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Enterprise did not represent Austin's employees and was not attempting to prevent Austin from specifying prefabricated products in all its projects.

Congress has placed great reliance upon collective bargaining as a technique for solving labor-management problems since the passage of the Wagner Act.[48] The Court's decision that the collective bargaining agreement can be circumvented in dealing with technological change is, therefore, inconsistent with the national labor policy. Automation threatens the stability of jobs in a number of industries, but the collective bargaining process has produced adequate and often imaginative solutions.[49] In the long run, the national interest might best be served by permitting technological change to proceed unhampered by labor demands, but it is for Congress and not the courts to decide how best to solve this problem.[50]

III. CONCLUSION

In *Pipefitters* the Supreme Court was presented with the question of whether pressure exerted upon a subcontractor to enforce a valid work preservation clause was secondary activity. The courts of appeals had split over the National Labor Relations Board's consistent use of "right to control," in light of *National Woodwork's* totality-of-the-circumstances test. In settling the dispute between the circuits, the Supreme Court adopted the right-to-control test as the proper test to be applied in deciding whether union pressure is secondary in nature. This decision circumvents congressional reliance on collective bargaining as the primary technique for solving labor-management problems and allows the diminution of important employee rights through subsequent subcontracts.

Richard L. Scott

Timely Parole Revocation Hearings—Warrants Issued But Not Executed: Moody v. Daggett

In 1962 Minor Moody was convicted of rape on a government reservation and sentenced by the United States District Judge to a term of ten years in prison. With almost six years remaining to be served, Moody was paroled; while on parole he was convicted of manslaughter and second-degree murder. In 1971 he received concurrent ten-year sentences and was incarcerated for these two crimes. The Parole Commission[1] thereafter issued a parole

48. Wagner Act, ch. 372, 49 Stat. 449 (1935).

49. For a discussion concerning technological change see Note, *Technological Change: Management Prerogative vs. Job Security*, 31 IND. L.J. 389 (1956).

50. 429 U.S. at 543 (Brennan, J., dissenting). *See also* Comment, *Secondary Boycotts and Work Preservation*, 77 YALE L.J. 1401, 1415-17 (1968).

1. The Parole Commission and Reorganization Act, 18 U.S.C.A. §§ 4201-4218, 5005-5006, 5014, 5020, 5041 (Supp. 1977), enacted soon after certiorari was granted, renamed what was formerly the United States Board of Parole the "United States Parole Commission" and principally codified the Board's existing practices. The new rules, 28 C.F.R. § 2.57 (1976),

violator warrant which was lodged with prison officials as a detainer[2] against him. One year later Moody requested that the warrant be executed, but the Commission refused to execute the warrant until Moody was released. In 1975 he began a habeas corpus action seeking a dismissal of the warrant on the ground that he had been denied a prompt hearing on the parole revocation charges.[3] The district court dismissed the petition, the court of appeals affirmed,[4] and the Supreme Court granted certiorari. *Held, affirmed*: An incarcerated parolee is deprived of no constitutionally protected rights simply by the issuance of a parole violator warrant, and, therefore, the Commission is not under a constitutional obligation to provide a parole revocation hearing until the inmate is taken into custody as a parole violator by execution of the warrant. *Moody v. Daggett*, 429 U.S. 78 (1976).

I. DETAINERS, PAROLE REVOCATION HEARINGS, AND DUE PROCESS

When a parolee is convicted of a crime while on parole, the Parole Commission customarily issues a parole violator warrant. Following the issuance of a parole violator warrant, the Commission must execute the warrant in order to take the parolee into custody. The Commission can take either of two alternative routes after a warrant has been issued: it may execute the warrant and take the parolee into custody[5] or it may lodge the warrant as a detainer.[6] Following a dispositional hearing,[7] at which there is a review of the record which may contain written responses of the parolee or an interview with the parolee, the Commission may let the detainer stand or may withdraw it.[8] A third option, however, is available to the Commission before it reaches this stage; the Commission may defer execution of the warrant and the attendant decision of whether to revoke parole.[9] If the

validated any order of the Board entered prior to May 14, 1976, declaring that such orders should be considered valid orders of the Parole Commission "according to the terms stated in the order."

2. *See* H. KERPER & J. KERPER, LEGAL RIGHTS OF THE CONVICTED 474 (1974). A detainer is a "hold order" under which an inmate will not be released from custody when he completes his sentence. The inmate would not be released until a jurisdiction asserting new criminal charges or a parole violation has an opportunity to act either by taking the inmate into custody or by making a parole revocation determination.

3. Moody argued that he would sustain a grievous loss of liberty if the Commission allowed the warrant to remain unexecuted since he would be deprived of the possibility of his original sentence running concurrently with his subsequent sentences; the detainer would also affect his prison classification status, his institutional programs, and his eligibility for specific rehabilitative programs. Moody claimed that these conditions and certainty as to the period of his incarceration amounted to liberty interests protected by the due process clause of the fifth amendment.

4. The court of appeals and district court decisions were unreported. *See* Moody v. Daggett, 429 U.S. 78, 81 (1976) (citing the court of appeals decision which affirmed the district court decision).

5. 18 U.S.C.A. § 4213(a)(2) (Supp. 1977).

6. *Id.* § 4214(b)(1).

7. *See* note 25 *infra* (a dispositional hearing must be held 180 days after the detainer is lodged).

8. 18 U.S.C.A. § 4214(b)(3) (Supp. 1977).

9. 429 U.S. at 84 ("Deferral of decision while permitting the warrant to stand unexecuted would operate to allow the original sentence to remain in the status it occupied at the time of the asserted parole violation, 18 U.S.C. § 4205 (1970 ed.) . . . ."). If the Commission executes the warrant and subsequently retakes the parolee, it may restore the parolee to parole status, reprimand the parolee, modify the conditions of the parole, refer the parolee to a residential community treatment center, or formally revoke the parole. 18 U.S.C.A. § 4214(d)(1)-(5)(Supp. 1977).

Commission defers the decision and subsequently revokes parole, the parolee could be returned to prison to serve time on his first conviction. In effect, therefore, the two sentences would be treated as consecutive. On the other hand, if the Commission decides to revoke parole while the sentence is being served, the parolee might be permitted to serve the remainder of his reinstated original sentence concurrently with the time remaining on the second sentence.[10] Some of the Commission's alternatives are subject to a due process attack. The fifth amendment guarantees that no person shall be deprived of liberty without due process of law. The Supreme Court considered the possibility of such deprivations in *Morrissey v. Brewer*.[11] In that case the Court held that the statutory[12] conditional freedom of a parolee is a liberty interest protected by the due process clause of the fourteenth amendment, and that due process requires both a preliminary and a final hearing for revocation of parole. Cases since *Morrissey* have not challenged the elimination of the preliminary hearing when a parolee is convicted of a subsequent violation,[13] but rather have questioned the timing of the final hearing in relation to the execution of the warrant.[14] According to *Morrissey* the revocation hearing must present an opportunity for the parolee to show circumstances which mitigate the seriousness of the parole violation, thus preventing parole revocation.[15] This opportunity must be given even though in most cases the parolee has been convicted of an intervening crime or has pleaded guilty to the charges.[16]

Three circuits[17] have held that a parolee convicted of a new crime has a sufficient interest in liberty to entitle him to a hearing promptly upon issuance of the parole violator warrant. In those circuits the Commission's practice has been to send examiners to hold immediate dispositional-revocation hearings.[18] Hearings have been delayed in the circuits which have determined that a hearing is unnecessary until after execution of the warrant, and the parolee is taken into custody for the alleged parole violation.[19]

10. *See, e.g.*, Jones v. Johnston, 534 F.2d 353, 363, 364 & n.31, 365 (D.C. Cir.), *vacated*, 429 U.S. 995 (1976); United States *ex rel.* Hahn v. Revis, 520 F.2d 632, 637 (7th Cir.), *mandate recalled*, No. 74-1057 (Aug. 27, 1975); Gaddy v. Michael, 519 F.2d 669, 678 (4th Cir. 1975), *cert. denied*, 429 U.S. 998 (1976); Cleveland v. Ciccone, 517 F.2d 1082, 1087 (8th Cir. 1975).

11. 408 U.S. 471 (1972). *See generally* Note, *Timely Revocation Hearings for Criminal Violations of Parole*, 44 FORDHAM L. REV. 373 (1975).

12. 18 U.S.C.A. §§ 4205, 4209 (Supp. 1977).

13. The Parole Commission and Reorganization Act does not call for a preliminary hearing in cases where there has been a subsequent conviction during the period of parole. *Id.* § 4214.

14. *See, e.g.*, Jones v. Johnston, 534 F.2d 353, 358 (D.C. Cir.), *vacated*, 429 U.S. 995 (1976); Cleveland v. Ciccone, 517 F.2d 1082, 1086-87 (8th Cir. 1975). *See also* note 9 *supra* and accompanying text.

15. 408 U.S. at 488.

16. *See* Gagnon v. Scarpelli, 411 U.S. 778, 787 (1973). Under federal standards an unfavorable disposition is not determined by conviction alone, but by the parolee's whole record. United States Board of Parole Policy Paper on Parole Revocation at 13 (Dec. 1971), attached to Bureau of Prisons Policy Statement No. 40100.18 (Feb. 2, 1972).

17. Jones v. Johnston, 534 F.2d 353 (D.C. Cir.), *vacated*, 429 U.S. 995 (1976); United States *ex rel.* Hahn v. Revis, 520 F.2d 632 (7th Cir.), *mandate recalled*, No. 74-1057 (Aug. 27, 1975); Cleveland v. Ciccone, 517 F.2d 1082 (8th Cir. 1975).

18. 28 C.F.R. § 2.47(b)(3) (1976).

19. Six circuits have held that no right to due process attaches until the warrant is executed. Reese v. United States Bd. of Parole, 530 F.2d 231 (9th Cir.), *cert. denied*, 429 U.S. 999 (1976); Gaddy v. Michael, 519 F.2d 669 (4th Cir. 1975), *cert. denied*, 429 U.S. 998 (1976); Small v. Britton, 500 F.2d 299 (10th Cir. 1974); Cook v. United States Attorney Gen., 488 F.2d 667 (5th

The *Morrissey* standard for determining whether due process requires a parole revocation hearing depends upon a determination of whether an individual suffers a "grievous loss" as a result of governmental action.[20] In *Cook v. United States Attorney General*[21] the Fifth Circuit held that the right to a *Morrissey* revocation hearing does not accrue until the parolee is taken into federal custody upon execution of the warrant.[22] The court found that delay of the hearing until after release from an intervening imprisonment entailed no "grievous loss." In *Cook* the parolee asserted that the detainer caused him anxiety, rehabilitation problems, and a denial of educational opportunities.[23] The court refused to view those disadvantages as a grievous loss and denied the parolee a hearing prior to service of his intervening sentence; rather, the court chose to defer to the administrative expertise of the Commission.[24] The Commission has broad discretion and several options[25] as to whether to hold the parole revocation hearing before or after completion of the intervening sentence.

Even though the sentencing judge on the intervening conviction cannot require the subsequent sentence to run concurrently with the original sentence,[26] he is not powerless to enforce his intent as to the total length of sentence to be served. In *United States ex rel. Hahn v. Revis*[27] both the state and federal sentencing judges ordered that the sentences be served concurrently; however, by delaying the execution of the warrant, the Commission held open the possibility that the original and intervening sentences would run consecutively, contrary to the intentions of the judges.[28] The Commission in *Tippitt v. Wood*[29] contended that the sentencing judge on the intervening conviction lacked the power and authority to direct the sentences to

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Cir.), *cert. denied*, 419 U.S. 846 (1974); Colangelo v. United States Bd. of Parole, No. 74-251 (W.D. Ohio 1974), *aff'd mem.*, 517 F.2d 1404 (6th Cir. 1975); Orr v. Saxbe, No. 74-341 (M.D. Pa. 1974), *aff'd mem.*, 517 F.2d 1399 (3d Cir. 1975).

20. 408 U.S. at 481-82.

21. 488 F.2d 667 (5th Cir.), *cert. denied*, 419 U.S. 846 (1974). *See also* Small v. Britton, 500 F.2d 299 (10th Cir. 1974).

22. 488 F.2d at 671. The Tenth Circuit has also concluded that a parolee is not in custody until after the parole revocation warrant has been executed for the purposes of former 18 U.S.C. § 4207 (1970), which stated, "A prisoner retaken upon a warrant issued by the Board of Parole, shall be given an opportunity to appear before the Board . . . ." Act of June 25, 1948, ch. 311, § 4207, 62 Stat. 855 (1948) (current version at 18 U.S.C.A. § 4214 (Supp. 1977)). Small v. Britton, 500 F.2d 299, 301 (10th Cir. 1974).

23. 488 F.2d at 673.

24. *Id.* As to the prisoner's deprivation of certain prison privileges, his anxiety as to the length of his incarcertation, and the interference with his rehabilitation process the court stated: "We are simply unqualified, unauthorized, and unwilling to second guess the Parole Board on a matter so peculiarly within its own expertise." *Id.*

25. See text accompanying notes 7 and 8 *supra*, and Act of June 25, 1948, ch. 311, § 4207, 62 Stat. 855 (1948) (current version at 18 U.S.C.A. § 4214 (Supp. 1977)) and 28 C.F.R. § 2.47 (1976) which gives the Commission wide discretion as to when to hold revocation hearings. Under the new Act, at 18 U.S.C.A. § 4214(b)(1) (Supp. 1977), the Commission officials must review a detainer within 180 days. The parolee must receive notice of the review and may submit a written application relating to the review. If the Commission so decides, a dispositional review may be conducted at the institution where the parolee is incarcerated, at which hearing the prisoner may appear and testify. *Id.* § 4214(b)(2).

26. *See* Tippitt v. Wood, 140 F.2d 689 (D.C. Cir. 1944). The judge could not legally demand that the second sentence run concurrently with the first sentence because the running of the first sentence was suspended by the parole violation. The judge could not awaken the "sleeping sentence." *Id.* at 692.

27. 520 F.2d 632, 634-35 (7th Cir.), *mandate recalled*, No. 74-1057 (Aug. 27, 1975).

28. *Id.* at 635.

29. 140 F.2d 689 (D.C. Cir. 1944).

run concurrently.[30] The court stated that the judge attempted to use means beyond his power and authority. He should have decided the total amount of time that he wished Tippitt to serve, subtracted the unserved portion of the original sentence from the new time, and imposed an absolute sentence for a period of time represented by the difference between the two figures.[31]

Although the circuits have reached different conclusions, the courts generally focus on a determination of prejudice or "grievous loss" to the parolee as the central issue in parole revocation cases. In *Reese v. United States Board of Parole*[32] the court discussed possible prejudice from loss of evidence and the parolee's inability to present mitigating factors. The court, however, rejected the prejudice as insubstantial, stating that when a parolee is convicted of a crime while on parole, the parole officer can assume "that all evidence upon which the parolee was legally entitled to rely was presented and considered."[33] *Jones v. Johnston*,[34] however, rejected this theory, stating that the Commission considers a very broad range of evidence in the parole revocation decision, much of which would be irrelevant or inadmissible at a criminal trial . . . ."[35] The *Reese* majority opinion did not discuss other aspects of possible prejudice such as the prisoner's lack of certainty as to the period of his incarceration, his lack of access to rehabilitative programs, and the diminished possibility of an early release.

Courts have also considered administrative interests in avoiding the difficulty and expense of conducting hearings in distant prisons and the costs of additional hearings held to re-evaluate a decision made at the beginning of an intervening sentence.[36] The courts have balanced these administrative burdens against the possible prejudice to the parolees' interests.[37] When the final parole revocation hearing must be held depends, therefore, on the parolee's ability to show that the prejudice to him outweighs the burden to the Commission in holding a parole revocation hearing at the request of the prisoner.

II. Moody v. Daggett

In *Moody v. Daggett* the issue before the Supreme Court was whether a federal parolee[38] imprisoned for committing a crime while on parole is

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30. *Id.* at 692.
31. *Id. Tippitt* involved a second sentence of four years and an original sentence with approximately two years remaining to be served. The judge could have accomplished the same end through the use of FED. R. CRIM. P. 35. Under this rule the judge could have reduced the sentence to probation if action had been taken within the 120 days required by the rule. The effect of such action would have been the release of the prisoner to the detainer and a subsequent execution of the warrant. The probationer would then have been taken into custody under the warrant, and a *Morrissey* revocation hearing would have been required soon thereafter.
32. 530 F.2d 231, 234 (9th Cir.), *cert. denied*, 429 U.S. 999 (1976).
33. *Id.*
34. 534 F.2d 353 (D.C. Cir. 1976).
35. *Id.* at 372.
36. *Id.* at 366-67.
37. *Id.* at 369. *See generally* the cases cited at notes 17 and 19 *supra*.
38. 429 U.S. at 79. The Court's statement of the issue in *Moody* appeared to limit the holding to parolees in *federal* prison. A possible reason for this is that prejudice to parolees incarcerated in state institutions may in some cases be more easy to demonstrate than prejudice to parolees in federal institutions. For example, in Texas an inmate under a detainer cannot become a State Approved Trusty; he therefore cannot serve time "two for one" as he would be

constitutionally entitled to a prompt revocation hearing when a parole violator warrant is issued against him and delivered to officials at his place of incarceration, but not served upon him. The Court restated the holding of *Morrissey*, asserting that a parolee's statutory conditional freedom is a liberty interest which is protected by the due process clause of the fourteenth amendment. The Court further noted that *Morrissey* had established that the operative events which trigger any loss of liberty and the consequent requirement of due process are the execution of the warrant and the act of taking custody pursuant thereto.[39] In *Moody* the parolee was confined because he had committed two crimes while on parole; his imprisonment was in no way related to the issuance of the warrant.[40] The outstanding warrant, therefore, would have no certain or inevitable effect on the liberty interests protected under *Morrissey*.[41]

The Court briefly considered the other possible sources of prejudice,[42] but dismissed them as either not involving a loss of protected liberty or as not arising from the warrant and detainer.[43] Following these considerations, the Court concluded its analysis by noting the practical usefulness of having a parolee's institutional record on which the Commission could base its determination.[44] The revocation hearing required by *Morrissey* calls for a "prediction as to the ability of the individual to live in society without committing antisocial acts."[45] Because a parolee's institutional record can provide vital information for purposes of prediction, the Court decided that the most appropriate time for the hearing would be the period following the intervening sentence.[46] To have the hearing sooner would frequently result in parole

able to do if he were a trusty. An inmate can be paroled to a detainer, but a detainer is a deterrent to early parole. A detainer also affects work assignments and assignments to work release programs outside of the prison. *See generally* H. KERPER & J. KERPER, *supra* note 2, at 474 n.92. *See also* TEX. REV. CIV. STAT. ANN. art. 6184d (Vernon 1970) (prisoners under detainers shall not be appointed trusties).

39. 429 U.S. at 87 (quoting Morrissey v. Brewer, 408 U.S. 471, 488 (1972): "[t]he revocation hearing must be tendered within a reasonable time after the parolee is taken into custody.").

40. 429 U.S. at 86.

41. *Id.* at 87.

42. *Id.* at 85, 87, 88 & n.9. Moody's loss of the chance to serve his sentences concurrently is not certain, according to the Court, because even when the Commission finally holds a hearing, it might not revoke parole; even if parole is revoked, the Commission could still decide, in its discretion, to grant the equivalent of concurrent sentences retroactively. *Id.* at 87. *See also* 18 U.S.C.A. §§ 4211, 4214(d) (1977); 28 C.F.R. § 2.21(c) (1976). The Court mentions the possible loss of mitigating evidence only in a footnote, and dismisses this factor by stating that Moody has not claimed additional evidence which may be lost by a delay. 429 U.S. at 88 n.9. In the same note the Court also dismisses possible prejudice to prison classification and participation in rehabilitation programs, citing Meachum v. Fano, 427 U.S. 215 (1976), for the proposition that the Court has rejected the notion that every state action which adversely affects prisoners automatically activates a due process right. 429 U.S. at 88 n.9.

43. 429 U.S. at 87.

44. *Id.* at 89.

45. *Id.* (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)).

46. 429 U.S. at 89. If the Court truly wanted to give deference to the administrative authority in the best position to evaluate the effect of a detainer, the Court should have utilized the Bureau of Prisons policy statements quoted by Justice Stevens in the dissent:

> 'Because uncertainty as to status can have an adverse effect on our efforts to provide offenders with correctional services, we should encourage detaining authorities to dispose of pending untried charges against offenders in Federal custody.
>
> 'The casework staff at all institutions may cooperate with and give assistance to offenders in their efforts to have detainers against them disposed of either by

revocation because recent convictions, not counterbalanced by a record of the parolee's conduct, would weigh heavily against the parolee in the Commission's determination.[47] This would have been particularly true in *Moody* due to petitioner's conviction of a double homicide.[48]

Rejecting most of the parolee's allegations of prejudice, the Court found that the warrant had neither a present nor an inevitable effect on liberty interests which *Morrissey* intended to protect,[49] and, therefore, the prisoner had been deprived of no constitutionally protected rights by mere issuance of a parole violator warrant.[50] Consequently the Commission had no constitutional duty to provide the parolee a *Morrissey* type of adversary parole revocation hearing until execution of the warrant caused him to be taken into custody as a parole violator.[51]

Mr. Justice Stevens, joined by Mr. Justice Brennan, dissented,[52] criticizing the Court's failure to answer what he saw as the critical question in the case: whether the timing of the hearing is an element of the procedural fairness to which the parolee is constitutionally entitled.[53] Justice Stevens recognized the parolee's "legitimate interest in changing the uncertainty associated with a pending charge into the greater certainty associated with its disposition,"[54] and also noted other possible sources of prejudice attributable to the detainer.[55] Justice Stevens reasoned that the parole revocation process begins when the Commission issues the warrant;[56] therefore, the parolee's constitutional protections should attach at that time.[57] He concluded that the due process clause of the fourteenth amendment, requiring the opportunity to be heard at a meaningful time and in a meaningful

> having the charges dropped, by restoration of probation or parole status, or by arrangement for concurrent service of the state sentence.
>
> . . . .
>
> 'The presence of a detainer oftentimes has a restricting effect on efforts to involve the offender in correctional programs. For this reason, caseworkers at Federal institutions are expected to assist offenders in their efforts to have detainers disposed of.'

Id. at 93-95 nn. 8 & 9 (quoting Bureau of Prisons Policy Statement No. 7500.14A (Jan. 7, 1970)). *See generally* Bennett, *The Last Full Ounce*, 23 FED. PROB. No. 2 (1959).

47. 429 U.S. at 89.

48. The Court's repeated references to the severity of the crimes of which the parolee was convicted may limit the case to its facts. For example, the Court mentioned the "gravity of petitioner's subsequent crimes" as placing him "under a cloud;" the fact that the parolee admits or has been convicted of an offense "plainly constituting a parole violation;" and the fact that the intervening crime was a "double homicide" for which a "decision to revoke parole would often be foreordained." *Id.* at 87, 89.

49. *Id.* at 87.

50. *Id.* at 89.

51. *Id.*

52. *Id.*

53. *Id.* at 89, 90.

54. *Id.* at 93 (noting Pollard v. United States, 352 U.S. 354 (1957), where the Court recognized that a defendant's right to a speedy trial also included a right to a prompt sentencing determination).

55. 429 U.S. at 93-94 n.8.

56. *Id.* at 91.

57. *Id.* at 93. Mr. Justice Stevens, citing Smith v. Hooey, 393 U.S. 374 (1969), Strunk v. United States, 412 U.S. 434 (1973) (right to speedy trial), and Pollard v. United States, 352 U.S. 354 (1957) (right to prompt sentencing), stated that "the Court has made it clear that the constitutional protection applies not only to the determination of guilt but also to the discretionary decision on what disposition should be made of the defendant." 429 U.S. at 93.

manner,[58] is violated by denying parolees an opportunity for a prompt revocation hearing.[59]

If the decision in *Moody* is correct, then it is so only on the facts of the case. The Court's analysis should not have so lightly dismissed the effects of a detainer on a parolee within a custodial institution, regardless of a conviction of an intervening crime. If a primary purpose of the prison system is rehabilitation,[60] then the Court should have given more deference to the Bureau of Prisons' policy statements noted by the dissent.[61] If the Court in reality applied a balancing test by weighing the great likelihood of revocation at hearings held soon after conviction and the possible administrative burdens[62] against the parolee's interests in a hearing on request, then it should have set forth such test clearly rather than determining that a parolee is deprived of no constitutionally protected rights under the facts of *Moody*.

The United States Parole Commission's policy since the *Moody* decision has been to abandon the practice of prompt dispositional-revocation hearings in those circuits where they were previously required.[63] Perhaps on another set of facts, where the parole revocation might not seem "foreordained" to the Court and the "grievous loss" to the parolee might seem more obvious, the Court will find a deprivation of a constitutionally protected right by issuance of a parole violator warrant which is lodged as a detainer at the institution of confinement.

III. CONCLUSION

Cases prior to *Moody* were in agreement that the *Morrissey* requirement of due process applied to parole revocation hearings; there was disagreement, however, as to when the parolee is entitled to a *Morrissey* hearing, and whether, on balance, the possible prejudice and "grievous loss" outweigh the interests of the administrative agency and society in a delayed hearing. In *Moody* the Supreme Court held that an incarcerated parolee is not deprived of constitutionally protected rights simply by the issuance of a parole violator warrant. The United States Parole Commission, therefore, has no constitutional duty to provide a parole revocation hearing until the warrant is executed and the inmate is taken into custody as a parole violator. The *Moody* opinion ignores important issues concerning the effect of detainers on incarcerated parolees and the liberty interests involved in uncertainty as to the period of confinement. The Court simply failed to see a present or inevitable loss of liberty such as to invoke the due process protections required by *Morrissey*.

Janice L. Mattox

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58. *See* Mathews v. Eldridge, 424 U.S. 319, 333 (1976).
59. 429 U.S. at 95-96.
60. *See generally* J. VORENBERG, CRIMINAL LAW AND PROCEDURE 8-9 (1975).
61. *See* note 46 *supra*.
62. There would seemingly be no burden in providing examiners for the revocation hearings at the prisons because they are already provided for parole hearings.
63. *See, e.g.*, Directive from Curtis Crawford, Acting Chairman, United States Parole Commission, to Regional Commissioners, North Central and South Central Regions, regarding Dispositional-Revocation Hearings (effective Dec. 13, 1976). *See* notes 18-19 *supra* and accompanying text.