tary evidence. Presumptively, counsel should be provided where the person requests counsel, based on a timely and colorable claim that he has not committed the alleged violation, or if that issue be uncontested, there are reasons in justification or mitigation that might make revocation inappropriate.[1239]

With respect to the granting of parole, the Court's analysis of the Due Process Clause's meaning in *Greenholtz v. Nebraska Penal Inmates* [1240] is much more problematical. The theory was rejected that the mere establishment of the possibility of parole was sufficient to create a liberty interest entitling any prisoner meeting the general standards of eligibility to a due process protected expectation of being dealt with in any particular way. On the other hand, the Court did recognize that a parole statute could create an expectancy of release entitled to some measure of constitutional protection, although a determination would need to be made on a case-by-case basis,[1241] and the full panoply of due process guarantees is not required.[1242] Where, however, government by its statutes and regulations creates no obligation of the pardoning authority and thus creates no legitimate expectancy of release, the prisoner may not by showing the favorable exercise of the authority in the great number of cases demonstrate such a legitimate expectancy. The power of the executive to pardon, or grant clemency, being a matter of grace, is rarely subject to judicial review.[1243]

[1239] Gagnon v. Scarpelli, 411 U.S. 778 (1973).

[1240] 442 U.S. 1 (1979). Justice Powell thought that creation of a parole system did create a legitimate expectancy of fair procedure protected by due process, but, save in one respect, he agreed with the Court that the procedure followed was adequate. Id. at 18. Justices Marshall, Brennan, and Stevens argued in dissent that the Court's analysis of the liberty interest was faulty and that due process required more than the board provided. Id. at 22.

[1241] Following *Greenholtz*, the Court held in Board of Pardons v. Allen, 482 U.S. 369 (1987), that a liberty interest was created by a Montana statute providing that a prisoner "shall" be released upon certain findings by a parole board. *Accord* Swarthout v. Cooke, 562 U.S. ___, 10–333, slip op. (2011) (*per curiam*).

[1242] The Court in *Greenholtz* held that procedures designed to elicit specific facts were inappropriate under the circumstances, and minimizing the risk of error should be the prime consideration. This goal may be achieved by the board's largely informal methods; eschewing formal hearings, notice, and specification of particular evidence in the record. The inmate in this case was afforded an opportunity to be heard and when parole was denied he was informed in what respects he fell short of qualifying. That afforded the process that was due. *Accord* Swarthout v. Cooke, 562 U.S. ___, 10–333, slip op. (2011) (*per curiam*).

[1243] Ohio Adult Parole Auth. v. Woodard, 523 U.S. 272 (1998). The mere existence of purely discretionary authority and the frequent exercise of it creates no entitlement. Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458 (1981); Jago v. Van Curen, 454 U.S. 14 (1981). The former case involved not parole but commutation of a life sentence, commutation being necessary to become eligible for parole. The statute gave the Board total discretion to commute, but in at least 75% of the cases prisoner received a favorable action and virtually all of the prisoners who had