of treatment success and to publicize this rather than failure rates so that the Society will come to understand that parole is a positive part of the total correctional treatment process in which the public have a vital supporting interest.

PROBATION FOLLOWING IMPRISONMENT

Section 638-B of the Criminal Code provides for probation following imprisonment which is an unfortunate substitution of probation for what should be a parole function. It disregards the nature and effect of the prison experience on the individual which should be considered before providing for release under the conditions of parole.

The general practice of the Bench in using this section seems to be to impose a relatively short prison experience followed by a longer period of probation. This tends to emphasize the more harmful effects of imprisonment without allowing time under our present prison organization for much constructive training. It is further a negation of the very concept of probation which is designed to avoid imprisonment and ensure supervision in the community without exposure to the prison experience.

Another aspect of the matter develops if the offender fails to respond to the probation following imprisonment. Unlike parole, in which he feels he has been given a "break", he feels that he has "done his time" and should not be obliged to submit to probation conditions. He can no longer be sentenced again on the original offence and if he fails to cooperate he has to be convicted of a breach which is very difficult to do. This may result in forfeiture of his recognizance and may also result in imprisonment for breach.

This is a highly questionable practice since, in effect, it allows for the creation of an offence punishable by imprisonment at the discretion of the Judge who sets the conditions of the probation order. Failure to abide by these conditions may result in the forfeiture of the person's freedom though there is no such a crime to be found in the Criminal Code. This then indirectly involves the Judge, as he sets conditions, in creating crimes punishable by imprisonment if the conditions are not observed.

RELATIONSHIP OF PAROLE TO SENTENCING PRACTICES

In a Study of Sentencing as a Human Process published in 1971 by the Institute of Criminology at the University of Toronto, John Hogarth found some interesting correlations:

"Magistrates were asked to indicate whether they adjusted their sentences in the light of the possibility of parole being granted. Two out of three admitted that they sometimes increased the length of sentence imposed. The reasons given were interesting.

"Of the forty-two magistrates admitting to this practice, twenty-one (50 percent) stated that they did so in order to give the institutional personnel ample opportunity to work with the offender, in hopes that he would respond quickly and be considered for early parole, but in the certain knowledge that if he did not respond, he would be kept inside.

"Nine magistrates (21 percent) stated that they often considered parole when imposing a long sentence directed to the deterrence of potential offenders, or when forced to do so by reasons of aroused public opinion. They would immediately write to the Parole Board requesting that the offender be considered for parole. In this way they felt that they could appear to be punitive without serious consequences to the offender. The difficulty with this policy is that parole is a matter for the complete discretion of the Board, and there are no guarantees that the magistrate's recommendations will be accepted.

"Twelve magistrates (29 percent) admitted that they increased sentences in order to ensure that the offender would not be "back on the streets" in a relatively short time. These magistrates are aware that parole is not normally considered until after the offender has served at least one-third of his sentence."

It is obvious that the Parole Board must have great difficulty in dealing with such differences in motivation for sentencing particularly as it is not the function of the Board to adjust sentences, but rather to predict readiness for parole and to grant it at the appropriate time. In any event it seems hardly equitable that the Parole Board should be expected by magistrates to accept responsibility for release which, to the public, may appear to negate the intention of the Court. The Appeal Courts have generally held that judges should not delegate their sentencing functions to the Parole Board.

CONCLUSION

No recommandations are made as to changes in legislation since these would follow from such changes in policy and practice as may result from the deliberations and recommendations of your Committee. The drafting of legislation and regulations then would become the task of those with such expertise in the Departments of Justice and the Solicitor General.

The opportunity to present our views on the subject of Parole, which has concerned the after-care agencies for so many years has been greatly appreciated and we trust may prove of interest to your Committee.

Respectfully submitted,

F. G. P. Lewis,
President.

Published under authority of the Senate by the Queen's Printer for Canada

Available from Information Canada, Ottawa, Canada.