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CONSTITUTIONAL LAW — Due Process — Denial of Inspection of Personal Institutional File Does Not Violate a Parole Applicant's Right of Due Process in the Second Circuit. *Williams v. Ward*, 556 F.2d 1143 (2d Cir. 1977), *cert. dismissed*, 434 U.S. 944 (1978).

Plaintiff Michael Williams, a state prisoner, brought suit[1] against the Commissioner of the New York State Department of Correctional Services and the Chairman of the New York State Board of Parole claiming a denial of due process protection under the fourteenth amendment[2] for parole[3] applicants in not having access to information contained in his parole file.[4] The United States District Court for the Southern District of New York granted summary judgment for the plaintiff and denied the defendant's subsequent motion to vacate judgment.[5] Judge Whitman Knapp entered final judgment[6] requiring the defendants to provide the plaintiff with copies of all unconfidential material contained in his parole file, a fair summary of confidential material therein, and a new parole release hearing.[7]

The United States Court of Appeals for the Second Circuit reversed and dismissed.[8] Judge Friendly acknowledged that the interest of a parole applicant in a parole release decision was subject to some due process protections,[9] but held that disclosure of the parole

1. Williams v. Ward, 556 F.2d 1143 (2d Cir. 1977), *cert. dismissed*, 434 U.S. 944 (1978).

2. The fourteenth amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law . . . ." U.S. CONST. amend. XIV.

3. In criminal law, parole is a conditional release from confinement subject to certain conditions to be observed by the convict. The parolee remains in constructive custody subject to being retaken and returned to actual custody. BLACK'S LAW DICTIONARY 1273 (4th ed. 1951). *See also* People *ex rel.* Natoli v. Lewis, 287 N.Y. 478, 41 N.E. 2d 62 (1942).

4. 556 F.2d at 1146. Williams had reason to believe that his file contained copies of at least two letters which stated that he was mentally disturbed. Williams felt that the allegedly false information might prejudice the Board's decision. He therefore petitioned the Chairman and the Commissioner for the removal of the letters. Receiving no response, Williams filed suit in August 1975. In September 1975, the Board denied parole. In its required written statement, the Board cited the violent and vicious nature of Williams' crimes as well as his lack of participation in any of the offered rehabilitative programs available. The statement contained no reference to any mental disturbance. *Id.* at 1145-1146.

5. The orders were filed on June 11 and July 23, 1976. *Id.* at 1148.

6. Williams v. Ward, 416 F. Supp. 1123 (S.D.N.Y. 1976).

7. *Id.* at 1125.

8. 556 F.2d at 1162.

9. *Id.* at 1158.

file was not constitutionally required.[10] Thus, although a parole applicant's right to procedural due process has undergone considerable interpretation and expansion in the Second Circuit within the last eight years, at present, a parole applicant has no protected right of access to his parole file.[11]

In *Menechino* v. *Oswald,*[12] decided on August 5, 1970, the Second Circuit held that a parole applicant, constitutionally deprived of his right to liberty for the duration of his sentence, was "[l]ike an alien seeking entry into the United States . . . he does not qualify for procedural due process in seeking parole."[13] The court went on to note that all seven circuit courts of appeal which had passed upon the issue had held an inmate is not entitled to due process as a matter of constitutional right.[14]

In 1971, considering the rights of a parolee whose parole had been revoked in *United States ex rel. Bey v. Connecticut State Board of Parole,*[15] the Second Circuit reiterated and strengthened its position regarding the rights of parole applicants by contrasting their position with that of the parolee:[16]

> Unlike a prisoner being considered for parole release, a parolee facing reimprisonment stands to lose a 'presently enjoyed' interest in his conditional freedom . . . . It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom . . . than to his mere anticipation or hope of freedom.

In 1972, the United States Supreme Court relied on the *Bey* distinction in its landmark case of *Morrissey* v. *Brewer.*[17] The plaintiffs, both parolees from the Iowa State Penitentiary, claimed deprivation of due process when their paroles were revoked without hear-

10. *Id.* at 1145.

11. *Id.*

12. 430 F.2d 403 (2d Cir. 1970), *cert. denied,* 400 U.S. 1023 (1971). Petitioner, a state prisoner, sought declaratory judgment of his right to procedural due process at a parole release hearing.

13. *Id.* at 408-09.

14. *Id.* at 409, *citing* Hyser v. Reed, 318 F.2d 225 (D.C. Cir.), *cert. denied sub nom.* Thompson v. United States Bd. of Parole, 375 U.S. 957 (1963); Rose v. Haskins, 388 F.2d 91 (6th Cir.), *cert. denied,* 392 U.S. 946 (1968); Williams v. Patterson, 389 F.2d 374 (10th Cir. 1968); Washington v. Hagan, 287 F.2d 332 (3d Cir. 1960), *cert. denied,* 366 U.S. 970 (1961); Jones v. Rivers, 338 F.2d 862 (4th Cir. 1964); Hodge v. Markley, 339 F.2d 973 (7th Cir.), *cert. denied,* 381 U.S. 927 (1965); Mead v. California Adult Auth., 415 F.2d 767 (9th Cir. 1969).

15. 443 F.2d 1079 (2d Cir.), *vacated as moot,* 404 U.S. 879 (1971).

16. 443 F.2d at 1086.

17. 408 U.S. 471, 482 (1972).

ings.[18] In its review, the Court specifically noted the parolees' circumstance of "conditional liberty" as opposed to the inmates' imprisonment. The Court stated that "[t]hough the State properly subjects [a parolee] to many restrictions not applicable to other citizens, his condition is very different from that of confinement in a prison."[19] The termination of this "conditional liberty", while not the termination of the unqualified liberty of a free citizen by process of criminal prosecution and thus requiring the full panoply of fourteenth amendment rights, nevertheless requires some orderly process.[20] The Court set forth the following requirements of minimum due process:[21]

> (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.

Stating that the process should remain flexible,[22] the Court went on to emphasize that there was no intent to equate a parole revocation procedure with a criminal prosecution[23] and declined to decide the question of the parolee's right to counsel.

In 1973, the Supreme Court extended the limited due process rights of *Morrissey* to the area of revocation of probation in *Gagnon v. Scarpelli*[24] wherein the probation of the respondent had been revoked without hearing.[25] The Court determined that the revocation of probation, like the revocation of parole resulted in a loss of

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18. *Id.* at 472-73.
19. *Id.* at 482.
20. *Id.*
21. *Id.* at 489.
22. *Id.*
23. *Id.*
24. 411 U.S. 778 (1973). Probation revocation is the official transaction by which the conditional freedom of a sentenced individual is withdrawn.
25. *Id.* at 780. "Despite the undoubted minor differences between probation and parole, the commentators have agreed that revocation of probation where sentence has been imposed previously is constitutionally indistinguishable from the revocation of parole. *See, e.g.*, Van Dyke, *Parole Revocation Hearings in California: The Right to Counsel*, 59 CALIF. L. REV. 1215, 1241-1243 (1971); Sklar, *Law and Practice in Probation and Parole Revocation Hearings*, 55 J. CRIM. L.C. & P.S. 175, 198 n. 182 (1964)." *Id.* at 782 n.3.

liberty, but again cautioned that such revocation procedures were not to be equated with a stage of criminal prosecution.[26] In this vein, the *Scarpelli* Court declined to state a hard rule with regard to the right to counsel.[27] The Court preferred a case-by-case approach,[28] and specifically sought to avoid the creation of an adversarial atmosphere in a non-adversarial proceeding.[29]

In 1974, the Supreme Court, in *Wolff v. McDonnell,*[30] extended due process protection to prisoners facing loss of "good-time credits."[31] The complaint of inmate respondent McDonnell alleged that prison disciplinary proceedings wherein such sanctions could be imposed violated due process.[32] Distinguishing the deprivation of "good-time" by stating that it is "qualitatively and quantitatively different from the revocation of parole or probation"[33] in that it does not work any immediate change in the prisoner's condition of liberty,[34] the Court nevertheless concluded that some, but not all, of the procedures outlined in *Morrissey* and *Scarpelli* must accompany state deprivation proceedings.[35]

Again, the Court was reluctant to allow the presence of counsel in proceedings, reasoning that this would "inevitably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals."[36] All three Supreme Court cases[37] sought to define the prisoner's interest in liberty,[38] to determine whether the loss of this liberty would constitute a "grievous loss",[39] and to strike a balance between the interests of the prisoners

26. *Id.* at 782.
27. *Id.* at 790.
28. *Id.* at 789.
29. *Id.* at 787-88.
30. 418 U.S. 539 (1974).
31. NEB. REV. STAT. § 83-1,107 (Cum. Supp. 1972). This statute provides in part that the chief executive officer of a prison facility may reduce a prisoner's sentence for parole purposes by giving time credits for good behavior, faithful performance of duties and for particularly meritorious behavior. *Id.* at § 83-1,107(1).
32. 418 U.S. at 543.
33. *Id.* at 561.
34. *Id.*
35. *Id.* at 571.
36. *Id.* at 570.
37. Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v. Scarpelli, 411 U.S. 778 (1973); Wolff v. McDonnell, 418 U.S. 539 (1974).
38. 408 U.S. at 480-81; 411 U.S. at 781-82; 418 U.S. at 556-57.
39. 408 U.S. at 482; 411 U.S. at 781; 418 U.S. at 561.

and the functional requirements of the institutions.[40] The parolee, probationer, or inmate's concern with a possibly unjust deprivation of liberty must be weighed against the interests of the institution in maintaining the discipline necessary to effect a successful rehabilitation program, and in avoiding actions prejudicial to the safety of the community at large. In each decision, the Court stressed that the application of due process protection should remain flexible according to the circumstances.[41]

Following the line of expansion of due process established by *Morrissey, Scarpelli,* and *Wolff,* the Second Circuit in 1974 went one step further. The Court in *United States ex rel. Johnson v. Chairman, New York State Board of Parole*[42] wherein an inmate who had been denied parole sought a statement of reasons for denial,[43] held that a parole applicant *is* subject to some due process protection.[44] Specifically, the applicant has the right to a statement of reasons for the Board's denial of parole.[45] The Second Circuit explained this surprising modification of its previous denial stance taken in *Menechino,*[46] by stating that in the *Menechino* case, unless the full panoply of procedural due process rights sought by Menechino was granted, the applicant was not interested in merely obtaining a statement of the Board's reasons "for denial". The Court therefore gave no consideration to partial relief.[47]

In light of *Morrissey's* grant of due process to parolees, the Second Circuit now reasoned that since parole was henceforth to be regarded as a "conditional liberty", representing a protected "interest", a parole applicant's interest in prospective parole must be viewed in a similar manner. "To hold otherwise would be to

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40. 408 U.S. at 484; 411 U.S. at 785-86; 418 U.S. at 572.

41. "We have no thought to create an inflexible structure for parole revocation procedures." 408 U.S. at 490. "But due process is not so rigid as to require that the significant interests in informality, flexibility, and economy must always be sacrificed." 411 U.S. at 788. "As the nature of the prison disciplinary process changes in future years, circumstances may then exist which will require further consideration and reflection of this Court." 418 U.S. at 572.

42. 500 F.2d 925 (2d Cir.), *vacated as moot sub nom.*, Regan v. Johnson, 419 U.S. 1015 (1974).

43. 500 F.2d at 926.

44. *Id.*

45. *Id.*

46. 430 F.2d 403 (2d Cir. 1970).

47. 500 F.2d at 927.

create a distinction too gossamer-thin to stand close analysis. Whether the immediate issue be release or revocation, the stakes are the same: conditional freedom versus incarceration."[48] Using the criteria established in *Morrissey* and the succeeding cases of *Scarpelli* and *Wolff*,[49] the Second Circuit reviewed the nature of the applicant's interest,[50] his risk of loss,[51] and the need for balance between the applicant's interest and the penal system's demands[52] and, once again, took the opportunity to emphasize the non-adversarial nature of a parole release.[53] The *Johnson* Court concluded that the minimum due process procedures required in the present instance would be satisfied by supplying the parole applicant with a statement of reasons, sufficient to enable a reviewing body to determine whether the actions of the Board were arbitrary or not.[54]

In 1975, *Haymes v. Regan*[55] held that while the New York State Parole Board need not disclose its release criteria, it must follow *Johnson* in providing the applicant with a specific statement of reasons and facts for denial of parole.[56] The Second Circuit noted that the New York Correction Law had been recently amended to codify *Johnson*.[57] Consistent with the prior cases,[58] *Haymes* reached its decision after considering the balance of the applicant's interest and the need for due process protection in the immediate circumstances.[59] The Court recognized that a Parole Board has great discretionary power in determining whether and when parole release is required[60] and that an inmate has a vital interest in the Board's

48. *Id.* at 928.
49. *See* notes 38-40 *supra* and accompanying text.
50. 500 F.2d at 928.
51. *Id.* at 929.
52. *Id.*
53. *Id.* at 928.
54. *Id.* at 934.
55. 525 F.2d 540 (2d Cir. 1975). Petitioner Haymes sought declaratory relief on the grounds that the procedures of the Parole Board were inadequate and violative of his procedural rights.
56. *Id.* at 542-43.
57. *Id.* at 543. "If, after appearance before the board pursuant to subdivision four of this section, the prisoner is denied release on parole, the board shall inform such prisoner, in writing and within two weeks of such appearance, of the facts and reason or reasons for such denial." N.Y. CORRECTION LAW § 214 (McKinney 1975).
58. *See* notes 38-40 *supra*.
59. 525 F.2d at 543.
60. *Id.*

decision and should have some procedural protection.[61] The Court answered that the required statement of facts and reasons for denial of parole "should serve to protect the inmate from arbitrary and capricious decisions or actions grounded upon impermissible considerations."[62]

The next case, *Billiteri* v. *United States Board of Parole*,[63] decided in 1976, sharply defined and limited the Circuit's previous two holdings. In *Billiteri*, a parole applicant sought pre-hearing access to his presentence report, examiner panel's report and other information contained in the Parole Board File.[64] The Court found no denial of due process in that the parole applicant was demanding a right to a type of discovery procedure *in advance* of his parole hearing.[65] Citing *Haymes*,[66] the Second Circuit held that "even *after* parole is denied such discovery is not 'required as part of the minimum due process to be accorded a parole applicant.' "[67] Although *Johnson* and *Haymes* entitle the applicant to a written statement of grounds for denial, *Haymes* denies the right of revelation of specific Board criteria and *Billiteri* flatly states that the applicant has "no such constitutional right to the information in the Parole Board's file . . . ."[68]

In 1976, the Second Circuit again reviewed the issue in *Holup v. Gates*.[69] State prisoners sought access to their parole files before parole hearings, alleging that denial of this access was a violation of due process.[70] The Second Circuit reiterated the considerations of *Johnson*[71] and *Haymes*[72] regarding the applicant's interest and the need for balancing and concluded that it could accept these previous holdings as dispositive.[73] These cases required the Parole

61. *Id.*
62. *Id.* at 544.
63. 541 F.2d 938 (2d Cir. 1976).
64. *Id.* at 945.
65. *Id.*
66. 525 F.2d at 542.
67. 541 F.2d at 945 (emphasis added) (citing Haymes v. Regan, 525 F.2d 540, 542 (2d Cir. 1975)).
68. *Id.*
69. 544 F.2d 82 (2d Cir. 1976), *cert. denied*, 430 U.S. 941 (1977).
70. *Id.* at 84.
71. 500 F.2d at 543.
72. 525 F.2d at 928-29.
73. 544 F.2d at 85-86.

Board to supply the applicant with a written statement of grounds and reasons for denial, nothing more. The defendant had done this.[74] The court did, however, take the opportunity to speculate that if the court were made aware of frequent errors in the state parole files, the court might reach another conclusion.[75] "The question is whether due process requires us to assume that only by exposing every prison file in advance can misinformation or failure to consider information favorable to the prisoner in the parole release process be substantially avoided."[76] Yet even so, the court reflected on the possible immateriality of such mistakes[77] and the possible onerous burden on the Board of redacting every such file.[78] The Second Circuit did not resolve these speculations and remanded the case.[79]

At present, the Supreme Court has yet to determine the extent to which a parole applicant is entitled to due process. In 1976, in *Scott v. Kentucky Parole Board,*[80] the Court postponed any decision on the matter by remanding the case to the court of appeals on the question of mootness.[81] There was a strong dissent by Mr. Justice Stevens, with whom Mr. Justice Brennan and Mr. Justice Powell joined,[82] stating that the constitutional issue involved was an extremely important question and should be decided.[83] "Delay in deciding the merits will affect not only these litigants, but also other pending litigation and parole procedures in every jurisdiction in the country."[84]

The present case of *Williams v. Ward*[85] brings the question clearly into focus: Whether procedural protections of due process entitle Michael Williams, a parole applicant, access to his parole file. Judge Friendly, writing for the Second Circuit, held that they do

74. *Id.* at 86.
75. *Id.*
76. *Id.* at 87.
77. *Id.*
78. *Id.*
79. *Id.*
80. 429 U.S. 60 (1976).
81. *Id.*
82. *Id.* at 61.
83. *Id.*
84. *Id.* at 64.
85. 556 F.2d 1143 (2d Cir. 1977), *cert. dismissed*, 434 U.S. 944 (1978).

not.[86] In reaching this conclusion, Judge Friendly reviewed the prior existing case law of both the Supreme Court[87] and the Second Circuit.[88] He began with *Morrissey*[89] and noted that a parolee's interest in parole revocation is protected by some due process requirements,[90] that *Scarpelli*[91] extended this protection to probationers,[92] and that *Wolff*[93] further extended due process to reach a prisoner's loss of "good-time" credits.[94] Judge Friendly found that this trend was not halted by the recent decisions of *Meachum v. Fano*[95] and *Montanye v. Haymes,*[96] wherein the Court held that a state prisoner had no due process right to a hearing when transferred from one state facility to another.[97] Nor has the Court's dictum in *Moody v. Daggett*[98] that a prisoner's eligibility for rehabilitation programs in a federal prison required no due process procedures[99] undercut the present position of the parole applicant in the Second Circuit.[100]

In reviewing the Second Circuit cases, Judge Friendly stated that it is settled law for an inmate, as a parole applicant, to be subject to some due process protections.[101] However, the Judge relied upon *Johnson,*[102] *Haymes,*[103] an *Billiteri*[104] to limit Williams' due process rights to a "*Haymes* statement" of reasons and facts.[105] Applying the three-prong test of *Johnson*[106] and the balancing test of *Haymes,*[107] both adapted by the Second Circuit from the Supreme Court tril-

86. *Id.* at 1145.
87. *Id.* at 1155-58.
88. *Id.* at 1158-60.
89. 408 U.S. 471 (1972).
90. 556 F.2d at 1155.
91. 411 U.S. 778 (1973).
92. 556 F.2d at 1156.
93. 418 U.S. 539 (1974).
94. 556 F.2d at 1156.
95. 427 U.S. 215 (1976).
96. 427 U.S. 236 (1976).
97. 556 F.2d at 1157.
98. 429 U.S. 78 (1976).
99. *Id.* at 88 n. 9.
100. 556 F.2d at 1158.
101. *Id.*
102. 500 F.2d 925 (2d Cir. 1974).
103. 525 F.2d 540 (2d Cir. 1975).
104. 541 F.2d 938 (2d Cir. 1976).
105. 556 F.2d at 1160. *See* note 57 *supra.*
106. 500 F.2d at 928-29.
107. 525 F.2d at 543.

ogy,[108] Judge Friendly held that, while Williams did have a protectable interest,[109] the applicant did not suffer a grievous loss through denial of access to his files.[110] Any further relief must be balanced against a direct burden on the Board.[111] Williams' relief was thereby limited to the *"Haymes"* statement.

In dismissing the defendant's and district court's reliance upon *Velger* v. *Cawley,*[112] Judge Friendly relied on the Supreme Court's and Second Circuit's long standing reluctance to treat a parole hearing as an adversarial procedure.[113] *Velger* concerned the petition of a former probationary policeman for reinstatement and damages after his dismissal from the police force without a hearing. The petitioner's hearing would have been admittedly adversarial.[114] Judge Friendly thus found a fundmental difference in circumstance.[115] The court also dismissed the defendant's other supporting case of *Cardaropoli v. Norton.*[116] While the designation of an inmate as a "Special Offender"[117] is subject to certain due process procedure,[118] Williams was not officially classified as such and there was no dispositive proof that the Board had relied on any unofficial classification.[119]

Judge Hays dissented.[120] The judge did not advocate a *per se* extension of discovery rights to all parole applicants, but would hold, on the present record, due process to mandate that Williams be given access to his parole files and granted a new release hearing.[121] Although concurring with the court's finding that parole ap-

108. *See* text accompanying note 37 *supra.*

109. 556 F.2d at 1158.

110. *Id.* at 1160.

111. *Id.* at 1159-60.

112. 525 F.2d 334 (2d Cir. 1975), *rev'd on other grounds sub nom.* Codd v. Velger, 429 U.S. 624 (1977).

113. *See* text accompanying notes 36 & 53 *supra.*

114. 525 F.2d at 337.

115. 556 F.2d at 1162.

116. 523 F.2d 990 (2d Cir. 1975). Petitioner, a federal prisoner, sought relief in that his classification as a "Special Offender" was a deprivation of liberty without due process protections. *Id.* at 992-93.

117. The term "Special Offender" is currently used by the Bureau of Prisons and designates "certain special categories of offenders who require greater case management supervision than the usual case." Bureau of Prisons Policy Statement 7900.47 (April 30, 1974).

118. 556 F.2d at 1162.

119. *Id.* at 1161. *See* note 4 *supra.*

120. *Id.* at 1162 (Hays, J., dissenting).

121. *Id.* at 1166 (Hays, J., dissenting).

plicants enjoy some due process rights,[122] Judge Hays disagreed with the court's finding that Williams suffered no loss.[123] He returned to *Cardaropoli*[124] and reasoned that the due process applicable to a "Special Offender" as one who has suffered the required "grievous loss"[125] should indeed be applied to Williams.[126] The judge argued that Williams had been specially classified on the basis of allegedly false information. The very language of the court states that "there may in the future be circumstances where an inmate plausibly contends that the only way he can demonstrate reliance on an impermissible factor or can show a particular allegation concerning his record to be false is by obtaining access to the detailed evidence in his file, albeit in redacted form."[127] Judge Hays felt that "the future" was, in this instance, now the present.

Moreover, Judge Hays demonstrated the consistent qualification of the Supreme Court and Second Circuit that the limits and requirements of due process must vary according to the particular circumstances.[128] He vigorously argued that the present case requires a flexible approach.[129] Agreeing that Williams had a protected interest but arguing that there was indeed a subsequent "grievous loss", Judge Hays went on to reject the third "balancing" consideration of the court's decision. Judge Hays observed that the court "raise[d] the specter of the impossible administrative burden . . . occasioned by granting parole applicants broad rights to inspect their files. . . ."[130] The judge found this unfair[131] in that the State failed to raise this argument in the district proceedings or in the present case,[132] and suggested that the matter be remanded to the district court for a determination of what the burden would be.[133]

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122. *Id.* at 1163 (Hays, J., dissenting).
123. *Id.* (Hays, J., dissenting).
124. 523 F.2d 990 (2d Cir. 1975).
125. 556 F.2d at 1164 (Hays, J., dissenting) (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).
126. *Id.* (Hays, J., dissenting).
127. *Id.* at 1160 (Hays, J., dissenting) (comparing Meachum v. Fano, 427 U.S. 215, 229 n.8 (1976)).
128. *Id.* at 1165 (Hays, J., dissenting). *See* text accompanying notes 41 & 75 *supra.*
129. *Id.* at 1165-66 (Hays, J., dissenting).
130. *Id.* at 1166 (Hays, J., dissenting).
131. *Id.* (Hays, J., dissenting).
132. *Id.* (Hays, J., dissenting).
133. *Id.* (Hays, J., dissenting).

In conclusion, the expansion of due process rights in state correctional proceedings has stopped short of the "full panoply" of fourteenth amendment guarantees and denies a right of discovery altogether. While parolees, probationers, inmates, and now parole applicants have been granted limited due process, the courts have been consistently way of approaching the "full trappings of adversarial trial-type hearings."[134] This is evident in the courts' continued refusal to permit counsel at revocation and parole proceedings[135] or to permit trial-type tactics such as discovery.[136] Indeed, even Judge Hays, dissenting in *Williams,*[137] based his dissent only upon the record before him and did not advocate a general extension of rights.[138]

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134. *Id.* at 1159, *quoting Johnson,* 500 F.2d at 934, *quoting* Beckworth v. New Jersey State Bd. of Parole, 62 N.J. 348, 301 A.2d 727, 733 (1973).

135. *See* text accompanying notes 36 & 53 *supra.*

136. *See Billiteri,* 541 F.2d 938 (2d Cir. 1977).

137. 556 F.2d at 1162 (Hays, J., dissenting).

138. *Id.* (Hays, J., dissenting).