

ing stage or in the revocation stage. Now, both granting and revocation are subject to due process analysis, although the results tend to be disparate. Thus, in *Mempa v. Rhay*,¹²³¹ the trial judge had deferred sentencing and placed the convicted defendant on probation; when facts subsequently developed that indicated a violation of the conditions of probation, he was summoned and summarily sentenced to prison. The Court held that he was entitled to counsel at the deferred sentencing hearing.

In *Morrissey v. Brewer*¹²³² a unanimous Court held that parole revocations must be accompanied by the usual due process hearing and notice requirements. “[T]he revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocation . . . [But] the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee’s liberty is a ‘right’ or a ‘privilege.’ By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal.”¹²³³ What process is due, then, turned upon the state’s interests. Its principal interest was that, having once convicted a defendant, imprisoned him, and, at some risk, released him for rehabilitation purposes, it should be “able to return the individual to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole. Yet, the state has no interest in revoking parole without some informal procedural guarantees,” inasmuch as such guarantees will not interfere with its reasonable interests.¹²³⁴

Minimal due process, the Court held, requires that at both stages of the revocation process—the arrest of the parolee and the formal revocation—the parolee is entitled to certain rights. Promptly following arrest of the parolee, there should be an informal hearing to determine whether reasonable grounds exist for revocation of parole; this preliminary hearing should be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly

the parolee was being granted a privilege and that he should neither expect nor seek due process. Then-Judge Burger in *Hyser v. Reed*, 318 F.2d 225 (D.C. Cir.), *cert. denied*, 375 U.S. 957 (1963), reasoned that due process was inapplicable because the parole board’s function was to assist the prisoner’s rehabilitation and restoration to society and that there was no adversary relationship between the board and the parolee.

¹²³¹ 389 U.S. 128 (1967).

¹²³² 408 U.S. 471 (1972).

¹²³³ 408 U.S. at 480, 482.

¹²³⁴ 408 U.S. at 483.