

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA



JAMES WARE  
CHIEF JUDGE

July 20, 2011

Re: Additional Information regarding the Report from the Administrative Office of the United States Courts regarding Parole Supervision of Phillip Garrido

The United States District Court for the Northern District of California expresses its sincere regret that the crimes committed against Ms. Jaycee Dugard by Phillip Garrido were committed while he was under the supervision of our District Probation Office. The mission of the United States Courts – equal justice under law – can be met if every court employee diligently performs his or her assigned responsibilities. Society suffers whenever a lack of vigilance contributes in any way to a failure to uncover an on-going crime. The Northern District is dedicated to ensuring that past deficiencies have been remedied and play no part in our current processes.

Since my public release of the Report by the Administrative Office of the United States Courts on the supervision of Phillip Garrido, various members of the Court's staff and I have received requests for additional information. This supplemental memorandum is intended as a means to address these requests.

**Garrido's Status as a Parolee**

At the time of his crimes against Ms. Dugard, Phillip Garrido was on parole under the supervision of the Northern District Probation Office. Some of the requests ask further clarification of what it means for Garrido to be a "parolee" and yet be supervised by the Northern District's Probation Office.

"Parole" is a component of a person's sentence that is granted by, and under the jurisdiction of, the United States Parole Commission. Parole is distinct from "probation" and "supervised release," which are administered by the courts. Under 18 U.S.C. § 3655, a probation officer is authorized to supervise a person released on parole, and under 18 U.S.C. § 3601, a probation officer is authorized to supervise a person placed on probation or supervised release. Both processes, however, share a common purpose – ensuring the safety of the community and the structured re-integration of an offender back into free society. Parole was administered by an agency of the Executive Branch. Supervised release is administered by an agency of the United States Courts. A violation of parole can lead to a return to prison to serve out the remainder of a term of incarceration. A violation of supervised release is an independent offense that is subject to punishment for the violation. In 1987 Congress enacted legislation that phased out parole and assigned the duty of supervising parolees to the district probation offices. More information about federal parole is available at [www.justice.gov/uspc/history.htm](http://www.justice.gov/uspc/history.htm).

In 1910, the federal parole system was established for federal prisoners. In 1930, Congress created a Federal Parole Board with the power to grant parole. The Parole Board was part of the Department of Justice and consisted of members appointed by the Attorney General. (In 1976, the Parole Board was renamed the United States Parole Commission.)

In 1984, Congress created the United States Sentencing Commission to establish a system of determinate sentences for the federal courts. With the creation of the Sentencing Commission, Congress provided that the Parole Commission would be abolished five years from the date on which the Sentencing Guidelines took effect. During the five-year transition period, the Parole Commission was to continue in existence to handle cases of parole for eligible defendants who were convicted of offenses committed before November 1, 1987. However, the Parole Commission has had its life extended several times by Congress, and it exists to this day, holding jurisdiction over: (1) Federal offenders who committed offenses before November 1, 1987; (2) D.C. Code offenders; (3) Uniform Code of Military Justice offenders; (4) U.S. citizens serving prison terms imposed by foreign countries who, pursuant to treaty, are serving their sentences in the U.S.; and (5) State probationers and parolees in the Federal Witness Protection Program. Supervision of parolees in the community is provided by United States Probation Officers, who are employees of the federal district courts.

On November 1, 1987, the initial set of Sentencing Guidelines took effect. Defendants who are sentenced for offenses committed on or after November 1, 1987 serve determinate terms under the Sentencing Guidelines, and are ineligible for parole consideration. For those defendants, “supervised release”—that is, post-release supervision—is provided as a separate part of the sentence. Between 1987 and 2010, nearly one million federal offenders were sentenced to terms of supervised release. Offenders on supervised release are subject to the jurisdiction of the federal courts. As with parole, offenders on supervised release are monitored by United States Probation Officers. Unlike probation, however, supervised release is not a punishment imposed on offenders in lieu of incarceration. Instead, it is primarily aimed at helping to reintegrate defendants into the community.

Although both parole and supervised release are forms of post-incarceration supervision, there are differences between parole and supervised release. An offender such as Phillip Garrido, who was released on “parole” was released from incarceration before the end of his sentence. When an individual is on parole, he is in effect serving a form of custody while living in society under the supervision of the United States Parole Commission. When parole was abolished, and with it, parole officers, the law assigned the supervision of parolees to District Probation Offices under the jurisdiction of the United States Parole Commission.

By contrast, for an offender sentenced after November 1, 1987, the District Judge could impose a term of supervised release at the time of sentencing to follow completion of the term of imprisonment. Thus, an offender on supervised release has already completed the period of incarceration mandated by his sentence. An individual on supervised release lives in society

under the supervision of the Probation Office, but is under the jurisdiction of the United States District Court rather than the jurisdiction of the Parole Commission.

An individual serving a term of supervised release must follow conditions that are imposed at the time of sentencing. Such conditions may include prohibitions on gun possession or contact with victims or witnesses and restrictions on travel. If the government proves to the Court that an offender has failed to comply with those conditions, the Court is empowered to punish the offender for the violation. The punishment may include incarceration.

Similarly, an individual who is on federal parole must also comply with conditions of release. However, these conditions are set by the United States Parole Commission. These general conditions include requiring parolees not to violate any law, not to possess a firearm, and to submit to drug or alcohol tests whenever ordered to do so. In addition, the Parole Commission may impose special conditions on individual parolees to protect the public from further crimes by the parolee and to provide adequate supervision. If the government proves that a parolee has violated a condition of parole, the Commission is empowered to re-incarcerate the parolee for the remainder of the parolee's unserved term.

### **The Power of a United States Probation Officer to Search Garrido's Residence**

We have received requests for further information on the authority of the probation officers who went to the Garrido residence to conduct a search of the premises. The documented lack of home inspections and visits by the federal probation officers is inexcusable. The hallmark of effective supervision is knowledge of the living and employment circumstances of the parolee.

The Fourth Amendment protects all citizens, including convicted felons, from unreasonable searches or seizure. Among the special conditions that may be imposed by the Parole Commission, however, is a requirement that a parolee submit to searches of the parolee's person, or of any building, vehicle, or other area under the control of the parolee by a probation officer, without a warrant. If a "submission to search" condition is imposed, the probation officer can conduct a search even if the officer has no warrant or probable cause to believe that the parolee has committed a crime or violation of parole. If the condition is not imposed, however, probable cause must exist or a warrant must be sought.

At the time of Garrido's release on parole, the Parole Commission did not impose a "submission to search" condition on Phillip Garrido. Therefore, the United States Probation Officer was not empowered to search the Garrido home and property solely because he was a parolee.

Although there was no "submission to search" condition, Garrido and his residence were subject to involuntary visits and inspections by federal probation officers to ensure that he was complying with the conditions of his parole. Such visits do not include the right to open closed compartments or containers.

Since Garrido was also on lifetime state parole, search conditions might have been imposed by State authorities. If they had been, Garrido and his property would have been subject to search by State parole officials and under some circumstances by local police officers.

### **Circumstances Prompting the AOUSC Report**

We have been asked about the circumstances that prompted the AOUSC Report. The national standards under which all probation offices operate are established by the Office of Probation and Pretrial Services (OPPS) of the Administrative Office of the United States Courts. From time to time that Office upon request by the Chief Judge or on its own initiative will dispatch a team to review the operations of various probation offices to assess compliance with national standards. Normally, the team consists of AO administrators and experienced probation officers from other districts.

In October 2000, OPPS conducted a review of the Northern District Probation Office. The review coincided with the appointment of a new Chief Probation Officer. The review identified post-conviction supervision as an area for improvement and made specific recommendations in that regard.

OPPS conducted another review in 2006. This review was initiated by OPPS to review supervision of a particular individual. The review concluded that the District's Probation Office needed a major overhaul with respect to management and operations. Based largely on this review, the Chief Probation Officer was replaced with the current Chief Probation Officer.

In May 2007, in conjunction with the appointment of the current Chief Probation Officer, OPPS conducted another review and made specific recommendations for improvements in our District. These recommendations formed the agenda of the new Chief Probation Officer, who has followed up on each of them and brought our District into full compliance with national standards.

In 2009, when Garrido was arrested, it was revealed that the kidnaping had taken place during federal supervision. At its own initiative, OPPS initiated a review of his supervision.

### **Current state of Supervision in the Northern District**

The current Chief Probation Officer of the Northern District of California is engaged in effectuating systems that meet the agency's primary mission of enforcing conditions imposed by the Court or the Parole Commission and of assuring public safety, while at the same time assisting offenders to positively reintegrate themselves back into society.

After assuming leadership, the current Chief Probation Officer recognized the staff and venue offices as needed to enhance the quality of our service delivery. This included the implementation of new supervision standards to the national level. He has worked closely and effectively with the Chief Judge, United States Attorney, Federal Public Defender, United States

Pretrial Services and others. He has recruited and maintained a staff of motivated, creative employees who possess qualities which are in line with the type of employees needed to achieve the District's new goals.

Utilizing the 2000, 2006, and 2007 Administrative Office's Operational Audit reports as a blue print, he recruited and brought in well-qualified managers from other districts to fill the chief deputy and assistant deputy positions. These individuals brought a national perspective to the District and possessed direct and decisive leadership qualifications with particular strengths in strategic planning, training, and policy development.

Because enforcing conditions of release and ensuring public safety are important aspects of the job of a federal probation officer, the current Chief Probation Officer has emphasized accountability and results-oriented supervision practices with explicit and stated outcomes. Specifically, he created a culture shift in the District by reorganizing some venue offices, expanding the roles of officers, creating Probation Officer Assistant positions, and elevating some veteran officers to coordinator positions. As a result of formulating these positions, the Probation Office has been able to effectively manage individuals in all four classes of active supervision cases: High, Medium, Low and Low Intensity.

Given the emphasis placed on community-based supervision, the District has seen an increase in our officers' field presence through a variety of strategies. During the course of the last several years, there has been an increase in both personal and collateral field visits. Under the current administration, the senior management team has stressed the importance of a field presence and, consequently, there has been significant improvement. The emphasis on field work activities like re-entry contacts, verifying address changes, employment verification and other collateral contacts (including officers' contact with family, associates and treatment providers) have reaped beneficial returns in the areas of deterrence and detection.

Other steps that have been implemented include a requirement that supervision officers perform a prescribed number of field hours each month. Officers must investigate and report noncompliance to the Court immediately. Additionally, the office has implemented a practice called High Intensity Field Projects (HISP) that focuses on noncompliance issues with offenders in the highest risk categories.

### **Key Specific Sex Offender Initiatives**

Sex offenders are amongst the high risk population that the Probation Office has targeted as a specific focus of significant new policies and practices (along with violent offenders, chronically addictive individuals and severely impaired mental health cases, to name a few).

Intensive home inspections are conducted at every sex offender's residence. These inspections include walking the perimeter of the residence and careful inspections of the garage and other outbuildings to look for secret hiding places or other secreted locations.

In view of the rising number of sex offenses that were coming through the courts of our District, a program called Sex Offender Monitoring (SOM) was created, which ultimately led to our Computer Internet Monitoring Program (CIMP). In September 2008, we brought in a nationally recognized trainer to review our practices, and completely overhauled our approach to ensure accountability and allow us a better opportunity to capture non-compliance and criminal behavior. This included having certain officers trained in forensic inspections of computers and smart mobile technology. This program has been extremely effective as it has resulted in the detection of new criminal violations which were subsequently reported to the Court.

Other initiatives focused on sex offenders include a strong community presence by both supervision and presentence investigation units, sex offender-specific treatment, and the use of the polygraph. Our District also has a sex offender working group which includes all officers who supervise sex offenders. They meet on a quarterly basis to discuss criminal patterns, detection and deterrent strategies, enforcement of Jessica's law/Megan's law, and other supervision issues. Additionally, our officers have been trained on how to perform community observation (surveillance) and utilize all available databases provided by the Administrative Office.

In summary, the Northern District's Probation Office supervised Phillip Garrido during a period in which management was not addressing serious deficiencies in the supervision program. After two leadership changes, the office fully embraced the need to modernize and improve its supervision programs beginning in 2007. Accordingly, those programs have undergone a great deal of change for the better over the past four years. In particular, sex offenders are amongst the high risk supervision population (which also includes violent offenders, chronically addictive individuals and severely impaired mental health cases) that has been targeted as a specific focus of significant new policies and practices by the Probation Office. The challenges of supervising this population are being specially addressed through new initiatives and we believe that our practices not only meet national standards but represent best practices. We are totally committed to continuous improvement in our supervision practices, with the safety of the community as our top priority.