Expert testimony showed that the man was not insane. He was convicted again of robbery in the first degree, and given the statutory indeterminate sentence. In committing the man Judge Leary appended a statement, such as the law requires with all commitments, explaining fully the measures which had been taken to ascertain this man's mental state. In this very fine paper the judge indicated that the offender would be a problem for any one who had to deal with him and recommended that he be put under observation. This is just the kind of assistance which the Board of Parole appreciates and welcomes.

Pursuant to the court's recommendation, this man was put under observation immediately and remained in a detention cell where he received special treatment from January 19, 1920, to August 10th of the same year. He did not improve, but grew worse. Again the Probate Court of Washington County appointed a commission which declared him insane. He was sent to the

asylum at St. Peter and remained there until September 3, 1925, when he was returned to the prison as "recovered." He was put to work and his case came before the Board of Parole in due course, and according to the Board's rules, at the October meeting in 1925. The case was considered on its merits and was denied. This fact is important. It indicates the mind of the Board with regard to the merits of his claim for consideration on the basis of his two offences.

Two months later, at the December meeting of the Board the warden of the penitentiary, with the advice of the prison physician, reported to the Board that this man was showing the same tendencies of nervousness which he had manifested on previous occasions, and that the probabilities were that in four or five months, at the latest, he would again be insane. Experience shows that there are some inmates, even among the stronger minded, who cannot endure the discipline of the institution without a mental breakdown. Clearly this was such a case. The question before the Board was whether to keep him and accept him, an alien and a stranger, as a permanent ward of the state, after Minnesota had cared for him for ten years, or to send him to his brothers in Canada where he had once been accepted by the immigration authorities and where he had resided as a free man for eight years.

The Board of Parole has a policy according to which an inmate whose domicile is outside of the state of Minnesota and who seems to be fatally ill or who has recurrent mental trouble pointing toward probable permanent insanity, is sent to his domicile or his relatives. This policy was invoked in the case under consideration. The man was voted a conditional discharge to go to his brothers in Canada. He went. He was stopped at the Border by the Canadian immigration authorities and asked where he had been. The Board had always found him truthful. He was truthful in this instance, stating that he had been in prison at Stillwater. He was not permitted to enter Canada, but was turned over to the United States' immigration authorities who put him in jail at Hallock, Minnesota. The sheriff at Hallock notified the warden of the penitentiary, who immediately reported to the other members of the Board of Parole. The man was very eager to go into Canada, and wished to make a second trial at some other point, believing that the immigrant agent there might not be so exacting as the one he had encountered. The Board asked the

opinion of the attorney-general as to its authority to change the condition of the discharge. The Board was advised that it had such power. Accordingly it gave the man permission to go to Canada some other way than that originally specified, on condition that he leave the state of Minnesota, at once. The sheriff at Hallock accompanied the man to the North Dakota line, where his authority ceased, and left Schiban there, on his way to Canada. This is the last official knowledge of him which the Board possesses until the deplorable and tragic event which occurred in Minneapolis soon afterward.

Knowing Schiban, as members of the Board did, it is surmised that he made a second attempt to get to his brothers and was turned back. It is not difficult to judge the effect which this would have upon his mind, and doubtless he determined to return to Minneapolis though he well knew the consequences if he should be apprehended within the boundaries of Minnesota.

None could grieve more than members of the Board of Parole over the unspeakably sad results of this case, except the relatives of one who lost his life in performance of his duty It was one case in the application of a well settled policy, which went wrong —the only case of the kind within the experience of the Board. Such heartrending results cannot be guarded against by any system that may be devised. Schiban was not a bad bandit of the intelligent type, but a coarse, dull floater. Men who are planning wickedness all the time and who are of a far more deadly sort, are coming out of the prison right along and there is no way under the law to prevent it, because they serve out their full terms.

The Board of Parole offers no alibis, it does not seek to escape responsibility for any of its actions, it makes no claim to infallibility It only asks that it be judged, in respect to its general policies and to its decisions in specific cases, in the light of a definite knowledge of all the facts. Then, whatever intelligent, honest, and disinterested criticism may be due the Board, will be accepted in good temper and without flinching, and effort made to profit by it.