July 1989

Working Paper on Federal Parole/Release for U.S. Political Prisoners and Prisoners-of-War

The U.S. government, the Department of Justice, and the federal prison system holds over 200 political prisoners and prisoners-of-war. The government enacts a program of repression against its political prisoners in order to hide the existence of organized social opposition and resistance to its politicies and practices from the world and the international human rights community. The special treatment directed against political prisoners sends a message to all those involved in social justice struggles that they should limit their protest and accept the status quo. This political repression is directed against just demands for an end to imperialist aggression, colonialism, racism, sexism, nuclear war. Political prisoners for the most part are kept in control units,in solitary confinement, or in highly restrictive detention facilities for years at a time. This special treatment has as part of its goal the physical elimination of these prisoners--through the conditions of incarceration, sentence lengths, isolation. The plan for many is parole by death.

The international community, and the U.S. human rights community, has begun to expose the abuse of the U.S. criminal justice system to achieve anti-democratic and highly-politicized ends. Amnesty International has condemned the U.S. practice of the death penalty, and of the conditions at Marion and Lexington federal prisons. This is one of the first times the U.S. has been called to account internationally for its treatment of prisoners.

The U.S. gives longer sentences to all its prisoners than most countries in the world. U.S. sentencing practices are considered excessive and unjust, and despite U.S. proposals that European nations adopt harsher sentencing policies, these nations have largely refused to do so. By 1994, one million prisoners in the U.S. will be "exiled" in federal and state prisons, existing with less and less in the way of programs and basic rights, sentenced to longer and longer prison terms. The sentence lengths that political prisoners are given in many instances amount to life sentences that do not match the severity of the actual offenses of which they have been convicted, and that far exceed the average sentences imposed on others who commit similar offenses.

The disproportionality of the sentences received by political prisoners from the left, versus those imposed on prisoners from the right wing (such as the KKK) is staggering. Parole release is systematically denied regardless of individual conduct in prison. For the most part political prisoners serve sentences longer than the majority of other prisoners, and are held in prison longer than established guidelines for sentencing and/or parole. Without political and legal intervention in the release/ parole process, political prisoners will serve their full terms and many will die in prison.

The purpose of this working paper is to begin a process of discussion among lawyers and concerned individuals about actual strategies for release of political prisoners through parole from federal prison.

Those of us issuing this memo believe that release within our parole guidelines is the first demand to make. Because of the disproportionality between our guidelines and our actual sentences, this would mean immediate release. The second demand--one which we believe is winnable--is for release at our minimum parole eligibility date, which is after serving 10 years (120 months).

Parole and Sentence Reviews/Release Dates

The year 1992 is a watershed for all federal prisoners in the U.S. The U.S. Parole Commission is scheduled to be abolished under the new sentencing law. Every federal prisoner sentenced for acts committed before November 1, 1987, will have his/her sentence reviewed and a release date set. This is the only time sentences will come up for such a review. This 1992 review is the procedural and legal mechanism around which a campaign for release can be built. Given the political composition of the U.S. Parole Board, we believe that without pressure and support, release dates for political prisoners and prisoners-of-war will be set at the maximum allowable: release for any prisoner is currently required by law when 2/3 of a sentence is completed. Because sentences imposed on political prisoners are excessively long, this means our release would not occur until well into the 21st century. For Susan Rosenberg and Tim Blunk, for example, their 2/3 release date is computed at November of the year 2014. For Linda Evans, the 2/3 release date is the year 2015.

We believe that political support can affect the Parole Board's decision in 1992, particularly because the new law that abolishes the parole system provides legally valid arguments for our release earlier than our 2/3 date. What follows is a legal explanation about the procedures involved in the parole board's decision-making---provisions in the new law that affect the possibilities of our release, and areas where political support may affect the parole board's decision.

Background

1992 potentially represents an opportunity for early release of political prisoners and prisoners-of-war because of a legislative process that began 30 years ago. During the 1950's and 1960's, criminal statutes and sentencing began to be scrutinized because of basic inconsistencies, disproportionalities, and "lack of fundamental fairness." Efforts at reform focused on: 1)grouping offenses into a limited number of categories; 2)modeling a criminal code that would bring together these offense categories and sentencing provisions; and 3)establishing a proportional sentencing structure that could incorporate newly enacted and amended criminal statutes. These problems were addressed by criminal justice-related organizations. Congressional involvement resulted finally in Senate Bill 1 of 1973, which was opposed by many progressive organizations because of its inherent expansion of police and surveillance powers of the government. (Although Senate Bill 1 was never enacted, many of its provisions were incorporated into subsequent legislation, including the Comprehensive Crime Control Act of 1984 (CCCA) which this paper discusses.)

Among these efforts at standardization to replace discretionary judgement were the first guidelines for federal parole decision-making, finally codified in 1976. Additionally, during the 1970's, various studies were published in the legal community addressing sentencing disparities and advocating new sentencing guidelines, mandatory statement of reasons for sentencing decisions, appellate review of sentences, and abolition of parole.

After considerable debate and numerous hearings in Congress over a period of several years, the Comprehensive Crime Control Act of 1984 was signed into law in October of 1984. The Sentencing Reform Act is part of this law; it authorized the establishment of the US Sentencing Commission. This Commission formulated the new sentencing guidelines that now are used to calculate sentences for all crimes committed after November 1, 1987. The new sentencing guidelines do not directly affect prisoners sentenced under the old law. However, relevant to the grossly disproportionate sentences imposed on political prisoners, there is some legal support for the proposition that if a prisoner's sentence under the new sentencing guidelines

would be less than his/her release date under the parole guidelines, the prisoner must be released after the earlier date. Additionally, the CCCA of 1984 abolished the U.S. Parole Commission as of November 1, 1992.

The Sentencing Reform Act reflects the official rejection of rehabilitation or re-integration into society as the philosophical goal of incarceration; the abolition of early release on parole supervision is consistent with fixed sentences where "punishment", warehousing, and social isolation of prisoners are the new official goals.

1992: Parole for "Old Law Offenders" (Sentenced for acts committed before 11/1/1987)

Before the CCCA was enacted, any federal prisoner was normally eligible for parole after serving 1/3 of their total cumulative sentence. If that total sentence was more than 30 years, the prisoner technically became eligible for release on parole after serving 10 years in prison. For example, Susan and Tim become eligible for parole in November 1994; Linda becomes eligible in November of 1995. Eligibility, of course, has never meant automatic release. Parole decisions traditionally are extremely discretionary and depend largely on the composition of any individual Parole Board. (Parole Board membership is based on political appointments, and members rotate.) They rely almost entirely on pre-sentence investigation reports submitted by probation departments, and many times parole hearings almost function as re-trials only without any guarantees of due process. For example, evidence excluded at trial because of illegal search and seizure, can be considered by the Parole Board; charges which have been dropped or simply not prosecuted can also be considered in parole decisions.

For political prisoners, denial of parole is the norm rather than release. Under current parole procedures, official mechanisms exist for bypassing even ordinary parole consideration in the cases of political prisoners. Our cases are probably designated as "original jurisdiction" cases. This means that, rather than normal consideration by a regional parole board, cases will be referred to the National Parole Commission. The following criteria are used for designating cases as "original jurisdiction" cases:

> "1) Prisoners who have committed serious crimes against the security of the nation, e.g. espionage or aggravated subversive activity;
> 2) Prisoners whose offense behavior a)involved an unusual degree of sophistication or planning, or b)was part of a large-scale criminal conspiracy or continuing criminal enterprise;
> 3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim;
> 4) Prisoners sentenced to a maximum term of 45 years (or more) or prisoners serving life sentences."
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> (U.S. Parole Commission Manual, April 5, 1987)

All political prisoners and prisoners-of-war, under one or more of the above criteria, could be considered "original jurisdiction" cases.

"Parole guidelines" have been codified since 1976, supposedly designed to standardize parole decisions. These guidelines are based on the severity of the offense charged, and any prisoner's prior criminal history. But in reality these "guidelines" are routinely ignored, and prisoners' release dates are often set beyond their guideline range. Currently, in addition to applicable guidelines, the parole board is allowed to consider a prisoners' behavior and activity while in prison (both participation in programs, disciplinary infractions of prison regulations, and cooperation with prison authorities), parole plans/employment, as well as subjective factors

such as whether a prisoner shows "remorse" for their actions.

The Sentencing Reform Act of the CCCA disbands the U.S. Parole Commission in November 1992. By law in 1992,

> "...the U. S. Parole Commission should set a release date for an individual that is within the range that applies to the prisoner under the applicable parole guidelines." (Section 235(b)(3) of the CCCA of 1984)

Also the legislative history of this statute makes it clear that Congress intended

> "...that, in the final setting of release dates under this provision, the Parole Commission (should) give the prisoner the benefit of the applicable new sentencing guidelines if it is lower than the minimum parole guidelines."

This apparently created a "legal loophole" that would mandate that all prisoners should be released within their parole guidelines. This was subsequently remedied by an amendment to the 1984 CCCA that was enacted in December, 1987. This amendment replaced "within the range that applies to the prisoner under the applicable parole guideline" with language that refers to Section 4206 of the old law, which was in fact specifically repealed by the CCCA. All these issues are currently being clarified in the courts, and it will be the court's interpretation that will ultimately be binding on the Parole Board.

How does this apply to political prisoners and prisoners-of-war?

Many of the prisoners-of-war from various national liberation struggles may continue to refuse to recognize the jurisdiction of the U.S. court system. However, in 1992 the Parole Board will set a release date for them whether or not they acknowledge the Parole Board's jurisdiction.

The sentences imposed on most political prisoners and prisoners-of-war are extremely longer than sentences imposed on other prisoners for similar actions. (For example, the average sentence for false statements in connection with purchases of firearms is 2 years, with a high percentage receiving probation. Linda Evans received a 40-year sentence.) For this reason, the move toward standardizing sentencing and parole is potentially advantageous to us.

According to the CCCA, in 1992 the two sets of guidelines that should be applicable in setting release dates are: 1) the parole guidelines, and 2) the new sentencing guidelines (if a release date set under these guidelines would be earlier). For concrete example, take the sentences of Linda Evans, Tim Blunk, and Susan Rosenberg:

Linda Evans:		
Actual sentence	540 months	45 years
Mandatory release (2/3)	320 months	26 2/3 years
Parole eligibility	120 months	10 years
Sentencing guidelines	6-12 months	½ - 1 year
Parole guidelines	12-44 months	1 - 3 2/3 years
Time served in 1992	80 months	6 2/3 years

Susan Rosenberg/Tim Blunk:		
Actual sentence	696 months	58 years
Mandatory release (2/3)	464 months	38 1/2 years
Parole eligibility	120 months	10 years
Sentencing guidelines	41-51 months	3¼ - 4¼ years
Parole guidelines	52-80 months	4 1/3 - 6 2/3 years
Time served in 1992	92 months	7½ years

This chart should make it clear: the most literal interpretation of specific application of the CCCA to these political prisoners mandates immediate release in 1992. Immediate release would be mandated at that time because the time these comrades had already served in prison would already have exceeded both sets of applicable guidelines.

Of course the Parole Commission disagrees with this interpretation. Their current statement of policy:

> "The Commission interprets 235(b)(3) of the Sentencing Reform Act as... 3) not allowing the Commission to set a release date which would conflict with the parole eligibility or ineligibility provisions of a prisoner's sentence and 4) no longer requiring the Commission to make decisions within the applicable parole guideline ranges on those persons who still will be incarcerated after October 31, 1992, and specifically authorizes the Commission to make decisions outside its guideline ranges as it has done in the past."
>
> (Rules & Procedures Memo #8, Effective 4/25/88)

This is a clear change from their interpretation of 4/25/87: "...the Commission may continue to make decisions outside of its guideline ranges, with such decisions being subject to a de novo review and modification by the Commission to conform to the guideline ranges before the end of the 5-year period."

We hope that this paper will stimulate interest in this issue, and we think that if we can begin to address parole/release in 1992 for political prisoners and prisoners-of-war held in federal prisons, we can lay the groundwork for a successful fight. We look forward to your responses. Any reactions or thoughts will add to the ongoing discussion and contribute to the formulation of a successful political campaign.

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Discussion/Research Questions

1. Is the U.S. Parole Commission vulnerable to political pressure? What is the most effective means of exerting it?

2. What habeas actions or other litigation has been undertaken by federal prisoners who are eligible for parole and whose time served has already exceeded the guidelines?

3. Will there be any legal challenges available to appeal release dates set in 1992?

4. What are the mechanisms for prisoner and community participation in the 1992 sentence review process? Since after 1992 there will be no parole hearings, is there a way to guarantee an opportunity for a prisoner to appear and present their case for parole?

5. In the 1992 review process does the Parole Commission have to give any reasons for imposing a release date beyond the parole guidelines?

6. Who were the Representatives and Senators who advocated for standardization of sentences in backing the new sentencing guidelines and the CCCA of 1984? In other words, will there be any Congressional support for our position?

7. Who are the members of the National Parole Commission?

8. Given the fact that the Section (4206) cited as a replacement in the 1987 amendment to the Sentencing Reform Act was actually repealed when the CCCA was adopted in 1984 (see p.4 of preceding memo), are there any legal arguments left that support application of parole guidelines to <u>all</u> prisoners remaining in federal custody in 1992?