

PAROLE LEGISLATION

MICROFILM

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
NATIONAL PENITENTIARIES
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

93D CONGRESS 1ST SESSION (S. 1463)

93D CONGRESS 2D SESSION (S. 1463)

94TH CONGRESS 1ST SESSION (S. 1109)

TO AMEND PAROLE LEGISLATION

JUNE 13, 1973, MARCH 20, 1974,
APRIL 9, 1975

Printed for the use of the Committee on the Judiciary

NCJRS

APR 7 1977

ACQUISITIONS

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1976

72-524

40365

CONTENTS

WITNESSES STATEMENTS

JUNE 13, 1973

Maurice H. Sigler, Chairman, U.S. Board of Parole, Washington, D.C.-----	Page 12
Accompanied by: Glen Pommerening, Assistant Attorney General for the Administrative Division; Mary Lawton, Deputy Assistant Attorney General, Office of Legal Counsel; Joseph A. Barry, Legal Counsel, U.S. Board of Parole; Dr. Peter B. Hoffman, Criminologist, U.S. Board of Parole.-----	26

MARCH 20, 1974

Maurice H. Sigler, Chairman, U.S. Board of Parole, Washington, D.C.-----	57
--	----

APRIL 9, 1975

Maurice H. Sigler, Chairman, U.S. Board of Parole, Washington, D.C.-----	89
Accompanied by: Hugh Durham, Legislative Counsel, U.S. Department of Justice, Washington, D.C.-----	98

EXHIBITS

S. 1463-----	1
Letter submitted by William E. Foley, Deputy Director, Administrative Office of the U.S. Courts, Washington, D.C.-----	12
Exhibit, "Guideline Evaluation Worksheet" submitted by the U.S. Board of Parole, Washington, D.C.-----	14
Exhibit, "Pilot Regionalization Project--The First Six Months" Submitted by the U.S. Board of Parole, Washington, D.C.-----	18
Letter, submitted by Morton Rosenberg, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, Washington, D.C., March 27, 1973-----	21
June 7, 1973-----	34
Exhibit, departmental communication, Department of Justice from Robert G. Dixon, Assistant Attorney General, Office of Legal Counsel to Glen E. Pommerening, Acting Assistant Attorney General for Administration, "Authority of the Board of Parole to Delegate Decisionmaking Powers to Hearing Examiners", April 18, 1973-----	35
Exhibit, letter submitted by Chairman Maurice H. Sigler, U.S. Board of Parole, Washington, D.C., July 11, 1973-----	38
S. 1463 (committee print), March 14, 1974-----	42
Section-by-section analysis of S. 1463-----	51
Exhibit, Letter from Senator John McClellan, March 20, 1974, and letter sent to Michael Dolan, Acting Chief of the Legislative and Legal Section, U.S. Department of Justice-----	67
Exhibit, letter, from Hon. William B. Saxbe, Attorney General to Senator James O. Eastland, June 3, 1974-----	68
Exhibit, "Possible Amendments to S. 1463"-----	68
Exhibit, letter from W. Vincent Rakestraw, Assistant Attorney General, to Hon. Quentin N. Burdick, April 25, 1974-----	69
S. 1109-----	72
Section-by-section analysis-----	81
Full statement of Hon. Roman L. Hruska-----	88
Exhibit, "Organization of Paroling Authorities", standard 12.1-----	103

(III)

COMMITTEE ON THE JUDICIARY

JAMES O. EASTLAND, Mississippi, *Chairman*

JOHN L. McCLELLAN, Arkansas	ROMAN L. HRUSKA, Nebraska
PHILIP A. HART, Michigan	HIRAM L. FONG, Hawaii
EDWARD M. KENNEDY, Massachusetts	HUGH SCOTT, Pennsylvania
BIRCH BAYH, Indiana	STROM THURMOND, South Carolina
QUENTIN N. BURDICK, North Dakota	CHARLES McC. MATHIAS, Jr., Maryland
ROBERT C. BYRD, West Virginia	WILLIAM L. SCOTT, Virginia
JOHN V. TUNNEY, California	
JAMES ABOUREZK, South Dakota	

SUBCOMMITTEE ON NATIONAL PENITENTIARIES

QUENTIN N. BURDICK, North Dakota, *Chairman*

PHILIP A. HART, Michigan	WILLIAM L. SCOTT, Virginia
BIRCH BAYH, Indiana	CHARLES McC. MATHIAS, Jr., Maryland

(II)

Full statement of Hon. John L. McClellan.....	Page 104
Exhibit, "S.1 Criminal Justice Reform Act of 1975, parole provisions, submitted by Hon. John L. McClellan.....	104
Exhibit, letter submitted by Hon. John L. McClellan to Hon. James O. Eastland, July 8, 1974.....	122

S. 1463—TO ESTABLISH A PAROLE COMMISSION

WEDNESDAY, JUNE 13, 1973

U.S. SENATE,
COMMITTEE ON JUDICIARY,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES,
Washington, D.C.

The subcommittee met, pursuant to notice at 10:30 a.m., in room 457, Russell Senate Office Building, Hon. Quentin N. Burdick, chairman, presiding.

Present: Senator Burdick.

Also Present: James G. Meeker, staff director; Christopher Erlewine, deputy counsel; and Judith E. Snopek, chief clerk.

Senator Burdick. I am pleased to convene this hearing before the Subcommittee on National Penitentiaries into reorganization of the U.S. Board of Parole; to change its form of organization to that of a Parole Commission, and to improve its capability of making the thousands of decisions of vital concern to the public safety which it must make annually.

Much of the substance of this legislation and the alternative executive reorganization apparently being proposed by the Department of Justice does not differ substantively. In fact, there is a broad base of agreement.

The questions which we face this morning have to deal with whether or not changes so sweeping in nature ought to be made without congressional consideration. We must also consider whether such sweeping changes made outside the usual processes might result in substantial new prisoner litigation which would hamper the board, the courts, or both.

I ask that the legislation under consideration be printed in the record at this point.

[The bill follows:]

[S. 1463, 93d Cong., 1st sess.]

A BILL To establish a Parole Commission and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Parole Commission Act of 1973".

(b) Section 4201 of title 18, United States Code, is amended to read as follows:

"§ 4201. PAROLE COMMISSION

"(a) There is hereby created as an independent agency of the Department of Justice a United States Parole Commission (hereinafter referred to in this chapter as the 'Commission'), the members of which shall be appointed by the President, by and with the advice and consent of the Senate, and which shall exercise the powers granted in the manner prescribed by this chapter. The term

of office of a member (hereinafter referred to in this chapter as 'Commissioner') shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of any member, such member shall continue to act until a successor has been appointed and qualified. The President shall from time to time designate from among the Commissioners one to serve as Chairman. The Attorney General shall from time to time designate from among the National Commissioners one to serve as Vice Chairman, and four to serve as National Commissioners.

"(b) The Commissioners shall meet at least twice annually, and by majority vote shall—

"(1) consider, promulgate, and oversee a national parole policy;

"(2) promulgate such regulations, adopted in accordance with the provisions of section 553 of title 5, United States Code, as are necessary to carry out the national parole policy;

"(3) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five;

"(4) ratify or deny the appointment by the Chairman of the heads of major administrative units; and

"(5) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

Each Commissioner shall have equal responsibility and authority in all such decisions and actions, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

"(c) The Chairman shall—

"(1) preside at meetings of the Commissioners, pursuant to subsection (b) of this section;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission, except such persons who may from time to time be employed in the immediate offices of Commissioners other than the Chairman;

"(3) assign duties among units of the Commission so as to balance the workload and provide for orderly administration;

"(4) direct the preparation of requests for appropriations and the use and expenditure of funds;

"(5) provide for research which shall include—

"(A) the systematic collection of the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) the dissemination of pertinent data and studies to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) the publishing of data concerning parole process and parolees;

"(6) perform such administrative and other duties and responsibilities as are necessary to carry out the provisions of this chapter.

"(d) The National Parole Commissioners, by majority vote, shall—

"(1) have authority to accept, reject, or modify any decision of any region, upon motion of any National Parole Commissioner, if the eligible person to whom such decision applies shall have made application for review;

"(2) have authority to review any decision of any region when the national well-being so requires, and to accept, reject, or modify such decision; and

"(3) give reasons in detail for their decision in any appropriate case including the review of any decision of any region.

"(e) The Vice Chairman shall—

"(1) preside at meetings of the National Commissioners;

"(2) assign cases to National Commissioners so as to balance the workload and provide for orderly administration;

"(3) in the absence of the Chairman, carry out the necessary functions of that office; and

"(4) perform such other duties and responsibilities as are necessary to carry out the purposes of this chapter.

"(f) A Regional Parole Commissioner shall establish panels which shall be authorized to—

"(1) grant or deny any application or recommendation to parole or re-parole any eligible person;

"(2) specify reasonable conditions or any order granting parole;

"(3) modify or revoke, pursuant to section 4207, any order parolling any eligible person;

"(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense;

"(5) re-parole any person whose parole has been revoked and who is not otherwise ineligible for parole; and

"(6) discharge any parolee from supervision or release him from one or more of the conditions of parole at any time after the expiration of one year after release on parole, if warranted by the conduct of the parolee and the ends of justice; except, in those cases in which the time remaining to be served is less than one year, in which case, such actions may be taken at any time.

Panels shall consist of either Commissioners or Parole Examiners and decisions shall be based upon concurrence of not less than two members of such panel. A Regional Parole Commissioner may review the decision of any panel of examiners, and shall have such other powers as are necessary to carry out the purposes of this chapter.

"(g) (1) The Commission shall have the power to issue subpoenas to require the attendance and testimony of witnesses and the production of evidence that directly relates to any matter with respect to which the Commission or powered to make a determination under this chapter. Any Commissioner or Parole Examiner may administer oaths to witnesses appearing before the Commission or before a Regional Parole Panel. Subpoenas may be issued under the signature of any Commissioner or any duly designated official of the Commission and may be served by any person designated by the chairman or any Commissioner. Witnesses summoned before the Commission or before a Regional Parole Panel shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place.

"(2) If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted or in which such person resides or carries on business to require such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, there to produce information or a thing, if so ordered, or to give testimony touching the matter under investigation or in question, when the court finds such information, thing or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this chapter. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such person resides, does business, or may be found."

Sec. 2. Section 4202 of title 18, United States Code, is amended to read as follows:

"§ 4202. PERSONS ELIGIBLE

"(a) A person committed pursuant to this title, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of one year or more, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over more than forty-five years, except to the extent otherwise provided in section 4208 of this title. Once a person becomes eligible for parole he must be given a parole appearance and such additional parole appearances as are deemed necessary, but in no case shall there be less than one additional parole appearance every two years.

"(b) If it appears from a report or recommendation by the proper institution officers and upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Com-

mission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"Such person shall remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

"(c) In imposing conditions of parole, the Commission shall consider the following—

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions should provide for only such deprivations of liberty as are necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

Upon release on parole, a person shall be given a certificate setting forth the conditions of such parole.

"(d) An order of parole or release may require a parolee or a person released pursuant to section 4164 of this title as conditions of parole or release to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because such residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General shall notify the Regional Parole Commissioner who shall thereupon make such other provision with respect to the person as is deemed appropriate.

"A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

"(e) An order of parole or release may require a parolee, or a prisoner released pursuant to section 4164 of this title, who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of parole or release to participate in the community supervision programs authorized by section 4253 of this title for all or part of the period of parole: *Provided*, That the Attorney General certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the Regional Commissioner, which shall thereupon make such other provision with respect to the person as is deemed appropriate."

Sec. 3. Section 4203 of title 18, United States Code, is amended to read as follows:

"§ 4203. PAROLE INTERVIEW PROCEDURES

"(a) Any interview of an eligible person by a Commissioner or parole examiner in connection with the consideration of an application of parole shall be conducted in accordance with the following procedures—

"(1) an eligible person shall be given written notice of the time and place of such interview; and

"(2) an eligible person shall be allowed to select an advocate to aid him in such interview. The advocate may be a member of the institutional staff, or any other person who qualifies under the rules promulgated by the Commission pursuant to this chapter.

"(b) Following notification that a parole interview is pending, an eligible person and his advocate shall have reasonable access to progress reports and such other materials as are prepared for the use of any Commissioner or examiner in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would, in the opinion of the prison administration, lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained by a pledge of confidentiality;

"(3) any part of any presentence report, except upon agreement of the court having jurisdiction to impose sentence; or

"(4) any information that would place any person in jeopardy of life or limb.

If any document is deemed by either the Commission or the prison administration to fall within the exclusionary provisions of this section, then it shall become the duty of that agency to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate and his advocate, in no case less than four days prior to the parole interview, except that the appropriate court may retain the discretion to approve any such summary of any presentence report.

"(c) A summary of every interview shall be prepared and included in the record of proceedings.

"(d) An eligible person denied parole shall be given a written list of the reasons for such; and, if possible, a personal conference shall be held between the eligible person and the Commissioners or parole examiners conducting the interview. In the case of a grant of parole on other than general conditions as promulgated pursuant to this chapter, the eligible person shall be given a statement of reasons for each such additional condition."

Sec. 4. Section 4204 of title 18, United States Code, is amended to read as follows:

"§ 4204. ALIENS

"When an alien prisoner subject to deportation becomes eligible for parole, the Parole Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation."

Sec. 5. Section 4205 of title 18, United States Code, is amended to read as follows:

"§ 4205. RETAKING PAROLE VIOLATOR UNDER WARRANT

"(a) A warrant for the retaking of any person who is alleged to have violated his parole may be issued by any Commissioner within the maximum term or terms for which such person was sentenced.

"(b) (1) A person retaken upon a warrant under this section shall be accorded the opportunity to have a preliminary hearing, as soon as possible, except as provided in subsection (c), at a place reasonably near the location where the alleged violation occurred, by an official designated by the Commission (hereinafter referred to as hearing officer) to determine if there is probable cause to believe that he has violated a condition of his parole.

"(2) Such person shall be accorded the opportunity for a revocation hearing at a place reasonably near the location where the alleged violation occurred within sixty days of a finding of probable cause, except that such hearing may be held at the same time and place as the hearing to determine if there is probable cause.

"(3) The procedure for such hearings shall provide—

"(A) notice of the conditions of parole alleged to have been violated, and the time, place, date and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of title 18, United States Code; and

"(D) opportunity for the parolee to be apprised of the evidence and if he so requests, to confront and cross-examine adverse witnesses, except in those cases wherein it is determined by the hearing officer that there is substantial risk of harm to any person who would so testify or otherwise be identified.

Following such hearing, a summary shall be prepared by the hearing officer, setting forth in writing findings and recommendations, stating with particularity the reasons therefor.

"(c) In the case of any parolee retaken by warrant under this section who does not contest any alleged violation of a condition of parole, or who has been convicted of a new offense under any law of the United States or any state, such person shall be accorded the opportunity for an institutional revocation

hearing within ninety days. Such hearing will be conducted by a panel appointed pursuant to this chapter and the parolee shall have notice of such hearing and be allowed to appear and testify on his own behalf, and to select an advocate to aid him in such appearance.

"(d) A person retaken pursuant to this section shall be detained pending disposition of such warrant if, subsequent to a finding of probable cause, the hearing officer determines that there is reason to believe that such person will not appear for his disposition hearing, or that he constitutes a danger to himself or to others."

Sec. 6. Section 4206 of title 18, United States Code, is amended to read as follows:

"§ 4206. OFFICER EXECUTING WARRANT TO RETAKE PAROLE VIOLATOR

"Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General."

Sec. 7. Section 4207 of title 18, United States Code, is amended to read as follows:

"§ 4207. PAROLE MODIFICATION AND REVOCATION

"(a) An order of parole may be modified or revoked in the case of any parolee convicted of a criminal offense, or where otherwise warranted by the frequency or seriousness of the parolee's violation of the conditions of his parole

"(b) A decision to modify or revoke an order of parole may include—

- "(1) a reprimand;
- "(2) an alteration of parole conditions;
- "(3) referral to a residential community treatment center for all or part of the remainder of the original sentence;
- "(4) formal revocation of parole or mandatory release pursuant to this chapter; or

"(5) any other action deemed necessary for successful rehabilitation of the violator, and which promotes the ends of justice."

Sec. 8. Section 4208 of title 18, United States Code, is amended to read as follows:

"§ 4208. FIXING ELIGIBILITY FOR PAROLE AT TIME OF SENTENCING

"(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may become eligible for parole at such time as the Commission may determine.

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title, or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(c) Upon commitment of any person sentenced to imprisonment under any law of the United States for a definite term or terms of one year or more, the

Director of the Bureau of Prisons, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. In any case involving a person with respect to whom the court has designated a minimum term in accordance with subsection (a) of this section, such report and recommendations shall be made not less than ninety days prior to the expiration of such minimum term.

"It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information concerning the person and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

"(d) The court shall have the authority to reduce any minimum term at any time, upon motion of the Director of the Bureau of Prisons, upon notice to the attorney for the government."

Sec. 9. Section 5002 of title 18, United States Code, is amended to read as follows:

"§ 5002. ADVISORY CORRECTIONS COUNCIL

"(a) There is hereby created an Advisory Corrections Council composed of two United States judges designated by the Chief Justice of the United States and ex officio, the Chairman of the Parole Commission, the Director of the Bureau of Prisons, the Chief of Probation of the Administrative Office of the United States Courts, the Administrator of Law Enforcement Assistance Administration or his designee at a policy level, the Secretary of Health, Education, and Welfare or his designee at a policy level, the Secretary of Labor or his designee at a policy level, the Commissioner of the Civil Service Commission or his designee at a policy level, the Secretary of Housing and Urban Development or his designee at a policy level, the Director of the Office of Economic Opportunity or his designee at a policy level, and the Secretary of Defense or his designee at a policy level. The judges first appointed to the Council shall continue in office for terms of three years from the date of appointment. Their successors shall likewise be appointed for a term of three years, except that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. The Chairman shall be designated annually by the Attorney General.

"(b) The Council shall meet quarterly and special sessions may be held from time to time upon the call of the Chairman.

"(c) The Council shall consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies of the Federal agencies, private industry, labor, and local jurisdictions respecting the disposition, treatment, and correction of all persons convicted of crime. It shall also consider measures to promote the prevention of crime and delinquency and suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation but necessary travel and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

"(d) (1) The Council shall appoint an Executive Secretary or an Administrative Assistant and such other personnel as may be necessary to carry out its functions. The Executive Secretary or Administrative Assistant shall supervise the activities of persons employed by the Council and shall perform such other duties as the Council may direct.

"(2) The Council may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

"(e) The Council is authorized to request from any department, agency, or independent instrumentality of the Government any information or records it deems necessary to carry out its functions, and each such department, agency,

and instrumentality is authorized to cooperate with the Council and, to the extent permitted by law, to furnish such information and records to the Council, upon request made by the Chairman or by any member when acting as Chairman.

"(f) The first meeting of the Council shall occur not later than thirty days after the enactment of this legislation."

Sec. 10. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. YOUTH CORRECTION DECISIONS

"The Commission may, in accordance with the provisions of chapter 311 of this title, grant or deny any application or recommendation for parole, modify or revoke any order of parole of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law."

Sec. 11. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. DEFINITIONS

"As used in this chapter—

"(a) 'Bureau' means the Bureau of Prisons;

"(b) 'Director' means the Director of the Bureau;

"(c) 'Youth offender' means a person under the age of twenty-two years at the time of conviction;

"(d) 'Committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(e) 'Treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders;

"(f) 'Conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

Sec. 12. Section 5010 of title 18, United States Code, is amended to read as follows:

"§ 5010. SENTENCE

"(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

"(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter.

"(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

"(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

"(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Bureau shall report to the court its findings."

Sec. 13. Section 5011 of title 18, United States Code, is amended to read as follows:

"§ 5011. CLASSIFICATION STUDIES AND REPORTS

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed

youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

Sec. 14. Section 5015 of title 18, United States Code, is amended to read as follows:

"§ 5015. POWERS OF DIRECTOR AS TO PLACEMENT OF YOUTH OFFENDERS

"(a) On receipt of the report and recommendations from the classification agency the Director may—

"(1) recommend to the Commission that the committed youth offender be released conditionally under supervision;

"(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

"(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

"(b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution."

Sec. 15. Section 5016 of title 18, United States Code, is amended to read as follows:

"§ 5016. REPORTS CONCERNING OFFENDERS

"The Director shall cause periodic examinations and reexaminations to be made of all committed youth offenders and shall report to the Commission as to each such offender as the Commission may require. United States probation officers and supervisory agents shall likewise report to the Commission respecting youth offenders under their supervision as the Parole Commission may direct."

Sec. 16. Section 5017 of title 18, United States Code, is amended to read as follows:

"§ 5017. RELEASE OF YOUTH OFFENDERS

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

"(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

"(c) A youthful offender committed under section 5010 (b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

"(d) A youth offender committed under section 5010 (c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

"(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission."

Sec. 17. Section 5018 of title 18, United States Code, is amended to read as follows:

"§ 5018. REVOCATION OF PAROLE COMMISSION ORDERS

"The Commission may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge."

Sec. 18. Section 5019 of title 18, United States Code, is amended to read as follows:

"§ 5019. SUPERVISION OF RELEASED YOUTH OFFENDERS

"Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of United States probation officers, supervisory agents appointed by the Attorney General, and voluntary supervisory agents approved by the Commission. The Commission is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors."

Sec. 19. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. APPREHENSION OF RELEASED OFFENDERS

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility and member of the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. The Commission may revoke parole, dismiss or otherwise modify such warrant as provided in section 4207 of this title."

Sec. 20. Section 5021 of title 18, United States Code, is amended to read as follows:

"§ 5021. CERTIFICATE SETTING ASIDE CONVICTION

"(a) Upon the unconditional discharge by the Commission of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect. This shall expunge the record for civil purposes although nothing herein shall be construed to prohibit consideration of this information in a subsequent criminal proceeding."

"(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect."

Sec. 21. Section 5037 of title 18, United States Code, is amended to read as follows:

"§ 5037. PAROLE OF JUVENILE OFFENDERS

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the Commission deems proper if it shall appear to the satisfaction of such Commission that there is reasonable probability that the juvenile will remain at liberty without violating the law when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

Sec. 22. (a) The amendments made by this Act shall not be construed as affecting or otherwise altering the provisions of sections 401 and 405 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 relating to special parole terms.

(b) The amendment made by section 2 of this Act shall not apply to any offense for which there is provided a mandatory penalty.

(c) The parole of any person sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

Sec. 23. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

Sec. 24. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of these amendments.

Sec. 25. Section 3050 of title 18, United States Code, is amended to read as follows:

"§ 3050. BUREAU OF PRISONS AND PAROLE COMMISSION EMPLOYEES' POWERS

"An officer or employee of the Bureau of Prisons may make arrests without warrant for violations of any of the provisions of section 751, 752, 1791, or 1792 of this title, if he has reasonable grounds to believe that the arrested person is guilty of such offense, and if there is likelihood of his escaping before a warrant can be obtained for his arrest. If the arrested person is a fugitive from custody, he shall be returned to custody. United States Parole Commissioners and such other employees as are designated by the Commission pursuant to section 4201 of this title, may execute any warrant issued by the Commission pursuant to section 4205 of this title. Officers and employees of the Bureau of Prisons, Parole Commissioners, and such employees of the Commission, may carry firearms under such rules and regulations as the Attorney General may prescribe."

Sec. 26. (a) The foregoing amendments made by this Act shall take effect upon the expiration of the ninety-day period following the date of the enactment of this Act.

(b) Upon the effective date of this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provisions of this Act, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following the effective date.

Sec. 27. The table of sections for chapter 311 of title 18, United States Code, is amended to read as follows:

- "Sec.
 "5201. Parole Commission.
 "4202. Persons eligible.
 "4203. Parole interview procedures.
 "4204. Aliens.
 "4205. Retaking parole violator under warrant.
 "4206. Officer executing warrant to retake parole violator.
 "4207. Parole modification and revocation.
 "4208. Fixing eligibility for parole at time of sentencing.
 "4209. Young adult offenders.
 "4210. Warrants to retake Canal Zone parole violators."

Sec. 28. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

- "Sec.
 "5005. Youth correction decisions.
 "5006. Definitions.
 "5010. Sentence.
 "5011. Treatment.
 "5012. Certificate as to availability of facilities.
 "5013. Provision of facilities.
 "5014. Classification studies and reports.
 "5015. Powers of Director as to placement of youth offenders.
 "5016. Reports concerning offenders.
 "5017. Release of youth offenders.
 "5018. Revocation of Commission orders.
 "5019. Supervision of released youth offenders.
 "5020. Apprehension of released offenders.
 "5021. Certificate setting aside conviction.
 "5022. Applicable date.
 "5023. Relationship to Probation and Juvenile Delinquency Acts.
 "5024. Where applicable.
 "5025. Applicability to the District of Columbia.
 "5026. Parole of other offenders not affected."

Sec. 29. The table of sections for chapter 403 of title 18, United States Code, is amended by deleting the item

"5037. Parole."

and inserting in lieu thereof the item
"5037. Parole of juvenile offenders."

The Judicial Conference of the United States has approved the concepts of S. 1463 and I am pleased to submit their report for the hearing record.

[The Judicial Conference statement follows:]

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D.C., May 1, 1973.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: I write in reference to the Parole Commission Act of 1973, a draft bill by Senator Burdick which would establish a regionalized Parole Commission as an independent agency of the Department of Justice. This bill is a revision of S. 3993, introduced in the 92nd Congress, which was referred to the Judicial Conference of the United States on October 19, 1972 for an expression of views.

At the meeting April 5 and 6, the Conference approved the draft bill in principle. The Conference noted its specific approval of four basic features in the bill, namely:

- (1) Regionalization of Parole Board hearings and original actions with provision for appeal to the National Parole Commission;
- (2) That applicants for parole be allowed to select a nonlawyer advocate;
- (3) That applicants for parole and their advocates shall have reasonable access to their files with certain exceptions;
- (4) That the Parole Commission shall furnish each applicant for parole a written statement of reasons for its actions when the application is denied.

The legislation provides that the Parole Commission may deny an applicant for parole access to any part of the presentence investigation report. In so doing, however, the Commission must summarize the basic content of the material withheld and furnish such summary to the inmate or his advocate. The Conference recommends that section 4203(b)(4) which provides that the appropriate court may retain the discretion to approve any such summary of any presentence report be followed by the words "by written direction or order."

Sincerely,

WILLIAM E. FOLEY,
Deputy Director.

Senator BURDICK. Our principal witness today is Maurice H. Sigler, Chairman of the U.S. Board of Parole, accompanied by Glen Pommerening, Assistant Attorney General for the Administrative Division, and Mary Lawton, Deputy Assistant Attorney General, Office of Legal Counsel.

STATEMENT OF MAURICE H. SIGLER, CHAIRMAN, U.S. BOARD OF PAROLE, ACCOMPANIED BY GLEN POMMERENING, ASSISTANT ATTORNEY GENERAL FOR THE ADMINISTRATIVE DIVISION; MARY LAWTON, DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL; JOSEPH A. BARRY, LEGAL COUNSEL, U.S. BOARD OF PAROLE, AND PETER B. HOFFMAN, CRIMINOLOGIST, U.S. BOARD OF PAROLE

Mr. SIGLER. Mr. Chairman, it is indeed a pleasure to appear before you today on the subject of S. 1463, the Parole Commission Act of 1973. I note initially that S. 1463 is quite similar to legislation upon which I testified in detail on July 25, 1972. For this reason, I shall express our views on the substantive provisions of the bill in the con-

text of the initiatives which have been undertaken by the Board of Parole since that time.

Before I proceed with my statement, however, I would like to commend you, Mr. Chairman, and the members of your staff, for the fine work you have done in seeking ways to improve the paroling process. This, of course, is a goal which we all share, and I am confident that by working together we will be able to achieve our common objective.

When I appeared before you last summer, I stated that the Board found much merit in your legislative proposal to reorganize the Board and to revise its procedures. This is likewise true of S. 1463, and I will address myself to many of the worthwhile changes which the legislation advocates.

You will recall that during my previous appearance, I indicated that the Board of Parole was in the process of establishing a pilot project designed to test both the concept of regionalization as well as new procedures. In many respects, the changes implemented in the pilot project are similar to those suggested in your recent legislative proposals. Therefore, I believe that it would be useful for me to review in depth the organization of the project and the procedural changes which have been adopted. In addition, I would like to bring to the committee's attention some of the results from our first 6 months of experience.

The pilot regionalization project went into effect in October 1972, in the Northeast region of the United States. The region consists of the following Federal institutions: The Federal Reformatory, Petersburg, Va.; the Robert F. Kennedy Youth Center, Morgantown, W. Va.; youth institutions, and also the U.S. Penitentiary, Lewisburg, Pa.; the Federal Reformatory for Women, Alderson, W. Va.; and the Federal Correctional Institution, Danbury, Conn., adult institutions.

For purposes of the project, parole interviews are conducted by a panel of two hearing examiners. Their recommendations are then forwarded to the Board in Washington, where a parole decision is made. The decision is then communicated back to the institution.

The project is innovative in many respects. First of all, parole decisions are based on explicit guidelines designed to provide fairness and reasonable uniformity in the parole process. These guidelines were developed in conjunction with an LEAA-funded research project which began in 1970.

In order to establish these guidelines, three primary elements in the parole decisionmaking process were identified. These are: (a) the severity of the offense; (b) the parole prognosis; that is, the probability of favorable parole outcome; and (c) other relevant factors such as institutional adjustment, community resources and the inmate's release plan.

Guidelines for parole decisionmaking have been developed which relate these elements to a general policy regarding the time to be served before release. Briefly, the determination of the severity of the offense, and the parole prognosis indicate the general range of time to be served before release. For example, an inmate who was convicted of a low-severity offense and who has a very high probability of favorable parole outcome will generally serve a relatively short period of time before release; an inmate with a low-severity offense, but only

a fair probability of favorable parole outcome will generally serve a longer period of time, et cetera. The periods are specified for each combination of elements.

After the range of time to be served is determined, other factors are then considered, such as the subject's institutional behavior and participation in institutional programming, the results of institutional testing, community resources, and the parole plan. When exceptional factors are present, such as extremely good or poor institutional performance, and a decision falling outside of the guideline range is made, the hearing examiner must cite the reason for this exception.

These guidelines serve two functions: One, they structure discretion by providing generally consistent parole policy; and two, in individual cases they serve to alert reviewing officers to decisions falling outside of the guidelines so that either the unique factors in the case may be specified or the decision may be reconsidered. It is felt that the use of these guidelines will serve not to remove discretion but to enable it to be exercised in a fair and rational manner.

In order that the subcommittee may better understand the use of these decision guidelines, I would like to submit for the record copies of the parole prognosis evaluation worksheet, the guidelines for youth and adult offenders, and a set of general instructions for using these forms. The guidelines were revised in April to reflect the results of the first 6 months, and will be revised periodically as necessary.

Senator BURECK. They will be received.

[The information follows:]

Form R-2—(Rev. April 1973)

GUIDELINE EVALUATION WORKSHEET

Case Name _____ Register Number _____

Salient Factors: (Please check each correct statement):

- _____ A. Commitment offense did not involve auto theft.
- _____ B. Subject had one or more codefendants (whether brought to trial with subject or not).
- _____ C. Subject has no prior (adult or juvenile) incarcerations.
- _____ D. Subject has no other prior sentences (adult or juvenile) (i.e., probation, fine, suspended sentence).
- _____ E. Subject has not served more than 18 consecutive months during any prior incarceration (adult or juvenile).
- _____ F. Subject has completed the 12th grade or received his G.E.D.
- _____ G. Subject has never had probation or parole revoked (or been committed for a new offense while on probation or parole).
- _____ H. Subject was 18 years old or older at first conviction (adult or juvenile).
- _____ I. Subject was 18 years old or older at first commitment (adult or juvenile).
- _____ J. Subject was employed, or a full time student, for a total of at least six months during the last two years in the community.
- _____ K. Subject plans to reside with his wife and/or children after release.
- _____ Total number of correct statements = favorable factors = score.

Offense Severity: Rate the severity of the present offense by placing a check in the appropriate category. If there is a disagreement, each examiner will initial the category he chooses.

Low _____
Low Moderate _____
Moderate _____

High _____
Very High _____
Greatest _____
(e.g. willful homicide, kidnapping)

Jail Time (Months) _____ + Prison Time (Months) _____ = Total Time
Served To Date _____ Months.

Guidelines Used: _____ Youth _____ Adult

Decision Recommendation _____

Dissenting Recommendation (if any) _____

INSTRUCTIONS FOR USE OF DECISION GUIDELINES

THE DECISION GUIDELINES (Form R-3—R-4) INDICATE THE AVERAGE TOTAL NUMBER OF MONTHS SERVED BEFORE RELEASE (INCLUDING JAIL TIME) FOR EACH COMBINATION OF OFFENSE SEVERITY/SALIENT FACTOR CHARACTERISTICS. THIS IS IN THE FORM OF A RANGE (e.g. 12-16 months) AND IS INTENDED TO SERVE AS A GUIDELINE ONLY. HOWEVER, YOU ARE REQUIRED TO INDICATE THE REASONS FOR RECOMMENDATIONS WHICH FALL OUTSIDE OF THE GUIDELINE RANGE.

GUIDELINE EVALUATION WORKSHEET—FORM R-2 WILL BE COMPLETED:

- A. For all initial interviews
- B. For all review interviews where the previous continuance has been 30 months or more
- C. For all review interviews in which a recommendation for continuance is being considered when this continuance does not relate to institutional misconduct or the failure to complete a specific program

SEVERITY RATING—THE HEARING PANEL WILL RATE THE SEVERITY OF THE SUBJECTS OFFENSE BEHAVIOR. THIS IS A MATTER OF JUDGMENT. The examples given on the Decision Guideline Chart (Form R-3) (Adult) and R-4 (Youth) show the severity ratings customarily given to selected offenses. These are meant to serve only as examples. However, the panel's severity rating must be supported by the case summary.

NOTE: 1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used. If the offense behavior involves a series of separate offenses, a more serious category may be used.

2. If an offense is not listed, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.

SALIENT (Favorable) FACTOR SCORE—ONE POSITIVE POINT WILL BE GIVEN FOR EACH CORRECT STATEMENT. The total number of correct statements reflect the salient factor score.

NOTE: 3. When recommending a continuance, allow one month for release program processing.

GUIDELINES FOR DECISIONMAKING—AVERAGE TOTAL TIME SERVED BEFORE RELEASE (INCLUDING JAIL TIME)

[In months]

Offense characteristics (examples)	Offender characteristics—salient (favorable) factor score (probability of favorable parole outcome)			
	(9 to 11) very high	(6 to 8) high	(4 to 5) fair	(0 to 3) low
ADULT CASES				
Category A—Low severity offenses—Immigration law violations, walkaway, minor theft (includes larceny and simple possession of stolen property less than \$1,000)	6-10	8-12	10-14	12-16
Category B—Low/moderate severity offenses—Alcohol law violations, selective Service, Mann Act (no force—commercial purposes), theft from mail, forgery/fraud (less than \$1,000), possession of marijuana (less than \$500) passing/possession of counterfeit currency (less than \$1,000)	8-12	12-16	16-20	20-25
Category C—Moderate severity offenses—Simple theft of motor vehicle (not multiple theft or for resale), theft, forgery/fraud (\$1,000 to \$20,000), possession of marijuana (\$500 or over), possession of other soft drugs (less than \$5,000), sale of marijuana (less than \$5,000); sale of other soft drugs (less than \$500), possession of heavy narcotics (by addict—less than \$500), receiving stolen property with intent to resell (less than \$20,000), embezzlement (less than \$20,000), passing/possession of counterfeit currency (\$1,000 to \$20,000), interstate transportation of stolen/forged securities (less than \$20,000)	12-16	16-20	20-24	24-30

GUIDELINES FOR DECISIONMAKING—AVERAGE TOTAL TIME SERVED BEFORE RELEASE (INCLUDING JAIL TIME)

(In months)

Offense characteristics (examples)	Offender characteristics—salient (favorable) factor score (probability of favorable parole outcome)			
	(9 to 11) very high	(6 to 8) high	(4 to 5) fair	(0 to 3) low
ADULT CASES				
Category D—High severity offenses—Theft, forgery/fraud (over \$20,000), sale of marijuana (\$5,000 or more), sale of other soft drugs (\$500 to \$5,000), possession of other soft drugs (more than \$5,000), sale of heavy narcotics to support own habit, receiving stolen property (\$20,000 or over), embezzlement (\$20,000 to \$100,000), passing/possession of counterfeit currency (more than \$20,000), counterfeiter, interstate transportation of stolen/forged securities (\$20,000 or more), possession of heavy narcotics (by addict—\$500 or more), sexual act (fear—no injury), burglary (bank or post office), robbery (no weapon or injury), organized vehicle theft	16-20	20-26	26-32	32-38
Category E—Very high severity offenses—Extortion, assault (serious injury), Mann Act (force), armed robbery, sexual act (force—injury), sale of soft drugs (other than marijuana—more than \$5,000), possession of heavy narcotics (nonaddict), sale of heavy narcotics for profit	26-36	36-45	45-55	55-65
Category F—Greatest severity offenses—Aggravated armed robbery (or other felony)—weapon fired or serious injury during offense, kidnapping, willful homicide	(Information not available due to limited number of cases)			
YOUTH CASES				
Category A—Low severity offenses—Immigration law violations, walk-away, minor theft (includes larceny and simple possession of stolen property less than \$1,000)	6-10	8-12	10-14	12-16
Category B—Low/moderate severity offenses—Alcohol law violations, selective service, Mann Act (no force—commercial purposes), theft from mail, forgery/fraud (less than \$1,000), possession of marijuana (less than \$500), passing/possession of counterfeit currency (less than \$1,000)	8-12	12-16	16-20	20-25
Category C—Moderate severity offenses—Simple theft of motor vehicle (not multiple theft or for resale), theft, forgery/fraud (\$1,000 to \$20,000), possession of marijuana (\$500 or over), possession of other soft drugs (less than \$5,000), sale of marijuana (less than \$5,000), sale of other soft drugs (less than \$500), possession of heavy narcotics (by addict—less than \$500), receiving stolen property with intent to resell (less than \$20,000), embezzlement (less than \$20,000), passing/possession of counterfeit currency (\$1,000 to \$20,000), interstate transportation of stolen/forged securities (less than \$20,000)	9-13	13-17	17-21	21-26
Category D—High severity offenses—Theft, forgery/fraud (over \$20,000), sale of marijuana (\$5,000 or more), sale of other soft drugs (\$500 to \$5,000), possession of other soft drugs (more than \$5,000), sale of heavy narcotics to support own habit, receiving stolen property (\$20,000 or over), embezzlement (\$20,000 to \$100,000), passing/possession of counterfeit currency (more than \$20,000), counterfeiter, interstate transportation of stolen/forged securities (\$20,000 or more), possession of heavy narcotics (by addict—\$500 or more), sexual act (fear—no injury), burglary (bank or post office), robbery (no weapon or injury), organized vehicle theft	12-16	16-20	20-24	24-28
Category E—Very high severity offenses—Extortion, assault (serious injury), Mann Act (force), armed robbery, sexual act (force—injury), sale of soft drugs (other than marijuana—more than \$5,000), possession of heavy narcotics (nonaddict), sale of heavy narcotics for profit	20-27	27-32	32-36	36-42
Category F—Greatest severity offenses—Aggravated armed robbery (or other felony)—weapon fired or serious injury during offense, kidnapping, willful homicide	(Information not available due to limited number of cases)			

NOTES

1. If an offense behavior can be classified under more than 1 category, the most serious applicable category is to be used. If an offense behavior involved multiple separate offenses, the severity level may be increased.
2. If an offense is not listed above, the proper category may be obtained by comparing the severity of the offense with those of similar offenses listed.
3. If a continuance is to be recommended, allow 30 days (1 mo) for release program provision.

For purposes of the pilot project, an inmate is also permitted to have a representative or advocate present with him at the parole interview. The function of the representative is to assist the inmate in summarizing the positive features of his case. This aspect has been well received by the inmates and has proved to be especially helpful in

cases where an inmate has had difficulties expressing himself. For the first 6 months of the project, representatives appeared at over 40 percent of the interviews.

I would like to point out here that up to this point in the project inmates have not been permitted to be represented by legal counsel. It appears, though, that there is no need to preclude an attorney from appearing as an inmate's representative simply because he is an attorney, as long as he realizes that parole release determinations do not, and should not, involve an adversary presentation of issues of law or fact.

Starting this month, therefore, inmates will be permitted to appear at the initial interview with a representative who may be an attorney. I wish to emphasize, however, that the Board will take the necessary measures to assure that the representative, be he a lawyer or not, understands his limited, nonadversary role in parole-release determinations.

Senator BRADICK. Is there any thought by anybody to provide an attorney at that point? Suppose the inmate is without funds? Is there any thought given to the Government providing an attorney?

Mr. SIGLER. This has been thought of and it is the opinion of the Department of Justice that this will not, that this will be a nonindigent thing: that is, if you have the money you may. It is not a matter of must, because a lawyer is not serving as a legal representative merely as an advocate.

Senator BRADICK. I see. Continue.

Mr. SIGLER. Another objective of the pilot project is to render speedier parole decisions. One of the frequent criticisms leveled at the Board, and justifiably so, is that the decisionmaking process has been too cumbersome and slow. This is in large part due to the fact that some 17,000 parole-related decisions must be made during the course of a year, yet the administrative framework is far from perfect.

We established a goal in the project of notifying the institution of the Board's decision within a very short period of time. Despite the awkward system that had to be devised for transmitting interview summaries and recommendations from the institutions to the Board as well as the Board's decisions back to the institutions, I can report that 99.5 percent of all decisions were made known to the inmates within 5 working days. This, of course, is a very significant accomplishment, as it tends to minimize the anxiety which the inmates understandably face during the waiting period.

I would also like to bring to the subcommittee's attention the fact that the inmates are provided with written reasons in cases when parole is denied. Again, the providing of reasons has been a frequent suggestion from those who have studied the parole process. We believe that the suggestion is sound, and this belief has been reinforced by the results of the project. Inmates who are advised of the reasons for parole denial are better able to understand what steps they must take to improve their chances. In addition, the cloak of secrecy is removed from the decisionmaking process when the reasons for the decision are communicated to the inmate.

The pilot project also involves a new review/appeal mechanism. Briefly, under this procedure inmates are permitted to file for review 30 days after a parole decision has been rendered. The request for re-

view may be based on either new and significant information which was available at the time of the interview, but not considered, or an assertion that the written reasons provided to the inmate do not support the order of the Board.

The petition by the inmate is considered by a Regional Board member, who then has several options available. The decision may be affirmed; a review hearing may be granted in Washington, D.C., at which the inmate may be represented; a reinterview may be granted at the institution; or the original decision may be modified. During the first 6 months, 104 requests for review were acted upon. The decision was affirmed in approximately 70 percent of the cases.

If the inmate is not satisfied with the action taken upon review, he may then appeal the decision to the Board after a 90-day waiting period. If a member of the Board determines that the appeal should be considered, he and two other members render a final decision.

This then is a general description of our pilot regionalization project. As I have already indicated, the results after 6 months have been very encouraging. We intend to continue the project and make appropriate improvements until such time as it is absorbed into a general parole reorganization.

Before proceeding, I would like to offer for inclusion in the record some additional statistics which may be of interest to the subcommittee concerning the project's first half year.

Senator BURDICK. They will be received.

U.S. BOARD OF PAROLE

PILOT REGIONALIZATION PROJECT—THE FIRST SIX MONTHS

This report describes some statistical highlights of the first six months of the U.S. Board of Parole Regionalization Project. The format of this report is designed for illustrative rather than analytical purposes. For further information, the six monthly research reports (from which these figures have been abstracted) may be consulted.

Table No. 1—Number of interviews

All institutions.....	0
Initial.....	962
Review.....	613
Early review.....	28
Violation.....	65
Re-interview.....	11

Table No. 1 shows the total number of the types of interviews conducted during the six month period from October 1972–March 1973.

TABLE 2.—REPRESENTATION AT INTERVIEWS

	None	Spouse	Parent	Other relative	Case-worker (or institutional staff)	Other inmate	Friend	Other
Number.....	892	103	65	35	396	35	59	8
Percent.....	56.0	6.5	4.1	2.2	24.9	2.2	3.7	.5

¹ Percentages do not tabulate 100 percent due to rounding error.

Note: Table 2 shows the number and breakdown in the types of representatives present at the interviews. It is noted that over 40 percent of the interviews had representatives present.

Table No. 3—Number of violation interviews with Attorney/witness present

None.....	47
Attorney/Witness(es).....	4
Attorney only.....	12
Witness(es) only.....	2

Table No. 3 shows the number of violation interviews and the number of times an alleged violator was represented by an attorney and/or had witness(es) present. It may be seen that at this point attorneys and witnesses are present at only a minority of the violation interviews held.

Table No. 4—Notification of decisions—percent of cases notified of decision within 5 working days

All institutions..... ¹99.5%

¹One case was delayed due to mechanical failure; two cases were delayed due to split decisions; six cases were continued to Washington for en banc consideration.

Table No. 4 shows the percent of cases notified of their decision within five working days. In all but nine cases, the goal of speedier decision-making was fulfilled in that the inmates were notified of the decision of the Board within five days of their interview.

TABLE 5.—INITIAL INTERVIEWS, GUIDELINE USAGE

	Recommendations				
	Within decision guidelines	1 to 3 mo longer	4 or more months longer	1 to 3 mo shorter	4 or more months shorter
All institutions:					
Number.....	599	49	69	102	92
Percent.....	62.2	56.6	7.9	11.7	10.6

Note: Table 5 shows the number and percentages of hearing panels' recommendations in relation to the explicit decision guidelines provided by the Board. At the project's 1st 6 mo review these guidelines were submitted to the Board for modification and several changes were made. Furthermore, a list of auxiliary examples (which notes recurring situations in which decisions falling outside the guidelines have been made) has been prepared.

TABLE 6.—PERCENT PAROLED AT REVIEW INTERVIEWS

	Parole	Continue
Number.....	494	114
Percent.....	81.3	18.7

Note: Table 6 shows the percent paroled at review interviews. It is to be noted that most continuances at review interviews were the result of institutional misconduct and/or failure to complete a specific program.

TABLE 7.—HEARING PANEL/PAROLE BOARD DECISION AGREEMENT INITIAL, REVIEW AND EARLY REVIEW INTERVIEWS

	Number	Percent ¹
Actual decisions:		
Same as panel recommendation.....	1,162	88.0
1 or 2 mo longer.....	72	5.5
3 or more months longer.....	76	5.8
1 or 2 mo shorter.....	6	.5
3 or more months shorter.....	4	.3

¹ Percentages do not tabulate 100 percent due to rounding error.

Note: Table 7 shows the agreement between the hearing panel and the Board members for all initial, review and early review interviews. This does not include 268 cases in which 2 board members voted as the hearing panel.

TABLE 8.—REQUESTS FOR REVIEW DECISIONS¹

	Decision affirmed	Review granted	Reinterview granted	Decision modified
Number.....	70	8	22	4
Percent.....	67.3	7.7	21.2	3.9

¹ 104 total requests acted on to date.

² Percentages do not tabulate 100 percent due to rounding error.

Note: Table 8 shows the dispositions of the 104 requests for review acted on to date. This excludes 6 requests which were deemed not eligible for review. In addition, 9 requests for review are pending.

TABLE 9.—RESULTS OF REVIEW HEARING OR REINTERVIEW

	No change	Advance parole or review date	Pending
Review.....	0	3	3
Reinterview.....	11	3	8

Note: Table 9 shows the results of the regional reviews and reinterviews that were granted, as a result of requests for review.

The Board of Parole is also actively considering a general reorganization, based on our experience with the pilot project. We hope to implement this reorganization in the near future in order to expand the procedural and substantive reforms to Federal parole applicants throughout the United States. I would like now to outline the form of the reorganization as it is presently contemplated. While no irrevocable decisions have been made, I believe that it would be safe to say that we are in agreement as to the general direction that the reorganization will take.

First of all, we are considering a basic structural change in the Board of Parole in order to effect regionalization on a national scale. It is proposed that five parole regions be created, each headed by a regional Board member, hereafter referred to as regional director. Each regional office would have responsibility for handling the total parole function within the particular geographical area. In addition, three Board members, hereafter referred to as national directors, would sit in Washington, D.C., as a National Appellate Board. Moreover, authority for original case decisions would be delegated to parole hearing examiners who would work in two-man panels using explicit decision guidelines promulgated by the Board, such as those I have discussed. In cases in which decisions outside of the parole guidelines were made, each hearing examiner panel would be required to specify the unique factors considered. Furthermore, each inmate would be permitted to have a representative who may be an attorney, to assist him at his parole hearing; parole denial would be accompanied by written reasons; and the right to a two-level appeal process would be provided.

Mr. Chairman, you will note that I indicated that decision making authority would be delegated to hearing examiners. The power to delegate this authority is, of course, the subject of some discussion, as you recognized in your introductory statement of S. 1463. I would like to elaborate on the Department's position later in my statement.

Under our proposal, the regional and national directors would function as an appellate and policysetting body. The regional direc-

tor would consider appeals from the case decisions of the hearing examiner panels within his region, and his decision could then be appealed to the three national directors sitting as a National Appellate Board. The decisions of the National Appellate Board would be final. In essence, the procedural details would be similar to those of the pilot project discussed previously.

In addition, original jurisdiction in certain cases, such as those that are especially sensitive or notorious, would be retained by the National Appellate Board. Also, the regional and national directors would meet as the U.S. Board of Parole at regular intervals to develop, modify, and promulgate Board procedures, rules, and policies.

Each regional director would be responsible for the management and general operation of his regional office, the career development and training of personnel, and the decisions made within his region. In addition to parole granting and revocation decisions, other case decisions, such as the modification of supervision conditions, early release from parole, or warrant issuance, presently made by the Board members in Washington, D.C., would be made at the regional level.

This then basically describes the reorganization plan as presently envisioned. We think that implementing the plan would achieve the following major goals:

One: The ability to provide timely, well-reasoned decisions based upon personal interviews of inmates by a professionally trained hearing panel. Both the lack of timely decisions and the geographic distance between parole applicants and decisionmakers have resulted in considerable criticism.

Two: The development and implementation of an explicit general paroling policy to provide greater consistency and equity in decision-making. The lack of explicit policy, precedents, and decision consistency has been a subject of major criticism.

Three: An efficient, effective, and legal method of affording, substantive review of case decisions, the lack of which also has been severely criticized.

Four: A more effective and responsive liaison with the institution, courts and related personnel, as well as with persons under the supervision of the Board.

As I mentioned previously, there has been some discussion concerning the issue of delegating the authority to make parole determinations to hearing examiners. The position of the Department of Justice is that this delegation may be accomplished administratively, without legislation. In this respect, this position is consistent with that of the American Law Division of the Library of Congress. I would be happy to supply a copy of this analysis for the record.

Senator BURDICK. If you supply a copy it will be inserted.

[The Library of Congress matter follows:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 27, 1973.

To: Senate Subcommittee on National Penitentiaries Attention: Mr. Chris Erlewine.

From: American Law Division.

Subject: Delegation of Decision-Making Functions of Parole Board Members by Executive Reorganization.

This is in response to your request for comments on a Subcommittee memorandum concerning the validity of transferring certain functions of the Parole

Board to hearing examiners by executive reorganization. You also inquire whether (1) a reorganization plan could transfer the functions of the Board to the Attorney General with authority to delegate those functions in turn to hearing examiners; (2) the Attorney General could accomplish such a transfer of functions without a reorganization plan under his powers of internal reorganization; (3) the Parole Board, under its present statutory authority, may delegate decisionmaking functions to hearing examiners, subject to discretionary review; and (4) the Board, under its present statutory authority, may authorize final decisions to be made by panels consisting of less than the full membership of the Board or may assign Board members specific areas of jurisdictional authority, e.g., over parole matters emanating from defined geographic areas.

The Subcommittee memorandum concludes that a reorganization plan containing a provision allowing delegation of the Board's decisionmaking function in parole matters to hearing examiners would be violative of 5 U.S.C. 905(a) (4). It is argued that since the statutory provision establishing the Parole Board (18 U.S.C. 4203) vests the decision-making power in the members of the Board and contains no explicit authority for delegation of that power, such a reorganization would involve a transfer of "a function which is not expressly authorized by law."

It would appear that the limitation of the Reorganization Act is being read too broadly. Although obviously it would be necessary to review the precise language of any proposed plan, it would appear that such a plan could either authorize the delegation of decision-making functions currently performed by the Parole Board to hearing examiners or transfer these functions to other governmental authorities, including the Attorney General, who could then delegate them to examiners.

Section 905(a) (4) of title 5 states:

Limitations on powers:—(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

* * * * *

(4) Authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress; . . .

Plainly, this provision precludes only the vesting by reorganization of a new substantive function in an agency. Stated differently, reorganization plans may not be utilized to authorize the delegation of a function which the delegator did not have or to transfer a function which does not exist.

In the instant situation, the Parole Board already has plenary statutory authority in parole matters. Thus allowing the Board to delegate some part of that authority to hearing examiners in no way adds to its substantive functions nor does it conflict with any express limitations in the statute. Indeed, since an apparent purpose of the proposed reorganization is to increase the efficiency of Board operations, such a plan would be totally consonant with the design of the Reorganization Act:

Section 901. Purposes:—(a) The President shall from time to time examine the organization of all agencies and shall determine what changes therein are necessary to accomplish the following purposes:

(1) to promote the better execution of the laws, the more effective management of the executive branch, and of its agencies and functions, and the expeditious administration of the public business; . . .

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable.

Similarly, a transfer by reorganization plan of the Parole Board's functions to the Attorney General would seem lawful since it would not involve the "exercise of a function which is not expressly authorized by law at the time the plan is transmitted to Congress." This would appear to be true notwithstanding the provision 28 U.S.C. 509(4) which vests in the Attorney General the functions of all officers, agencies and employees of the Department of Justice except, among others, the Parole Board. That provision itself is derived from an executive reorganization plan (Reorganization Plan No. 2 of 1950, sec. 1, 64 Stat. 1261) and appears in the United States Code as a result of codification action by Congress in 1966, P.L. 89-554, sec. 4(c), 80 Stat. 612. Thus it is not a substantive congressional prohibition but, rather, a part of the executive organizational scheme.

Finally, by the same token, the Attorney General could not, because of section 509(4), effect a transfer of functions within the Board on his own without a further reorganization which vests him with the functions of the Board. To this extent section 509(4) serves as a limitation on the Attorney General's administrative authority.

The subject memorandum cites in support of its contrary conclusion the example of the rejection of Reorganization Plan No. 2 of 1961 which involved, among other things, the transfer, with authority to delegate, of powers vested with certain members of the Federal Communications Commission to other Commission employees and hearing officers. But as the Report of the Senate Committee on Commerce (S. Rept. No. 576) clearly indicates, the rejected plan would have amended certain basic substantive provisions of the Communications Act. It was also objected to on the ground that it would concentrate too much power in the Chairman of the Commission. (Extracts from the Report are attached.) Thus the FCC rejection would not appear applicable to the instant situation.

On the other hand, several reorganization plans authorizing the delegation of decision-making functions from similar commissions and boards to hearing examiners have been approved by Congress, e.g., Reorganization Plan No. 3 of 1961 (Civil Aeronautics Board); Reorganization Plan No. 4 of 1961 (Federal Trade Commission); Reorganization Plan No. 7 of 1961 (Federal Maritime Commission). (Copies attached.) In each instance the underlying statute had no prohibitory provision.

With regard to your further inquiry as to whether less than the full membership of the Board may exercise the decision-making authority of the Board, the courts have held that in light of the broad discretion vested by Congress in the Board it has the inherent authority to establish procedures to accomplish its purposes and functions, including delegation of authority to determine parole matters by a panel of members. Thus in *Earnest v. Mosley*, 426 F. 2d 466, 469 (10th Cir. 1970), the court stated:

The appellant's next contention is that the Board of Parole may not delegate two members of the Board the authority to determine whether or not parole or conditional release should be revoked. We disagree.

Title 18 U.S.C. sec. 4207 provides for a revocation hearing before the Board, a member of the Board, "or an examiner designated by the Board." It then provides:

"The Board may then, or at any time in its discretion, revoke the order of parole and terminate such parole or modify the terms and conditions thereof."

We see nothing in this language which would compel the conclusion that the entire Board must decide on every parole revocation. The creation of the Board and Congress' vesting in it a very broad discretion carries with it an inherent authority to establish such procedures as will best effectuate Congress' purpose in establishing the Board and the parole system. The Court in *Hyscr v. Reed*, 115 U.S. App. D.C. 254, 318 F. 2d 225, 242 n. 14, noted that for the fiscal year 1960 the Parole Board held 12,640 hearings of all types and issued 1,016 warrants for the arrest of parole violators and 670 warrants for the arrest of mandatory release violators. To too narrowly circumscribe the authority of the Board to establish its own internal procedures and effectively distribute its work load would impose an undue burden on the Board and, indeed, the entire parole system. As this court said in *Christianson v. Zerbst*, 89 F. 2d 40 (10th Cir.), the proceedings of the Board in revoking the parole or conditional release are presumptively correct. Unless it is clearly shown that the procedures established by the Board are clearly discriminatory or so lacking in fundamental fairness as to deprive the parolee or releasee of due process, or that those procedures are clearly contrary to the statutes creating and regulating the Board, the Court will not attempt to substitute its judgment for that of the Board.

Under the court's rationale, it would also appear proper for the Board in apportioning its workload to assign specific jurisdictional areas to individual members.

Your final inquiry, as to whether the Board currently has authority to delegate certain decision-making functions to hearing examiners, presents a closer legal question. There is no express authority under the present statute regarding delegations of the Board's functions. The absence of such explicit authority, however, obviously does not make all delegations impermissible. As *Earnest v.*

Moseley, supra, holds, final determinations in parole revocation proceedings may be made by two members of the Board. And in *French v. Ciccone*, 308 F. Supp. 256 (U.S.D.C.W.D. Mo. 1969), the court upheld the Board's practice (see 28 C.F.R. 2.15) of having hearing officers conduct parole proceedings against a claim that a prisoner has a right to a hearing "before a voting member" of the Board. (It may be noted that the examiners may submit recommendations along with their report to the Board.) Both cases turned on the broad discretion vested in the Board.

However, in a leading case in this area, *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942), the Supreme Court held a delegation of subpoena issuing power, without specific statutory authority, to be unlawful. At issue was the question whether the Administrator of the Wage and Hour Division of the Department of Labor could delegate his power to sign and issue a subpoena duces tecum. The Administrator argued that his delegation authority stemmed from section 4(c) of the Fair Labor Standards Act and by implication from the structure of the Act and the nature of the duties imposed upon him. Section 4(c) provided: "The principal office of the Administrator shall be in the District of Columbia, but he or his duly authorized representative may exercise any or all his powers in any place." The Court rejected the contention, stating (315 U.S. at pp. 361-362):

If, as the Administrator contends, the section is to be read as authorizing delegation of the subpoena power, that authority is without limitation. He may confer the power on any employee appointed under § 4(b), whom "he deems necessary to carry out his functions and duties," or even on those who render the voluntary and uncompensated service which he may accept under that section. Moreover, if so read § 4(c) likewise gives the Administrator unrestricted authority to delegate every other power which he possesses, and would render meaningless and unnecessary the provisions of § 11 authorizing the Administrator to delegate his power of investigation to designated representatives.

If such is the meaning of the Act, he could delegate at will his duty to report periodically to Congress (§ 4(d)), to appoint industry committees and their chairmen, to fix their compensation and prescribe their procedure (§ 5), to approve or disapprove their reports by orders whose findings of fact, if supported by substantial evidence, are conclusive (§ 10), to define certain terms used in the Act (§ 13), to provide by regulations or orders for the employment of learners and handicapped workers (§ 14), as well as other duties. A construction of the Act which would thus permit the Administrator to delegate all his duties, including those involving administrative judgment and discretion which the Act has in terms given only to him, can hardly be accepted unless plainly required by its words.

The Administrator seeks to meet this difficulty by construing § 4(c) as authorizing the delegation of some but not all of his administrative functions. But we cannot read "any or all" as meaning "some." And in any case if only some functions can be delegated, we are afforded no legislative guide for determining which may and which may not be delegated. We think that the words of the section, read in their statutory setting, make it reasonably plain that its only function is to provide that the Administrator and his representatives may exercise either within or without the District of Columbia such powers as each possesses. This construction is fully supported by the legislative history of § 4(c).³

The Court also noted that specific authority to delegate the subpoena power contained in measures passed by both Houses was eliminated in conference.

More recent decisions appear to have modified *Cudahy*, however. In *N.L.R.B. v. Duval Jewelry Co.*, 357 U.S. 1 (1958), the Court held proper the Board's delegation of authority to hearing officers to make preliminary rulings on motions to revoke subpoenas since the Board reserved to itself the right of final decision:

The limited nature of the delegated authority distinguishes the case from *Cudahy Packing Co. v. Holland*, 315 U.S. 357, and *Fleming v. Mohawk Wrecking Co.*, 331 U.S. 111, where the person endowed with the power to issue subpoenas delegated the function to another. While there is delegation here, the ultimate decision on a motion to revoke is reserved to the Board, not to a subordinate. All that the Board has delegated is the preliminary ruling on the motion to revoke. It retains the final decision on the merits. One who is

aggrieved by the ruling of the regional director or hearing officer can get the Board's ruling. The fact that special permission of the Board is required for the appeal⁴ is not important. Motion for leave to appeal is the method of showing that a substantial question is raised concerning the validity of the subordinate's ruling. If the Board denies leave, it has decided that no substantial question is presented. We think that no more is required of it under the statutory system embodied in § 11. No matter how strict or stubborn the statutory requirement may be, the law does not "preclude practicable administrative procedure in obtaining the aid of assistants in the department." See *Morgan v. United States*, 298, U.S. 468, 481; *Eagles v. Samuels*, 329 U.S. 304, 315, 316. It is not of help to say that on some matters the Board has original jurisdiction, on others appellate jurisdiction. We are dealing with a matter on which the Board has the final say. As in the case of many other matters coming before hearing examiners, it merely delegates the right to make a preliminary ruling. Much of the work of the Board necessarily has to be done through agents.

Similarly, in *Wirtz v. Atlantic States Construction Co.*, 357 F. 2d 442, 445 (5th Cir. 1966), the court remarked:

Unless, as in *Cudahy*, the statutory agent is hemmed in, the "administrative flexibility necessary for prompt and expeditious action on a multitude of fronts," *Fleming v. Mohawk Wrecking & Lumber Co.*, *supra*, 331 U.S. at 122, 67 S.Ct. at 1135, 91 L.Ed. at 1385, points in the direction of allowing more, not less, delegation. To argue for nondelegability in those situations in which Congress has not spoken explicitly and thereby insist upon personal performance by the Executive or the Chief Statutory Administrative Office envisages many unsatisfactory results. It will mean less, not greater, attention to the intrinsic merits of each situation requiring action. It will make governmental bureaucracy more, not less, formidable and frustrating.

If the foregoing cases represent a true modification of *Cudahy*, then a clearly circumscribed delegation of decision-making authority to hearing examiners, which plainly maintains a "final say" with the Board, may be permissible since there appears to be no legislative history evincing a congressional intent to the contrary; the Board is presently vested with the broadest possible discretion in parole matters; and the current workload of the Board is sufficiently large to admit of reasonable administrative solutions for the sake of efficiency, effectiveness and economy in carrying out the congressional purpose. But in view of the absence of such express authority, and particularly taking into account that Congress could have made provision for such delegation, the safest course would appear to be application for new legislation by the Congress or revision of the Board's administrative powers by executive reorganization.

MORTON ROSENBERG.

Legislative Attorney.

Mr. SIGLER. Even if it be assumed that the delegation can be effected administratively, it still remains to be decided if this is the best approach. Our view is that administrative changes would have the advantage of much greater flexibility and permit us to continue experimentation until the best parole process can be achieved. We are dealing with an inexact science and should be in a position to make additional changes, necessitated by experience, mistake, or advances in the state of the art. Legislation might not provide this flexibility, and we strongly recommend that the subcommittee defer further consideration of legislation until the Board has had the opportunity to see the results from our proposed reorganization.

As I mentioned before, the subcommittee has been of great assistance in helping the Board to focus on the issues and we would wish to continue our close cooperation.

Senator BUNDICK. Thank you, Mr. Sigler, for a very interesting statement. I can see we are on the same wavelength, that the legislation and your presentation coincide almost in very way. The only problem that we are faced with that I can see is the legal problem,

whether or not this outline that you provided can be done without legislation. That is the only question I can see facing us right now.

We have some other questions that I am going to ask you. But I was curious about that opinion from the Law Division of the Library of Congress. We have one dated June 7 which is to the contrary. What is the date of your opinion?

Mr. SIGLER. March 27, this year.

Senator BURDICK. I am surprised that the Law Division of the Library of Congress has two positions. Let me read to you what they said in the opinion they gave to the committee.

It is concluded, therefore, that the two-tiered panel system, "that is the 5 regional people and the 3 national people" would effect a major substantive change in and departure from the legislative scheme established by Congress and it would substantially alter the powers of individual members of the Board. In this sense legislation or authorization of the Congress would appear advisable.

We all want the same things. The Library of Congress says they raise some questions about whether this two-tiered system can be created by reorganization. It makes no difference to the chairman which way we do it, but we want to do it right. How can you resolve this difference?

Miss LAWTON. I think one of the difficulties, Senator, is that the structure on which the American Law Division's conclusions are based is not entirely the structure that is under consideration.

For example, the American Law Division's June opinion refers to the difficulty that while parole denials would be appealable to a member and then to the three-member panel, the national appellate level, parole grants by a hearing examiner panel would not be.

This is not what we are contemplating at the present time. All of this is in a state of flux and study but we recognize this problem ourselves and suggest that both the grant and the denial should be reviewable by a parole board member, and not stop with the hearing examiner level. So that the problem that is referred to there which we agree is a real problem does not exist in the present contemplation for changes.

Another matter that the American Law Division relied on or makes some reference to here is that there would be in effect first- and second-class board members. That the national appellate level in Washington would have the real power and the members of the board who are out in the field as regional directors, there is a question whether they will at any time sit as national directors. Well, of course, it is contemplated that they will meet periodically as national directors together as a board, establishing the guidelines, policies and procedures. They will serve as national directors. So I think that the premises, factual premises are not entirely accurate and, of course, we think the conclusions not either.

Senator BURDICK. Well, whether the denial or the granting of the parole is a matter for appeal would have nothing to do with the structure of the two-tier parole system itself, would it?

Miss LAWTON. No; what it has to do with is whether this is too much of a delegation, in fact an abdication of certain authorities by the Board of Parole. That doesn't exist.

Senator BURDICK. That is one question. Setting up the structure itself seems to me the key question. The theory is here you have two tiers now and you didn't have two tiers before. You have national

board members, but you still have regional members down below and an appellate board above. You have two structures.

Miss LAWTON. But as I understand it that exists to an extent now where you have two-member panels and a possibility of an en banc review by the full Board which is in a sense a two-tier approach.

Senator BURDICK. I understand the Board has approved a specific plan of the reorganization which has been submitted to the Department of Justice. Have you given a copy of this to the subcommittee?

Mr. SIGLER. No, sir, Mr. Chairman, we have not. This has not been approved yet. That is why we didn't—I have a copy here. But it has not been acted on by the officials of the Department of Justice and so I can't tell you that it has been accepted. It has been submitted.

Senator BURDICK. When that point comes we will have a copy of it as soon as it is available?

Mr. SIGLER. Yes, sir.

Senator BURDICK. Could you give the subcommittee an example of how the proposed reorganization plan would work—in a typical case?

Mr. SIGLER. An ordinary case where the two examiners would hear the case and if they arrived at a unanimous decision, then that would be it, unless the inmate appealed. However, the regional director at any time has the privilege, the authority, if that is a better word to use, of taking any decision that a panel of board members might make, review it, make his recommendation on it, and submit it to the appeal board members for a final review in the event he wants to completely reverse it. That might be in the interest, for example, of the general public rather than the inmate.

Senator BURDICK. Suppose the examiner is authorizing parole and the administration of the institution believes it should not be granted, who takes the appeal?

Mr. SIGLER. In that case, of course, if that was done, if any action at all was taken, it would begin with the regional director. Under normal conditions unless there was some kind of a complaint made there probably would be no action taken.

Senator BURDICK. Suppose there is a decision that is unfavorable to the warden of the penitentiary, that this fellow is granted parole, and the hearing examiners both agree he should have it, who would be the one to appeal?

Mr. SIGLER. In all instances the first appeal would be initiated with the regional director.

Senator BURDICK. Would he do it himself on his own volition?

Mr. SIGLER. He can. That is written into our new regulations, that you will get a copy of.

Senator BURDICK. What happens when the hearing examiners are divided?

Mr. SIGLER. Then it must be submitted to the regional director for another vote by another examiner because it takes two concurring votes either to deny or affirm a parole.

Senator BURDICK. I see.

Mr. SIGLER. I might say, sir, in our project we have had a few of those and they have been submitted.

Senator BURDICK. I suppose it would be a rare case where it would be granted and it would be appealed from?

Mr. SIGLER. Where the administration would appeal? I think it would be a rare occasion, frankly, but we have written that into our regulations because we believe that protection needs to be there, but we think it would be rare.

Senator BURDICK. Under your plan that you outlined this morning, how would you decide, or who would decide, which members are regional directors and which members are national directors?

Mr. SIGLER. The way it is written into the regulations the Chairman of the Board will do this after consultation with the Attorney General.

Senator BURDICK. In other words, there's eight men here and the Chairman of the Board would say five of you go out in the hinterlands and three of you stay here?

Mr. SIGLER. Right. This is the way it has been submitted.

Senator BURDICK. After consulting with the Attorney General?

Mr. SIGLER. With the Attorney General.

Senator BURDICK. How is the chairman selected?

Mr. SIGLER. By the Attorney General. And serves at the pleasure of the Attorney General.

Senator BURDICK. Do you have a suggestion now where the five directors might be located, the regional directors?

Mr. SIGLER. We have a suggestion that I can mention to you. I have doubts that it will stay this way. The eight members of our Board at this point feel that one should be in California, possibly in the Los Angeles area. One at Atlanta. One in the South-Central region. Right now we have Oklahoma City, but I think the regional area might be changed from there. Another would be in the North-Midwest which at the present time we have specified as Indianapolis, and another in this area which at the present time we have specified as Baltimore. We arrive at our decisions on a population situation from the standpoint of the prisoners.

Senator BURDICK. Prison population?

Mr. SIGLER. Prison population and also, insofar as the best locations concerned for travel of the examiners.

Senator BURDICK. How will the various requirements of the Youth Corrections Act be carried out in the proposed reorganization?

Mr. SIGLER. That is written this way. That there will be a designated chairman for the Youth Corrections Act and that every member of the Board will be a member of the Youth Corrections Board so that the Regional Director can function.

Senator BURDICK. Would it be the same Chairman?

Mr. SIGLER. No; it would not be the same Chairman.

Senator BURDICK. It would be a member of the eight?

Mr. SIGLER. It would be a member of the eight and probably I would think a member of the three that are based in Washington.

Senator BURDICK. How will the requirements of the Labor-Management Reporting and Disclosure Act of 1959 be carried out under the proposed reorganization?

Mr. SIGLER. In exactly the same manner as it is today. In other words, our legal counsel would have this thing prepared from our standpoint after an examiner has handled the request for help in the field someplace and then a decision would be made at a regular meeting of the entire Board. All Board members would act on all of those cases.

Senator BURDICK. I understand that from time to time the Bureau of Prisons comes upon a special situation—an individual in some unusual circumstances who deserves parole consideration but who has not yet served the minimum time before he may be considered. Once the 120-day period during which a judge has jurisdiction to modify a sentence has expired, the only avenue left is executive clemency. Since S. 1463 provides a remedy for this situation, what do you propose the Board do in these situations if there is no new legislation?

Mr. SIGLER. I am going to ask Mr. Barry, our counsel, to answer that.

Mr. BARRY. I understand that we do have a similar provision in the proposed regulations where the Bureau of Prisons at their initiative could bring this before the Board for a special consideration. This is after the initial period has been set. You couldn't without statutory authorization bring them up before the three, or if it were two examiners, you would have to reach statutory eligibility first. We don't have that.

Mr. SIGLER. Frankly, as an unlearned person in the law I would think the statute would have to be changed before this could be done at all. We can do only what the law calls for in giving a parole.

Senator BURDICK. You have to have some provision in the law.

Mr. BARRY. If you want to bring him up before the eligibility date some provision would have to be made in the statute.

Senator BURDICK. Another thing we have talked about in the past is letting an inmate know where he stands in the parole system, to force him to accept responsibility for his behavior, and for his future. What are your feelings about letting the inmate have this information; where it is appropriate?

Mr. SIGLER. Would you restate that, please?

Senator BURDICK. One of the things we have talked about in the past is letting the inmate know where he stands in the parole system, to force him to accept responsibility for his behavior, and for his future. What are your feelings about letting the inmate have this information, where it is appropriate?

Mr. SIGLER. I agree with it. I think the best way possible to get what you want done from a person that you have control over is to let him know what you want and so I would say this would be good.

Senator BURDICK. What about letting him know how he is getting along, I presume, in the interim between appearances?

Mr. SIGLER. This is, of course, an admirable thing and a good thing. I don't know exactly how you would do that from our standpoint. I would think that would be the responsibility of the institutional authority.

Mr. MEERER. You talked in considerable detail in your earlier testimony. Your current plan as much as has been revealed doesn't mention disclosure of the files.

Mr. SIGLER. The status is that the Department has—they made a decision. We have a memorandum from former Attorney General Kleindienst to that effect and that is we are not giving access to the files. This has been a question that has been talked about and studied and debated in the Department of Justice for a considerable time. The decision was made, I think, because of this. No. 1, we don't own the

files. The Criminal Division of the Department of Justice places confidential information in these files. The Bureau of Prisons owns these files. If they were our files, we could make a decision about everything that was in there. This would be one thing, but now there are three people, well there are four, because the courts also have the presentence investigation report in these files. I can understand why the decision was made. But to answer your question specifically and I know that is what you want me to do, I still believe that a man is entitled to know what we make our decisions on, and so personally, if all these other things could be corrected, it would be my judgment that disclosure would be right and fair. But I can understand very well why this decision had to be made as it was.

Senator BURDICK. In your statement you refer to "Explicit guidelines promulgated by the Board" as necessary for the parole examiners. Will these guidelines be published as regulations, with the opportunity for interested parties to comment on them, as is done in other agencies making extensive use of hearing examiners?

Mr. SIGLER. This has been done, you know, as a demonstration thing and the answer is, yes, they should be part of the published regulations.

Senator BURDICK. If hearing examiners decide parole on a case which is in the parole guidelines, would this decision be reviewed by a Parole Board member, or would the findings of the two hearing examiners be completely final at that time?

Mr. SIGLER. I can think of no instance why it would be. It could be reviewed, but why it would be changed if it is made within the guidelines I can't answer.

Senator BURDICK. As we discussed a few minutes ago the possibility of an appeal from that decision still remains by the Board or someone representing the administration.

Mr. SIGLER. This is correct, sir.

Senator BURDICK. If a decision by the hearing examiner to grant parole is not reviewed by a member of the Parole Board—doesn't this violate the holding of the *Dural* case, which would require the Board to reserve the power to make final decisions?

Mr. SIGLER. We are into a law question and I would ask Miss Lawton or Mr. Barry to answer that question.

Miss LAWTON. The point is the power is reserved to the Board so it always has the choice of exercising it. What the Board does by nonactions is to ratify the hearing examiner's opinion, so it is the Board's opinion. By refusing to alter it in any way the Parole Board accepts it, so I think there is no problem here. If there was a total delegation where the Board had no power to review or change, then there would be a serious question.

Senator BURDICK. They have the power and they don't exercise the power, they in effect agree?

Miss LAWTON. It is a negative ratification; yes.

Senator BURDICK. Getting back to my original question. The two-tier appeal system you plan would appear to place three members of the Board in a permanently superior position to the other five members. How does this square with the present law, which clearly contemplates eight equal members?

Mr. SIGLER. Mr. Chairman, I can't see that it does this simply because all policy is made by all eight members. All policy must be made by eight members. In our new regulations you will see that we have stated that the Board will meet at least four times yearly and for this purpose. There is nothing in the regulations that say that people cannot be transferred from one area of responsibility to another.

Senator BURDICK. This is true. But the three Board members in the top supreme court here, if you want to call it that for purposes of clarification, can review any one of the administrative Directors. How does that make them all equal?

Miss LAWTON. I would say that the functions are different, but not necessarily unequal.

Senator BURDICK. Well, I can see if I am in Washington and I can upset your decision I am a little more equal than you are.

Miss LAWTON. Even today the decision of a few Board members can be upset by the whole.

Senator BURDICK. But it is not being upset by the whole. The whole is eight that is upsetting now. Now the upsetting will be done by three and they can upset all of the other five. Does that make them equal?

Miss LAWTON. Not all of the other five collectively. One of the other five.

Senator BURDICK. I understand.

Miss LAWTON. Well, if there is a split between the two, I believe a third Board member is added who can tip the balance there. I don't think the assigning of different functions necessarily makes some Board members unequal. It simply really provides the inmate with a greater chance because the appeals will be undoubtedly primarily the inmate's or almost exclusively.

Mr. SIGLER. The regional member involved has a vote in all of these cases.

Senator BURDICK. And have you considered the administrative and legal consequences of the court ruling that your plan for two classes of parole board members was illegal because it would effect a major substantial change in and departure from the legislative scheme established by Congress?

Miss LAWTON. I think there will be court decisions. It should be noted, however, that the present legislation, of course, is singularly silent on how the Board is to function. It says there is a Board of Parole. In the Youth Corrections Act section it does refer to the existence of examiners. It doesn't in the main parole structure, and yet they have been used traditionally and the challenges were resolved in our favor some time ago.

Senator BURDICK. I can't quite understand, to be perfectly frank with you. You want something to be done. We agree it is a good approach. Complete harmony. What is the objection to making sure that we set the machinery up legally and properly, do it by legislative enactment? What is the argument against that?

Mr. SIGLER. As far as the Board is concerned it is our judgment and feeling we should go with this now. We think that, as I said in my statement, that we will have a better chance of correcting any errors we might make. We don't say here that we object to legislation,

but we do say that we would like to have you take a look at what we are doing to see if it is right, and to make any changes that you might think we need to make, of course, later on, we want to make certain we get the kinks ironed out of this thing before we put it into legislation. That is why we ask you to defer it.

Senator BURDICK. Then you aren't sure entirely of when.

Mr. SIGLER. We say in our statement we are not absolutely positive we are right. I wouldn't know how to be that way in this business.

Senator BURDICK. If you recall your testimony before this subcommittee last July, you specifically asked that we defer consideration of parole legislation while you study the matter. Is it not correct that the delay is of your making, and not ours? A year has gone by now.

Mr. SIGLER. Yes; I am suggesting now that we go with the thing because we think it is good, that we don't defer it longer.

Senator BURDICK. The only question you want to defer now is whether or not the Board, the two-tier system is construed to be legally constituted?

Mr. SIGLER. This would be a legal question and I am not capable of making a decision or discussing it with you because I don't know the law.

Senator BURDICK. Has the Department of Justice given an opinion on this question?

Miss LAWTON. Yes, sir, well, I can't speak for the Department. These draft regulations, the proposals of the Board have been circulated throughout the Department for comment on both the procedural and the structural aspects and various components of the Department have expressed their views both on procedure and on structure. My own office has on the legal issues, not so much on the procedural. Other components of the Department have expressed their views so that whether there is a single departmental opinion, I couldn't say, but there are a number.

Senator BURDICK. The only question is the structure.

Miss LAWTON. This is the question to which we addressed ourselves and this was the opinion that Chairman Sigler referred to earlier, furnishing to the committee.

Mr. MEEKER. Excuse me, Miss Lawton. The only document the Subcommittee has been supplied is a memorandum of April 18 of Mr. Dixon to Mr. Pommerening which does not address this question of the two classes of Board members.

Miss LAWTON. That was the opinion I was referring to, on the authority of the Board to restructure itself as a general opinion. That is the only one that our office has.

Mr. MEEKER. And it doesn't address this question that Senator Burdick has raised this morning?

Miss LAWTON. No; not specifically. At the time that was written we did not have any proposed specific structure in front of us. That was a general opinion on the legality of the Board taking such action generally, making structural changes, making procedural changes on its own initiative, and that was the only question before us at the time. We have no specific written opinion on the details of the regulations.

Senator BURDICK. If this reorganization plan that you are proposing is accepted, what is to prevent the Department of Justice from implementing a further reorganization that would give one man the

authority to enter the final parole decision in every case. You do it with three. Why couldn't you do it with one?

Mr. SIGLER. I suppose, again, from the standpoint of operation, if they said do this you could do that. I don't believe that would ever be done because we in the Board of Parole, want support. People that work in this business like support.

Senator BURDICK. Wouldn't you have sort of a comfortable feeling if you knew Congress gave the blessing to this two-tier system and it was put in concrete, so to speak? Maybe that is what you don't want.

Mr. SIGLER. No; I would like that. I wish everybody—I hope everybody approves of it, but we would like to make sure that we absolutely know we are right.

Senator BURDICK. We think the approach is fine. We are all for it. We don't want you to have any trouble along the way, that is all.

Mr. SIGLER. Of course we don't want that either.

Senator BURDICK. Thank you very much. Is there any way we can resolve the two different opinions from the Library of Congress that you know of?

Miss LAWTON. Well, as I said before, I think that the structure the Library of Congress was looking at was not the structure that is presently in contemplation. I think some of the problems that they see simply are not there any longer. We recognized there were problems and corrected them, I would suppose if the Library of Congress had a transcript of this with a description of the arrangement as it is now contemplated, that they might take another look at it. I don't know. I notice it is the same attorney who wrote both opinions and I don't know really, whether there would be a change.

Senator BURDICK. The staff tells me that the first opinion was rendered before your statement came to light with this present plan and that the opinion itself which I haven't read, indicates that it does not deal with the same structure. That the current opinion was based upon the testimony you have given today. That may shed some light on it or not, I am not sure.

Miss LAWTON. I think there are only the two areas where misunderstandings exist. First: whether or not a favorable parole decision by an examiner panel could nevertheless be overturned by a regional director. The opinion suggested it could not. As I indicated, we think it could and in fact the regulations so provide.

Senator BURDICK. That is not structure.

Miss LAWTON. No; but that is a problem raised in the opinion which does not now exist. The other is on the two-tier approach. It suggests that the regional parole board members would never sit in Washington and make decisions as part of the whole Board and that is not true. They would on guideline decisions. Individual parole decisions is another matter, but I think that needs to be clarified. The opinion may remain the same even after they have seen the clarifications, but I think there is some misunderstanding there on both the tier structure and on the review structure.

Senator BURDICK. As a matter of fact, the district directors can become national directors by order of the Chairman at any time.

Miss LAWTON. Yes.

Senator BURDICK. They can be shuffled any way he wishes?

Miss LAWTON. Yes.

Senator BURDICK. Maybe we can get some more light from them.
Thank you very much for your contribution this morning.
The second opinion will also be made a part of the record.
[The second Library of Congress opinion follows:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., June 7, 1973.

To: Senate National Penitentiaries Subcommittee.
From: American Law Division.
Subject: Reorganization of the Parole Board.

In a prepared statement to the Subcommittee, the Chairman of Board of Parole has outlined a plan for internal reorganization of the Board. You request an analysis of that proposal, with particular emphasis on whether the contemplated changes would be compatible with existing law governing the powers and functions of the Board.

The proposed organizational changes, which are to be accomplished by internal reorganization rather than through amendatory legislation or reorganization plan (5 U.S.C. 903) may be summarized as follows: The nation would be divided into five parole regions, each headed by a "Regional Board Member" who will have the title of Regional Director. Each regional office would be responsible for all parole functions within the designated region. Regional Directors would consider appeals from decisions of two-man hearing examiner panels which would be delegated original decision-making authority. In addition, three Board Members, to be known as National Directors, would sit permanently in Washington, D.C. as a National Appellate Board and hear appeals from decisions of the Regional Directors. Decisions of the National Appellate Board would be final. The Appellate Board would also retain original jurisdiction over sensitive or notorious or other such special cases. Finally, the Regional and National Directors would meet periodically to develop, modify, and promulgate Board procedures, rules and policies.

Several significant questions appear to be raised by the proposal: (1) May the Board delegate original decision-making authority to hearing examiners? (2) May Board members be assigned to specific areas of jurisdictional authority? (3) May certain Board members be assigned permanent final appellate authority over other members?

1. *Delegation of decision-making authority to panels of hearing examiners.* As was indicated to you in our memorandum of March 27, 1973, it would appear that judicial authority would support a clearly circumscribed delegation of decision-making authority to hearing examiners which plainly maintains a "final say" with the Board. As was pointed out then, such delegation seems supportable under current judicial standards since there appears to be no legislative history evincing a congressional intent to the contrary; the Board is presently vested with the broadest possible discretion in parole matters; and the current workload of the Board is sufficiently large to admit of reasonable administrative solutions for the sake of efficiency, effectiveness and economy in carrying out the Congressional purpose. *N.L.R.B. v. Duval Jewelry Co.*, 357 U.S. 1 (1958); *Wirtz v. Atlantic States Construction Co.*, 357 F. 2d 442, 445 (5th Cir. 1966); *French v. Cleome*, 308 F. Supp. 236 (U.S.D.C. W.D. Mo. 1969). Cf. *Jay v. Boyd*, 351 U.S. 315 (1956).¹

One aspect of the proposed delegation raises a question, however. It appears that under the contemplated procedure only inmates are permitted to file for review of a decision. Thus a decision to free on parole becomes final even if prison authorities would be in strong disagreement. In such cases it is believed that the failure to maintain a minimal review authority in a Board member may be an unlawful delegation of the Board's statutory authority. *Cudahy Parking Co. v. Holland* 315 U.S. 357 (1942).

¹ Indeed, the legislative history of the 1970 amendments to the Youth Corrections Act, 18 U.S.C. 5005 *et seq.*, which authorized examiners to conduct hearings under sections 5014 and 5024 of title 18, implicitly approved the longstanding practice of the Board of having examiners interview adult offenders. House Report No. 91-1239, 91st Congress, 2d Sess., 1970. "A consistent administrative interpretation of a statute, shown clearly to have been brought to the attention of Congress and not changed by it, is almost conclusive evidence that the interpretation has Congressional approval." *Kan v. F.C.C.*, 443 F. 2d 638, 646-647 (D.C. Cir. 1970); *Udall v. Tullman* 380 U.S. 1, 17-18 (1965).

2. *Delegation of Specific Areas of Jurisdictional Authority to Board Members.* Again referring to our memorandum of March 27, judicial authority would support the assignment of specific jurisdictional areas to individual members in order to effectively apportion the Board's workload. See *Barnest v. Mosely*, 420 F. 2d 460, 469 (10th Cir. 1970).

3. *Validity of two-tier appellate procedure.* As indicated, the Board proposes to establish a two-tier appellate procedure in which final decision-making authority is to be vested in three members of the Board ("National Directors") who reside permanently in Washington, D. C. There is no indication in the plan that the five members of the Board who will become Regional Directors will ever, at any time during their tenures, sit as National Directors. That is, there is no provision for rotation amongst the members so that each member at some time will sit on the National Appellate Board. Rather the Regional Directors appear permanently slotted in their respective regions.

Under these circumstances the proposal would seem contrary to the intent of 18 U. S. C. 4201. That section states that "There is hereby created in the Department of Justice a Board of Parole to consist of eight members to be appointed by the President, by and with the advice and consent of the Senate." Each member serves a six year term. One member is selected to serve as chairman by the Attorney General but the chairman's additional duties and responsibilities are purely administrative. Thus it would appear that Congress intended to create one Parole Board consisting of eight equal members." The reference to "a Board of Parole," the requirement of Senate confirmation of each Board member, and the lack of any differentiation in the current legislative scheme between members in terms of their respective powers and functions, argues strongly, if not conclusively, against an administrative establishment of a scheme that would make some Board members substantively inferior to others.

It is concluded, therefore, that the two-tiered appellate system that is being proposed would effect a major substantive change in, and departure from, the legislative scheme established by Congress in that it would substantially alter the powers and functions of individual members of the Board. In these circumstances legislative authorization from the Congress would appear advisable.

MORTON ROSENBERG
Legislative Attorney.

MEMORANDUM

APRIL 18, 1973.

To: Mr. Glen E. Pommerening, Acting, Assistant Attorney General for Administration.

From: Robert G. Dixon, Assistant Attorney General, Office of Legal Counsel.
Subject: Authority of the Board of Parole to Delegate Decisionmaking Powers to Hearing Examiners.

This is in response to your request for our views on the question whether the Board of Parole can, under existing statutes, delegate to hearing examiners the authority to determine whether to grant, deny or revoke parole. Presently, the power to make parole determinations is exercised by members of the Board. For the reasons that follow, we have concluded that parole determination can be legally delegated to hearing examiners, particularly where an appeal of the examiner's decision to the Board or a member thereof is available to an offender.

I.

Four statutes vest the decision-making powers with respect to parole determinations in the Board of Parole or the Youth Correction Division of the Board. Section 4203, Title 18, United States Code, provides that the Board of Parole shall review the record of an adult offender eligible for release on parole—and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.

¹ The above-cited judicial approval of the Board's practice of sitting in two member panels (*Barnest v. Mosely*, *supra*) does not detract from this conclusion. Under the present scheme (which of course the *Mosely* court had reference to) there remains the possibility of *en banc* review. Also, it is presently possible, and probable, that each member will sit on all types of cases, including "sensitive and notorious" ones. Finally, at present no Board is precluded from participating in a truly final decision.

Section 5017 similarly vests the Youth Correction Division with discretion to release youth offenders. Section 4207 governs the revocation of parole of an adult offender and provides that the parolee upon being retaken upon a warrant—

Shall be given an opportunity to appear before the Board, a member thereof, or an examiner designated by the Board.

The Board may . . . in its discretion revoke the order of parole . . . or modify the terms and conditions thereof.

To the same effect is Section 5020 which vests the decision to revoke parole of a youth offender in the Youth Division.

Read literally, each statute indicates that the parole determination is vested in the Board or Youth Division *simpliciter*. Indeed, sections 4207 and 5020, both of which initially provide that the offender may appear before a single member or an examiner, but subsequently omit any reference to a member or examiner in providing that the Board or Division shall make the determination, suggest that only the entire Board or Division has the authority to make such a determination.¹

However, responsibilities imposed upon particular officers by statute can often be delegated notwithstanding the absence of specific statutory authority empowering the delegation and, indeed, even in the face of statutory language literally read otherwise. For example, in *Jay v. Boyd*, 351 U.S. 345 (1956), the Supreme Court found that the section in the Immigration Act which provides that the Attorney General "may, in his discretion" suspend deportation of a deportable alien did not mean that the Attorney General could not delegate his power to special inquiry officers. (Emphasis added.) Thus, even though the reference to "his" discretion does not literally mean the discretion of subordinates, the Court found that it could not be expected that "the Attorney General . . . exercise his discretion in suspension cases personally." *Id.* at 351, n. 8.

In the absence of a legislative intent on the issue of delegation—as is the case here—the question whether a delegation is lawful or unlawful seems to depend on both the degree of administrative discretion conferred on the delegator, see *Jay v. Boyd*, *supra*; *Wirtz v. Atlantic States Construction Co.*, 357 F.2d 442, 445 (1966) and the exigencies of the function for which the delegator is responsible. *U.S. Health Club, Inc. v. Major*, 252 F.2d 665, 667 (3rd Cir. 1961); *Papagianakis v. The Samos*, 186 F.2d 257, 259 (4th Cir. 1950).

Both of these points were considered in *Earnest v. Mosley*, 426 F.2d 466 (10th Cir. 1970), in which the Court held permissible the Board's delegation of the authority to determine whether or not parole should be revoked to two members of the Board. The Court rejected the theory that, in Section 4207 referred to earlier, the omission of the words "member of the Board or . . . examiner designated by the Board" from the provision in the same section granting the authority to revoke parole "compell[ed] the conclusion that the entire Board must decide on every parole revocation." 426 F.2d at 469. The court's refusal to strictly construe Section 4207 was based on the broad discretion conferred on the Board and on the necessity to delegate decision-making power:

The creation of the Board and Congress' vesting in it a very broad discretion carries with it an inherent authority to establish such procedures as will best effectuate Congress' purpose in establishing the Board and the parole system. The Court in *Hyser v. Reed*, 115 U.S. App. D.C. 254, 318 F.2d 225, 242 n. 14, noted that for the fiscal year 1960 the Parole Board held 12,640 hearings of all types and issued 1,016 warrants for the arrest of parole violators and 670 warrants for the arrest of mandatory release violators. To too narrowly circumscribe the authority of the Board to establish its own internal procedures and effectively distribute its work load would impose an undue burden on the Board and, indeed, the entire parole system. 426 F.2d at 469.

The same considerations, in our view, provide the premise upon which the authority to delegate to hearing examiners is based. As the court said in *Wirtz v. Atlantic States Construction Co.*, 357 F.2d 442, 445 (5th Cir. 1966), "the administrative flexibility necessary for prompt and expeditious action on a multitude of fronts, . . . [citation omitted] . . . points in the direction of allowing

¹ In *Earnest v. Mosley*, 426 F.2d 466 (10th Cir. 1970), the court did not interpret this statute strictly. It found that the entire Board need not make every determination on parole revocation, contrary to the literal language of the statute. Instead it held that the authority to determine whether parole should be revoked could be delegated to two members of the Board. See p. 3, *infra*.

more, not less, delegation." In the year of 1970, the eight members of the Board of Parole considered and decided over 17,000 cases. Of course, the members of the Board were unable to conduct all of the hearings. Many of the hearings were conducted by hearing examiners who recommended decisions to the Board.² Because of the sheer number of cases, Board members were compelled to rely heavily on the judgment of the hearing examiners in making the formal parole determination. Delegation of the authority to render decisions on parole matters with review of the decision by a Board member available to an offender would be but a recognition of the current practice.

This is not to say that an administrative practice can operate to change the law. Rather, the exigencies of a situation can warrant the delegation of authority where the delegation is not clearly contrary to the relevant statutory provisions. For example, in *Papagianakis v. The Samos*, 186 F.2d 257, 259 (4th Cir. 1950), the court held that even though a statute imposed a duty upon the "immigration officer in charge," that officer could delegate the duty to immigration inspectors because the delegation was "essential to the proper transaction of business." See also *U.S. Health Club, Inc. v. Major*, 292 F.2d 665, 667 (3rd Cir. 1969). As the court said in *Wirtz v. Atlantic States Construction Co.*, 357 F.2d 442, 445 (5th Cir. 1966), in upholding the authority of the Secretary of Labor to delegate the power to institute suits under the Fair Labor Standards Act of 1938 to the Solicitor of the Labor Department who, in turn, delegated this power to regional attorneys:

To argue for non-delegability in those situations in which Congress has not spoken explicitly and thereby insist upon personal performance by the Executive . . . envisages many unsatisfactory results. It will mean less, not greater, attention to the intrinsic merits of each situation requiring action. It will make governmental bureaucracy more, not less, formidable and frustrating.³

In this instance, the decision whether to grant, deny or revoke parole would be made by the hearing examiner who would have the opportunity to personally interview the offender, observe his demeanor, question him about points that would arise in the examiner's mind and generally make the decision regarding the individual's liberty on the basis of personal contact rather than on paper alone. To insist that the parole determination be made by a Board member or panel will, very concretely, mean less, not greater, attention to the offender.

The second touchstone of the delegation cases—broad discretion and inherent authority to establish procedures that will achieve the legislative purpose in establishing the decision-making body—is also applicable in this instance as the decision in *Earnest v. Mosley*, *supra*, indicated. Speaking of the broad authority of the Board of Parole, the court in *Hatt v. Compagne*, 178 F.2d 42, 45 (5th Cir. 1949), said:

As respects parole, the original statutes as well as the revision . . . bristle with discretion given the Board. . . . It is very evident that the whole matter of paroles is left to the informed discretion of the Board.

Because the Board is vested with the broadest possible discretion in parole matters it is authorized to institute procedures necessary to effectively carry out its statutorily imposed responsibility. The test to determine whether the procedures adopted by the Board are lawful was articulated in *Earnest v. Mosley*, *supra*:

As this court said in *Christianson v. Zerbst*, 80 F.2d 40 (10th Cir.), the proceedings of the Board in revoking the parole or conditional release are presumptively correct. Unless it is clearly shown that the procedures established by the Board are clearly discriminatory or so lacking in fundamental fairness as to deprive the parolee or releasee of due process, or that those procedures are clearly contrary to the statutes creating and regulating the Board, the court will not attempt to substitute its judgment for that of the Board. 426 F.2d at 469.

Thus, in our view, the delegation of decision-making power to hearing examiners is authorized for the following reasons: the workload of the Board of Parole

² In *Ott v. Ciccone*, 326 F. Supp. 608 (W.D. Mo. 1970), the court held that the hearing need not be conducted by a member of the Board of Parole, but instead could be conducted by an examiner.

³ In *Wirtz*, the court pointed to the fact that the Office of the Solicitor instituted 1,432 cases under the FLSA as evidence that it was administratively necessary to delegate the authority to file the legal actions. Here, eight members of the Board of Parole determine some 17,000 cases.

requires an administrative solution that will make the parole system more efficient and effective; the delegation of decision-making power meets this need and effectuates Congress' purpose in establishing the parole system; and the delegation is not clearly contrary to the statutes creating the Board.

II.

It is our understanding that under the reorganization proposal now being considered by both the Board of Parole and the Administrative Division the parole determinations of the examiners can be reviewed under a two-level appellate system. Presumably, the offender could appeal the determination first to a Board member and, if the determination was not reversed or modified, he could then appeal to a panel of the Board or the entire Board. We believe that this feature greatly strengthens the legal propriety of delegating decision-making power to examiners. In *N.L.R.B. v. Duval Jewelry Co.*, 357 U.S. 1, 7 (1958), the Supreme Court upheld the N.L.R.B.'s delegation of authority to hearing officers to make preliminary rulings on motions to revoke subpoenas because the Board reserved to itself the right to make the final decision:

While there is delegation here, the ultimate decision on a motion to revoke is reserved to the Board, not to a subordinate. All that the Board has delegated is the preliminary ruling on the motion to revoke. It retains the final decision on the merits. One who is aggrieved by the ruling of the regional director or hearing officer can get the Board's ruling. The fact that special permission of the Board is required for the appeal is not important. Motion for leave to appeal is the method of showing that a substantial question is raised concerning the validity of the subordinate's ruling. If the Board denies leave, it has decided that no substantial question is presented. We think that no more is required of it under the statutory system. . . .

Accordingly, the retention by the Board of Parole of the authority to render the ultimate decision strengthens the case for delegation. The fact that the Board or Board member may not conduct a *de novo* review but instead may deny the petition for review will not, according to the decision in *Duval Jewelry Co.*, detract from the position that the Board reserves for itself the final decision. Thus, to strengthen the legal position, if the Board chooses not to conduct a *de novo* review in each instance, the draftsmen of the reorganization proposal may wish to draft a procedure under which the Board or Board member retains a discretionary right to review either upon its own initiative or upon petition of a party or both. In the case of a petition, the Board may wish to retain the authority for the Board or Board member to deny a petition for review unless the applicant seeking review makes a reasonable showing that certain errors or misjudgments were committed, e. g. a material fact upon the initial decision was based is erroneous; the guidelines under which the examiner operates were not adhered to; or an exercise of discretion or decision on law or policy is important and should be reviewed by the Board. For the foregoing reasons, we believe that such a delegation of decision-making authority to hearing examiners is legally permissible.

Senator BURDICK. The hearing is adjourned.
[Whereupon, at 11 a.m., the hearing was adjourned]

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES BOARD OF PAROLE,
Washington, D. C., July 11, 1973.

Re: Hearing held June 13, 1973, on S-1463 before Subcommittee on National Penitentiaries, Committee of the Judiciary.

Hon. QUENTIN N. BURDICK,
Chairman, Subcommittee on National Penitentiaries,
U.S. Senate, Washington, D.C.

DEAR SENATOR BURDICK: For the consideration of your Subcommittee, I would like to submit the following additional explication concerning a point raised at the hearings on June 13, 1973, with respect to the proposed reorganization of the United States Board of Parole. I refer to the suggestion of the American Law Division of the Library of Congress Research Service that the reorganization might appear to provide for two distinct classes of Board Members.

The Board does not view the setting up of an appellate section consisting of three Board Members at the national headquarters as establishing any substantive difference in the nature of the work performed as between this group and that of the regional board members. Although the terminology of appellate review and jurisdiction is employed, nothing really new in the nature of such reviews is intended or contemplated: thus I should point out that under long established Board rules and practice, as set out in 28 C.F.R. § 2.22, we have provided for Washington Review hearings in which two Members review the decision of an original panel concerning parole. This constitutes a vote of two Members (or three to break a tie) potentially changing the vote of two other equal Members. Any available Members are used for Washington Review hearings. It is true that under current practice some rotation occurs in the personnel of the reviewing panels; however, in our three Member Youth Division we are frequently restricted as to Members who act as reviewers.

Also, as mentioned at the hearing, our regulations indicate that the Chairman would from time to time designate regional Members to act as Members of the appellate group. I would contemplate that inter-change of duties of personnel as between the regions and appellate group would be used to the fullest extent since such flexibility in the duties of the Members would be the best possible means of achieving insight and on-going experience for all eight Members, for use in their primary duties of setting guidelines for all Parole Board functions, in particular, for the parole and parole revocation processes. The unifilar nature of the Board's work is also illustrated in the Board's *en banc* procedures under which in quarterly meetings the Board will continue to sit as a group for appellate review of cases meeting *en banc* criteria. As you know the statutes creating the Board, as well as their consistent judicial and administrative interpretation, have established the broadest discretion for the Board's discharge of its quasi-judicial functions, in particular for its apportionment of its work load which includes review procedures.

Finally, as brought out at the hearing, policies and procedures used by the appellate Members would be set by the entire eight Member Board, and the appellate Members, like the regional Members, would be acting under criteria established by the entire Board; consideration of the cases would thus be structured to constitute execution of Board policy. Obviously since the regional Members would outnumber the appellate Members, they would constitute a majority voice in setting rules for appellate review and all other Board policy.

In view of the contemplated structuring and functioning of the regionalized Board, as described above, it is the judgment of the Board that there is no legal impediment to the proposed interim reorganization. I would reiterate that, following a period of regional operation to permit evaluation of all alternatives for structuring the Board's functions, the Board would be desirous of presenting to the Committee its recommendations, incorporating this experience, for the Committee's consideration in finalizing legislation on the subject.

Sincerely,

MAURICE H. SIGLER,
Chairman, U.S. Board of Parole.

S. 1463—TO ESTABLISH A PAROLE COMMISSION
AND FOR OTHER PURPOSES

WEDNESDAY, MARCH 20, 1974

U. S. SENATE,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 6202, Dirksen Senate Office Building, Senator Quentin N. Burdick presiding.

Present: Senators Burdick and Cook.

Also Present: James G. Meeker, staff director; Christopher Erlewine, deputy counsel; and Shanda Askland, secretary.

Senator BURDICK. Today's hearing marks the final step in the study and consideration which the Senate Subcommittee on Penitentiaries has given to the subject of the Federal parole system. We have before us today legislation which preserves the fundamental outline of reform and reorganization of Federal parole that was first considered by this subcommittee on July 1972. In the intervening time, the U.S. Board of Parole has operated under a regional plan in one area of the country on an experimental basis and has concluded that this format outlined more than 20 months ago will bring fundamental improvement to the Federal paroling system.

In the intervening months, the subcommittee and its staff, working together with the Board of Parole and its staff, has carefully refined this original proposal. It is my hope that from today we can move very quickly to full nationwide implementation of this reorganization and change in the paroling authority.

There are many changes that will be brought by passage and implementation of the legislation before us today. These are the basic changes:

One: The Parole Board needs resources for better decisionmaking. The present Board of Parole has been faced with approximately 17,000 decisions per year on the different types of cases which come before it. With its limited resources, this has been an overwhelming caseload. This legislation authorizes additional resources in the form of a series of Regional Parole Commissioners with hearing examiners, and a National Appeals Board. The Regional Commissioners are responsible for the administration of parole in one section of the country. They could become more familiar with the institutional programs, the community resources, and the individual cases of prisoners within their region.

Two: A system of administrative appeals would be established. A system of appeals to a National Appeals Board provides not only that parole will be administered equitably across the United States under a regionalized structure, it would also provide an administrative remedy which is available to prison inmates in lieu of the flood of prisoner suits and petitions which hampers the work of our courts.

Three: The inmate will know his chances for being granted parole. Prison inmates who have little idea as to where they stand in the parole system have the opportunity to escape from reality and raise false hopes. This is a deterrent to realistic planning for the future, for such things as jobs. Under the revised system, the inmate will have guidelines as to the length of sentence he can expect to serve, based on his offense and personal situation. He will be given reasons when parole is denied. These are important factors in encouraging prison inmates to take greater responsibility for their own plans and their own behavior.

Four: Parole would have the appearance of fairness. The individuals who are eligible for parole would be given access to the background information which the Parole Board uses in making its decision, providing this information would not place any other person in jeopardy. The individual is also able to select a friend or member of his family to assist him in preparing for his session with the Parole Board. He might select a person such as his wife, his minister, another member of his family, or a prospective employer. This, together with the appeals system, will give parole an appearance of fairness and rationality to the inmates, which will go a long ways toward reducing tensions within the prison institutions.

I would like to take a moment before we begin, if I may, to express my appreciation to our witness this morning for the work which he has contributed to this legislation. He has been for many years a professional in the files of corrections and has contributed generously of his knowledge and experience in the development of this legislation.

If there is no objection, I ask that the committee print amendment in the nature of a substitute to S. 1463 be placed at this point in the record.

[The committee print follows:]

[S. 1463, 93d Cong., 2d sess.]

AMENDMENT Intended to be proposed by Mr. _____ to S. 1463, a bill to amend title 18, United States Code, relating to parole, and for other purposes, viz: Strike out all after the enacting clause, and insert in lieu thereof the following: That this Act may be cited as the Parole Commission Act".

Sec. 2. Chapter 311 of title 18, United States Code is amended to read as follows:

"Chapter 311—Parole

"Sec.

"4201. Definitions.

"4202. Parole Commission created.

"4203. Powers and duties of the Chairman.

"4204. Persons eligible.

"4205. Release on parole.

"4206. Conditions of parole.

"4207. Parole interview procedures.

"4208. Aliens.

"4209. Retaking parole violator under warrant.

"4210. Officer executing warrant to retake parole violator.

"4211. Parole modification and revocation.

"4212. Appeals.

"421. Applicability of Administrative Procedure Act.

"421. Young adult offenders.

"421. Warrants to retake Canal Zone parole violators.

"§ 4201. Definitions

"As used in this chapter—

"(1) 'Commission' means the United States Parole Commission;

"(2) 'Commissioner' means any member of the United States Parole Commission;

"(3) 'Director' means the Director of the Bureau of Prisons;

"(4) 'eligible person' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;

"(5) 'parolee' means any eligible person who has been released on parole or deemed as if released on parole under section 4164 of this title; and

"(6) 'rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 553 of title 5, United States Code.

"§ 4202. Parole Commission created

"(a) There is hereby established as an independent agency of the Department of Justice a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. The Attorney General shall designate from among the Commissioners one to serve as Chairman. The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of any member such member shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

"(b) The Commission shall meet at least quarterly, and by majority vote shall—

"(1) promulgate rules and regulations establishing guidelines for parole release decisions and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

"(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five;

"(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

Each Commissioner shall have equal responsibility and authority in all such decisions and actions, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote. A record of the final vote of each Commissioner on any action pursuant to this subsection shall be maintained and made available for public inspection.

"(c) The Commission shall, under rules and regulations promulgated under this chapter, have the power to—

"(1) grant or deny any application or recommendation to parole any eligible person;

"(2) impose reasonable conditions on any order granting parole;

"(3) modify or revoke any order paroling any eligible person;

"(4) establish the maximum length of time which any person whose parole or parole discharge has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense; and where such revocation is based upon a subsequent conviction of the parolee under any Federal or State law for an offense committed subsequent to his release on parole, the Commission shall determine whether all or any part of such sentence imposed for such subsequent offense shall run concurrently or consecutively with the unexpired term being served at time of such parole;

"(5) accept voluntary and uncompensated services; and

"(6) utilize, on a cost-reimbursable basis, the services of officers and/or employees of the executive or judicial branches of Federal or State government, for the purpose of carrying out the provisions of section 4209 of this chapter.

"(d) The Commission, pursuant to rules and regulations, may delegate to any Commissioner or panel of hearing examiners all or any of its powers it may deem appropriate except such powers enumerated in subsection (b) of this section and section 4212. Decisions of any panel of hearing examiners shall be based upon concurrence of not less than two members of such panel.

"§ 4203. Powers and duties of the Chairman

"The Chairman shall—

"(1) convene and preside at meetings of the Commission pursuant to section 4202(b) and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission;

"(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

"(4) designate three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as "Vice Chairman, and designate, for each such region established pursuant to section 4202(b) (2), one Commissioner to serve as regional commissioner in each such region;

"(5) direct the preparation of requests for appropriations and the use and expenditure of funds;

"(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

"(7) provide for research and training including, but not limited to—

"(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) publishing data concerning the parole process and parolees; and

"(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process; and

"(8) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter.

"§ 4204. Persons eligible

"(a) An eligible person, other than a juvenile delinquent or committed youth offender, wherever confined and serving a definite term or terms of more than one year, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence in excess of forty-five years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may, for purposes of study, commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law. The results of such study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, shall be furnished to the court within sixty days, or such additional period as the court may grant. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title; or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(d) Any person sentenced to imprisonment for a term or terms of one year or less, who after one hundred and eighty days has not served his term or terms less good time deductions, shall be released as if on parole, notwithstanding the provisions of section 4164 of this title, unless the court, which imposed sentence, shall, at the time of sentencing find that such release is not in accord with the ends of justice and the best interests of the public and sets another time for such release. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

"(e) Upon notice to the attorney for the Government, the court which imposed sentence shall have jurisdiction, upon motion of the Director (concurrent in by the Commission), to reduce any minimum term at any time for any meritorious or unusual factor that could not have been reasonably foreseen at the time of sentencing.

"(f) Except to the extent otherwise herein specifically provided, nothing in this section shall be construed to affect or otherwise alter, amend, modify, or repeal any provision of law relating to eligibility for release on parole, or any other provision of law which empowers the court to suspend the imposition or execution of any sentence, to place any person on probation, or to correct, reduce, or otherwise modify any sentence.

"§ 4205. Release on parole

"(a) If it appears from a report or recommendation by the proper institution officers or upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"(b) Upon commitment of any person sentenced to imprisonment under any law for a definite term or terms of more than one year, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the eligible person's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. Such report and recommendations shall be made not less than ninety days prior to the date upon which such person becomes eligible for parole, except where such person may become eligible for parole less than one hundred and twenty days following commitment the Director shall have not less than thirty days to make such report and recommendations.

"(c) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau or agency, concerning any eligible person or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

"§ 4206. Conditions of parole

"(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

"(b) In every case, the Commission shall impose as a condition of parole that the parolee not commit any criminal offense during his parole. In imposing any other conditions or conditions of parole the Commission shall consider the following:

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions may provide for such deprivations of liberty as are reasonably necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

Upon release on parole, a parolee shall be given a certificate setting forth the conditions of such parole.

"(c) An order of parole or release as if on parole may as a condition of such order require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release. A person residing in a community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate;

"(2) a parolee, who is an addict within the meaning of section 4251(a) of title 18, United States Code, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 of title 18, United States Code, for all or part of the period of parole.

"(d) The Commission may discharge any parolee from parole supervision or release him from one or more conditions of parole at any time after release on parole. In addition, the Commission shall—

"(1) review, at least annually, the status of any parolee who has had two years of continuous parole supervision, to determine the need for continued parole supervision; and

"(2) discharge from parole supervision any parolee who has had five years of continuous parole supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will either engage in conduct violating any criminal law or would jeopardize the public welfare. In any case in which parole supervision is continued pursuant to this subpart, the parolee may request a hearing annually and shall receive a hearing at least biennially for the purpose of determining need for further parole supervision. Any hearing held pursuant to this subpart shall be in accordance with the procedures set out in section 4209 (b) (2) at a time and location determined by the Commission.

Any order of discharge pursuant to this subsection may be revoked by the Commission, in accordance with the procedures set out in section 4209(c) (3), provided that such person so discharged has been convicted of an offense subsequent to discharge and sentenced to a term or terms of imprisonment of more than one year. In the case of any person whose parole discharge is revoked, the Commission may take any action permitted under section 4211.

"§ 4207. Parole interview procedures

"(a) Any person eligible for parole shall promptly be given a parole interview and such additional parole interviews as the Commission deems necessary, but in no case shall there be less than one additional parole interview every two years, except that an eligible person may waive any interview.

"(b) Any interview of an eligible person by the Commission in connection with the consideration of a parole application or recommendation shall be conducted in accordance with the following procedure—

"(1) an eligible person shall be given written notice of the time and place of such interview; and

"(2) an eligible person shall be allowed to select an advocate to aid him in such interview. The advocate may be any person who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

"(c) Following notification that a parole interview is pending, an eligible person shall have reasonable access to progress reports and such other materials as are prepared by and for the use of the Commission in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would, in the opinion of the prison administration, lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained on the basis of a pledge of confidentiality made by or in behalf of a public official in the performance of his official duties if such official has substan-

tial reason to believe that such information would place any person in jeopardy of life or limb,

"(3) any other information that would place any person in jeopardy of life or limb, or

"(4) any part of any presentence report, except upon agreement of the court having jurisdiction to impose sentence.

If any document is deemed by either the Commission or the prison administration to fall within the exclusionary provisions of subparts 1, 2, or 3 of this subsection, then it shall become the duty of such Commission or administration, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

"(d) A full and complete record of every interview shall be retained by the Commission. For good cause shown, the Commission may make a transcript of such record available to any eligible person.

"(e) Not later than fifteen working days after the date of the interview, the Commission shall notify the eligible person in writing of its determination. In any case in which parole release is denied or parole conditions are imposed other than those commonly imposed, the Commission shall include a narrative of the reasons for such determination, and if possible a personal conference to explain such reasons shall be held between the eligible person and the Commissioners or examiners conducting the interview.

"§ 4208. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

"§ 4209. Retaking parole violator under warrant

"(a) A warrant for the taking of any person who is alleged to have violated his parole may be issued by the Commission within the maximum term or terms for which such person was sentenced.

"(b) (1) Except as provided in subsection (c), any alleged parole violator retaken upon a warrant under this section shall be accorded the opportunity to have—

(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, as promptly as possible after such arrest, to determine if there is probable cause or reasonable grounds to believe that he has violated a condition of his parole; a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee;

"(B) upon a finding of probable cause or reasonable grounds under subpart (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause or reasonable grounds, except that a revocation hearing may be held at the time and place set for the preliminary hearing.

"(2) Hearings held pursuant to subpart (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, date, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of title 18, United States Code; and

"(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, except in those cases wherein it is determined by the Commission that there is substantial risk of harm to any person who would so testify or otherwise be identified, or that the rights of any party in any pending criminal prosecution would be jeopardized. Pursuant to subpart (2) (D), the Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the

judicial district in which such parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person resides, carries on business, or may be found.

"(c) (1) Any parolee convicted under any State or Federal law for an offense committed subsequent to his release on parole and sentenced to a term or terms of imprisonment of more than ninety days who has a detainer for a warrant issued under this section placed against him shall receive an institutional revocation hearing within ninety days of such placement, except that such period may be extended for not to exceed an additional sixty days if such parolee is imprisoned in other than a Federal institution.

"(2) Any alleged parole violator, who waives his right to any hearing under subsection (b), shall receive an institutional revocation hearing within ninety days of the date of retaking.

"(3) Hearings held pursuant to subparts (1) and (2) of this subsection shall be conducted by the Commission. The alleged parole violator shall have notice of such hearing and be allowed to appear and testify on his own behalf, and to select an advocate, in accordance with the procedures of section 4207(b) (2), to aid him in such appearance.

"(d) Following any revocation hearing held pursuant to this section, the Commission may dismiss the warrant or take any action provided under section 4211: *Provided, however,* That in any case in which parole is modified or revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for such action, a copy of which shall be given to the parolee.

"(e) The Commission, under rules and regulations, may delegate authority to conduct hearings held pursuant to this section to any officer and/or employee of the executive or judicial branches of Federal or State Government.

"§ 4210. Officer executing warrant to retake parole violator

"Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General.

"§ 4211. Parole modification and revocation

"When a warrant has been executed pursuant to section 4209, and such warrant is not dismissed, the decision of the Commission may include—

- "(1) a reprimand;
- "(2) an alteration of parole conditions;
- "(3) referral to a residential community treatment center for all or part of the remainder of the original sentence;
- "(4) formal revocation of parole or release as if on parole pursuant to this title; or
- "(5) any other action deemed necessary for successful rehabilitation of the violator, or which promotes the ends of justice.

The Commission may take any action pursuant to this section as it deems appropriate taking into consideration whether or not the parolee has been convicted of a criminal offense subsequent to his release on parole or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

"§ 4212. Appeals

"(a) Whenever parole release is denied under section 4205, parole conditions are imposed other than those commonly imposed or parole discharge is denied or revoked under section 4206, or parole is modified or revoked under section 4211, the individual to whom any such decision applies may appeal such decision by submitting a written notice of appeal to the regional commissioner not later than thirty days following the date on which such decision is rendered. The regional

commissioner shall decide the appeal within sixty days after receipt of the appellant's appeal papers and shall inform the appellant in writing of the decision and the reasons therefor.

"(b) Any decision made pursuant to subsection (a) of this section, which is adverse to the appellant, may be appealed by such appellant to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered. Such appeal shall be decided by a majority vote of the three Commissioners on the National Appeals Board within sixty days after receipt of the appellant's papers.

"(c) The rules and regulations of the Commission shall provide that:

"(1) any regional commissioner may review any decision of any panel of hearing examiners assigned to his region;

"(2) the National Appeals Board may review any decision of any regional commissioner; and

"(3) in any case in which original jurisdiction is retained by the Commission, the initial decision shall be made by a panel of five commissioners. The decision of such panel shall be final except that, upon motion of any member of such panel, all nine members of the Commission shall make final review of such decision.

"(d) Except as provided in subsection (c) (3) of this section, no Commissioner shall consider any appeal made pursuant to this section if he participated in making such decision either initially or on appeal.

"§ 4213. Applicability of the Administrative Procedure Act

"(a) For the purposes of section 4201(6) of this chapter, section 553(b) (3) (A) of title 5, relating to rulemaking, shall be deemed not to include the phrase 'general statements of policy'.

"(b) Except as otherwise provided in this chapter, the provisions of sections 551 through 559 and sections 701 through 706 of title 5, United States Code, shall not apply to the making of any order, notice, or decision made pursuant to this chapter or any other law."

Sec. 3. Sections 4209 and 4210 of title 18, United States Code, are renumbered to appear as sections 4214 and 4215 of such title.

Sec. 4. Section 5002 of title 18, United States Code, is repealed.

Sec. 5. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. Youth correction decisions

"The Commission and, where appropriate, its authorized representative as provided in sections 4202(d) and 4209(d) of this title, may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

Sec. 6. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Parole Commission;

"(b) 'Bureau' means the Bureau of Prisons;

"(c) 'Director' means the Director of the Bureau of Prisons;

"(d) 'Youth offender' means a person under the age of twenty-two years at the time of conviction;

"(e) 'committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(f) 'treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

Sec. 7. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

Sec. 8, Section 5014 of title 18, United States Code, is amended to read as follows:

"§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

Sec. 9, Section 5017(a) of title 18, United States Code, is amended to read as follows:

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

Sec. 10, Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

Sec. 11, Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission".

Sec. 12, The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

- "Sec.
- "5005. Youth correction decisions.
- "5006. Definitions.
- "5010. Sentence.
- "5011. Treatment.
- "5012. Certificate as to availability of facilities.
- "5013. Provision of facilities.
- "5014. Classification studies and reports.
- "5015. Powers of Director as to placement of youth offenders.
- "5017. Release of youth offenders.
- "5018. Revocation of Commission orders.
- "5019. Supervision of released youth offenders.
- "5020. Apprehension for released offenders.
- "5021. Certificate setting aside conviction.
- "5022. Applicable date.
- "5023. Relationship to Probation and Juvenile Delinquency Acts.
- "5024. Where applicable.
- "5025. Applicability to the District of Columbia.
- "5026. Parole of other offenders not affected."

Sec. 13, Section 5037 of title 18, United States Code, is amended to read as follows:

"§ 5037. Parole

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the United States Parole Com-

mission deems proper if it shall appear to the satisfaction of such Commission that the juvenile has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

Sec. 14, Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the expiration of the one-year period following the date of the enactment of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

Sec. 15, The parole of any person sentenced before June 20, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

Sec. 16, Section 5108(c) (7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons;"

Sec. 17, There is hereby authorized to be appropriated such sums as are necessary to carry out the purpose of the amendments made by this Act.

Sec. 18, (a) The foregoing amendments made by this Act shall take effect upon the expiration of the ninety-day period following the date of the enactment of this Act.

(b) Upon the effective date of the amendments made by this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provisions of applicable law, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following such effective date.

SECTION BY SECTION ANALYSIS OF S. 1463

Sec. 1. Short title—The Parole Commission Act.

Sec. 2, Chapter 311 of title 18, United States Code, is amended to read as follows:

§ 4201. Definitions

As used in this chapter—

(1) 'Commission' means the U.S. Parole Commission created by this Act.

(2) 'Commissioner' is any one of the nine members of the U.S. Parole Commission.

(3) 'Director' means the Director of the Bureau of Prisons.

(4) 'Eligible person' means any Federal prisoner in the custody of the Attorney General who is by law eligible for parole, including any individual whose parole has been previously revoked.

(5) 'Parolee' means any eligible person who has been released on parole or deemed to have been released on parole under sections 4164 and 4204(d) of title 18, U.S. Code, which provide for release as if on parole.

(6) 'Rules and regulations' means the rules and regulations made by the Commission; notice is required in the Federal Register and interested parties shall have an opportunity to comment.

§ 4202.

(a) Establishes a nine member U.S. Parole Commission as an independent agency of the Department of Justice. The Commission is attached to the Department for administrative reasons but its decision making machinery is independent so as to guard against influence in case decisions. Commissioners serve a term of six years under Presidential appointment, by and with the advice and consent of the Senate; the Chairman is appointed by the Attorney General. The terms are staggered with the Commission members continuing to serve until

their successors have been qualified. The rate of pay for a member of the Commission shall be the highest step of G.S. level 17.

(b) All nine members of the Parole Commission will meet periodically as a policy making group to: (1) establish procedural rules and guidelines for parole determinations so that the administration of parole throughout the Federal system will be uniform; (2) set boundaries for the nation's five parole regions to insure equal distribution of the parole workload; and (3) act upon budget recommendations, which will be separate from other agencies of the Department of Justice.

Each Commissioner shall have an equal voice in these policy making functions and the policies established will be published in the Federal Register. Records of the final vote of the Commissioners on these policy making actions will also be available for public inspection. This publication requirement will not apply to votes by the Commission or any member thereof on individual parole decisions.

(c) The Commission has authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner would be released on parole; (3) modify or revoke the parole of any individual who violated the conditions of his release; (4) decide on the period of reimprisonment for any individual whose parole or parole discharge has been revoked, except that the length of such reimprisonment together with the time served for the offense before parole was granted cannot be longer than the maximum length of the sentence; where such revocation is based on a conviction for a new crime the Commission may also determine whether all or any part of the remaining Federal time shall run concurrently or consecutively with the new sentence; (5) accept voluntary and uncompensated services of volunteers who assist in counseling and supervision of individuals who have been released on parole; and (6) utilize, on a cost re-imbursable basis, Federal or State officials for certain parole revocation proceedings.

(d) Establishes the framework under which the powers of the Commission may be exercised by individual Commissioners or panels of hearing examiners within the regulations and statements of policy adopted by the Commission with the following exceptions: policy making responsibilities of the full Commission may not be delegated and decisions on review or appeal of Commission actions on individual parole decisions are reserved for the Commission members with the initial decisions by Regional Commissioners and final decisions by a panel of three Commissioners sitting as a National Appeals Board.

§ 4203.

The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon by his own request or that of any Commissioners; (2) make all personnel decisions; (3) delegate work among the Commissioners and the various units and employees of the Commission; (4) designate three Commissioners to serve on a National Appellate Board, one of which will also serve as Vice Chairman, and designate one Commissioner to serve in each of the parole regions as Regional Commissioner; (5) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (6) serve as spokesman for the Commission and make reports to the Congress, the courts, and the Attorney General; (7) provide for a research and training component in the Commission which will provide studies and information to the public and private agencies concerning the parole process; and (8) perform other necessary duties.

§ 4204.

(a) Sets out the statutory basis for eligibility for parole of all Federal prisoners except for those sentenced under some special sentencing statute. A Federal prisoner is eligible for parole after serving one-third of his maximum term or after serving fifteen years and there is no change in this from present language of title 18.

(b) Reenacts the existing provisions of law which enables the court to: (1) direct that the prisoner be eligible for parole at any time up to one-third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) Amends existing provisions of law which give the judge an opportunity to request that the Bureau of Prisons conduct a study of the individual by reducing the time period allowed for such study from 90 to 60 days.

(d) This subsection reenacts in part and amends in part the present law on eligibility for parole of offenders with maximum sentences of one year or less. For individuals whose maximum term or terms is six months or less, there is no change from present law, under which the sentencing judge may set any release date, including a split sentence under 18 U.S.C. 3651, of up to six months incarceration and five years probation. For individuals sentenced to a maximum term or terms of more than six months, but not more than one year, the sentencing judge sets the date for release of the offender as if on parole, except if the judge sets no release date, the individual would be released after having served six months. Present law concerning good time reductions and surrender of prisoners to other authorities is unchanged.

(e) This subsection provides a means by which the minimum term of any Federal prisoner may be reduced for appropriate reasons, making the individual eligible for parole consideration. A motion, to reduce any minimum term must be concurred in by the Commission and by the Director of the Bureau of Prisons. The court which imposed sentence would have jurisdiction to consider any such motion and the appropriate U.S. Attorney would have an opportunity to resist such motion. A meritorious or unusual factor that could not have been reasonably foreseen at the time of sentencing would include any situation which could not have normally been considered at the time of sentencing, such as the development of some severe health problem or an extraordinary change in the inmate's behavior or family situation.

(f) Present law and practice relating to existing powers of the sentencing court and certain special provisions relating to eligibility for parole are carefully preserved.

§ 4205.

(a) Restates the present statutory criteria utilized by the Federal parole authorities in making their decision as to whether or not to grant parole. To achieve parole, an individual who is eligible for parole must have substantially observed the rules of the institution in which he is confined, there must be a reasonable probability that he will not violate the law on release, and the Commission must decide that his release is compatible with the general welfare of society.

(b) When an individual is about to become eligible for consideration for parole, the Bureau of Prisons prepares a progress report which includes a summary of his criminal and social background, his mental and physical health, his behavior in the institution and his participation in institution programs. The Commission is authorized to make such other investigations as it may deem appropriate.

(c) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies will furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

§ 4206.

(a) An individual released on parole remains in the legal custody of the Attorney General but time spent on parole is not automatically credited toward service of the maximum sentence.

(b) Every parolee shall have as a parole condition that he cannot commit any criminal offense during his parole. In imposing any other condition or conditions of parole the Commission shall consider the following guidelines: (1) there should be a reasonable relationship between the standards of behavior required and the individual circumstances; (2) deprivations of liberty which are necessary for the protection of the public welfare may be imposed; (3) the conditions must be specific and not vague so that they can serve as a guide to behavior. In addition, the parolee is given a statement of his conditions.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center of an addict treatment program.

(d) Sets up an orderly procedure under which the Commission may suspend parole supervision of parolees who no longer need it. (1) Systematic evaluation for parole discharge begins after an individual has been under parole supervision for two years, but discharge remains entirely in the discretion of the Commission. (2) After five years an individual shall receive a hearing to decide whether or

not such supervision shall be terminated. Similar consideration will be accorded at least every two years thereafter.

An individual discharged from supervision under this subsection will be returned either to supervision status or to serve the remainder of his term in prison if, subsequent to his discharge, he is convicted of an offense and sentenced to more than one year in prison. Parole discharge under this section is not the same as unconditional discharge provided for youth offenders under the Federal Youth Corrections Act, Chapter 402 of title 18, United States Code. The Youth Act provides a procedure for certain conditionally released youth offenders who achieve the status of unconditional discharge within a specific time period to earn a set aside of their conviction.

§ 4207.

(a) Once an individual becomes eligible for parole he is entitled to a hearing and additional rehearings at least once every two years except he can waive any such hearing.

(b) When a Commissioner or panel of hearing examiners conducts an interview of any individual who is eligible for parole, that individual will receive written notice of the time of the interview and will be allowed to select an advocate to assist him both before and during the interview. The Commission is authorized to promulgate rules and regulations as to who an advocate may be. "Advocate" is a term of art in the corrections field and includes such persons as members of the immediate family, common-law relationships included, other relatives, friends, ministers or prospective employers. The phrase, "Such rules shall not exclude attorneys as a class," means that inmates may utilize retained counsel as advocates but that any other provisions for legal assistance is within the discretion of the Commission. See, for example, *Kessler v. Cupp*, 3 Prison L. Rptr. 14 (Ore. 1973) Fn. 5.

(c) An eligible Federal prisoner shall have reasonable access to certain documents which are utilized by the Commission to determine parole eligibility. However four categories of documents may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption in his program of rehabilitation; (2) documents which contain information obtained on the basis of a pledge of confidentiality by or on behalf of any public official who has substantial reason to believe that revealing the information would jeopardize the life or limb of any person; (3) any other information which if revealed would jeopardize the life or limb of any person; or (4) presentence reports prepared for the sentencing judge, unless the court agrees to release of the information. The Commission and the Bureau of Prisons would be responsible for preparing summaries of documents excluded under subparts (1), (2) or (3) of this subsection.

(d) The Commission is required to retain a record of all parole interviews. Where an individual is denied parole or granted parole under conditions other than those commonly imposed, he can obtain a copy of the transcript of the interview record if he can demonstrate to the satisfaction of the Commission that it is necessary for purposes of administrative appeal. However, in any case in which the Commission has transcribed the interview record for the purposes of any appellate determination, the inmate, if he so requests, should be provided with a copy of such transcript.

(e) The Commission has 15 working days in which to notify the individual in writing of the initial parole decision. Individuals denied parole or granted parole under conditions other than those commonly imposed will receive a written statement which spells out clearly the reasons for this adverse action. Congress does not wish to tie the hands of the Parole Commission by specifying a particular format for such statement of reasons. However, while a formal judicial fact-finding is not required, the inmate must receive an understandable explanation of his parole status. For example, under the recently published rules of the U.S. Board of Parole, 38 CFR 184 (Sept. 24, 1974), the Board utilizes a set of guidelines for parole release determinations. This subsection would operate in the following manner in relation to such a guideline system. When a prisoner is not within the guidelines and is subsequently denied parole, he should receive a statement explaining how such a determination utilizing the guidelines was reached. When a prisoner is eligible for parole under the guidelines but is denied parole he shall receive a specific explanation of the factors which cause them to reach a determination outside the guidelines.

The phrase, "parole conditions other than those commonly imposed", refers to any condition imposed by the Commission on any order of parole release

which the individual wishes to contest on the grounds that such a deprivation of liberty is unwarranted. Typically imposed proscriptions relating to violations of law, use of narcotics, excessive use of alcohol, etc., would not fit this category.

§ 4208.

Existing law with respect to delivery of convicted aliens for deportation is recodified under a new section number.

§ 4209.

This section, with certain modifications, codifies the recent Supreme Court decision, *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973), relating to the revocation of parole under circumstances in which there may be a need to ascertain facts concerning an alleged violation of the conditions of such release on parole.

(a) Provides for issuing a warrant for the arrest of a parolee alleged to have violated a condition of parole before the expiration of his maximum sentence

(b) (1) This subsection provides revocation procedures for any alleged parole violator who wishes to contest the revocation and whose revocation is not based on a conviction for a new offense for which he was sentenced to more than 3 months of imprisonment. (A) Such parolee is entitled to an immediate hearing, near where the violation is alleged to have occurred or where the parolee was arrested, to determine if there is probable cause or reasonable grounds to believe that he has violated his parole conditions. The Commission shall make a written summary of the hearing which states the reasons for the decision and the factors considered in the hearing. (B) Upon a finding of probable cause or reasonable grounds under subpart (A) of this subsection, the alleged parole violator is entitled to a revocation hearing which also takes place reasonably near the place where the alleged violation occurred or where the parolee was arrested. In the words of Chief Justice Burger, "this hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation." 471 U.S. 488 (1972). While the revocation hearing must be held within sixty days of the preliminary hearing held pursuant to subpart (A), it may be held at the same time.

(2) In any hearing held pursuant to subpart (1) (A) or (B) of this subsection, the alleged parole violator is entitled to the following procedures: (A) notice of the violations of parole and the time, place, date and purposes of the scheduled hearings; (B) the right to appear and testify and to present witnesses and documentary evidence on his own behalf; (C) the right to be represented by retained counsel or if he is unable to retain counsel, counsel may be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006 (A) and (D)) the right to be apprised of evidence against him and the qualified right to confront and cross-examine adverse witnesses. Under subpart 2(D), an inmate who so requests, may confront and cross-examine adverse witnesses unless the hearing officer designated by the Commission makes a determination that there is either a substantial risk of harm to any person or that the rights of any person in a pending criminal prosecution would be endangered. This determination requires the hearing officer to balance the parolee's need to confront his accusers in view of the particular facts and circumstances of his case against the probability and severity of either the risk of harm to the informant or the danger that the rights of someone in any pending criminal prosecution would be jeopardized. The Commission, where appropriate, may subpoena adverse witnesses pursuant to subpart 2(D) of this subsection.

(c) (1) Whenever a parolee, who has been convicted of a new crime committed while on parole and sentenced to a term of imprisonment of more than 90 days in any Federal, State or local correctional institution, has a detainer for a parole warrant issued under this section lodged against him at such institution, he shall receive an institutional revocation hearing within 90 days of the placement of such detainer. In recognition of potential administrative problems, if the parolee is serving the new sentence in a State or local institution, an additional 60 days extension is provided.

(2) Any alleged parole violator, who waives any of his hearing rights under subsection (b), shall receive an institutional revocation hearing within 90 days of recommitment.

(3) Hearings held under this subsection shall be conducted by the Commission. The alleged parole violator will have notice of the hearing and be allowed to appear and testify in his own behalf and to select an advocate as provided in section 4207(b) (2), to aid him in his appearance.

(d) The Commission, after any revocation hearing held under this section, may dismiss the warrant or take any other action which it deems appropriate in accordance with the provisions of section 4211 of this chapter. However, in any case in which parole is modified or revoked pursuant to a hearing under this section, the Commission shall provide a written summary of the hearing which states the reasons for the adverse action and indicates the evidence considered and relied upon. It is important to remember that this is not a formal judicial determination. In *Morrissey* the Court observed, "no interest would be served by formalism in this process; informality will not lessen the utility of this inquiry in reducing the risk of error." 408 U.S.C. 487 (1972). The alleged violator shall receive a copy of this document.

(e) To facilitate speedy parole revocation determinations, the Commission may delegate authority to State or Federal officials to conduct hearings pursuant to this section. The Commission would promulgate regulations setting out appropriate categories of government officials to be used in this capacity such as U.S. magistrates, administrative law judges, and officials of State parole authorities, etc.

§ 4210.

Existing law with respect to the enumeration of individuals entitled to serve parole revocation warrants is recodified under a new section number.

§ 4211

If the parole revocation warrant is not dismissed, the range of possible responses by the Commission to a parolee who has been found to have violated the conditions of his parole include: (1) a reprimand; (2) an alteration of parole conditions; (3) referral to a half-way house or other residential facility for all or part of the remainder of the original sentence; (4) formal revocation of parole or release as if on parole; (5) any other action deemed necessary for the purposes of successful rehabilitation of the parole violator, or which promotes the ends of justice.

In taking any action under this section, the Commission shall take into consideration whether or not the parolee has been convicted of a new criminal offense or whether such action is warranted by either the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4212.

(a) Initial decisions involving a grant or denial of parole, modification or revocation of parole, or denial or revocation of parole discharge, are made by a panel of hearing examiners except under special circumstances in which the Commission or any Commissioner retains original jurisdiction. The eligible person or parolee adversely affected by these decisions is entitled to appeal the decision within 30 days to one member of the Commission who will be the Regional Commissioner assigned to the region in which this adverse decision is made. The Regional Commissioner, subject to rules and regulations, will then have 60 days to act upon the appeal and shall notify the appellant in writing of the decision and reasons therefor.

(b) If the decision is affirmed by the Regional Commissioner, the appellant, within 30 days, may take his case to the three member national appeals board. This final administrative appeal will be decided by the majority vote of the three members of the National Appeals Board within 60 days.

(c) Under subpart (1), in accordance with rules and regulations promulgated by the Commission, Regional Commissioners may review decisions made by panels of hearing examiners in their regions. Subpart (2) sets out the review procedure for parole determinations in which original jurisdiction is retained by the Commission.

(d) No Commissioner shall act upon any appeal to the National Appeals Board if he has previously taken part in the parole decision involved.

§ 4213.

(a) Provides that the rule making procedures of section 553 of title 5, U.S. Code, apply to any general statements and policies issued by the United States Parole Commission.

(b) Except where this statute provides for the application of section 553 of

title 5, United States Code, the provisions of the Administrative Procedure Act shall not apply to the making of any order, notice, or decision of the United States Parole Commission.

Sec. 3. Section 4209, relating to the application of the Federal Youth Corrections Act, and Section 4210, relating to Canal Zone warrants, are reenacted under new section numbers.

Sec. 4. Section 5002 of title 18, United States Code, is repealed.

Sec. 5. Section 5005 of title 18, United States Code, is amended to make procedures for consideration of individuals sentenced under the Youth Corrections Act an integral part of the Commission's responsibilities. Decisions regarding parole of youthful offenders will be made in the manner prescribed for all other eligible offenders, with the exception of certain provisions relating to unconditional discharge of youth offenders.

Sec. 6. Section 5006 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 7. Sections 5007, 5008, 5009 of title 17, U.S. Code, which conflict with the provisions of Chapter 311 of title 18, relating to the organization and operation of the U.S. Parole Commission, are repealed.

Sec. 8. Section 5014 of title 18, United States Code, is amended to provide that parole interviews for youth offenders are conducted in the same manner as prescribed for other eligible offenders.

Sec. 9. Section 5017(a) of title 18, United States Code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 10. Section 5020 of title 18, United States Code, is amended to provide that parole revocations for youth offenders are conducted in the same manner as prescribed for other parolees.

Sec. 11. Chapter 402 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 12. Amends the Table of Section of Chapter 402 of title 18, United States Code.

Sec. 13. Section 5037 of title 18, United States code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 14. This section provides that wherever the term United States Parole Board is used in any law it shall be replaced with the term U.S. Parole Commission.

Sec. 15. Protects the eligibility of the one prisoner remaining in the Federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

Sec. 16. Section 5108(e) (7) of title 5, United States Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of Section 4202(a) of title 18, United States Code.

Sec. 17. Authorized the appropriation of such sums as are necessary to carry out the purposes of this Act.

Sec. 18. (a) This legislation would take effect ninety days following enactment.

(b) All members of the Board of Parole on the effective date of this legislation would become Commissioners, entitled to serve for the remainder of the terms for which they were appointed as members of the Board of Parole.

(c) All powers, duties and functions of the Board of Parole would be transferred to the U.S. Parole Commission on or after the effective date. The U.S. Parole Commission may make such transitional rules as are necessary for a period of one year following the effective date.

Senator BURDICK. Mr. Sigler, we are happy to have you again this morning and you may proceed.

STATEMENT OF MAURICE H. SIGLER, CHAIRMAN, BOARD OF PAROLE

Mr. SIGLER. Thank you.

Mr. Chairman, I have a rather short prepared statement and I thank you for this opportunity to appear before you once more on the subject of S. 1463, the proposed "Parole Commission Act of 1974."

We appreciate the continued interest of this subcommittee in parole procedures, and in the efforts of the U.S. Board of Parole.

It is evident, Mr. Chairman, from our discussions in the past, that we seek the same objectives—the most effective and efficient means of administering a program of parole in our criminal justice system. Earlier hearings on S. 1463, and our conversations with your staff, have also made it evident that we are in agreement as to many of the changes which have been needed in this area.

As you know, in the past it was our position that administrative changes are legally acceptable and preferable for the flexibility which they afford. However, the major substantive provisions of S. 1463, as recently redrafted, are not objectionable to us. A number of the provisions are already incorporated in our procedures—some under the recent reorganization of the Board, which was anticipated when I met with you in June of last year, and others through our response to either judicial decisions or to our experience over the years.

Turning now to the provisions of S. 1463, as we have testified before, and as we have demonstrated through our Board reorganization, we endorse the concept of regionalization. The concepts of appeal and the granting of the opportunity to the parolee to have representation contained in the legislation are concepts incorporated in current Board procedure.

The subject of informing a prisoner of the reasons for denial of parole has been one of much discussion over the past years both in this country and others. The rules and regulations of the Board provide that reasons for any parole denial shall be given to prisoners, in writing, following initial hearings. We are continuously striving to develop means whereby the reasons given for denial will be constructive as well as informative.

As in the past, however, we object to a statutory requirement that reasons always be given in narrative form. This manner of informing an inmate is not always more informative and would be a tremendous task considering the caseload of the Board.

The instant bill would require that the reasons for denial be provided the prisoner within 15 days after the interview. This would merely codify present practice.

Section 4207(c) of S. 1463 presently provides that a prisoner shall have access to progress reports and other materials prepared for use by the Parole Commission in making a release determination. This section purports to provide safeguards for maintaining the confidentiality of those documents which are obtained under a pledge of confidentiality and those whose release could jeopardize the well-being of individuals or disrupt prison administration.

However, the final paragraph of subsection 4207(c) imposes a duty upon the Commission or the prison administration to summarize the basic contents of information excluded from examination by the prisoner. While we can appreciate the reasons for including this provision in the bill, it presents some real difficulties.

First, confidential sources of valuable information could be inhibited by the possibility of any sort of disclosure. Second, summaries of potentially injurious information could be of greater detriment to the inmate than would access to the complete report.

Section 4207(b) (2) provides that an inmate shall be permitted to have an advocate to assist him in parole interviews. We prefer that

the concept of representation, rather than advocacy, be provided, as contained in the present rules and regulations. The use of the term advocate implies an adversary proceeding, which, in our estimation, is neither appropriate for a parole interview, nor do we have the resources to adjudicate the more than 17,000 cases each year on an adversarial basis.

I understand that two provisions of the bill relating to appeals have been changed, which obviates objections in the printed statement.

The progress that has been made in developing this legislation is most gratifying. Again, I'd like to express our appreciation for your interest and your efforts in this area. If we may be further assistance to you or your staff, we are anxious to do so.

Mr. Chairman, that concludes my prepared statement but I would be willing to try to answer any questions you have.

Senator BURDICK. Thank you very much.

The bill provides an inmate denied parole should be given a narrative of the reasons why. What does this language mean to you, and how do you intend to implement it if it becomes law?

Mr. SIGLER. It means just about that. We do have a dictation guide, a notice of action proposal that I will submit to you now for your study if you want that. We think that might do what you believe needs to be done and we think it will do a good job. We would like to have you look at it.

Senator BURDICK. Is it in narrative form?

Mr. SIGLER. Yes, it is in narrative form?

Senator BURDICK. And you think that would work out all right?

Mr. SIGLER. We think it will.

Senator BURDICK. The Bureau of Prisons now prepares summaries of file material in the form of progress reports, which are given to inmates. Is it your position that this practice should be stopped?

Mr. SIGLER. No, sir, it is not my position. I think to be consistent with what I have said here in the past, I would have to say to you I believe that is not my position.

Senator BURDICK. This procedure is going on at the present time?

Mr. SIGLER. The Bureau of Prisons procedure? Yes, it is.

Senator BURDICK. And there are no adverse reactions to it?

Mr. SIGLER. Not any to my knowledge, none.

Senator BURDICK. The bill provides for an advocate—and I notice that is the word you used in your statement—to aid the inmate in the parole interview process. Is the Commission satisfied with this provision, which allows the inmate to have an attorney advocate if he pays the fee but strictly limits any other provision for legal assistance to the discretion of the Commission?

Mr. SIGLER. We certainly are, and that is why we say we believe the word representative is better than advocate. We think the lawyer shouldn't be—well, I guess I should say it this way. We think the lawyers should be allowed to represent the prisoners in the same manner as anyone else but in no other way.

Senator BURDICK. But what?

Mr. SIGLER. But in no other way, I said. We don't think he should be allowed to take an adversary position here, in other words, make his own statement on behalf of the prisoner.

Senator BURDICK. Then you are recommending that we change the advocate to representative?

Mr. SIGLER. That is all.

Senator BURDICK. That is all?

Mr. SIGLER. Yes, sir.

Senator BURDICK. And you think it wouldn't change the process at all?

Mr. SIGLER. Well, that is our feeling. It wouldn't change the process, and we think it might leave the connotation of an adversary hearing out of the legislation.

Mr. MEEKER. Mr. Sigler, if I may interject there?

Senator BURDICK. Yes.

Mr. MEEKER. The term advocate has become a term of art in the field of corrections, and I am looking for a particular recent case in which the advocate was defined by the court. In the case of *Kessler vs. Cupp*, 3 Prison L. Rptr. 14 (Oreg. 1973) F.N. 5 was a case in which the word advocate was defined. This was a prison disciplinary proceeding, but, nonetheless, the language was useful, and the advocate was defined in the same terms in which I believe your parole determination hearings are set.

Wouldn't it be preferable to have a term in the statute with a defined meaning rather than one in which we would have to go back and establish a meaning?

Mr. SIGLER. That is an Oregon case?

Mr. MEEKER. Yes.

Mr. SIGLER. That could very well be true. I am not a lawyer. I just want to be certain that—actually, we just want to be certain, the Board wants to be certain that we don't have any connotation of an adversary hearing being a part of the legislation here. That is our concern, and if the advocate definition—or the court takes care of it, it is no big thing with us.

Senator BURDICK. Mr. Sigler, do you feel that the organizational structure provided in the bill provides a necessary means to get the work accomplished while still preserving opportunities for the entire Board to act on major policy decisions?

Mr. SIGLER. That is the way the Federal Register is set up; yes. There have been some changes made in the authority of the Chairman, and we, although it is not unanimous with our Board, the percentage of the Board in favor of it is very high. And as the CFR points out, we must meet at least four times a year as a full board to establish policy. We see no problem there at all.

Senator BURDICK. The legislature makes no changes in the criteria for parole, which shifts to the sentencing judge the responsibility for the release decision when the maximum sentence is 1 year or less. Do you think this is a good change?

Mr. SIGLER. This was ours, and I would have to say it to you, we have not discussed this. We think this is a good change because we don't think any court sentences one man to 1 year for rehabilitative reasons. We think he is there because the judge thinks he needs to be there maybe for example purposes or for punishment. And most people who get a year don't go there for rehabilitative reasons anyway. They don't need it. And it takes just as much time for the Board of Parole to hear a case that is for a man doing a year as it does for a case for a man that is doing a lot of time, and it presents a lot of problems.

We believe it makes good sense for the courts to tell this man that,

you are going to serve so much time in a year's sentence and the rest in the community without parole intervention whatsoever.

Senator BURDICK. Do you feel the language in the bill which establishes the criteria for parole decisions is workable?

Mr. SIGLER. We think so. We have spent much time on our projects in the last 18 months, and we have made some changes, not too many, but we don't see any problems from the standpoint of workability.

Senator BURDICK. They are practical and not theoretical?

Mr. SIGLER. That is the point. I hope there is nothing theoretical there where decisionmaking is concerned.

Senator BURDICK. This bill would establish in effect two classes of parole revocation cases. In case of a technical violation of parole conditions, the parolee may ask for all of the procedural steps outlined in the *Morrissey* case. If there is a new criminal conviction the hearing is primarily to determine how much time remains to be served.

Do you feel this is a workable procedure and is the Commission going to be able to meet the time deadline for hearings in deciding these cases?

Mr. SIGLER. To answer the last part of your question first, I think that is the only difficulty we have, the time. We may have to come back and ask for more help from the standpoint of examiners later on. I don't think anybody could answer that part of your question.

I think the answer to your other question, the first part of your question, is "Yes." The *Morrissey* case says if a man has not admitted to the violation and if he has not been convicted of a new crime, we must give him a local hearing and there is nothing we can do about that. That is now the law, Senator. And we don't see any problem with the other because it is a matter of, he has gone through the court or he has admitted that he is guilty. So we do think there are two distinctions there to consider and, in fact, *Morrissey* says so.

Senator BURDICK. Well, if we aren't entirely sure about the time deadlines, we are sort of in a dilemma?

Mr. SIGLER. As we said, we are not absolutely sure of that and the amount of help we may need.

Senator BURDICK. Would you be in favor of giving some discretion and latitude there instead of having fixed dates?

Mr. SIGLER. Of course that would be better for us. We have not made any recommendations to change that, but it would be better for us.

Senator BURDICK. I see. Well, maybe we can answer that through trial and error and find out.

Mr. SIGLER. Yes.

Senator BURDICK. The whole theory, of course, behind this is to speed up the decisions.

Mr. SIGLER. And to see that everybody gets a fair shake.

Senator BURDICK. That is right, and everybody knows about it and gets the results.

Mr. SIGLER. But if we have some flexibility, Mr. Chairman, then that obviously would be helpful to us.

Senator BURDICK. Do you feel that you may be able to utilize magistrates, administrative law judges and others experienced in hearing procedures to help you meet the revocation caseload?

Mr. SIGLER. I think we can utilize them, but they don't want to be utilized. I think they would prefer to stay out of this.

Senator BURDICK. The bill provides a means for reduction of minimum sentences to make a prisoner eligible for parole consideration for circumstances that could not be foreseen at time of sentencing. Do you feel this is a necessary safety valve?

Mr. SIGLER. I think this is a good thing because if a parole means anything, one of the things it means is fairness. And an adjustment of that kind, I think would bring about another element of fairness that is not available at this time. So, we would be in favor of that.

Senator BURDICK. The bill provides that parolees who would be under supervision for long periods of time, they could be discharged from supervision. Do you think this is wise?

Mr. SIGLER. I think this is appropriate.

Senator BURDICK. And do you think it is reasonable to place the burden of proving a need for supervision longer than 5 years on the Government?

Mr. SIGLER. I surely do. I think that if a man has been under supervision 5 years, and we decide that we need to keep him there, I think it is up to us to show why he needs to be under supervision.

Senator BURDICK. Mr. Sigler, the prepared statement says only that there is no objection to enactment of this legislation. What is the parole board's feeling about this?

Mr. SIGLER. My personal opinion, it's good and not only do I have no objections, I think it is a good bill.

Senator BURDICK. In other words, you recommend its passage?

Mr. SIGLER. I recommend its passage.

Senator BURDICK. Thank you very much.
Senator?

Senator Cook. You recommend its passage even though on page 3 you do have some question relative to the last paragraph of section 4207(c) relative to the procedures for parole interview? You don't have such a hard way to go, in other words, with that language on a summary of matters and records that you would have any serious objection to that language staying in the bill?

Mr. SIGLER. We think, sir, we have the answer to that right here. And if you don't accept this, why, of course, we will accept yours.

Senator Cook. May I ask what the proposal is that you make?

Senator BURDICK. Would you send that up to the desk and let's all see it? This is what he intends, Senator, as a manner in which he can handle it and handle it well.

Mr. SIGLER. Oh, you are talking about disclosures here now? Senator, you are speaking of disclosure, I see?

Senator Cook. Yes.

Mr. SIGLER. This is a controversial thing.

Senator Cook. Well, the first thing I don't understand is that once a man is in an institution, once his case has been concluded, once all the material has been exhibited to either his benefit or his detriment at the trial of the case, once witnesses have appeared and testified against him, once that record has been made and has been established and once it is a matter of record, now give me, if you can, some particular cases or circumstances under which a summary of a man's record and a summary of even confidential material in that record is so confidential, as

it applies to you and the institution, that someone who either represents the prisoner in question, that is the proposed parolee or the parolee, could not have a summary of that information?

Mr. SIGLER. Well, take the instance of organized crime.

Senator Cook. All right.

Mr. SIGLER. These are violent people and sometimes they talk. Otherwise we don't have a conviction.

Senator BURDICK. Is that going to appear in his prison record?

Mr. SIGLER. Oh, yes. In the presentence interview, yes, it does.

Senator Cook. All right.

Mr. SIGLER. And then you have a domestic situation. And this happens, I am sure you know, frequently that—

Senator Cook. May I interrupt to say this to you, Mr. Chairman? If there is anybody aware of a domestic situation it is the guy that is there, the guy under consideration for parole.

Mr. SIGLER. The point is, we do not want him to kill his wife. Maybe she has put something in there.

Senator Cook. Well, isn't that well within the confines of how you come up with a summary of that information?

Mr. SIGLER. It would be, but I don't know whether everyone we have in our organization is capable of making a summary that would say it in such a way that this could be hidden from the man as far as to the source of the information.

Senator Cook. I just hope in my own mind that is all you want to keep from him.

Mr. SIGLER. I will have to give you my own philosophy, I guess. I don't want to keep anything, Senator. I believe in an open book myself. But I think maybe I have been convinced that there are some dangers here. I have run a prison for many years in the State system and we gave complete disclosure in the State system. I never had anybody killed, but in these Federal cases there are instances where we have organized crime material in the files. And we don't own the files, Senator. The Bureau of Prisons owns the files.

Senator Cook. All I have to tell you is this. If he doesn't have some knowledge when you turn him loose, it is going to take him about 25 or 30 minutes after he gets back home to the neighborhood until he finds out.

Mr. SIGLER. You will find in the Federal judges' opinions that there is a lot of opposition to this. I know this because I have been meeting with these judges for a long time. There are some of these judges who will tell you to give him anything we have, but there are judges violently opposed to this for the reasons I just gave you.

Senator Cook. Well, I make a distinction in reading this section here. And may I say in all fairness, when you talk about judges violently opposed, what do you mean within the context of the phrase judges? Are you talking about the trial judge?

Mr. SIGLER. The trial judge, yes. I am saying the information that goes into this presentence investigation. And I have letters to this effect. I have seen letters.

Senator Cook. Yes, but the presentence investigation file is not turned over. Is that presentence investigation file, is all of that turned over to you?

Mr. SIGLER. Oh, yes. We have all of the files. We have every presentence that is made. We have the entire thing in the files.

We have a complete copy, as it is composed by the probation officer, which comes to us with the exception of one State.

Senator Cook. What State is that?

Mr. SIGLER. South Carolina. We have one judge down there that does not like to send presentence investigations to the prison record.

Senator Cook. All right. Go ahead.

Senator BURDICK. The staff just called my attention to subsection 4, to page 15 of the bill, where it says, "any part of any presentence report except upon agreement of the court having jurisdiction to impose the sentence" and so on and so on.

In other words, he may exclude it if he wishes.

Mr. SIGLER. He may, but we have 647 judges in our system.

Senator Cook. Well, I can see that that is a problem.

Mr. SIGLER. Yes.

Senator Cook. In the first place, because what you are talking about then is a prolonged preparation for a parole hearing, which would require a request that presentence material be authorized, and then you would have to lay it over for another time purely and simply because you would have to make a written request of the judge to authorize the disclosure of such information and then you would have to reset the case. I know the situation you are under now where you send somebody to a particular area to hear a number of cases, and if he can't hear a case on that particular occasion, then the applicant has to wait until the next time around.

Mr. SIGLER. Right.

Senator Cook. Then I am wondering if we couldn't really work on that. What you really want to do is tighten it down more. What I am really trying to figure out is how a summary of that information could be made. And I can see really under item 4 it is conceivable that we could delay an applicant's processing of a hearing for a parole and we wouldn't want to do that. What we are really doing with item 4 is, we are not expediting the matter at all; we are really prolonging the matter. That is something I think we ought to treat very carefully.

Mr. ERLEWINE. Senator, the bill provides that there is no requirement for a summary of subsection 4 at all, only for the first three subsections.

Senator Cook. Yes, but the point of it is that if a request is made, unfortunately under item 4 then the guy says, "well, forget it, then I won't even get it if it is going to hold up his parole." Do you see? And that is what I am trying to say, that somehow or other we ought to do something about that.

Mr. MEEKER. The Judicial Conference has before it a proposal to change the rules of criminal procedure to provide that all presentence reports are made available to the defendant at the time of sentencing, which of course would take care of this problem if the Judicial Conference makes that change. It has been pending there for several years, but there are strong supporters for it in the Conference and some strong opposition.

Senator Cook. You know, we are going in just the opposite direction in our juvenile court bill, as you are well aware, where they can

only be scrutinized by the presiding judge at the time of a juvenile offender's incarceration or whatever the case may be.

Well, I must say in all fairness that I don't want to restrict him from any information, but I also don't want to put him in a position where, if he wishes something in that particular report—and suppose he knows of his own knowledge that it is a particularly good one—it would be a terrible shame to have to prolong that parole hearing. But then again, I am not quite sure that I am delighted that judges are incensed about the fact that they can show a particular individual a presentence report on an individual.

Because certainly if that has a great deal to do with the determination a judge makes in relation to the sentence, then I have a notion that the individual that receives an extremely harsh sentence as a result of that would like to see that, and I am not quite sure that we should deny him the right to know why he has received the particular sentence that he has received.

Mr. SIGLER. I do not disagree with that.

Senator BURDICK. What would you think of deleting subsection 4, or would you like to retain it?

Mr. SIGLER. I would like to think about it. I am thinking now for the whole Board, and we have gone over this together. I think probably from the standpoint of disclosure, that I have the most liberal attitude of any man or woman on our Board.

So my own personal opinion, Senator, may not carry.

Senator Cook. Let me ask you this. How long a period prior to the time of a hearing does an individual make application for that hearing?

Mr. SIGLER. I think the latest is 30 days.

Senator Cook. 30 days?

Mr. SIGLER. Yes, sir.

Senator Cook. Is there any reason why an individual cannot request some information that is in a pre-sentence file at the time that he makes application, and can that situation be resolved in that 30-day period so that there would be no need to prolong or to lay over a proposed hearing as a result of such a request?

Mr. SIGLER. Senator Cook, this is an administrative thing. I do not know how much time it would take at that particular time. I do not know whether it would take more help or not, so I cannot answer that question honestly.

Senator Cook. Well, help does not bother me. I am concerned about the rights of an individual who is subject to a hearing for a parole. I would rather give you the money so the situation could be resolved, rather than think somehow or another we are denying an individual some particular element of a file pertaining to him.

We have got too many files in the United States that nobody knows about, and that somebody ought to know about. And there are a lot of them that we ought to get rid of.

But somehow or other, I just have a hard time thinking that judges are going to be really incensed about the fact that some information in pretrial files should absolutely be denied to the individual who is subject to a sentence, as the result of the information in that file.

Mr. SIGLER. If you have money to hire help, you can do anything from the standpoint of getting this thing resolved. There is no way I could tell you that cannot be done.

Senator COOK. Well, let us work on the language. It seems to me that you raise a point that I am not sure I am happy with, come to think of it.

Senator BURDICK. May I ask this question? The 30-day notice, is it possible that as soon as you get the request for a hearing, you send a formal notice to the presiding judge at the time this man was sentenced asking him if he has any objection at that time, so that you will not lose any time?

Mr. SIGLER. Well, I do not think 30 days would do it.

Senator BURDICK. Well, I am just trying to take care of the time factor that the Senator has referred to if we retain the section.

Mr. SIGLER. Well, I think if you adopt it, we are going to have to contact every judge, because I think the judge has the right to say what material he has submitted to us can be used.

Senator BURDICK. I am thinking of the time frame here. At the time you receive the request for hearing, if at that time you send some sort of formal notice to the judge asking if he has any objection to reporting the investigation he had—

Mr. SIGLER. Oh, you want the time frame? Again, I cannot answer that because this starts in the Bureau of Prisons, and I would have to find out from them about the time frame. I would have to answer that later.

Mr. MEEKER. Excuse me, Mr. Sigler, but this would be a piece of information that could be determined at the time the individual is committed to the institution to begin serving his sentence. And very seldom does the first parole hearing, even under A-2 cases occur before the individual has been in the institution 60 to 90 days.

Mr. SIGLER. Right.

Mr. MEEKER. So I do not think this is a piece of information that you determine one time, and I think within that time frame, it would work satisfactorily. And I think the information is already noted in the file in a great majority of cases as to whether or not the presentence material has been given to the defendant at the time of sentencing.

Mr. SIGLER. I have a suggestion here that has just been handed to me suggesting that the presentence report shall be used unless a presiding judge objects at the time of sentence.

Senator COOK. I do not mind that. The unfortunate part about it, though, I am afraid, is you are going to establish a pattern. You are going to establish a pattern with the judicial system that the judges are automatically going to say, no. That is what really bothers me. Then I get the feeling we are just going to have an absolute denial across the board within the framework of the judicial council, and that is going to be established, an automatic no. That is what bothers me.

Then what we have done really in trying to resolve a problem by giving this option, we have seen to it that the problem never occurs, because everybody is going to take advantage of the easiness of saying no.

Mr. SIGLER. It might be interesting to know that at the last two judges conferences I attended, I ask if they would raise their hands in answer to this question, and it was just about split down the middle.

Senator COOK. In other words, one-half of the room were hanging judges, and the other half of the room were moderates?

Mr. SIGLER. You said that, sir. But this was in the Southern District of New York and in California, and that is the ninth district, I guess. Those were the last two I attended.

I asked them to raise their hands, and it was just about split down the middle.

Senator COOK. I think we ought to see what we can come up with, you know, if we can come up with any language which would meet this problem.

Senator BURDICK. But you prefer the suggested language by the witness to be used?

Senator COOK. Well, I do not know.

Mr. SIGLER. As Senator Cook points out, it may be an easy thing to say no, but it sounds good from our standpoint. If they do not object, we automatically use it.

Senator BURDICK. Well, that is in keeping with my suggestion that you send this notice for 30 days and if there is no objection, it goes.

Senator COOK. I would rather have that, rather than the flatout proposition that if he does not object at the time of sentencing because if we do it that way, your way, then I think we can catch him on a periodic basis saying, here is this case, and here is the next case; rather than Mr. Sigler's suggestion.

So I like your suggestion, Mr. Chairman, because otherwise I feel we will get ourselves in a bind where we are not going to be able to use it under any circumstances.

Senator BURDICK. And then you suggest that we use the word "representative" instead of "advocate"?

Mr. SIGLER. Yes.

Senator BURDICK. Because that kind of takes the idea of a confrontation or a contest away from it?

Mr. SIGLER. We think so.

Senator BURDICK. The effect would be the same though?

Mr. SIGLER. Sir, exactly the same.

Senator COOK. It is just semantics, but one who represents better be an advocate.

Mr. SIGLER. Yes; he had better be.

Senator BURDICK. Outside of that, do we have any problems?

Mr. SIGLER. I have none.

Senator COOK. Well, thank you.

Senator BURDICK. That is all I have, and thank you very much for coming up here this morning.

The meeting will be adjourned, but there will be a 10-day period for additional statements from interested people.

[Whereupon, at 10:15 a.m., the subcommittee recessed subject to the call of the Chair.]

[Following is additional information:]

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 27, 1974.

MICHAEL DOLAN, Esq.,
Acting Chief of the Legislative and Legal Section, Department of Justice,
Washington, D.C.

DEAR MR. DOLAN: Enclosed is correspondence I recently received from Senator McClellan with regard to suggested amendments to the March 14 Committee Print of S. 1463, legislation to reorganize the U.S. Board of Parole. I intend to ask that

this correspondence be included in the hearing record on this legislation and I would appreciate being advised of the comments of the Department of Justice also for inclusion in the record.

With kind regards, I am
Sincerely,

Enclosure.

QUENTIN N. BURDICK.

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 20, 1974.

HON. QUENTIN N. BURDICK,
United States Senate
Washington, D.C.

DEAR SENATOR BURDICK: I understand that S. 1463, a bill to amend title 18, United States Code, relating to parole, and for other purpose, is approaching the final stages of processing within the Subcommittee on National Penitentiaries.

In studying the Committee Print on the bill, dated March 14, 1974, I have become concerned about provisions setting forth the powers of the Chairman of the proposed Parole Commission which could create the potential for a single individual to unduly influence national parole policy and to undermine the independent role of the other eight Commissioners. In my judgment, it is of paramount importance that the institutional framework of the Commission be carefully designed to avoid such a situation.

With this concern in mind, I would appreciate your giving careful consideration to the attached suggested amendments to S. 1463 as proposed in the Committee Print.

With kindest regards, I am
Sincerely yours,

JOHN L. MCCLELLAN.

PROPOSED AMENDMENTS

(1) On page 3, line 1, strike the period and insert in lieu thereof a semicolon and the following: "three to serve as members of the National Appeals Board; and from the members of the National Appeals Board one to serve as Vice Chairman of the Commission."

(2) On page 6, beginning on line 7, delete "designate three Commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as Vice Chairman, and."

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., June 3, 1974.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: As you know, S. 1463, the Parole Commission Act, was favorably reported by the Subcommittee on Penitentiaries to the full Judiciary Committee.

The Justice Department has worked closely with the Subcommittee on this bill and supports S. 1463, as reported. In our view, this bill achieves a proper balance on the question of the Chairman's authority. S. 1463 gives the Chairman sufficient authority to properly administer the Commission, but at the same time, authorizes the Commission members to approve all policy statements, rules, and regulations.

Sincerely,

WILLIAM B. SANDE,
Attorney General.

POSSIBLE AMENDMENTS TO S. 1463

(1) On p. 2, line 25, following the word "Senate," insert "At no time shall more than six members be of the same political party."

(2) On p. 3, line 1, following the word "Chairman" delete the period and insert "and one as Vice Chairman. The Attorney General shall also designate from among the Commissioners three to serve on the National Appeals Board and, for each region established pursuant to section 4202(6)(2), one Commissioner to serve as Regional Commissioner for such region."

(3) On p. 5, between lines 18 and 19, following subsection (d) of Section 4202, insert the following:

"(e) The Commission is authorized, subject to the civil service and classification laws, to appoint such officers, attorneys, examiners, and other employees as may be necessary for carrying out its functions under this chapter."

(4) On p. 6—delete lines 1-6 and insert the following in lieu thereof:

"(2) exercise the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and the distribution of business among such personnel and administrative units of the Commission."

"Provided that,

"(A) in carrying out any of his functions under this subsection the Chairman shall be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make;

"(B) the appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission;

"(C) personnel employed regularly and full time in the immediate offices of members of the Commission other than the Chairman are subject to the appointment and supervision of such commissioner; and

"(D) functions of the Commission with respect to determining upon the distribution of appropriated funds according to major programs and purposes is reserved to the Commission."

(5) on p. 6, delete lines 7-12.

(6) on p. 6-7, redesignate subparagraphs (5), (6), (7), and (8) as (3), (4), (5), and (6), respectively.

(7) on p. 7, line 10, after the word "responsibilities" insert "delegated by the Commission."

DEPARTMENT OF JUSTICE,
Washington, D.C., April 25, 1974.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on National Penitentiaries, U.S. Senate,
Washington, D.C.

DEAR SENATOR BURDICK: This is in response to your request for the views of the Department of Justice on possible amendments to S. 1463, the proposed "Parole Commission Act."

These amendments, which you forwarded to us on March 27, 1974, would alter the bill in respect to the administrative composition and responsibilities of the Commission.

The first amendment would preclude the appointment of more than six members of the same political party. While we believe the parole function should be carried out without regard to partisan political considerations, we interpose no objection to the adoption of this amendment.

The second amendment would provide for the designation of the Vice Chairman, the National Appeals Board, and the Regional Commissioners by the Attorney General. It is our view that the Parole Commission should operate in an independent manner. The designation of positions by the Attorney General to this extent could have, in our opinion, the potential of diluting that independence, or could give the appearance of such dilution. We urge the Committee to give consideration to this possibility.

The third amendment would authorize the appointment of personnel by the Commission. We believe that it would be preferable for the Chairman to have this appointment authority.

The fourth amendment would make the exercise of executive and administrative functions by the Chairman subject to Commission regulations, decisions, findings and determinations, subject appointments by the Chairman to Commission approval, and give Commissioners, other than the Chairman, appointment and supervisory powers in regard to personnel working in their immediate offices.

We question whether or not it is feasible to require Commission involvement in administrative detail to the extent which this amendment provides through liberal interpretation. Also, it may present some difficulty of interpretation.

Terms such as "general policies" are ambiguous, and one reading of paragraph (C) of the proviso would indicate that every Commissioner except the Chairman would have the exclusive supervision of the staff with which he works.

Amendments 5 and 6 are technical, but the final amendment would provide that responsibilities of the Chairman not specified in the statute would be "delegated by the Commission." While it would appear to be acceptable under the terms of the bill for the Commission to delegate administrative duties to the Chairman in a general sense, the amendment could prove to be an obstacle to the efficient operation of the business of the Commission.

In summary, it is our estimation that the general affect of amendments two, four and seven would be to involve the Attorney General and the Commission as a whole in personnel and administrative matters to a greater extent than does the present bill. We seriously question whether the changes proposed would improve the potential for the most effective parole program.

Sincerely,

W. VINCENT RAKESTRAW,
Assistant Attorney General.

S. 1109—PAROLE COMMISSION ACT

WEDNESDAY, APRIL 9, 1975

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PENITENTIARIES,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:30 p.m. in room 457 Russell Senate Office Building, Senator Quentin N. Burdick (presiding).

Present: Senators Burdick, Scott, and Hruska.

Also present: James G. Meeker, staff director, Chris Erlewine, deputy counsel, Richard Kait, minority counsel, Judith E. Snopek, chief clerk.

Senator BURDICK. It is a pleasure to open these hearings today on S. 1109, legislation which would change the organization and administration of the parole system for offenders convicted of Federal crimes. We are beginning this afternoon to write the final chapter in the consideration of this legislation, which has been before the Subcommittee on National Penitentiaries for near 3 years.

This legislation has been developed with the cooperation of the Board of Parole and the Department of Justice. This subcommittee has supported the administrative trial of many of the provisions incorporated in the bill.

We have tried to experiment with change. I believe that we have good reason to be more confident in it is provisions.

While there are still some differences of opinion here today, we are all trying to improve the legislation. The sincerity of these efforts is recognized.

The bill before us does not change the criteria for the grant or denial of parole, and the subcommittee recognizes that only about one-third of eligible Federal prisoners are paroled. Our effort has been to focus the best information and the best procedures toward making good parole decisions. As we have learned, the decision to imprison an individual is an important one, and one which costs tax dollars. We must use the scarce resources for the incarceration of those individuals who are a threat to public safety for whom there is a need for incarceration.

Continual review and improvement of this decisionmaking process is important, and must not stop even when parole legislation has been enacted.

Without objection, the legislation before the subcommittee and the analysis will be incorporated in the hearing record at this point.

[The documents referred to follow:]

[S. 1109, 94th Cong., 1st sess.]

A BILL To amend title 18, United States Code, relating to parole, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Parole Commission Act".

SEC. 2. Chapter 311 of title 18, United States Code, is amended to read as follows:

"Chapter 311—PAROLE

- "Sec.
 "4201. Definitions.
 "4202. Parole Commission created.
 "4203. Powers and duties of the Commission.
 "4204. Powers and duties of the Chairman.
 "4205. Persons eligible.
 "4206. Release on parole.
 "4207. Conditions of parole.
 "4208. Parole interview procedures.
 "4209. Aliens.
 "4210. Retaking parole violator under warrant.
 "4211. Officer executing warrant to retake parole violator.
 "4212. Parole modification and revocation.
 "4213. Reconsideration and appeal.
 "4214. Original jurisdiction cases.
 "4215. Applicability of Administrative Procedure Act.
 "4216. Young adult offenders.
 "4217. Warrants to retake Canal Zone parole violators.

"§ 4201. Definitions

"As used in this chapter—

- "(1) 'Commission' means the United States Parole Commission;
 "(2) 'Commissioner' means any member of the United States Parole Commission;
 "(3) 'Director' means the Director of the Bureau of Prisons;
 "(4) 'eligible person' means any Federal prisoner who is eligible for parole pursuant to this title or any other law including any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole;
 "(5) 'parolee' means any eligible person who has been released on parole or deemed as if released on parole under section 4164 or section 4205(d) of this title; and
 "(6) 'rules and regulations' means rules and regulations promulgated by the Commission pursuant to section 4203(b)(1) of this title and section 553 of title 5, United States Code."

"§ 4202. Parole Commission created

"There is hereby established as an independent agency of the Department of Justice a United States Parole Commission which shall be comprised of nine members appointed by the President, by and with the advice and consent of the Senate. At no time shall more than six members be of the same political party. The Attorney General shall designate from among the commissioners one to serve as Chairman. The term of office of a commissioner shall be six years, except that the term of a person appointed as a commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of a commissioner, the commissioner shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

"§ 4203. Powers and duties of the Commission

- "(a) The Commission, by majority vote, shall have the power to—
 "(1) grant or deny any application or recommendation to parole any eligible person;
 "(2) impose reasonable conditions on any order granting parole;
 "(3) modify or revoke any order paroling any eligible person; and
 "(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense; and where such

revocation is based upon a subsequent conviction of the parolee of any Federal, State, or local crime committed subsequent to his release on parole, determine whether all or any part of the unexpired term being served at time of such parole shall run concurrently or consecutively with the sentence imposed for such subsequent offense.

"(b) The Commission shall meet at least quarterly, and by majority vote shall—

"(1) promulgate rules and regulations establishing guidelines for the powers enumerated in subsection (a) of this section and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter;

"(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five; and

"(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

A record of the final vote of each commissioner on any action pursuant to this subsection shall be maintained and made available for public inspection.

"(c) The Commission, by majority vote, and pursuant to rules and regulations—

"(1) may delegate to any commissioner or commissioners any powers enumerated in subsection (a) of this section;

"(2) may delegate to any panel of hearing examiners, any powers necessary to conduct hearings and interviews, take sworn testimony, obtain and make a record of pertinent information, make findings of probable cause, issue subpoenas for witnesses or evidence in parole revocation proceedings, and recommend disposition of any matters enumerated in subsection (a) of this section, except that any such findings or recommendations of any panel of hearing examiners shall be based upon the concurrence of not less than two members of such a panel; and

"(3) may review, or may delegate to the National Appeals Board the power to review, any decision made pursuant to subparagraph (1) of this subsection except that any such decision so reviewed must be reaffirmed, modified, or reversed within thirty days of the date the decision is rendered, and, in case of such review, the individual to whom the decision applies shall be informed in writing of the Commission's actions with respect thereto and the reasons for such actions.

"(d) With respect to any decision made pursuant to the powers enumerated in subsection (a) of this section, the Commission upon request of the Attorney General filed not later than thirty days following any such decision, shall review such decision and shall by majority vote reaffirm, modify, or reverse the decision within thirty days of the receipt of the Attorney General's request, and shall inform the Attorney General and the individual to whom the decision applies in writing of its decision and the reasons therefor.

"(e) Except to the extent otherwise herein provided, in every decision or action made by the Commission pursuant to the powers enumerated in this section, each commissioner shall have equal responsibility and authority, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

"§ 4204. Powers and duties of the Chairman

"(a) The Chairman shall—

"(1) convene and preside at meetings of the Commission pursuant to section 4203 of this title and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three commissioners;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that:

"(A) the appointment of any hearing examiner shall be subject to approval of the Commission within the first year of such hearing examiner's employment; and

"(B) regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including commissioners, so as to balance the workload and provide for orderly administration;

"(4) designate three commissioners to serve on the National Appeals Board of whom one shall be so designated to serve as vice chairman, and designate, for each such region established pursuant to section 4203(b) (2) of this title, one commissioner to serve as regional commissioner in each such region; except that in each such designation the Chairman shall consider years of service, preference and fitness, and no such designation shall take effect unless concurred in by the Attorney General;

"(5) direct the preparation of requests for appropriations and the use and expenditure of funds;

"(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

"(7) provide for research and training, including, but not limited to—

"(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) publishing data concerning the parole process and parolees; and

"(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process;

"(8) accept voluntary and uncompensated services;

"(9) utilize, on a cost-reimbursable basis, the services of officers or employees of the executive or judicial branches of Federal or State government, for the purpose of carrying out the provisions of section 10 of this title; and

"(10) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter.

"(b) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

"§ 4205. Persons eligible

"(a) An eligible person, other than a juvenile delinquent or committed youth offender, wherever confined and serving a definite term or terms of more than one year, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence in excess of forty-five years, except to the extent otherwise provided by law.

"(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term of exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may be released on parole at such time as the Commission may determine.

"(c) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may, for purposes of study, commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law. The results of such study, together with any recommendations which the Director believes would be helpful in determining the disposition of the case, shall be furnished to the court within sixty days, or such additional period, but not to exceed sixty days, as the court may grant. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title; or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(d) Any person sentenced to imprisonment for a term or terms of one year or less, who after one hundred and eighty days has not served his term or terms

less good time deductions, shall be released as if on parole, notwithstanding the provisions of section 4164 of this title, unless the court which imposed sentence, shall, at the time of sentencing, find that such release is not in accord with the ends of justice and the best interest the public and sets another time for such release. This subsection shall not prevent delivery of any person released on parole to the authorities of any State otherwise entitled to his custody.

"(e) At any time upon motion of the Bureau of Prisons and upon notice to the attorney for the Government, the court may reduce any minimum term to the time the defendant has served.

"(f) Except to the extent otherwise herein specifically provided, nothing in this section shall be construed to affect or otherwise alter, amend, modify, or repeal any provision of law relating to eligibility for release on parole, or any other provision of law which empowers the court to suspend the imposition or execution of any sentence, to place any person on probation, or to correct, reduce, or otherwise modify any sentence.

"§ 4206. Release on parole

"(a) If it appears from a report or recommendation by the proper institution officers or upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"(b) Upon commitment of any person sentenced to imprisonment under any law for a definite term or terms of more than one year, the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the eligible person's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. Such report and recommendations shall be made not less than ninety days prior to the date upon which such person becomes eligible for parole, except where such person may become eligible for parole less than one hundred and twenty days following commitment, the Director, in the absence of exceptional circumstances, shall have not less than thirty days, but not more than sixty days, to make such report and recommendations.

"(c) Upon request of the Commission, it shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information available to such officer, bureau, or agency, concerning any eligible person or parolee and whenever not incompatible with the public interest, their views and recommendation with respect to any matter within the jurisdiction of the Commission.

"§ 4207. Conditions of parole

"(a) A parolee shall remain in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced.

"(b) In every case, the Commission shall impose as a condition of parole that the parolee not commit another Federal, State, or local crime during the term of his parole. In imposing any other condition or conditions of parole the Commission shall consider the following:

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions may provide for such deprivations of liberty as are reasonably necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

"(c) An order of parole or release as if on parole may as a condition of such order require—

"(1) a parolee to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release. A person residing in a community treatment center may

be required to pay such costs incident to residence as the Attorney General deems appropriate;

"(2) a parolee, who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole.

"(d) The Commission may discharge any parolee from parole supervision or release him from one or more conditions of parole at any time after release on parole. In addition, the Commission shall—

"(1) review, at least annually, the status of any parolee who has had two years of continuous parole supervision, to determine the need for continued parole supervision; and

"(2) discharge from parole supervision any parolee who has had five years of continuous parole supervision unless it is determined, after a hearing, that he should not be so discharged because there is a likelihood that he will either engage in conduct violating any criminal law or would jeopardize the public welfare. In any case in which parole supervision is continued pursuant to this subparagraph, the parolee shall receive a hearing at least every two years for the purpose of determining need for further parole supervision. Any hearing held pursuant to this subparagraph shall be in accordance with the procedures set out in section 4210(b) (2) of this title at a time and location determined by the Commission.

"§ 4208. Parole interview procedures

"(a) Any person eligible for parole shall promptly be given a parole interview and such additional parole interviews as the Commission deems necessary, but in no case shall there be less than one additional parole interview every two years, except that an eligible person may waive any interview.

"(b) Any interview of an eligible person by the Commission in connection with the consideration of a parole application or recommendation shall be conducted in accordance with the following procedure—

"(1) an eligible person shall be given written notice of the time, place, and purpose of such interview; and

"(2) an eligible person shall be allowed to select a representative to aid him in such interview. The representative may be any person who qualifies under rules and regulations promulgated by the Commission. Such rules shall not exclude attorneys as a class.

"(c) Following notification that a parole interview is pending, an eligible person shall have reasonable access to progress reports and such other materials as are prepared by or for the use of the Commission in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained on the basis of a pledge of confidentiality made by or in behalf of a public official in the performance of his official duties if such official has substantial reason to believe that such information would place any person in jeopardy of life or limb;

"(3) any other information that would place any person in jeopardy of life or limb, or if any document is deemed by either the Commission, the Bureau of Prisons, or any other agency to fall within the exclusionary provisions of subparagraph 1, 2, or 3 of this subsection, then it shall become the duty of the Commission, the Bureau, or such other agency, as the case may be, to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate.

"(d) A full and complete record of every interview shall be retained by the Commission. For good cause shown, the Commission may make a transcript of such record available to any eligible person.

"(e) Not later than fifteen working days after the date of the interview, the Commission shall notify the eligible person in writing of its determination. In any case in which parole release is denied or parole conditions are imposed other than those commonly imposed, the Commission shall include the reasons for such determination, and, if possible, a personal conference to explain such reasons

shall be held between the eligible person and the Commissioners or examiners conducting the interview.

"§ 4209. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation.

§ 4210. Retaking parole violator under warrant

"(a) A warrant for the taking of any person who is alleged to have violated his parole may be issued by the Commission within the maximum term or terms for which such person was sentenced.

"(b) (1) Except as provided in subsection (c), any alleged parole violator retaken upon a warrant under this section shall be accorded the opportunity to have—

"(A) a preliminary hearing at or reasonably near the place of the alleged parole violation or arrest, without unnecessary delay, to determine if there is probable cause to believe that he has violated a condition of his parole; and upon a finding of probable cause a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for the decision, a copy of which shall be given to the parolee within a reasonable period of time;

"(B) upon a finding of probable cause under subparagraph (1)(A), a revocation hearing at or reasonably near the place of the alleged parole violation or arrest within sixty days of such determination of probable cause except that a revocation hearing may be held at the same time and place set forth the preliminary hearing.

"(2) Hearings held pursuant to subparagraph (1) of this subsection shall be conducted by the Commission in accordance with the following procedures:

"(A) notice to the parolee of the conditions of parole alleged to have been violated, and the time, place, and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity for the parolee to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of this title, and

"(D) opportunity for the parolee to be apprised of the evidence against him and, if he so requests, to confront and cross-examine adverse witnesses, unless the Commission specifically finds good cause for not allowing confrontation. The Commission may subpoena witnesses and evidence, and pay witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, or in which such person may be found, to request such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, when the court finds such information, thing, or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this section. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found.

"(c) (1) Any parolee convicted of any Federal, State, or local crime committed subsequent to his release on parole and sentenced for such crime to a term or terms of imprisonment who has a detainer for a warrant issued under this section placed against him shall receive an institutional revocation hearing within one hundred and eighty days of such placement, or promptly upon release from such commitment whichever comes first.

"(2) Any alleged parole violator, who waives his right to any hearing under subsection (b), shall receive an institutional revocation hearing within ninety days of the date of retaking.

"(3) Hearings held pursuant to subparagraphs (1) and (2) of this subsection shall be conducted by the Commission. The alleged parole violator shall have notice of such hearing, be allowed to appear and testify on his own behalf,

and to select a representative, in accordance with the procedures of section 4208(b) (2) of this title, to aid him in such appearance.

"(d) Following any revocation hearing held pursuant to this section, the Commission may dismiss the warrant or take any action provided under section 4212 of this title: *Provided, However, That in any case in which parole is modified or revoked, a digest shall be prepared by the Commission setting forth in writing the factors considered and the reasons for such action, a copy of which shall be given to the parolee.*

"(e) The Commission, pursuant to rules and regulations, may delegate authority to conduct hearings held pursuant to this section to any officer or employee of the executive or judicial branches of Federal or State Government.

"§ 4211. Officer executing warrant to retake parole violator

"Any officer of any Federal penal or correctional institutions, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General.

"§ 4212. Parole modification and revocation

"When a warrant has been executed pursuant to section 4210 of this title, and such warrant is not dismissed, the decision of the Commission may include—

"(1) a reprimand;

"(2) an alteration of parole conditions;

"(3) referral to a residential community treatment center for all or part of the remainder of the original sentence;

"(4) formal revocation of parole or release as if on parole pursuant to this title; or

"(5) any other action deemed necessary for successful rehabilitation of the violator, or which promotes the ends of justice.

The Commission may take any action pursuant to this section it deems appropriate taking into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

"§ 4213. Reconsideration and appeal

"(a) Whenever parole release is denied under section 4206 of this title, parole conditions are imposed other than those commonly imposed under section 4207 of this title, parole discharge is denied under section 4207(d) (2) of this title, or parole is modified or revoked under section 4212 of this title, the individual to whom any such decision applies may have the decision reconsidered by submitting a written application to the regional commissioner not later than forty-five days following the date on which the decision is rendered. The regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

"(b) Any decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than forty-five days following the date on which such decision is rendered. The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

"§ 4214. Original jurisdiction cases

"The regional commissioner, pursuant to rules and regulations, may designate certain cases as original jurisdiction cases, and shall forward any case so designated to the National Appeals Board with his vote and the reasons therefor. Decisions shall be based upon the concurrence of three votes with the appropriate regional director and the members of the National Appeals Board each having one vote. In case of a tie vote, and pursuant to rules and regulations, an additional vote shall be cast by one of the other regional commissioners. The individual to whom such decision applies, or any commissioner who voted in the decision, may appeal such decision directly to the Commission by submitting a written notice of appeal not later than forty-five days following the date on

which such decision is rendered. The Commission, by majority vote, shall decide the appeal at its next regularly scheduled meeting and shall inform the individual to which such decision applies to the decision and the reasons therefor.

"§ 4215. Applicability of the Administrative Procedure Act

"Except as otherwise provided in this chapter, the provisions of sections 551 through 559 and sections 701 through 706 of title 5, United States Code, shall not apply to the making of any determination, decision, or order made pursuant to this chapter or any other law."

Sec. 3. Sections 4209 and 4210 of title 18, United States Code, are renumbered to appear as sections 4216 and 4217 of such title.

Sec. 4. Section 5002 of title 18, United States Code, is repealed.

Sec. 5. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. Youth correction decisions

"The Commission and, where appropriate, its authorized representatives as provided in sections 4203(c) and 4210(e) of this title, may grant or deny any application or recommendation for conditional release, or modify or revoke any order of conditional release, of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law. Except as otherwise provided, decisions of the Commission shall be made in accordance with the procedures set out in chapter 311 of this title."

Sec. 6. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. Definitions

"As used in this chapter—

"(a) 'Commission' means the United States Parole Commission;

"(b) 'Bureau' means the Bureau of Prisons;

"(c) 'Director' means the Director of the Bureau of Prisons;

"(d) 'youth offender' means a person under the age of twenty-two years at the time of conviction;

"(e) 'committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;

"(f) 'treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and

"(g) 'conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

Sec. 7. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

Sec. 8. Section 5014 of title 18, United States Code, is amended to read as follows:

"§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

Sec. 9. Section 5017(a) of title 18, United State Code, is amended to read as follows:

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rule of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society.

When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission."

Sec. 10. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

Sec. 11. Chapter 402 of title 18, United States Code, is amended by deleting the term "division" whenever it appears therein and inserting in lieu thereof the word "Commission."

Sec. 12. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

"Sec.
 "5005. Youth correction decisions.
 "5006. Definitions.
 "5010. Sentence.
 "5011. Treatment.
 "5012. Certificate as to availability of facilities.
 "5013. Provisions of facilities.
 "5014. Classification studies and reports.
 "5015. Powers of Director as to placement of youth offenders.
 "5016. Reports concerning offenders.
 "5017. Release of youth offenders.
 "5018. Revocation of Commission orders.
 "5019. Supervision of released youth offenders.
 "5020. Apprehension for released offenders.
 "5021. Certificate setting aside conviction.
 "5022. Applicable date.
 "5023. Relationship to Probation and Juvenile Delinquency Acts.
 "5024. Where applicable.
 "5025. Applicability to the District of Columbia.
 "5026. Parole of other offenders not affected."

Sec. 13. Section 5041 of title 18, United States Code, is amended to read as follows:

"§ 5041. Parole

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper if it shall appear to the satisfaction of such Commission that the juvenile has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

Sec. 14. Whenever in any of the laws of the United States or the District of Columbia the term "United States Parole Board", or any other term referring thereto, is used, such term or terms, on and after the expiration of the one-year period following the date of the enactment of this Act, shall be deemed to refer to the United States Parole Commission as established by the amendments made by this Act.

Sec. 15. The parole of any person sentenced before June 20, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowance provided by law.

Sec. 16. Section 5108(c) (7) of title 5, United States Code, is amended to read as follows:

"(7) the Attorney General, without regard to any other provision of this section, may place a total of ten positions of warden in the Bureau of Prisons in GS-16".

Sec. 17. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the amendments made by this Act.

SEC. 18. (a) The foregoing amendments made by this Act shall take effect upon the expiration of the thirty-day period following the date of the enactment of this Act.

(b) Upon the effective date of the amendments made by this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provisions of applicable law, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following such effective date.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Short title, the Parole Commission Act.

SEC. 2. Chapter 311 of title 18, United States Code, is amended to read as follows:

§ 4201. Definitions

As used in this chapter—

- (1) 'Commission' means the U.S. Parole Commission created by this Act;
- (2) 'Commissioner' is any one of the nine members of the U.S. Parole Commission;
- (3) 'Director' means the Director of the U.S. Bureau of Prisons;
- (4) 'Eligible person' means any Federal prisoner in the custody of the Attorney General who is by law eligible for parole, including any individual whose parole has been previously revoked;
- (5) 'Parolee' means any eligible person who has been released on parole or deemed to have been released on parole under sections 4164 and 4204(d) of title 18, United States Code, which provide for release as if on parole; and
- (6) 'Rules and regulations' means the rules and regulations made by the full Commission. The rulemaking procedures § 553 of title 5, United States Code, apply; notice is required in the Federal Register, and interested parties shall have an opportunity to comment. Guidelines promulgated by the full Commission for parole decisionmaking are rules and regulations within the meaning of this definition. *Pickus et al v. U.S. Board of Parole*, 507 F2d 1107 (1974).

§ 4202.

This section establishes a nine member U.S. Parole Commission as an independent agency of the Department of Justice. No more than six members of the Commission can be of the same political party. The Commission is attached to the Department for administrative reasons but its decisionmaking machinery is independent so as to guard against influence in case decisions. Commissioners serve a term of six years under Presidential appointment by and with the advice and consent of the Senate; the Chairman is appointed by the Attorney General. The terms are staggered with the Commission members continuing to serve until their successors have been qualified. The rate of pay for a member of the Commission shall be the highest step of G.S. level 17.

§ 4203(a).

The Commission, acting by majority vote, has authority to: (1) grant or deny parole to any Federal prisoner who is eligible for parole; (2) impose conditions under which any prisoner would be released on parole; (3) modify or revoke the parole of any individual who violated the conditions of his release; and (4) decide on the period of reimprisonment for any individual whose parole has been revoked, except that the length of such reimprisonment together with the time served for the offense before parole was granted cannot be longer than the maximum length of the sentence; where revocation is based on a conviction for a new crime the Commission may also determine whether all or any part of the unexpired term shall run concurrently or consecutively with the new sentence.

(b) The full Commission will meet periodically as a policy making group to: (1) establish procedural rules and guidelines for parole determinations so that the administration of parole throughout the Federal system will be uniform;

(2) set boundaries for the nation's five parole regions; and (3) act upon budget recommendations, which will be separate from other agencies of the Department of Justice.

Records of the final vote of the commissioners on these policy making actions will be available for public inspection.

(c) The Commission, acting by majority vote and pursuant to rules and regulations, may (1) delegate any of its decisionmaking authority set out in subsection (a) of this section to one or more commissioners, enabling the Commission to allocate its decisionmaking workload to regional commissioners who are responsible for initial parole determinations and to the three commissioners on the National Appeals Board who review these decisions on appeal; (2) delegate to panels of hearing examiners certain Commission functions which are necessary to provide regional commissioners with recommendations and a hearing record on which to base their decisions, including conducting hearings and interviews, taking sworn testimony, making findings of probable cause and issuing subpoenas in parole revocation proceedings, and making a record of the pertinent evidence presented at any such hearing or interview; and (3) review any delegated decision, or delegate authority to the National Appeals Board to review decisions made by a regional commissioner or commissioners.

(d) The Attorney General has an unqualified right to have the Commission review any delegated decision or to reconsider any of its own decisions. The Commission must act promptly on any such request and must give a written copy of its decision to both the Attorney General and the individual whose case is involved.

(e) When the full Commission is required to make decisions under the powers and duties set out in this section, each member will have an equal voice in policy or decision determinations, be provided with all necessary information, and have one vote.

§ 4204.

(a) The Chairman, who functions as the chief executive officer of the Commission, is authorized to: (1) preside at the regular meetings of the full Commission as well as special meetings that are called upon his own request or that of any three commissioners; (2) make all personnel decisions except that the full Commission must confirm the appointment of any hearing examiner before his probationary status as a first-year government employee terminates and each regional commissioner will be responsible for the appointment and supervision of certain clerical personnel employed in his region; (3) delegate work among the commissioners and the various units and employees of the Commission; (4) designate three commissioners to serve on a National Appellate Board, one of which will also serve as Vice Chairman, and designate one commissioner to serve in each of the parole regions as regional commissioner, except that in making any such delegation the Chairman must consider certain pertinent criteria and must obtain the concurrence of the Attorney General; (5) carry out fiscal responsibilities including preparation of appropriation requests and oversight of Commission expenditures; (6) serve as spokesman for the Commission and make reports to Congress, the courts, and the Attorney General; (7) provide for a research and training component in the Commission which will provide studies and information concerning the parole process to public and private agencies; (8) accept voluntary and uncompensated services of volunteers who assist in the counseling and supervision of individuals who have been released on parole; (9) utilize, on a cost reimbursable basis, Federal or State officials for certain parole revocation proceedings; and (10) perform other necessary duties.

(b) The Chairman shall carry out his administrative duties and responsibilities in line with the national parole policies promulgated by the Commission.

§ 4205.

(a) The statutory basis for eligibility for parole for Federal prisoners under regular adult and special sentencing procedures remains unchanged. A Federal prisoner is eligible for parole after serving one-third of his maximum term or after serving fifteen years and there is no change in this from present language of title 18.

(b) This subsection reenacts the existing provisions of law which enable the court to: (1) direct that the prisoner be eligible for parole at any time up to one-third of his maximum sentence, or (2) specify that the Commission shall decide when the prisoner shall be considered for parole.

(c) This subsection amends existing provisions of law which give the judge an opportunity to request that the Bureau of Prisons conduct a study of the individual by reducing the time period allowed for such study from 90 to 60 days, and preserves existing provisions of sentencing law.

(d) This subsection reenacts in part and amends in part the present law on eligibility for parole of offenders with maximum sentences of one year or less. For individuals whose maximum term or terms is six months or less, there is no change from present law, under which the sentencing judge may set any release date, including a split sentence under 18 U.S.C. 3651, of up to six months incarceration and five years probation. For individuals sentenced to a maximum term or terms of more than six months, but not more than one year, the sentencing judge sets the date for release of the offender as if on parole, except if the judge sets no release date, the individual would be released after having served six months. Present law concerning good time reductions and surrender of prisoners to other authorities is unchanged.

(e) This subsection provides a means by which the minimum term of any Federal prisoner may be reduced to make the individual eligible for parole consideration. The Bureau of Prisons would make a motion to the court which imposed sentence, and the appropriate U.S. Attorney would have an opportunity to oppose it.

(f) Present law and practice relating to existing powers of the sentencing court and certain special provisions relating to eligibility for parole are preserved.

§ 4206.

(a) The present statutory criteria utilized by the Federal parole authorities in making their decision as to whether or not to grant parole are preserved. Before granting parole, the Commission must decide that an individual who is eligible for parole has substantially observed the rules of the institution in which he is confined, there is a reasonable probability that he will not violate the law on release, and his release is compatible with the general welfare of society.

(b) When an individual is about to become eligible for parole consideration the Bureau of Prisons prepares a progress report which includes a summary of his criminal and social background, his mental and physical health, his behavior in the institution and his participation in institution programs. The Commission is authorized to make such other investigations as it may deem appropriate.

(c) The Commission is authorized to seek information from other government agencies such as the U.S. Probation Service and the Federal Bureau of Investigation. Upon request, these agencies will furnish available information, and, where appropriate, their views and recommendations with respect to Commission matters.

§ 4207.

(a) An individual released on parole remains in the legal custody of the Attorney General but time spent on parole is not automatically credited toward service of the maximum sentence.

(b) Every parolee shall have as a condition of parole that he cannot commit any criminal offense during his parole. In imposing any other condition or conditions of parole the Commission shall consider the following guidelines: (1) there should be a reasonable relationship between the standards of behavior required and the individual's circumstances; (2) deprivations of liberty which are necessary for the protection of the public welfare may be imposed; (3) the conditions must be specific and not vague so that they can serve as a guide to behavior. In addition, the parolee is given a written statement of his conditions.

(c) As provided under present law, the conditions of parole may require that an individual reside in or participate in the program of a community treatment center or an addiet treatment program.

(d) An orderly procedure under which the Commission may suspend parole supervision of parolees who no longer need it is established. (1) Systematic evaluation for parole discharge begins after an individual has been under parole supervision for two years, but discharge remains entirely in the discretion of the Commission. (2) After five years an individual shall receive a hearing to decide whether or not such supervision shall be terminated. Similar consideration shall be accorded at least every two years thereafter.

Parole discharge under this section is not the same as unconditional discharge provided for youth offenders under the Federal Youth Corrections Act, Chapter

402 of title 18, United States Code. The Youth Act provides a procedure for certain conditionally released youth offenders who achieve the status of unconditional discharge within a specific time period to earn a set aside of their conviction.

§ 4208.

(a) Once an individual becomes eligible for parole he is entitled to a hearing and additional rehearings at least once every two years, but he may waive any hearing.

(b) When a commissioner or panel of hearing examiners, conducts an interview of any individual who is eligible for parole, that individual will receive written notice of the time of the interview and will be allowed to select a representative to assist him both before and during the interview. The Commission is authorized to promulgate rules and regulations as to who a representative may be. Persons appropriate for such position include members of the immediate family, including common-law relations; other relatives; friends; ministers, or prospective employers. The phrase, "Such rules shall not exclude attorneys as a class", means that inmates may utilize retained counsel as representatives but that any other provision for legal assistance is within the discretion of the Commission.

(c) An eligible Federal prisoner shall have reasonable access to certain documents which are utilized by the Commission to determine parole eligibility. Three categories of documents, however, may be excluded: (1) diagnostic opinions such as psychological or psychiatric reports which if revealed to the individual might cause a serious disruption in his program of rehabilitation; (2) documents which contain information obtained on the basis of a pledge of confidentiality by, or on behalf of, any public official who has substantial reason to believe that revealing the information would jeopardize the life or limb of any person; or (3) any other information which if revealed would jeopardize the life or limb of any person. The Commission, the Bureau of Prisons, or any other agency which deems a document excludable under subparagraphs (1), (2) or (3) of this subsection shall be responsible for preparing a summary of such document. In recognition of administrative time constraints, agencies, other than the Commission or the Bureau of Prisons, submitting excludable documents shall enclose summarized versions which meet the requirements of this subsection. The Bureau of Prisons recently implemented a procedure for disclosing progress reports and, in some cases, psychiatric reports to Federal prisoners awaiting parole consideration. BOP Policy Statement, No. 7200.13, "Disclosure of Parole/Special Progress Reports", (1-28-74).

(d) The Commission is required to retain a record of all parole interviews. Where an individual is denied parole or granted parole under conditions other than those commonly imposed, he can obtain a copy of the transcript of the interview record if he can demonstrate to the satisfaction of the Commission that it is necessary for purposes of administrative appeal. In any case in which the Commission has transcribed the interview record for the purposes of any appellate determination, the inmate, if he so requests, should be provided with a copy of such transcript.

(e) The Commission has fifteen working days in which to notify the individual in writing of the initial parole decision. Individuals denied parole or granted parole under conditions other than those commonly imposed will receive a written statement which spells out clearly the reasons for this adverse action. The Committee does not wish to tie the hands of the Parole Commission by specifying a particular format for such statement of reasons. A formal judicial fact-finding is not required, but the inmate must receive an understandable explanation of his parole status. For example, under the published rules of the U.S. Board of Parole, 28 CFR 2.20 (1975 Vol. as amended), the Board utilizes a set of guidelines for parole release determinations. The guidelines take into consideration certain primary elements in the parole decision-making process and indicate, for any individual combination thereof, the general range of time to be served before release. This subsection would operate in the following manner in relation to the present guidelines system. If a prisoner who has not served the minimum period recommended by the guidelines is denied parole, he should receive a statement containing his severity of offense rating, the calculation of his salient factors score and an explanation of how such a determination utilizing the guidelines was reached. On the other hand, if a prisoner who has served the time required to be eligible for parole under the guidelines is

denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he should receive not only the above information but also a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines. Parole Form R-2, Notice of Action Worksheet, (revised June 1974), which was implemented by the U.S. Parole Board in the northeast region on April 1, 1974, provides the necessary information. The Committee realizes that these guidelines and procedures may change and reserves the right of continuing oversight to ensure that individuals receiving adverse parole determinations are given an adequate explanation of the reasons for such action.

The phrase, "parole conditions other than those commonly imposed", refers to any condition imposed by the Commission on any order of parole release which the individual wishes to contest on the grounds that such a deprivation of liberty is unwarranted. Typically imposed proscriptions relating to violations of law, use of narcotics, excessive use of alcohol, etc., would not fit this category.

§ 4209.

Existing law with respect to delivery of convicted aliens for deportation is recodified under a new section number.

§ 4210.

This section, with certain modifications, codifies the recent Supreme Court decisions, *Morrissey v. Brewer*, 408 U.S. 471 (1972) and *Gagnon v. Scarpelli*, 411 U.S. 788 (1973), relating to the revocation of parole under circumstances in which there may be a need to ascertain facts concerning an alleged violation of the conditions of such release on parole.

(a) Provides for issuing a warrant for the arrest of a parolee alleged to have violated a condition of parole before the expiration of his maximum sentence.

(b) (1) This subsection provides revocation procedures for any alleged parole violator who wishes to contest the revocation and whose revocation is not based on a conviction for a new offense. (A) Such parolee is entitled to an immediate hearing, near where the violation is alleged to have occurred or where the parolee was arrested, to determine if there is probable cause to believe that he has violated his parole conditions. The timing of the preliminary hearing is particularly crucial; even if probable cause is not found, if a parolee is held in jail awaiting his hearing for more than one or two days, his job will probably be lost and his reintegration efforts badly disrupted. The Commission upon a finding of probable cause shall make a written summary of the hearing which states the reasons for the decision and the factors considered in the hearing. The parolee shall be given a copy of this written summary a reasonable period of time before his revocation hearing, unless the revocation hearing is held at the same time as the probable cause hearing in which case he will be given a document summarizing the joint proceedings within fifteen working days. (B) Upon a finding of probable cause under subparagraph (A) of this subsection, the alleged parole violator is entitled to a revocation hearing which also takes place reasonably near the place where the alleged violation occurred or where the parolee was arrested. In the words of Chief Justice Burger, "This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation." 471 U.S. 488 (1972). While the revocation hearing must be held within sixty days of the preliminary hearing held pursuant to subparagraph (A), it may be held at the same time.

(2) In any hearing held pursuant to subparagraph (1)(A) or (B) of this subsection, the alleged parole violator is entitled to the following procedures: (A) notice of the violations of parole and the time, place, and purposes of the scheduled hearings; (B) the right to appear and testify and to present witnesses and documentary evidence on his own behalf; (C) the right to be represented by retained counsel or if he is unable to retain counsel, counsel may be provided pursuant to the Criminal Justice Act (18 U.S.C. 3006A) and (D) the right to be apprised of evidence against him and the qualified right to confront and cross-examine adverse witnesses. This subparagraph would permit an inmate who so requests to confront and cross-examine adverse witnesses unless the hearing officer designated by the Commission makes a determination that there is good

cause for not allowing confrontation. This determination requires the hearing officer to balance the parolee's need to confront his accusers in view of the particular facts and circumstances of his case against factors, which include but are not necessarily limited to, the probability and severity of either the risk of harm to the informant or the danger that the rights of someone in any pending criminal prosecution would be jeopardized. The Commission, where appropriate, may subpoena adverse witnesses but only for the purposes set out in this subparagraph.

(c) (1) Any parolee who is convicted of a new offense and sentenced to imprisonment in any Federal, State or local correctional facility and who has a parole revocation detainer lodged against him at such institution, shall receive an institutional revocation hearing within one hundred and eighty days of the placement of such detainer, or upon his release, whichever comes first.

(2) Any alleged parole violator who waives any of his hearing rights under subsection (b), shall receive an institutional revocation hearing within three months of recommitment.

(3) Hearings held under this subsection shall be conducted by the Commission. The alleged parole violator will have notice of the hearing and be allowed to appear and testify in his own behalf and to select a representative as provided in § 4208(b) (2), to aid him in his appearance.

(4) The Commission after any revocation hearing held under this section, may dismiss the warrant or take any other action which it deems appropriate in accordance with the provisions of § 4212 of this chapter. In any case in which parole is modified or revoked pursuant to a hearing under this section, the Commission shall provide a written summary of the hearing which states the reasons for the adverse action and indicates the evidence considered and relied upon. It is important to remember that this is not a formal judicial determination. In *Morrissey* the Court observed, "no interest would be served by formalism in this process; informality will not lessen the utility of this inquiry in reducing the risk of error." 408 U.S.C. 487 (1972). The alleged violator shall receive a copy of this document.

(e) To facilitate speedy parole revocation determinations, the Commission may delegate authority to State or Federal officials to conduct hearings pursuant to this section. The Commission would promulgate regulations setting out appropriate categories of government officials to be used in this capacity such as U.S. magistrates, administrative law judges and officials of State parole authorities, etc.

§ 4211.

Existing law with respect to the enumeration of individuals entitled to serve parole revocation warrants is recodified under a new section number.

§ 4212.

If the parole revocation warrant is not dismissed, the range of possible responses by the Commission to a parolee who has been found to have violated the conditions of his parole include: (1) a reprimand; (2) an alteration of parole conditions; (3) referral to a half-way house or other residential facility for all or part of the remainder of the original sentence; (4) formal revocation of parole or release as if on parole; or (5) any other action deemed necessary for the purposes of successful rehabilitation of the parole violator, or which promotes the ends of justice.

In taking any action under this section, the Commission shall take into consideration whether or not the parolee has been convicted of a new criminal offense or whether such action is warranted by either the frequency or seriousness of the parolee's violation of any other condition or conditions of his parole.

§ 4213.

Initial decisions involving a grant or denial of parole, the imposition of unusual parole conditions, denial of parole discharge after five or more years of continuous parole supervision, or the modification or revocation of parole, are made by regional commissioners in accordance with rules and regulations promulgated by the full Commission. The eligible person or parolee adversely affected by any such decision is entitled, by filing a timely application, to have the regional commissioner reconsider the decision. The regional commissioner, in accordance with rules and regulations promulgated by the full Commission, must act on the application within sixty days and shall notify the applicant of the reconsidered decision and the reasons therefor.

(b) If the decision is affirmed by the regional commissioner or is in some other way still adverse to the applicant, he may take his case to the three member National Appeals Board. In accordance with the same time and notice requirements as provided in subsection (b), this final administrative appeal will be decided by the majority vote of the three members.

§ 4214.

This section sets out the review procedure for parole determinations in which original jurisdiction is retained by the Commission. The initial decision is made by the regional commissioner, the members of the National Appeals Board, and, in the event of a tie vote, an additional regional commissioner. The eligible person or parolee adversely affected by this decision, or any commissioner who took part in the decision, may appeal the decision within forty-five days to the full Commission which shall decide the case at its next quarterly meeting.

§ 4215.

Except where this statute provides for the application of section 553 of title 5, United States Code, the provisions of the Administrative Procedure Act shall not apply to the making of any determination, decision, or order of the United States Parole Commission.

Sec. 3. Section 4209, relating to the application of the Federal Youth Corrections Act, and Section 4210, relating to Canal Zone warrants, are reenacted under new section numbers.

Sec. 4. Section 5002 of title 18, United States Code, is replaced.

Sec. 5. Section 5005 of title 18, United States Code, is amended to make procedures for consideration of individuals sentenced under the Youth Corrections Act an integral part of the Commission's responsibilities. Decisions regarding parole of youthful offenders will be made in the manner prescribed for all other eligible offenders, with the exception of certain provisions relating to unconditional discharge of youth offenders.

Sec. 6. Section 5006 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 7. Sections 5007, 5008, 5009 of title 18, United States Code, which conflict with the provisions of Chapter 311 of title 18, relating to the organization and operation of the U.S. Parole Commission, are repealed.

Sec. 8. Section 5014 of title 18, United States Code, is amended to provide that parole interviews for youth offenders are conducted in the same manner as prescribed for other eligible offenders.

Sec. 9. Section 5017(a) of title 18, United States Code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 10. Section 5020 of title 18, United States Code, is amended to provide that parole revocations for youth offenders are conducted in the same manner as prescribed for other parolees.

Sec. 11. Chapter 402 of title 18, United States Code, is amended to reflect the change in name from Youth Division to U.S. Parole Commission.

Sec. 12. Amends the Table of Sections of Chapter 402 of title 18, United States Code.

Sec. 13. Section 5041 of title 18, United States Code, is amended to provide for parallel parole release criteria for all offenders.

Sec. 14. This section provides that wherever the term United States Parole Board is used in any law it shall be replaced with the term U.S. Parole Commission.

Sec. 15. Protects the eligibility of the one prisoner remaining in the Federal system who was sentenced prior to June 29, 1932, in order to preserve the possibility that he may be released under applicable provisions of law.

Sec. 16. Section 5108(c) (7) of title 5, United States Code, is amended to delete from the control of the Attorney General the salary of members of the U.S. Parole Commission which shall be set by the Congress under the provisions of Section 4202 of title 18, United States Code.

Sec. 17. Authorizes the appropriation of such sums as are necessary to carry out the purposes of this Act.

Sec. 18. (a) This legislation would take effect ninety days following enactment.

(b) All members of the Board of Parole on the effective date of this legislation would become commissioners, entitled to serve for the remainder of the terms for which they were appointed as members of the Board of Parole.

(c) All powers, duties and functions of the Board of Parole would be transferred to the U.S. Parole Commission on or after the effective date. The U.S. Parole Commission may make such transitional rules as are necessary for a period of one year following the effective date.

Senator HRUSKA. Mr. Chairman, I would like to take this opportunity to applaud your efforts in pursuing legislation to reform the Federal parole system. The subcommittee's diligent work during the past few years is clearly evidenced by the measure we now have before us.

As you know, Mr. Chairman, a nearly identical version of this measure was pending before the Judiciary Committee at the close of the 93rd Congress. The bill represents the labors of not only the subcommittee, but also representatives of the Department of Justice and members of the Board of Parole.

Many issues regarding parole reform produced differing opinions as to administration, authority, and other aspects of the decisionmaking process of the Board of Parole. But these differences have been, in large part, resolved. These efforts for an acceptable bill also reflect the fact that the Board of Parole has undertaken changes by way of administrative regulation to alter the structure and operation of the Board. This bill merely codifies most of these changes.

As I noted in my remarks on the introduction of S. 1109 last month, its provisions are substantially incorporated into S. 1, the bill which seeks to revise the entire Federal criminal code. I believe, however, that because of the importance and need for reform and modernization of our Federal parole system, S. 1109 merits our separate consideration. In addition, views on the use of parole have changed significantly in recent years, and I think it is good that the Congress undertake efforts to keep pace with these views.

Mr. Chairman, this measure is an excellent step in that direction. I do not necessarily agree with each and every one of its provisions. I recognize that further discussion, debate, and, perhaps, amendments in the Judiciary Committee, or even on the Senate floor, may be required. In any case, it is an important aspect of our Federal criminal justice system. It deserves consideration by this subcommittee and the Congress. I look forward to the measure's processing and ultimate enactment.

Mr. Chairman, I would also like to extend a personal welcome to our first witness this afternoon, Mr. Maurice Sigler, Chairman of the Board of Parole. Mr. Sigler is a veteran of the Federal corrections system and served from 1959 to 1971 in the corrections department of my home State of Nebraska. Mr. Sigler, we look forward to your testimony on S. 1109.

Senator BURDICK. I call our witness, Chairman Maurice H. Sigler of the U.S. Board of Parole, accompanied by Hugh Durham, Legislative Counsel, Office of Legislative Affairs, Department of Justice.

STATEMENT OF MAURICE H. SIGLER, CHAIRMAN, U.S. BOARD OF PAROLE; ACCOMPANIED BY HUGH M. DURHAM, LEGISLATIVE COUNSEL

Senator BURDICK. Welcome to the committee, gentlemen.
Mr. SIGLER. Thank you.

Mr. Chairman, it is a pleasure to appear again before this subcommittee on the subject of parole and in particular on the important bill which this subcommittee had developed—S. 1109, the proposed "Parole Commission Act."

As you know, we have worked closely with you and your subcommittee during the past several years. We have benefited from your wise counsel and with your cooperation have developed new regulations and procedures under which the Board operates today. I believe that you and the subcommittee and we, the Board of Parole, can be jointly proud of the progress that has been made.

Operation of the Board of Parole under guidelines and procedural regulations has now been going on for more than 1½ years, and during this period we have made some changes in our operation, and we have learned a great deal about the operation of a parole system under these regulations, and this process has been very beneficial because today we are appearing in support of legislation that is much stronger as a result of this experience.

S. 1109 is a logical culmination of these efforts. For the most part it would put into statutory law the regulations and procedures which have been adopted administratively and now pertain. In general we, the Board of Parole, and the Department of Justice support this bill.

As with any measure of this complexity, however, there are some individual provisions upon which we differ and a few changes which we think would improve the legislation.

Before discussing the specifics of the bill I would like to clarify my role today. I appearing both as spokesman for the Board of Parole and as spokesman for the Department of Justice. There is a distinction. We have indicated in testimony before your subcommittee in the past—and it is still true—the Board of Parole is essentially an independent entity.

A succession of Attorney Generals have recognized this parole and the Department on the provisions of S. 1109 coincide. I will carefully point out any differences.

APPOINTMENT OF THE MEMBERS OF THE COMMISSION

In the formulation of S. 1109 considerable discussion was had concerning the pros and cons of various methods of appointing the members of the Parole Commission and of assigning the Commissioners to the several positions, that is to particular regions or to the National Appeals Board. The bill provides that the Commissioners shall be appointed by the President, by and with the advice and consent of the Senate, and that the Chairman of the Commission shall designate these Commissioners to serve on the National Appeals Board and one Commissioner to serve as Regional Commissioner in each region.

The assignments in each case by the chairman shall not take effect unless concurred in by the Attorney General. We believe these provisions strike a proper balance between the need for some administrative flexibility and protection against arbitrary or improper assignment by a chairman. Both the Department and the majority of the Board support these provisions.

One Board member recommended a more specific appointment authority whereunder the Commissioners of the National Appeals Board would be appointed by the President directly to this Board. The arguments in favor of this arrangement are that it would enhance the status of the National Appeals Board and safeguard its independence.

We believe, however, that the requirement for concurrence by the Attorney General in any assignment is adequate protection and that the flexibility of the bill's provisions is desirable.

POWER OF HEARING EXAMINERS

Section 4203(c) (1-2) of the bill has the effect of reserving the power to grant or deny parole exclusively to parole Commissioners. Under present Board regulations the majority of cases are decided by two-man panels of hearing examiners—GS-14's—subject to screening and possible reconsideration by the regional member. The Board would like to continue the current flexible procedure, but the bill will prevent it.

The following considerations support letting hearing examiners grant or deny parole:

One: This procedure has been utilized since October 1973, is consistent with the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals, and has in practice worked extremely well.

Two: Each panel decision is screened for the regional member by an administrative hearing examiner and certain types of decision, namely decisions above or below the guidelines or cases of major violence are routinely referred to the regional member for review.

The Regional member on his own motion may review any panel decision and may refer any such decision with his recommendation and vote for reconsideration to the members of the National Appeals Board (28 CFR 2.24). You will find that in the citation.

Three: If a regional member had the responsibility for reviewing each and every case in toto, 5,000 cases per region per year would present an impossible workload.

Four: Certain cases are now deemed original jurisdiction cases—cases involving national security, unusual public interest or attention, organized criminal activity, or long term sentences—and require the concurrence of 3 out of 5 Board members.

On the other hand, it is recognized that there is a certain incongruity in permitting hearing examiners to take final action in any parole case. While the Department supports the Board's view, the Department also sees a certain validity in the arguments that the Regional Commissioner should be aware of and responsible for parole action in his region and thus should have a positive role in each case.

The Department feels that matter needs further attention.

POWER OF THE ATTORNEY GENERAL TO REQUIRE RECONSIDERATION OF A CASE

Section 4203(d) requires the Commission upon the request of the Attorney General to review any parole decision and by majority vote

reaffirm, modify or reverse the decision. All members of the Board view this requirement as being inconsistent with the concept of an independent commission.

The Department does not agree with the Board on this issue. The Department feels that the parole procedures are loaded with safeguards for the individual, but without section 4203(d) would fail to provide any adequate means of requiring further consideration of decisions in favor of the individual which may have been improvidently rendered.

The Department does not view the provision as violating the independence of the commission as the commission would have express authority to reaffirm its prior action if it so chose.

Release on parole and conditions of parole:

Section 4206(a) and 4207 related to the standards for granting parole and for setting the conditions of release. These sections are consistent with existing law and practice and neither the Board nor the Department has any objection to them.

I should note, however, that the proposed revision of the Federal Criminal Code will result in basic changes in the statutory provisions concerning sentencing philosophy and structure. When such changes are made, they will, of course, necessitate the adoption of standards for parole and for setting conditions of release that are consistent with the new sentencing standards.

MISCELLANEOUS PROVISIONS

There are also a few minor items upon which we have some recommendations.

(a) A majority of the board favors reducing the time limit for filing appeals from the 45 days provided in section 4213 to the present 30 days which is working well.

(b) The Board also feels that mandatory reinterviews every 2 years (sec. 4208) instead of after the present 3 years would create unnecessary hearings and promote tension among inmates—particularly in long term cases. And that was not desirable.

(c) The Board opposes the provision in section 4214 that would permit a single dissenting commissioner to trigger a full commission review of an original jurisdiction case decision. The Board believes this provision would cause needless rehearings. The Department, however, does not agree. The Department believes that since the individual is given the power to require rehearing in such cases, balanced protection against ill considered action demands that a similar power be given to the commissioners.

(d) The Board questions the need for the mechanism in section 4205(e) for reducing the minimum time to be served and believes it would weaken the finality of sentences. The Department, however, contemplates that the mechanism would only be used in special, deserving cases and consequently feels this flexibility is desirable.

(e) The Board does not agree to the desirability of mandatory hearings on parole discharges (sec. 427(d)(2)) at 5 years and every 2 years thereafter, but concurs in the principle of annual discharge review.

CONTINUED

1 OF 2

In conclusion, since I have only alluded to the various provisions of S. 1109 upon which we have some question or problem, it may seem that we have great troubles with the measure. That is not at all true. In the interest of time and orderly presentation, I did not dwell on the many, many issues in this bill upon which we are in complete agreement.

In conclusion, we believe S. 1109 is in general and in most respects an outstanding step forward in parole legislation. It is a timely, needed measure and one which we strongly support. We would like to work with you and the subcommittee in resolving the few difficulties which we have and which I have discussed briefly today.

I would now be happy to attempt to answer any questions which you may have.

Senator BURDICK. Senator Hruska?

Senator HRUSKA. Thank you, Mr. Chairman.

It is good to see Mr. Sigler. He is well known in the Federal corrections world and also in the Nebraska corrections field, having served there for a number of years as director of our corrections department there.

I don't know that I have any questions at this time. I will defer to the chairman and my colleagues here.

Senator BURDICK. The Senator from the great State of Virginia?

Senator SCOTT. Thank you, Mr. Chairman. It is good to be on the subcommittee with my friend, Senator Burdick, and to be the ranking member of this subcommittee. I look forward to working with the chairman.

I have not had an opportunity to review this proposal. I noticed the names of the various sponsors, including the chairman of this subcommittee, the ranking member of the full committee, Mr. Hruska. It must be a good bill, but perhaps you could tell me the remarks that you have made, are they your own remarks as chairman of the board, are they the Department's views, are they the administration's views?

Mr. SIGLER. There are two views there, Senator.

The ones I designated as the Department's are the Department's position on something on which we differ. When I address myself to representing the Board of Parole, that is what I am doing.

Everything that is stated in here that is supported by the Board of Parole is by majority vote. In all but about two or three instances the votes were unanimous from the standpoint of the Board of Parole. So it is a Board of Parole statement.

Senator SCOTT. I heard your comment that I interpreted to mean that we want to enact into law administrative practices, or some activities that were carried out through Executive Order.

Is that correct?

Mr. SIGLER. Through the administrative order of the Attorney General, that is how we are now operating, and I believe everything that pertains to the Government should be statutory. That is my belief. That is the reason I support this.

Most of this we are doing exactly as it is called for now.

Mr. SCOTT. Maybe the skeleton ought to be legislated, and perhaps the details could be filled in by administrative regulation.

Mr. SIGLER. May I say you can get too many details, but I think the skeleton should be there.

Senator SCOTT. I am quite in agreement about too many regulations. What substantive changes does this make in existing practice, without asking you to review your whole testimony?

Mr. SIGLER. The most important one as called for in the bill, in my view, is the one pertaining to the hearing examiners, wherein the bill says we must have—that the board must sign off—they don't say that, but actually that is what it means, that the Board must act on all the cases, and may I say to you that if that should happen, we have to have more Parole Board members, because one Parole Board member, or two acting in concert, cannot act 5,000 cases a year intelligently.

Senator SCOTT. Are you saying this bill indicates the Board must act on all cases?

Mr. SIGLER. Yes, sir; that is the way the bill reads.

Senator SCOTT. Would you suggest it be deleted?

Mr. SIGLER. I am suggesting this be deleted and that we do what we do today. I think the Board should be involved in this. I think the Board should have the responsibility and authority to review any cases, but—

Senator SCOTT. How many members of the Board are there?

Mr. SIGLER. Eight.

Senator SCOTT. Would it be feasible to have one member of the Board to review every case and then if he saw fit, then that the entire board could look at it? Could something of that nature be worked out, rather than just filing the decision of the hearing officer?

Mr. SIGLER. Sir, I don't think it is possible, because there is just too much work for that. I don't believe that one man can intelligently review over 30 cases a day.

Senator SCOTT. How many hearing officers do you have?

Mr. SIGLER. Twenty-eight at this time, and we work in pairs.

Senator SCOTT. And you have an eight-man board?

Mr. SIGLER. Yes, sir.

Senator SCOTT. Couldn't one of the men at least make a cursory examination of each one, not hold hearings, not do everything that the hearing officer did, but couldn't you divide it up some way so that one of them could at least look at it, and if he felt that it was routine, then that would be the end of it?

But on the other hand, if something sticks out that didn't seem correct, then he could look at it deeper? I am asking—

Mr. SIGLER. Yes.

Senator SCOTT [continuing]. Because you are expert in this field and I am not. Isn't there a compromise here somewhere?

Mr. SIGLER. Well, there could be a compromise by hiring more people, first, sir, let me say three of us are in Washington, and we act as an appellate group.

In the bill which we believe is right, we have a two-level appeal system and three of us in Washington, two other members and myself, act as an appellate group. We would not vote on these cases. Only the people in the regions do. There are five regions, and we have one Board member in each region as the Regional Director.

We will have upward of 25,000 decisions made this year on the Parole Board, and I don't believe that one man could honestly tell you that he could do that. I believe that there should be safeguards there.

I think that the Regional Director, the Board member, should not only have the authority, but the responsibility of reviewing certain types of cases. Maybe those cases that go below the guidelines or those above or rough cases something over 15 years, we will say, cases with a long time.

Right now in our procedure, there are certain types of cases where 3 members out of 5 must vote on the cases. That is organized crime, terms of over 45 years, public interest cases, and national safety.

Those are the four types. We must do that now.

Senator SCOTT. Mr. Sigler, it seems to me that every executive, in every field, does review to some extent the work of his subordinates, and it would seem that some compromise, Mr. Chairman, might be worked out, but again I haven't read the bill, and perhaps I should not comment further.

Mr. SIGLER. I hope I made myself clear, then. I don't know whether I have or not.

Senator SCOTT. I think so. It just seems to me curbstome that the parole officer should not have the final decision, and that somewhere along the line a member of the parole board ought to look at his decision, possibly not in a great depth.

When I sign my mail, I look at what the people in the office are doing, and some of them I have more confidence in than others, and some of them I look at in more detail. I think that is true of everyone that reviews another person's actions.

Thank you, Mr. Chairman.

Senator BURDICK. Mr. Sigler, maybe there is an area for agreement here by separating types of cases, and the Board could give more attention to some of the harder cases. There are many, many routine cases, I assume, where there is no need for anybody to look at but the hearing examiner.

Mr. SIGLER. Most of our sentences are between 6 months and 5 years, and they don't pertain to dangerous people. At this point, we don't have it written into the regulations exactly how a Regional Director should handle the business, but I am well aware of the way that they do do it.

They don't do it all alike. We have one man, regardless of the type of case it is, one Regional Director, if it has 10 years or more, he wants to look at it. If it is a case involving violence, regardless of the length of sentence, he wants to look at it, and then we have others that are really interested in narcotics, for example, because, of the problems in that area today, and so they don't all work alike but they all look at the cases that they believe should come to the attention and action of the Regional Director or Parole Commission.

Senator BURDICK. The hearing examiners actually work within the confines of the guidelines before they act, too, do they not?

Mr. SIGLER. I beg your pardon?

Senator BURDICK. The hearing examiners must operate within certain guidelines?

Mr. SIGLER. They must do that, or if they go above or below the guidelines, they must make a written statement why they do so. We don't vote on these guidelines from a gut-level thing. We must document our reasons.

Senator BURDICK. Right here is one of the areas of disagreement that has to be resolved somehow.

Mr. SIGLER. Yes, sir, this is one we have to resolve.

Senator BURDICK. Could you tell the subcommittee more about the role of hearing examiners? What safeguard would there be against premature release of sophisticated offenders? Would you intend to give them more authority than they have now?

Mr. SIGLER. The Regional Directors?

Senator BURDICK. The examiners.

Mr. SIGLER. No, sir, we don't want to give them any more than they have now. We would recommend they continue in exactly the same manner as they are in now.

Senator BURDICK. This would be helpful to the subcommittee if you could tell us more about the relationship of Attorney General to the Parole Board. I would think the Attorney General is free to make information available on the individual available to the Board, because this recently has been done.

Does this affect your view with respect to the review by the Attorney General?

Mr. SIGLER. I agree, not that the Attorney General in all cases couldn't make a better decision than we can, but we have had a number—I can illustrate my feeling this way—in the last 2 or 3 years, we had had more than the usual number of notorious cases, cases that might involve influential people, and I think this would be—I think it would be a dangerous thing for the Attorney General to be even asked to make recommendations in these areas, because the media, especially, over the past several months or a year and a half, have called me on many, many occasions: "What did the Attorney General have to say about that?"

Is the Department of Justice involved in the decision you have made in this case? Has the White House contacted you? And I can tell this Board under oath that in no instance was this ever done, which I think helps maintain the integrity of the whole system, and I wouldn't want anybody to think here that I am not suggesting that any Attorney General would not be as honest as I hope I am, but the point of the thing is that he is a powerful figure, and if he suggested to the Chairman of a Parole Board, whoever that Chairman might be, "that you take this back before your Board and look at it again. You have made your decision, but I want you to look at it again. You don't have to change it," but he is telling us in his judgment he is pretty certain something is wrong.

I am sure you would find eight members—some parole boards, maybe all of ours today—if they had just voted on this case, they would vote the same way, but there are some who would listen to the Attorney General, and he wants a change made here, or he would not have asked us to do it.

That is our position, sir, on this.

Senator SCOTT. Mr. Chairman, would you yield briefly?

Senator BURDICK. Yes.

Senator SCOTT. I notice on page 3 of the bill where it states you are an independent agency of the Department of Justice, and then the comment that the witness just made relating to independence. Now is this agency to be within the Department of Justice? Frankly, I don't share the concern of the witness.

I think we might be talking about two different things. The Attorney General is the Chief Executive officer of the Department of Justice, and as such, he might on some occasion make a political decision.

He might make a decision on its merits. That is possible, too, you know. In fact I would hope that all decisions would be made on their merits. If the President did somehow intervene, he is the Chief Executive officer of the country, elected by the people. I think we are wrong, Mr. Chairman, when we suggest something sinister in the Department of Justice when the Attorney General talks with a subordinate officer.

I talk with my staff, and they are under me. The chairman in a sense is over the committee here, and we have lines of authority all the way along. I believe we are overreacting perhaps to Watergate or something like that, when we assume that if the Attorney General talks with someone under him within the Department of Justice that there is something wrong.

I don't see a thing wrong with it, unless the subject matter or the actions are such that they happen to be wrong. He is the chief executive. Isn't that correct?

Mr. SIGLER. Oh, yes, and talking with us is one thing, but telling us to open the case and do it over is quite another in our view, and—

Senator SCOTT. Well, now are you saying that you feel that even though you are under the Department of Justice, that whatever you decide is final, and that the Attorney General would have no right to review anything that you do?

Mr. SIGLER. Oh, no, I am not saying that, because any citizen could do that. I am not saying that. But the Board of Parole has always been referred to and felt that they are an independent agency.

Senator SCOTT. Sort of quasijudicial.

Mr. SIGLER. That is right. I had a call this morning on a case. The question was asked me: "How many Members of Congress contacted you in this decision?"

They didn't like our decision, and I could say: "Nobody contacted us."

There may be an error in the decision we made, but we were not influenced to make the decision, or in making our decision.

Senator SCOTT. Do you see something wrong with a Member of Congress contacting you about something that is under your jurisdiction?

Mr. SIGLER. Not at all. I have about 300 letters a month from the Congress, and every one of them is answered.

Senator SCOTT. It is one thing for them to make an inquiry, and another thing for them to try to tell you what to do; isn't it?

Mr. SIGLER. I believe that is correct. I believe I would agree with that. I think every Member of Congress who has written our office, and maybe you, sir, got a response back immediately with the information requested.

Senator SCOTT. I always put in a phrase: "In accordance with your rules and regulations." Mr. Chairman, I am a little concerned with the suggestion that there may be something wrong with the Attorney General contacting a subordinate officer, because it just seems to me that the President as Chief Executive officer of the country, regardless of his party or who he is at all, is responsible for the operation of the entire executive branch of Government.

The Attorney General under the President is responsible for the operation of the entire Department of Justice, whether it be the Parole Board, whether it be the FBI, the Division of Lands and Natural Resources or whatever it happens to be. Good government, I believe, requires these lines to be observed.

So that is why I asked the chairman if I could intercede briefly here.

Thank you, Mr. Chairman.

Senator BURDICK. Well, this is another difference in the bill, a difference between you and the Attorney General.

Mr. SIGLER. May I add just one more sentence, sir? The only thing is, we are not concerned about the Attorney General as a man. We are concerned about the system of asking us to reopen cases. That is our concern.

Senator BURDICK. To repeat what you said on page 5 of your statement:

Section 403(d) requires the Commission upon the request of the Attorney General to review any parole decisions and by majority vote, reaffirm, modify or reverse the decision.

All members of the board view this requirement as being inconsistent with the concept of an independent commission.

Do I understand again that you support 4203(d)?

Mr. SIGLER. Yes, sir; we are.

Senator BURDICK. Even though the Board has the right to reaffirm the original decision?

Mr. SIGLER. Well, Mr. Chairman, this right, and I suppose if we were as strong as we should be, none of us would ever submit to what might be referred to as pressure. I don't know whether we would ever get a Board of Parole or any commission that would be that strong. The Board unanimous opinion is that they have to stand on their own decisions and take the responsibility for any errors in there that they might make, but they should not make them at the suggestion of anybody else.

That was said that way by another member of the Board.

Senator SCOTT. Mr. Sigler, might you not ever ask one of your associates, "Tom, do you really believe that is right?" Would there be something wrong with you as the chairman if one of the members of the Board said something, and for you to say "Tom, do you think that is right?"

You would be asking Tom to reconsider. You are the Chairman.

Mr. SIGLER. Senator SCOTT, all the policy of the Board is made by all members of the Board, and it is thrashed out and voted on before it is put in our policy manual, and we argue it out; yes, sir.

We do that in all instances. Now if one—I want to say it this way. Two members of the Board vote on a case, and unless I am involved in the decision, unless I have new information that they don't have, I do not get in it.

I would like to say this, though, under the present procedures, the Attorney General may request the board to reconsider. He may not mandate it. This is it, you see.

Senator BURDICK. My point, the point I am making, is this: That all the Attorney General has under this section is the power to request review. He can't mandate your action. You can reaffirm what you did before.

Mr. SIGLER. Yes.

Senator BURDICK. Isn't that compatible with the independent commission?

Mr. SIGLER. I don't think this item is the most world-shaking thing in the bill, but I do believe we should tell this committee, and I have been so instructed by the Board of Parole, to give these views, and to do it strongly, and I happen to agree with them—you know, I am not now backing off. This happens to be our view, and, again, we have been wrong.

I think we were wrong in this case yesterday.

Senator BURDICK. Mr. Durham, would you like to add something?

Mr. DURHAM. Speaking for the Department, I think there is room on this point for some compromise. I don't think the Department is insisting on the language as it is presently in the bill. I think the main thing the Department wants to insure is that there is an opportunity after a decision has been made and appealed, if there is information that we think has not been considered and so forth, that it can be brought to the proper attention of the board, and the remedial action taken if such is the case.

I don't think we are wedded to any particular language giving a right to the Attorney General to do this or do that, but really it is to sort of perpetuate the system as it now is, but do it in a statutory format.

Senator BURDICK. Why can't you two sit down and draft some language, then?

Mr. DURHAM. I am sure we can, working with the staff.

Mr. SIGLER. I am sure we can.

Senator HRUSKA. Would the chairman yield on this point? Isn't that section which they are considering now comparable to the right of a litigant in a court, after judgment has been rendered by the court, to ask for a rehearing and state the reasons why; that the board in his opinion did not stress this enough, or overlooked this?

The litigant does not make a request that flows therefrom, but simply asks to reconsider or review in the light of something that may have escaped their attention or wasn't properly emphasized. In that sense, can that section be considered an invasion of the Board as an independent agency?

Mr. DURHAM. Senator, it didn't bother the Department. It bothered the Board.

Senator HRUSKA. I am addressing the point to both of you.

Mr. DURHAM. Yes.

Senator HRUSKA. What do you think, Mr. Sigler?

Mr. SIGLER. I have to speak for myself. The Board isn't here. I think if this were worded very differently so that any of these cases that are hot that the Attorney General might be interested in, if we were to know from his beforehand, like we do from the Criminal Division, if

they have things we want to know, these are the things we want you to consider that we are suggesting and telling you to.

The Criminal Division does that now. It is after we make our decision that we are concerned about. We think that anybody should come in and bring information to us and certainly the Attorney General, Senator Scott, is my boss, and I am going to recognize him and treat him as my boss, and respect him as my boss as long as I am in this position.

If the Board has made a decision in a case, and then we are ordered to reopen it, there is a "can of worms" there if we would get involved. Now, if the Attorney General has information he knows we don't have and we get that, then I think we are obligated to consider the new information.

Senator BURDICK. Isn't that what this more or less provides for?

Mr. SIGLER. But it isn't after the fact.

Senator BURDICK. If they discovered information after you made your decision, he could say, "Take a look at it."

Mr. SIGLER. These things we consider now, sir, in our appeal system, even. Here are the facts you did not consider, or if we have a letter, and it has not been 3 weeks until a Member of the House of Representatives called me and said,

I hear you have acted in so and so's case. Here is information that if you have it, fine, but I don't think you had it, and if you don't, it might do something from the standpoint of making, or reconsidering the case.

It had to do with a hardship situation, with a guy that was not dangerous. I wrote the Congressman and thanked him, and the case was reopened, and he was paroled because this was new and important information that we did not have before.

Senator BURDICK. As I said before, I think you and Mr. Durham could get down to some language. We are all talking about the same thing. You want to be an independent agency, and you have the final voice, and the Attorney General wants to be protected in the unusual cases where there may be some fact that may have been overlooked.

That is all. Did I say it about right?

Mr. SIGLER. Oh, yes; whatever needs to be done, we are going to do it, and we are going to do it well.

Senator SCOTT. Mr. Chairman, as I recall as a premise to Mr. Sigler's statement, he said something about the press learning about the intervention of the Attorney General, and again, I don't believe that ought to be the basis for a decision to be made by this committee. We ought to do whatever is right and proper under the circumstances, and my fear is that we may fragment our government.

It seems to me we need a chain of command in our Government, and within the executive department of the Government; I have heard it said many times that the President of the United States cannot control the executive branch of the Government, because of the bureaucracy within the Government, and because there are so many people that he has no real control.

I think it is wrong when the President of the United States cannot control the executive branch of the Government. I don't think any President can. I just hate for us to contribute something that does reduce the proper power of the Attorney General of the United States

as the chief legal officer of our Government. Mr. Chairman, I just share my thoughts.

I was with the Department of Justice for 21 years, and do have some knowledge of the various branches of the Justice Department, and I just feel that it is wrong to say an agency within the Justice Department is beyond the Attorney General's control. I think he should control the FBI, Immigration, and all the various agencies that come under the umbrella of the Department of Justice—not control in a political sense, but I think we are overreacting to some of the things that have happened in recent years.

Senator BURDICK. Mr. Durham, would you identify yourself for the record?

Mr. DURHAM. I am the Legislative Counsel from the Office of Legislative Affairs, Department of Justice.

Senator BURDICK. Your full name?

Mr. DURHAM. Hugh M. Durham.

Senator BURDICK. I have one more question. Mr. Sigler, why is appointment of the Appeals Board members a power which the Chairman of the Parole Commission needs?

Mr. SIGLER. I can speak objectively about this, because when my term is over, I won't be back. I am not talking about what I want. All members but two have more time than I, and the possibility of appointing more than one is remote.

If I have to appoint one—I hope I don't have to—but any time in our board, or this commission, that you have two levels of people, and one we are talking about the President appointing, and a year and a half or two in this same group we talked about that, and that was one of the things some people thought was wrong with our proposal.

But here we are proposing that the President appoint part of the board to their position, and then there are five left, and then, of course, there is just one thing they can do. They will have to be regional directors.

That is one thing.

The other thing is that the chairman of any commission as you well know, has limited powers, and he should have—but if he does not have the ability or authority to put these people where they are best suited, then he does not have anything at all. In a system like ours, where we have five regions, we might have, because of the nature of the way we are appointed, we might have men who have absolutely no administrative ability.

In fact one man who was recently retired from our board told me that he did not think he could run a region, and he did not want to try it, because he had never been an administrator.

That is one thing. It is easy, too, to bring a man on the appellate level which is sort of a dull job in some cases, because his full responsibility is to sit there and look at cases that have been worked on and they are appealed before him, and of course you have to go through them in much detail.

Now if you had the President appoint a man to that job that felt like he could go through this, and we have board members—we are made up of all kinds of people—we have board members that think they can handle 40 or 50 cases a day like that, and they can't do it. So

you have to have the authority to put your people where they belong, and where they can do the best job.

But getting down to the last part of it, the Chairman of the Board of Parole has to have that authority if he is going to have a unit. If he does not have, then these people are entities unto themselves, and instead of one parole system, we are going to have five.

We have enough difficulty today trying to run one. It must be the Chairman's responsibility if we are to run a fair operation. There is on our board, out of eight members voting—two I believe—no, one vote, one man, thought we should have it done as suggested in the bill.

The other seven said no, for the reasons that I am giving you.

Senator BURDICK. Does the Chairman now appoint the five in the field and the three here?

Mr. SIGLER. Yes, I did. If I may tell you how that was done, I think I was lucky, because in the first instance, we tried to go on a seniority deal as much as we could, to get this thing started, because these men had been appointed to Washington, you know, and I think we got the right five men in the field, or four men and one woman, and you know I think we kept the right people in town, excluding me.

I think we did. It was not because I selected them properly. It just fell in that way. But on our board today, I could move two men, one in and one out, and it would affect the board tremendously, because they are not particularly fitted for the positions either in for one and out for another.

Senator BURDICK. How long has this practice been going on?

Mr. SIGLER. We started in October. Our demonstration, sir, you won't remember the date, but I have been before you and we talked about it, on the first day of October 1972. Then in 1973 in August, we were given permission to regionalize the whole country, because the Attorney General and the Bureau of Prisons, and even the courts, although there are one or two things we do that the courts don't like, believe that this is a good system.

I am going to quote Judge Marvin Frankel here. I know all of you know who he is. In a meeting I heard him say, "I don't know what did it, but there are light years—the United States Board of Parole is light years ahead of what it was 21½ years ago."

He said that in a meeting at Yale University less than 2 months ago, that I sat in.

Senator BURDICK. In other words, it is your argument that as a Chairman you are familiar with the day-to-day operations of your department, of your agency and you would be in a better position than the President to say who is going to be on the appeals board.

Mr. SIGLER. This does not sound very modest, but I believe that unequivocally. I believe it. We are all the President's appointments, but he does not tell us what we are supposed to do.

Senator BURDICK. But there is another conflict right here, isn't there?

Mr. SIGLER. No. There is only one man. It was a 7 to 1 vote on the board.

Mr. DURHAM. The Department supports the Board's position.

Senator BURDICK. Then the only conflict we found, you think you can resolve.

Mr. SIGLER. I don't think there will be any problem.

Mr. DURHAM. No.

Senator BURDICK. There are no other differences?

Mr. DURHAM. None of significance. All are pointed out in the statement. I don't think there are any that cannot be resolved without too much difficulty.

Senator BURDICK. Senator Hruska?

Senator HRUSKA. I can sympathize with you that the Chairman knows the members, and he knows who are temperamentally unqualified by experience, and who is suited to take a job as regional commissioner, and whatever.

I expect that is true, but what about the countervailing argument that says maybe the Chairman could be wrong? Maybe the Chairman could be wrong, and if so, would we be without redress?

The Chairman could say you go to Kansas, or you go to Texas, and that would be it. Maybe he is wrong. There are those who say that when you share that responsibility with the Attorney General, you get away from that individual, sole judgment, and if you can't sell it to the Attorney General, maybe you are wrong.

Mr. SIGLER. Senator Hruska, I would like to refer you to the statement. We agree with you 100 percent, and I don't think that the Chairman should appoint anybody without the concurrence of the Attorney General.

Senator HRUSKA. That is the way the bill now reads, isn't it?

Mr. SIGLER. I believe that is right, and it does read that way.

Senator HRUSKA. There is one man who says he believes the Attorney General should not pass judgment on it.

Mr. SIGLER. No, the President. There are those who say the President should appoint the three members on the appellate group, the three members in Washington. We say, and the Department agrees with us, that with the exception of one Board member, that no chairman should put anybody anywhere unless—excuse me—unless it is concurred in by the Attorney General, and I would buy that.

Senator HRUSKA. Isn't that what happens? The President appoints the Commissioners, and then in various forms, you have Regional Deputies or Assistants or Regional Directors and the Commission usually appoints those, or the Chairman of the Commission subject to the advice and the consent of the whole Commission, whether it is the CAB or the NLRB or whatever?

Mr. DURHAM. I am not familiar with it.

Senator HRUSKA. They are appointed by the regulatory body, whatever it happens to be.

Mr. SIGLER. The reason, sir, that I prefer the Attorney General to do it, regardless of who the Chairman might be, is because in our particular situation, if we voted as a Commission to do it, I don't believe we would ever get it done. Now I am telling you this very honestly.

I don't think that the Commission as a group would agree on who should be where. Now I think that, as Senator Scott says, the Attorney General runs the Department of Justice, and should, and when we go to moving these Commissioners around, there is a very good chance that sometimes some Chairman might want to be vindictive.

He might not even know what he is doing, too. That could happen to

me. But if I can't do it unless the Attorney General says "OK," I think that is safeguard enough, and I agree with you, that if I can't sell the Attorney General on this thing, then maybe I am wrong.

Senator HRUSKA. On another point, Mr. Chairman, just a brief thing, and a unanimous consent request. In regard to the making of the decisions, either by the Commerce or by the Commission, you refer to a procedure you now have and have been using since October 1973, which is a procedure which is contained in the report of the Commission on Criminal Justice Standards on Goals.

Mr. SIGLER. Yes, sir.

Senator HRUSKA. For the availability of the committee as well as for use on the Senate floor, I ask that just the recommendations of the Standards and Goals report at page 417, entitled "Organization of Parole Authorities," be inserted at an appropriate place in the hearing records. There is a brief explanation, and then there are six points underneath and it is fairly short, and I think it might help us as we go along at a later time.

Senator BURDICK. Without objection, it is received.

Senator HRUSKA. Thank you.

Senator BURDICK. Any other questions?

Senator SCOTT. Mr. Chairman, might I add that I personally appreciate the candor of the witness. Again having been with the Department of Justice for a number of years, I sort of respect the authority of the Attorney General to be the final decisionmaker within the Department.

I remember back in the 1940's, when we had an Assistant Attorney General who said he was appointed by the President and could only be removed by the President, and there was a difference between the Attorney General and this particular assistant, Normal Mackles. He was fired that day.

I think he should have been. To me, the Attorney General should not get into the individual cases, as a rule, and the decision should be that of the hearing officer under the supervision of the Commission. But, in the unusual case, I believe that the Attorney General should still run the Department of Justice.

Mr. SIGLER. Senator Scott, let me say this to you. I have been around a long time, too, and when the boss tells me to do something, I will either do it, or I will get out.

Senator BURDICK. I don't want to prolong the hearing, but a thought just came to me. What do you do in a case where two hearing officers do not agree?

Mr. SIGLER. The case is sent in to the regional headquarters and the regional examiner votes, and he will vote with one or the other.

Senator BURDICK. I see.

We shall have 10 days for additional questions or additional statements, and with that, we will now close the meeting.

[Whereupon, at 2:30 p.m., the subcommittee recessed, subject to the call of the Chair.]

[Additional information follows:]

STANDARD 12.1—ORGANIZATION OF PAROLING AUTHORITIES

Each State that has not already done so should, by 1975, establish parole decisionmaking bodies for adult and juvenile offenders that are independent

of correctional institutions. These boards may be administratively part of an overall statewide correctional services agency, but they should be autonomous in their decisionmaking authority and separate from field services. The board responsible for the parole of adult offenders should have jurisdiction over both felons and misdemeanants.

1. The boards should be specifically responsible for articulating and fixing policy, for acting on appeals by correctional authorities or inmates on decisions made by hearing examiners, and for issuing and signing warrants to arrest and hold alleged parole violators.

2. The boards of larger States should have a staff of full-time hearing examiners appointed under civil service regulations.

3. The boards of smaller States may assume responsibility for all functions; but should establish clearly defined procedures for policy development, hearings and appeals.

4. Hearing examiners should be empowered to hear and make initial decisions in parole grant and revocation cases under the specific policies of the parole board. The report of the hearing examiner containing a transcript of the hearing and the evidence should constitute the exclusive record. The decision of the hearing examiner should be final unless appealed to the parole board within 5 days by the correctional authority or the offender. In the case of an appeal, the parole board should review the case on the basis of whether there is substantial evidence in the report to support the finding or whether the finding was erroneous as a matter of law.

5. Both board members and hearing examiners should have close understanding of correctional institutions and be fully aware of the nature of their programs and the activities of offenders.

6. The parole board should develop a citizen committee, broadly representative of the community and including ex-offenders, to advise the board on the development of policies.

STATEMENT OF SENATOR JOHN L. MCCLELLAN

"PAROLE COMMISSION ACT"

APRIL 9, 1975

Mr. Chairman, the Subcommittee on National Penitentiaries is considering needed legislation to help modernize the Federal parole system. The "Parole Commission Act," introduced as S. 1109 in this Congress, is the product of the efforts of many sources, including the professional staff of the Subcommittee, the Federal parole board, the Department of Justice, and others interested in a sound Federal parole system. It is on the whole a commendable step forward.

My interest in parole legislation is not new. For a number of years, the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair, has worked closely with the staff of the Subcommittee on National Penitentiaries, drawing on its expertise to iron out modern parole provisions for the Federal Criminal Code legislation which meshed with the overall sentencing philosophy and structure of that bill. As various approaches to sentencing were studied in relation to the general purposes of the Criminal Code, it became apparent that there was an interrelationship between the various phases and options of sentencing, such as probation, imprisonment, fines, and parole, which required consistency in standards, criteria, and conditions. Hopefully, the parole provisions in S. 1 the Criminal Justice Reform Act of 1975—which I submit for the record—accomplish this result.

"Chapter 39.—UNITED STATES PAROLE COMMISSION"

"Sec.

"591. Organization and membership.

"592. Powers of the Commission.

"593. Powers and duties of the Chairman of the Parole Commission.

"594. Applicability of the Administrative Procedure Act to rulemaking.

"§ 591. Organization and Membership"

"(a) The United States Parole Commission shall be established as an independent agency within the Department of Justice and shall be comprised of a Chairman and eight members appointed by the President, by and with the advice and consent of the Senate. At no time shall more than six of the nine

Commissioners be of the same political party. The President shall designate three of the Commissioners to serve on the National Appeals Board.

"(b) The term of office of a Commissioner shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which the person vacating the office was appointed and qualified. Upon the expiration of a term of office of a Commissioner the Commissioner shall continue to act until a successor has been appointed and qualified. Commissioners shall be compensated at the highest rate now or hereafter prescribed for grade 17 of the General Schedule pay rates (5 U.S.C. 5332).

"§ 592. Powers of the Commission"

"(a) The Parole Commission shall meet at least quarterly, and by majority vote shall:

"(1) promulgate rules and regulations establishing guidelines for parole release decisions and such other rules and regulations as are necessary to carry out a national parole policy and the purposes of this chapter and of subchapter D of chapter 38 of title 18, United States Code;

"(2) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five;

"(3) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

Each Commissioner shall have equal responsibility and authority in all such decisions and actions, shall have full access to all information relating to the performance of all duties and responsibilities, and shall have one vote. A record of the final vote of each Commissioner on any action pursuant to this subsection shall be maintained and made available for public inspection.

"(b) The Parole Commission shall, under rules and regulations promulgated under this chapter and subject to the provisions of subchapter D of chapter 38 of title 18, have the power to:

"(1) grant or deny any application or recommendation for the parole of any person who has been convicted of an offense under any Federal law and who has been sentenced to a term of imprisonment in the custody of the Bureau of Prisons;

"(2) impose reasonable conditions on any order granting parole;

"(3) modify or revoke any order granting parole;

"(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, and, where such revocation is based upon a subsequent conviction of the parolee under any Federal or State law for an offense committed subsequent to his release on parole, determine whether all or any part of the term required to be served shall run concurrently or consecutively with the sentence imposed for such subsequent offense;

"(5) accept voluntary and uncompensated services; and

"(6) utilize, on a cost reimbursable basis, the services of the Federal government or of a State government for the purpose of carrying out the provisions of section 3835 (a) of title 18, United States Code.

"(c) The Parole Commission may subpoena witnesses to testify or to produce at a parole revocation hearing, and may pay such witness fees as established for the courts of the United States. If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found, to order such person to attend and to testify or produce evidence. The court may issue an order requiring such person to appear before the Commission if the court finds that such testimony or evidence is directly related to a matter with respect to which the Commission is empowered to make a determination under section 3835 of title 18, United States Code. All process in such a case may be served in the judicial district in which such a parole proceeding is being conducted, in which such person resides or carries on business, or in which such person may be found.

"(d) The Commission, pursuant to rules and regulations promulgated under this chapter, may delegate to any Commissioner any of its powers except the powers enumerated in subsection (a) of this section and in section 3836 of title 18, United States Code.

"(e) Pursuant to rules and regulations promulgated by the Commission, hearing examiners may be delegated any or all functions necessary to provide the

basis for decision under subsection (b) of this section, including gathering and recording in the hearing record any pertinent information, conducting hearings and interviews, taking sworn testimony, and recommending appropriate action. Recommendations of any panel of hearing examiners shall be based upon concurrence of at least two members of such panel.

"(f) Pursuant to rules and regulations promulgated by the Commission, any officer or employee of the executive or judicial branches of the Federal government or a State government may be delegated authority to conduct hearings to be held pursuant to the provisions of section 3835 of title 18, United States Code.

"§ 593. Powers and Duties of the Chairman of the Parole Commission

"(a) The Chairman of the Parole Commission shall:

"(1) convene and preside at meetings of the Commission pursuant to section 592(a) and such additional meetings of the Commission as the Chairman may call or as may be requested in writing by at least three Commissioners;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission except that appointment of hearing examiners shall be subject to approval by the Commission and regional commissioners shall appoint and supervise such personnel employed regularly and full time in their respective regions as are compensated at a rate up to and including grade 9 of the General Schedule pay rates (5 U.S.C. 5332);

"(3) assign duties among officers and employees of the Commission, including Commissioners, so as to balance the workload and provide for orderly administration;

"(4) assign regional commissioners to serve temporarily on the National Appeals Board in case of vacancy, or in the event of disability or disqualification; designate one member of the National Appeals Board to serve as Vice Chairman of the Commission; and designate for each such region established pursuant to section 592(a) (2), one Commissioner to serve as regional commissioner for each such region;

"(5) direct the preparation of requests for appropriations and the use and expenditure of funds;

"(6) make reports on the position and policies of the Commission to the Attorney General, the Administrative Office of the United States Courts, and the Congress;

"(7) provide for research and training, including:

"(A) collecting data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) disseminating pertinent data and studies, to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) publishing data concerning the parole process and parolees; and

"(D) conducting seminars, workshops, and training programs on methods of parole for parole personnel and other persons connected with the parole process; and

"(8) perform such administrative and other duties and responsibilities as may be necessary to carry out the provisions of this chapter and of subchapter D of chapter 38 of title 18, United States Code.

"(b) In carrying out his functions under this section, the Chairman shall be governed by the national parole policies promulgated by the Commission.

"§ 594. Applicability of the Administrative Procedure Act to Rulemaking

"Rules and regulations promulgated under the authority of this chapter shall be promulgated pursuant to the provisions of section 553 of title 5, United States Code, except that, for the purposes of this chapter, section 553(b) (3) (A) shall be deemed not to include the phrase 'general statements of policy'."

"Chapter 40.—UNITED STATES VICTIM COMPENSATION BOARD

"Sec.
"595. Organization and Membership.
"596. Powers of the Board.
"597. Procedures.
"598. Review.

"§ 595. Organization and Membership

"(a) The United States Victim Compensation Board is hereby established as an independent agency within the Department of Justice. The Board shall be

composed of three members, each of whom shall have been a member of the bar of the highest court of a state for at least eight years, to be appointed by the President, by and with the advice and consent of the Senate. Not more than two members shall be affiliated with the same political party. The President shall designate one of the members of the Board to serve as Chairman.

"(b) No member of the Board shall engage in any other business, vocation, or employment.

"(c) The Board shall have an official seal.

"(d) The term of office of each member of the Board shall be eight years, except that (1) the terms of office of the members first taking office shall expire as designated by the President at the time of appointment, one at the end of four years, one at the end of six years, and one at the end of eight years and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

"(e) Each member of the Board shall be eligible for reappointment.

"(f) Any member of the Board may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

"(g) The principal office of the Board shall be in or near the District of Columbia, but the Board or any duly authorized representative may exercise any or all of its powers in any place.

"§ 596. Power of the Board

"(a) The Board is authorized in carrying out its functions to:

"(1) appoint and fix the compensation of an Executive Director and a General Counsel and such other personnel as the Board deems necessary in accordance with the provisions of title 5 of the United States Code;

"(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 of the United States Code, but at rates not to exceed \$100 a day for individuals;

"(3) promulgate such rules and regulations as may be required to carry out the provisions of subchapter B of chapter 41 of title 18 of the United States Code;

"(4) designate representatives to serve or assist on such advisory committees as the Board may determine to be necessary to maintain effective liaison with Federal agencies and with State and local agencies developing or carrying out policies or programs.

"Subchapter D.—Parole

"Sec.

"3831. Consideration of a Prisoner for Release on Parole.

"3832. Pre-Parole Reports.

"3833. Parole Interview Procedure.

"3834. Term and Conditions of Parole.

"3835. Revocation of Parole.

"3836. Appeal from Parole Commission Determination.

"3837. Inapplicability of the Administrative Procedures Act.

"§ 3831. Consideration of a Prisoner for Release on Parole

"(a) ELIGIBILITY.—A prisoner who has been committed to the custody of the Bureau of Prisons to serve a term of imprisonment totaling six months or more is eligible for release on parole by the Parole Commission:

"(1) upon completion of the service of the term of parole ineligibility if such a term was imposed by the sentencing court pursuant to the provisions of sections 2301(d) and 2302(c); or

"(2) at any time after the completion of the first six months of the term of imprisonment if a term of parole ineligibility was not imposed by the court.

"(b) FIRST CONSIDERATION.—The Parole Commission shall consider the parole of a prisoner serving a term of imprisonment totaling six months or more at least sixty days prior to:

"(1) the completion of the service of the term of parole ineligibility if such a term was imposed by the sentencing court; or

"(2) the expiration of the term of imprisonment or of the first year of the term of imprisonment, whichever is earlier, if a term of parole ineligibility was not imposed by the court.

"(c) CRITERIA FOR RELEASE.—Parole may be granted a prisoner who is eligible for parole if the Parole Commission, having regard for the nature and circum-

stances of the offense and the history and characteristics of the prisoner, is of the opinion that:

"(1) his release at that time would not unduly deprecate the seriousness of the offense, undermine respect for law, or prevent the administration of just punishment for the offense;

"(2) his release at that time would not undermine the affording of adequate deterrence of criminal conduct;

"(3) there is no undue risk that he will commit further crimes or otherwise fail to conform to such conditions of parole as would be warranted under the circumstances;

"(4) the continued provision of the educational or vocational training, medical care, or other correctional treatment that he is receiving at the prison facility will not substantially enhance his capacity to lead a law-abiding life; and

"(5) his release at that time would not have a substantially adverse effect on institutional discipline.

"(d) RECONSIDERATION.—If parole is denied a prisoner, the Parole Commission shall reconsider parole at least once each year thereafter until parole is granted, unless it appears clear that a release order after an additional year would be inappropriate, in which case the Commission may defer reconsideration for not more than two years.

"(e) MANDATORY RELEASE ON PAROLE AT EXPIRATION OF SENTENCE.—A prisoner serving a term of imprisonment totaling six months or more who is still in confinement on the date of the expiration of his term of imprisonment shall then be released on parole.

"§ 3832. Preparole Reports

"(a) PREPAROLE STUDY AND REPORT BY BUREAU OF PRISONS.—An adequate time prior to the date upon which a prisoner becomes eligible for parole, the Bureau of Prisons, under such regulations as the Attorney General may prescribe, shall conduct a complete study of the prisoner, inquiring into such matters as the prisoner's previous delinquency or criminal experiences; his social background; his capabilities; his mental, emotional, and physical health; and the rehabilitative resources or programs that may be available to suit his needs. At least ninety days prior to the date upon which the prisoner becomes eligible for parole, the Bureau shall provide the Parole Commission with a written report of the results of the study and shall make to the Commission whatever recommendations the Bureau believes will be helpful in determining the suitability of the prisoner for parole.

"(b) PREPAROLE REPORT BY PROBATION OFFICERS AND GOVERNMENT AGENCIES.—Upon request of the Parole Commission prior to its consideration of the parole of a prisoner or of any other matter within its jurisdiction, a probation officer or a government agency shall provide the Commission with whatever information is available to such officer or agency concerning a prisoner or parolee and shall, if not inconsistent with the public interest, make to the Commission whatever recommendations such officer or agency believes will be helpful with respect to the matter concerning which the request was made.

"(c) OTHER PREPAROLE INVESTIGATION.—The Parole Commission may make such other investigation as it may consider warranted.

"§ 3833. Parole Interview Procedure

"(a) INTERVIEW REQUIRED.—A prisoner whom the Parole Commission is required to consider for parole under the provisions of section 3531(b) or (d), shall, within the time specified, be afforded a parole interview unless he signs a written waiver of such an interview.

"(b) NOTICE AND OPPORTUNITY FOR REPRESENTATION.—Prior to the parole interview, the prisoner:

"(1) shall be given a written notice of the time, place, and purpose of such interview; and

"(2) shall be allowed to select, as a representative to aid him in such interview, any person who qualifies under regulations or rules issued by the Parole Commission, the regulations or rules of which may not exclude attorneys as a class.

"(c) ACCESS TO REPORTS.—Following notification that a parole interview is scheduled, the prisoner shall be afforded reasonable access to such reports and other materials as are prepared by, or for the use of, the Parole Commission in

making its determination, except that the prisoner shall not be afforded access to matters that, if they appeared in a report of a presentence investigation, would not be revealed to a defendant under the provisions of Rule 32 of the Federal Rules of Criminal Procedure. If access to any such material is withheld from the prisoner on such grounds, the Commission, or, if the material was withheld at the request of the Bureau of Prisons or another agency, the Bureau or such other agency, shall summarize the basic contents of material to the extent that is possible without violating a pledge of confidentiality or endangering any person, and the Commission shall furnish such summary to the prisoner.

"(d) RECORD OF INTERVIEW.—A complete record of a parole interview shall be retained by the Parole Commission. For good cause shown the Commission may make a transcript of the record available to the prisoner.

"(e) NOTIFICATION OF DETERMINATION.—Not later than fifteen working days after the date of the interview, the Parole Commission shall notify the prisoner in writing of its determination. If parole is denied, or if discretionary conditions of parole are imposed other than those incorporated by reference in section 3834(c), the Commission shall include a statement of the reasons for such determination and, if possible, a representative of the Commission who participated in the parole interview shall hold a conference with the prisoner to explain such reasons.

"§ 3834. Term and Conditions of Parole

"(a) SETTING OF TERM AND CONDITIONS.—Upon a determination to release a prisoner on parole, the Parole Commission shall set the term and conditions of parole, having regard for:

"(1) the nature and circumstances of the offense and the history and characteristics of the parolee; and

"(2) the need:

"(A) to protect the public from further crimes of the parolee; and

"(B) to provide the parolee with such needed educational or vocational training, medical care, or other correctional treatment as can be provided effectively while he is on parole.

"(b) TERM OF PAROLE.—The Parole Commission shall set the term of parole at not less than one nor more than five years.

"(c) CONDITIONS OF PAROLE.—The Parole Commission shall provide as an explicit condition of parole, that the parolee not commit another federal, state, or local crime during the term of parole. The Commission may provide, as further conditions of parole to the extent that such conditions are reasonably related to the matters set forth in subsection (a), any conditions set forth as discretionary conditions of probation in section 2103 (b)(1) through (b)(17), and any other conditions it considers to be appropriate. If an alien prisoner subject to deportation is paroled, the Commission may provide, as a condition of parole, that he be deported and remain outside the United States. The Commission shall provide to a parolee a written statement setting forth all the conditions to which the parole is subject with sufficient clarity and specificity to serve as a guide for the parolee's conduct and for such supervision as is required.

"(d) COMMENCEMENT OF TERM.—A term of parole commences on the day the parolee is released from imprisonment.

"(e) CONCURRENCE WITH OTHER SENTENCES.—A term of parole runs concurrently with any federal, state, or local term of parole or probation for another offense to which the parolee is subject or becomes subject during the term of parole, except that it does not run during any period in which the parolee is imprisoned in connection with a conviction for a federal, state, or local crime.

"(f) EARLY TERMINATION.—The Parole Commission may terminate a term of parole previously ordered and discharge the parolee at any time after expiration of one year of parole if it is satisfied that such action is warranted by the conduct of the parolee and the interest of justice. The Commission shall review the status of a parolee after two years of continuous parole, and after each additional year of parole, to determine the need for his continued parole.

"(g) EXTENSION OF TERM OR MODIFICATION OF CONDITIONS.—The Parole Commission may extend a term of parole if less than the authorized term was previously imposed, and may modify or enlarge the conditions of parole, at any time prior to the expiration or termination of the term of parole.

"(h) SUBJECT TO REVOCATION.—A term of parole remains conditional and subject to revocation until its expiration or termination.

"§ 3835. Revocation of Parole

"(a) **WARRANT FOR ARREST.**—A warrant for the arrest of a parolee who is alleged to have violated a condition of his parole may be issued by the Parole Commission at any time prior to the expiration or termination of the term of parole. An officer authorized under subchapter B of chapter 30 to execute such a warrant may arrest the parolee and, upon such an arrest, shall return the parolee to the custody of the Bureau of Prisons.

"(b) **PRELIMINARY APPEARANCE.**—A parolee arrested on a warrant for violation of a condition of his parole shall be taken, without unnecessary delay, before the Parole Commission at a place reasonably near the place of the arrest or of the violation alleged, to determine if there is probable cause to believe that he has violated a condition of his parole. The parolee shall be given the opportunity to admit or deny, in whole or in part, the violation alleged, and to explain the circumstances of the matter. If the Commission, after a preliminary hearing, finds that there is probable cause to believe that the violation occurred, a revocation hearing before the Commission shall be ordered. If the parolee admits the violation alleged, the revocation hearing may be limited to matters concerning disposition.

"(c) **TIME AND PLACE OF REVOCATION HEARING.**—A revocation hearing shall be held by the Parole Commission, with respect to the parole of:

"(1) a parolee for whom such a hearing was ordered under subsection (b), immediately upon the finding of probable cause or within sixty days thereafter, at a place reasonably near the place of the arrest or of the violation alleged; or

"(2) a parolee who has been convicted of a federal, state, or local crime committed subsequent to his release on parole and who has been sentenced for such crime to a term of imprisonment of more than one hundred and eighty days and who has had placed against him a detainer on a warrant issued under subsection (a), within one hundred and eighty days of such placement, at the prison facility in which he is confined.

(d) **REVOCATION HEARING PROCEDURE.**—Prior to the holding of the revocation hearing, the parolee shall be given reasonable notice of the conditions of parole alleged to have been violated, and of the time, place, and purpose of the scheduled hearing. At the hearing, the parolee shall be apprised of the evidence against him and shall be given opportunity:

(1) to be represented by retained counsel, or, if he is unable to retain counsel, by counsel provided pursuant to the provisions of chapter 34;

(2) to appear, to testify, and to present witnesses and documentary evidence on his own behalf; and

(3) to confront and cross-examine adverse witnesses, if he so requests, unless the Parole Commission specifically finds good cause for declining to allow confrontation.

Any relevant evidence may be received at the hearing, regardless of its admissibility under the rules governing admission of evidence at criminal trials. At the conclusion of the hearing, the Commission shall determine on the evidence before it whether the parolee has violated a condition of his parole.

"(e) **DISPOSITION.**—If the Parole Commission determines that the parolee has not violated a condition of his parole, the warrant shall be withdrawn. If the Commission determines that the parolee has violated a condition of his parole, it may continue him on the existing parole, with or without extending the term or modifying or enlarging the conditions, or, if such continuation, extension, modification, or enlargement is inappropriate in its opinion, may revoke parole and order the parolee imprisoned for:

(1) the term of the original sentence minus the portion of the original sentence served in confinement prior to the parole; or

(2) the contingent term of imprisonment provided in section 2303.

In determining the appropriate disposition, the Commission shall consider whether the violation was serious and whether the violation had been preceded by other violations.

"(f) **DIGEST OF PROCEEDING.**—In any case in which parole is modified or revoked, the Parole Commission shall prepare, and shall give to the parolee, a digest of the factors considered by the Commission and of the reasons for the disposition ordered by the Commission.

"(g) **DELAYED ADJUDICATION.**—The power of the Parole Commission to revoke parole for violation of a condition of parole extends beyond the expiration of the

term of parole for any period reasonably necessary for the adjudication of matters arising before its expiration if, hearing is made prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

"(h) **CREDIT UPON REIMPRISONMENT.**—Credit shall be given for reimprisonment of a parolee beginning on the date he is returned to the custody of the Bureau of Prisons.

"(i) **REPAROLE.**—A prisoner who has been reimprisoned following revocation of parole may be reparable by the Parole Commission under the same provisions of this subchapter that govern initial parole, and such subsequent parole may be revoked by the Commission under the same provisions of this subchapter that govern initial revocation. If such a subsequent parole is revoked, the parolee may be reimprisoned for:

"(1) the term of the original sentence minus the portion of the original sentence served in confinement prior to the last parole; or

"(2) the contingent term of imprisonment provided in section 2303 if no part of such a term was served in the course of his reimprisonment after the initial revocation.

"§ 3836. Appeal from Parole Commission Determination

"(a) **APPEAL IN GENERAL.**—In any case in which parole is denied, in which conditions of parole are imposed other than those set forth or incorporated by reference in section 3834(c), or in which parole is modified or revoked, the person to whom any such decision applies may file with the National Appeals Board a written appeal from such decision not later than thirty days after the decision is rendered. In any case in which any decision with respect to parole is rendered, the Attorney General may file with the National Appeals Board a written appeal from such decision not later than thirty days after the decision is rendered. An appeal shall be decided by a majority vote of the three commissioners on the National Appeals Board within sixty days after receipt of the appellant's papers.

"(b) **APPEAL IF ORIGINAL JURISDICTION RETAINED.**—In accordance with regulations and rules issued by the Parole Commission, in any case in which original jurisdiction is retained by the Commission the initial decision shall be made by a majority vote of a panel of five commissioners. The panel's decision may be appealed on the motion of any commissioner on the panel, or on the application of the individual to whom such decision applies, or on the motion of the Attorney General, directly to the National Appeals Board, which shall either affirm the decision or schedule a review by the full Commission.

"(c) **PARTICIPANT IN PRIOR DECISION BARRED.**—No commissioner may participate as a member of the National Appeals Board in the consideration of an appeal from a decision in which he had earlier participated.

"§ 3837. Inapplicability of the Administrative Procedure Act

"The provisions of 5 U.S.C. 551 through 559, and 701 through 706, do not apply to the making of any determination, decision, or order under this subchapter.

Subchapter E.—Death Sentence

"Sec.

"3841. Implementation of a Death Sentence.

"3842. Use of State Facilities.

"§ 3841. Implementation of a Death Sentence

"A person who has been sentenced to death pursuant to the provisions of chapter 24 shall be delivered to the custody of the Bureau of Prisons until the sentence is to be implemented. The Bureau shall release the person sentenced to death to the custody of a United States marshal, who shall supervise the implementation of the sentence in the manner prescribed by the law of the state in which the sentence is imposed. If the law of such state does not provide for the implementation of a sentence of death, the court shall designate another state, the law of which does so provide, and the sentence shall be implemented in the latter state in the manner prescribed by such law. A sentence of death may not be implemented while the person sentenced to death is pregnant.

"§ 3842. Use of State Facilities

"A United States marshal charged with the supervision of the implementation of a sentence of death may use appropriate state or local facilities for the purpose, may use the services of an appropriate state or local official or of a person

he employs for the purpose, and may pay the costs thereof in an amount approved by the Attorney General.

[S. 1463, 93d Cong., first sess.]

A BILL To establish a Parole Commission and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Parole Commission Act of 1973".

(b) Section 4201 of title 18, United States Code, is amended to read as follows:

"§ 4231. Parole Commission

"(a) There is hereby created as an independent agency of the Department of Justice a United States Parole Commission (hereinafter referred to in this chapter as the 'Commission'), the members of which shall be appointed by the President, by and with the advice and consent of the Senate, and which shall exercise the powers granted in the manner prescribed by this chapter. The term of office of a member (hereinafter referred to in this chapter as 'Commissioner') shall be six years, except that the term of a person appointed as a Commissioner to fill a vacancy shall expire six years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office of any member, such member shall continue to act until a successor has been appointed and qualified. The President shall from time to time designate from among the Commissioners one to serve as Chairman. The Attorney General shall from time to time designate from among the National Commissioners one to serve as Vice Chairman, and four to serve as National Commissioners.

"(b) The Commissioners shall meet at least twice annually, and by majority vote shall—

"(1) consider, promulgate, and oversee a national parole policy;

"(2) promulgate such regulations, adopted in accordance with the provisions of section 553 of title 5, United States Code, as are necessary to carry out the national parole policy;

"(3) create such regions as are necessary to carry out the provisions of this chapter, but in no event less than five;

"(4) ratify or deny the appointment by the Chairman of the heads of major administrative units; and

"(5) ratify, revise, or deny any request for regular, supplemental, or deficiency appropriations, prior to the submission of the requests to the Office of Management and Budget by the Chairman, which requests shall be separate from those of any other agency of the Department of Justice.

Each Commissioner shall have equal responsibility and authority in all such decisions and actions, shall have full access to all information relating to the performance of such duties and responsibilities, and shall have one vote.

"(c) The Chairman shall—

"(1) preside at meetings of the Commissioners, pursuant to subsection (b) of this section;

"(2) appoint, fix the compensation of, assign, and supervise all personnel employed by the Commission, except such persons who may from time to time be employed in the immediate offices of Commissioners other than the Chairman;

"(3) assign duties among units of the Commission so as to balance the workload and provides for orderly administration;

"(4) direct the preparation of requests for appropriations and the use and expenditure of funds;

"(5) provide for research which shall include—

"(A) the systematic collection of the data obtained from studies, research, and the empirical experience of public and private agencies concerning the parole process and parolees;

"(B) the dissemination of pertinent data and studies to individuals, agencies, and organizations concerned with the parole process and parolees;

"(C) the publishing of data concerning parole process and parolees;

"(6) perform such administrative and other duties and responsibilities as are necessary to carry out the provisions of this chapter.

"(d) The National Parole Commissioners, by majority vote, shall—

"(1) have authority to accept, reject, or modify any decision of any region, upon motion of any National Parole Commissioner, if the eligible

person to whom such decision applies shall have made application for review;

"(2) have authority to review any decision of any region when the national well-being so requires, and to accept, reject, or modify such decision; and

"(3) give reasons in detail for their decision in any appropriate case, including the review of any decision of any region

"(e) The Vice Chairman shall—

"(1) preside at meetings of the National Commissioners;

"(2) assign cases to National Commissioners so as to balance the workload and provide for orderly administration;

"(3) in the absence of the Chairman, carry out the necessary functions of that office; and

"(4) perform such other duties and responsibilities as are necessary to carry out the purposes of this chapter.

"(f) A Regional Parole Commissioner shall establish panels which shall be authorized to—

"(1) grant or deny any application or recommendation to parole or re-parole any eligible person;

"(2) specify reasonable conditions or any order granting parole;

"(3) modify or revoke, pursuant to section 4207, any order paroling any eligible person;

"(4) establish the maximum length of time which any person whose parole has been revoked shall be required to serve, but in no case shall such time, together with such time as he previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense;

"(5) re-parole any person whose parole has been revoked and who is not otherwise ineligible for parole; and

"(6) discharge any parolee from supervision or release him from one or more of the conditions of parole at any time after the expiration of one year after release on parole, if warranted by the conduct of the parolee and the ends of justice; except, in those cases in which the time remaining to be served is less than one year, in which case, such actions may be taken at any time.

Panels shall consist of either Commissioners or Parole Examiners and decisions shall be based upon concurrence of not less than two members of such panel. A Regional Parole Commissioner may review the decision of any panel of examiners, and shall have such other powers as are necessary to carry out the purposes of this chapter.

"(g) (1) The Commission shall have the power to issue subpoenas to require the attendance and testimony of witnesses and the production of evidence that directly relates to any matter with respect to which the Commission is empowered to make a determination under this chapter. Any Commissioner or Parole Examiner may administer oaths to witnesses appearing before the Commission or before a Regional Parole Panel. Subpoenas may be issued under the signature of any Commissioner or any duly designated official of the Commission and may be served by any person designated by the chairman or any Commissioner. Witnesses summoned before the Commission or before a Regional Parole Panel shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production of evidence may be required from any place in the United States to any designated place.

"(2) If a person refuses to obey such a subpoena, the Commission may petition a court of the United States for the judicial district in which such parole proceeding is being conducted or in which such person resides or carries on business to require such person to attend, testify, and produce evidence. The court may issue an order requiring such person to appear before the Commission, there to produce information or a thing, if so ordered, or to give testimony touching the matter under investigation or in question, when the court finds such information, thing or testimony directly related to a matter with respect to which the Commission is empowered to make a determination under this chapter. Failure to obey such an order is punishable by such court as a contempt. All process in such a case may be served in the judicial district in which such person resides, does business, or may be found."

SEC. 2. Section 4202 of title 18, United States Code, is amended to read as follows:

"§ 4202. Persons eligible

"(a) A person committed pursuant to this title, other than a juvenile delinquent or a committed youth offender, wherever confined and serving a definite term or terms of one year or more, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over more than forty-five years, except to the extent otherwise provided in section 4208 of this title. Once a person becomes eligible for parole he must be given a parole appearance and such additional parole appearances as are deemed necessary, but in no case shall there be less than one additional parole appearance every two years.

"(b) If it appears from a report or recommendation by the proper institution officers and upon application by a person eligible for release on parole, that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society, the Commission may authorize release of such person on parole.

"Such person shall remain, while on parole, in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which he was sentenced.

"(c) In imposing conditions of parole, the Commission shall consider the following—

"(1) there should be a reasonable relationship between the conditions imposed and the person's conduct and present situation;

"(2) the conditions should provide for only such deprivations of liberty as are necessary for the protection of the public welfare; and

"(3) the conditions should be sufficiently specific to serve as a guide to supervision and conduct.

Upon release on parole, a person shall be given a certificate setting forth the conditions of such parole.

"(d) An order of parole or release may require a parolee or a person released pursuant to section 4164 of this title as conditions of parole or release to reside in or participate in the program of a residential community treatment center, or both, for all or part of the period of such parole or release: *Provided*, That the Attorney General certifies that adequate treatment facilities, personnel, and programs are available. If the Attorney General determines that the person's residence in the center or participation in its program, or both, should be terminated, because the person can derive no further significant benefits from such residence or participation, or both, or because such residence or participation adversely affects the rehabilitation of other residents or participants, the Attorney General shall notify the Regional Parole Commissioner who shall thereupon make such other provision with respect to the person as is deemed appropriate.

"A person residing in a residential community treatment center may be required to pay such costs incident to residence as the Attorney General deems appropriate.

"(e) An order of parole or release may require a parolee, or a prisoner released pursuant to section 4164 of this title, who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of parole or release to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of parole: *Provided*, That the Attorney General certifies a suitable program is available. If the Attorney General determines that the person's participation in the program should be terminated, because the person can derive no further significant benefits from participation or because his participation adversely affects the rehabilitation of other participants, he shall so notify the Regional Commissioner, which shall thereupon make such other provision with respect to the person as is deemed appropriate."

SEC. 3. Section 4203 of title 18, United States Code, is amended to read as follows:

"§ 4203. Parole interview procedures

"(a) Any interview of an eligible person by a Commissioner or parole examiner in connection with the consideration of an application of parole shall be conducted in accordance with the following procedures—

"(1) an eligible person shall be given written notice of the time and place of such interview; and

"(2) an eligible person shall be allowed to select an advocate to aid him in such interview. The advocate may be a member of the institutional staff, or any other person who qualifies under the rules promulgated by the Commission pursuant to this chapter.

"(b) Following notification that a parole interview is pending, an eligible person and his advocate shall have reasonable access to progress reports and such other materials as are prepared for the use of any Commissioner or examiner in making any determination, except that the following materials may be excluded from inspection—

"(1) diagnostic opinions which, if made known to the eligible person, would, in the opinion of the prison administration, lead to a serious disruption of his institutional program of rehabilitation;

"(2) any document which contains information which was obtained by a pledge of confidentiality;

"(3) any part of any presentence report, except upon agreement of the court having jurisdiction to impose sentence; or

"(4) any information that would place any person in jeopardy of life or limb.

If any document is deemed by either the Commission or the prison administration to fall within the exclusionary provisions of this section, then it shall become the duty of that agency to summarize the basic contents of the material withheld, bearing in mind the need for confidentiality or the impact on the inmate, or both, and furnish such summary to the inmate and his advocate, in no case less than four days prior to the parole interview, except that the appropriate court may retain the discretion to approve any such summary of any presentence report.

"(c) A summary of every interview shall be prepared and included in the record of proceedings.

"(d) An eligible person denied parole shall be given a written list of the reasons for such; and, if possible, a personal conference shall be held between the eligible person and the Commissioners or parole examiners conducting the interview. In the case of a grant of parole on other than general conditions as promulgated pursuant to this chapter, the eligible person shall be given a statement of reasons for each such additional condition."

SEC. 4 Section 4204 of title 18, United States Code, is amended to read as follows:

"§ 4204. Aliens

"When an alien prisoner subject to deportation becomes eligible for parole, the Parole Commission may authorize the release of such person on condition that such person be deported and remain outside the United States.

"Such person, when his parole becomes effective, shall be delivered to the duly authorized immigration official for deportation."

SEC. 5. Section 4205 of title 18, United States Code, is amended to read as follows:

"§ 4205. Retaking parole violator under warrant

"(a) A warrant for the retaking of any person who is alleged to have violated his parole may be issued by any Commissioner within the maximum term or terms for which such person was sentenced.

"(b) (1) A person retaken upon a warrant under this section shall be accorded the opportunity to have a preliminary hearing, as soon as possible, except as provided in subsection (c), at a place reasonably near the location where the alleged violation occurred, by an official designated by the Commission (hereinafter referred to as hearing officer) to determine if there is probable cause to believe that he has violated a condition of his parole.

"(2) Such person shall be accorded the opportunity for a revocation hearing at a place reasonably near the location where the alleged violation occurred within sixty days of a finding of probable cause, except that such hearing may be held at the same time and place as the hearing to determine if there is probable cause.

"(A) notice of the conditions of parole alleged to have been violated, and the time, place, date and purposes of the scheduled hearing;

"(B) opportunity for the parolee to appear and testify, and present witnesses and documentary evidence on his own behalf;

"(C) opportunity to be represented by retained counsel, or if he is unable to retain counsel, counsel may be provided pursuant to section 3006A of title 18, United States Code; and

"(D) opportunity for the parolee to be apprised of the evidence and if he so requests, to confront and cross-examine adverse witnesses, except in those cases wherein it is determined by the hearing officer that there is substantial risk of harm to any person who would so testify or otherwise be identified. Following such hearing, a summary shall be prepared by the hearing officer, setting forth in writing findings and recommendations, stating with particularity the reasons therefor.

"(c) In the case of any parolee retaken by warrant under this section who does not contest any alleged violation of a condition of parole, or who has been convicted of a new offense under any law of the United States or any state, such person shall be accorded the opportunity for an institutional revocation hearing within ninety days. Such hearing will be conducted by a panel appointed pursuant to this chapter and the parolee shall have notice of such hearing and be allowed to appear and testify on his own behalf, and to select an advocate to aid him in such appearance.

"(d) A person retaken pursuant to this section shall be detained pending disposition of such warrant if, subsequent to a finding of probable cause, the hearing officer determines that there is reason to believe that such person will not appear for his disposition hearing, or that he constitutes a danger to himself or to others."

Sec. 6, Section 4206 of title 18, United States Code, is amended to read as follows:

"§ 4206. Officer executing warrant to retake parole violator

"Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant for the retaking of a parole violator is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the Attorney General."

Sec. 7, Section 4207 of title 18, United States Code, is amended to read as follows:

"§ 4207. Parole modification and revocation

"(a) An order of parole may be modified or revoked in the case of any parolee convicted of a criminal offense, or where otherwise warranted by the frequency or seriousness of the parolee's violation of the conditions of his parole.

"(b) A decision to modify or revoke an order of parole may include—

"(1) a reprimand;

"(2) an alteration of parole conditions;

"(3) referral—to a residential community treatment center for all or part of the remainder of the original sentence;

"(4) formal revocation of parole or mandatory release pursuant to this chapter; or

"(5) any other action deemed necessary for successful rehabilitation of the violator, and which promotes the ends of justice."

Sec. 8, Section 4208 of title 18, United States Code, is amended to read as follows:

"§ 4208. Fixing eligibility for parole at time of sentencing

"(a) Upon entering a judgement of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the person shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the person may become eligible for parole at such time as the Commission

"(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in

determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion—

"(1) place the person on probation as authorized by section 3651 of this title, or

"(2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

"(c) Upon commitment of any person sentenced to imprisonment under any law of the United States for a definite term or terms of one year or more, the Director of the Bureau of Prisons, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the person and shall furnish to the Commission a summary report, together with any recommendations which in the Director's opinion would be helpful in determining the suitability of the prisoner for parole. Such report may include, but shall not be limited to, data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The Commission may make such other investigation as it may deem necessary. In any case involving a person with respect to whom the court has designated a minimum term in accordance with subsection (a) of this section, such report and recommendations shall be made not less than ninety days prior to the expiration of such minimum term.

"It shall be the duty of the various probation officers and government bureaus and agencies to furnish the Commission information concerning the person and, whenever not incompatible with the public interest, their views and recommendations with respect to the parole disposition of his case.

"(d) The court shall have the authority to reduce any minimum term at any time, upon motion of the Director of the Bureau of Prisons, upon notice to the attorney for the government."

Sec. 9, Section 5002 of title 18, United States Code, is amended to read as follows:

"§ 5002. Advisory Corrections Council

"(a) There is hereby created an Advisory Corrections Council composed of two United States judges designated by the Chief Justice of the United States and ex officio, the Chairman of the Parole Commission, the Director of the Bureau of Prisons, the Chief of Probation of the Administrative Office of the United States Courts, the Administrator of Law Enforcement Assistance Administration or his designee at a policy level, the Secretary of Health, Education, and Welfare or his designee at a policy level, the Secretary of Labor or his designee at a policy level, the Commissioner of the Civil Service Commission or his designee at a policy level, the Secretary of Housing and Urban Development or his designee at a policy level, the Director of the Office of Economic Opportunity or his designee at a policy level, and the Secretary of Defense or his designee at a policy level. The judges first appointed to the Council shall continue in office for terms of three years from the date of appointment. Their successors shall likewise be appointed for a term of three years, except that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. The Chairman shall be designated annually by the Attorney General.

"(b) The Council shall meet quarterly and special sessions may be held from time to time upon the call of the Chairman.

"(c) The Council shall consider problems of treatment and correction of all offenders against the United States and shall make such recommendations to the Congress, the President, the Judicial Conference of the United States, and other appropriate officials as may improve the administration of criminal justice and assure the coordination and integration of policies of the Federal agencies, private industry, labor, and local jurisdictions respecting the disposition, treatment, and correction of all persons convicted of crime. It shall also consider measures to promote the prevention of crime and delinquency and suggest appropriate studies in this connection to be undertaken by agencies both public and private. The members of the Council shall serve without compensation but necessary travel

and subsistence expenses as authorized by law shall be paid from available appropriations of the Department of Justice.

"(d) (1) The Council shall appoint an Executive Secretary or an Administrative Assistant and such other personnel as may be necessary to carry out its functions. The Executive Secretary or Administrative Assistant shall supervise the activities of persons employed by the Council and shall perform such other duties as the Council may direct.

"(2) The Council may obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed \$100 per day.

"(e) The Council is authorized to request from any department, agency, or independent instrumentality of the Government any information or records it deems necessary to carry out its functions, and each such department, agency, and instrumentality is authorized to cooperate with the Council and, to the extent permitted by law, to furnish such information and records to the Council, upon request made by the Chairman or by any member when acting as Chairman.

"(f) The first meeting of the Council shall occur not later than thirty days after the enactment of this legislation."

Sec. 10. Section 5005 of title 18, United States Code, is amended to read as follows:

"§ 5005. Youth correction decisions

"The Commission may, in accordance with the provisions of chapter 311 of this title, grant or deny any application or recommendation for parole, modify or revoke any order of parole of any person sentenced pursuant to this chapter, and perform such other duties and responsibilities as may be required by law."

Sec. 11. Section 5006 of title 18, United States Code, is amended to read as follows:

"§ 5006. Definitions

"As used in this chapter—

"(a) 'Bureau' means the Bureau of Prisons;

"(b) 'Director' means the Director of the Bureau;

"(c) 'Youth offender' means a person under the age of twenty-two years at the time of conviction;

"(d) 'Committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to section 5010(b) and 5010(c) of this chapter;

"(e) 'Treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders;

"(f) 'Conviction' means the judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere."

Sec. 12. Section 5010 of title 18, United States Code, is amended to read as follows:

"§ 5010. Sentence

"(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation.

"(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter.

"(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter.

"(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision.

"(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsection (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Bureau shall report to the court its findings."

Sec. 13. Section 5014 of title 18, United States Code, is amended to read as follows:

"§ 5014. Classification studies and reports

"The Director shall provide classification centers and agencies. Every committed youth offender shall first be sent to a classification center or agency. The classification center or agency shall make a complete study of each committed youth offender, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school, family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency. In the absence of exceptional circumstances, such study shall be completed within a period of thirty days. The agency shall promptly forward to the Director and to the Commission a report of its findings with respect to the youth offender and its recommendations as to his treatment. As soon as practicable after commitment, the youth offender shall receive a parole interview."

Sec. 14. Section 5015 of title 18, United States Code, is amended to read as follows:

"§ 5015. Powers of Director as to placement of youth offenders

"(a) On receipt of the report and recommendations from the classification agency the Director may—

"(1) recommend to the Commission that the committed youth offender be released conditionally under supervision;

"(2) allocate and direct the transfer of the committed youth offender to an agency or institution for treatment; or

"(3) order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public.

"(b) The Director may transfer at any time a committed youth offender from one agency or institution to any other agency or institution."

Sec. 15. Section 5016 of title 18, United States Code, is amended to read as follows:

"§ 5016. Reports concerning offenders

"The Director shall cause periodic examinations and reexaminations to be made of all committed youth offenders and shall report to the Commission as to each such offender as the Commission may require. United States probation officers and supervisory agents shall likewise report to the Commission respecting youth offenders under their supervision as the Parole Commission may direct."

Sec. 16. Section 5017 of title 18, United States Code, is amended to read as follows:

"§ 5017. Release of youth offenders

"(a) The Commission may at any time after reasonable notice to the Director release conditionally under supervision a committed youth offender when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society. When, in the judgment of the Director, a committed youth offender should be released conditionally under supervision he shall so report and recommend to the Commission.

"(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release.

"(c) A youthful offender committed under section 5010 (b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

"(d) A youth offender committed under section 5010 (c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

"(e) Commutation of sentence authorized by any Act of Congress shall not be granted as a matter of right to committed youth offenders but only in accordance with rules prescribed by the Director with the approval of the Commission."

Sec. 17. Section 5018 of title 18, United States Code, is amended to read as follows:

"§ 5018. Revocation of Parole Commission orders

"The Commission may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge."

Sec. 18. Section 5019 of title 18, United States Code, is amended to read as follows:

"§ 5019. Supervision of released youth offenders

"Committed youth offenders permitted to remain at liberty under supervision or conditionally released shall be under the supervision of United States probation officers, supervisory agents appointed by the Attorney General, and voluntary supervisory agents approved by the Commission. The Commission is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors."

Sec. 19. Section 5020 of title 18, United States Code, is amended to read as follows:

"§ 5020. Apprehension of released offenders

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility any member of the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youth offender and cause such warrant to be executed by the United States probation officer, an appointed supervisory agent, a United States marshal, or any officer of a Federal penal or correctional institution. The Commission may revoke parole, dismiss or otherwise modify such warrant as provided in section 4207 of this title."

Sec. 20. Section 5021 of title 18, United States Code, is amended to read as follows:

"§ 5021. Certificate setting aside conviction

"(a) Upon the unconditional discharge by the Commission of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect. This shall expunge the record for civil purposes although nothing herein shall be construed to prohibit consideration of this information in a subsequent criminal proceeding.

"(b) Where a youth offender has been placed on probation by the court, the court may thereafter, in its discretion, unconditionally discharge such youth offender from probation prior to the expiration of the maximum period of probation theretofore fixed by the court, which discharge shall automatically set aside the conviction, and the court shall issue to the youth offender a certificate to that effect."

Sec. 21. Section 5037 of title 18, United States Code, is amended to read as follows:

"§ 5037. Parole of juvenile offenders

"A juvenile delinquent who has been committed and who, by his conduct, has given sufficient evidence that he has reformed, may be released on parole at any time under such conditions and regulations as the Commission deems proper if it shall appear to the satisfaction of such Commission that there is reasonable

probability that the juvenile will remain at liberty without violating the law when it appears that such person has substantially observed the rules of the institution to which he is confined, that there is a reasonable probability that such person will live and remain at liberty without violating the law, and if in the opinion of the Commission such release is not incompatible with the welfare of society."

Sec. 22. (a) The amendments made by this Act shall not be construed as affecting or otherwise altering the provisions of sections 401 and 405 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 relating to special parole terms.

(b) The amendment made by section 2 of this Act shall not apply to any offense for which there is provided a mandatory penalty.

(c) The parole of any person sentenced before June 20, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

Sec. 23. Sections 5007, 5008, and 5009 of title 18, United States Code, are repealed.

Sec. 24. There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of these amendments.

Sec. 25. Section 3050 of title 18, United States Code, is amended to read as follows:

"§ 3050. Bureau of Prisons and Parole Commission employees' powers

"An officer or employee of the Bureau of Prisons may make arrests without warrant for violations of any of the provisions of section 751, 752, 1791, or 1792 of this title, if he has reasonable grounds to believe that the arrested person is guilty of such offense, and if there (is) likelihood of his escaping before a warrant can be obtained for his arrest. If the arrested person is a fugitive from custody, he shall be returned to custody. United States Parole Commissioners and such other employees as are designated by the Commission pursuant to section 4201 of this title, may execute any warrant issued by the Commission pursuant to section 4205 of this title. Officers and employees of the Bureau of Prisons, Parole Commissioners, and such employees of the Commission, may carry firearms under such rules and regulations as the Attorney General may prescribe.

Sec. 26. (a) The foregoing amendments made by this Act shall take effect upon the expiration of the ninety-day period following the date of the enactment of this Act.

(b) Upon the effective date of this Act, each person holding office as a member of the Board of Parole on the date immediately preceding such effective date shall be deemed to be a Commissioner and shall be entitled to serve as such for the remainder of the term for which such person was appointed as a member of such Board of Parole.

(c) All powers, duties, and functions of the aforementioned Board of Parole shall, on and after such effective date, be deemed to be vested in the Commission, and shall, on and after such date, be carried out by the Commission in accordance with the provisions of this Act, except that the Commission may make such transitional rules as are necessary to be in effect for not to exceed one year following the effective date.

Sec. 27. The table of sections for chapter 311 of title 18, United States Code, is amended to read as follows:

"Sec.

"4201. Parole Commission.

"4202. Persons eligible.

"4203. Parole interview procedures.

"4204. Aliens.

"4205. Retaking parole violator under warrant.

"4206. Officer executing warrant to retake parole violator.

"4207. Parole modification and revocation.

"4208. Fixing eligibility for parole at time of sentencing.

"4209. Young adult offenders.

"4210. Warrants to retake Canal Zone parole violators."

Sec. 28. The table of sections for chapter 402 of title 18, United States Code, is amended to read as follows:

"Sec.

"5005. Youth correction decisions.

"5006. Definitions.

"5010. Sentence.

"5011. Treatment.

- "5012. Certificate as to availability of facilities.
- "5013. Provision of facilities.
- "5014. Classification studies and reports.
- "5015. Powers of Director as to placement of youth offenders.
- "5016. Reports concerning offenders.
- "5017. Release of youth offenders.
- "5018. Revocation of Commission orders.
- "5019. Supervision of released youth offenders.
- "5020. Apprehension of released offenders.
- "5021. Certificate setting aside conviction.
- "5022. Applicable date.
- "5023. Relationship to Probation and Juvenile Delinquency Acts.
- "5024. Where applicable.
- "5025. Application to the District of Columbia.
- "5026. Parole of other offenders not affected."

SEC. 20. The table of sections for chapter 403 of title 18, United States Code, is amended by deleting the item

"5037. Parole."

and inserting in lieu thereof the item

"5037. Parole of juvenile offenders".

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE OF CRIMINAL LAWS AND PROCEDURES,
Washington, D.C., July 8, 1974.

HON. JAMES O. EASTLAND,
Dirksen Building,
Washington, D.C.

DEAR SENATOR EASTLAND: S. 1463, the "Parole Commission Act," was recently reported by the Subcommittee on National Penitentiaries to the full Committee on the Judiciary, and is presently on the Committee Agenda.

The purpose of this bill is to reorganize the structure of the Federal parole system by replacing the United States Board of Parole with a new United States Parole Commission and to designate by statute the procedures to be followed in the granting, modifying, and revoking of parole. As you are well aware, since I first entered the Senate over thirty years ago, I have been deeply interested in our criminal justice system and have devoted a great deal of effort toward making that system both more effective and more just. As a result of that long experience, and although the bill represents a commendable effort in the area of corrections, I am so concerned about several of its features that I feel compelled to offer a number of amendments I hope will be acceptable to the Committee. A copy of these amendments, with a brief explanation, is attached for your study. I strongly solicit your support.

My concern with the bill relates primarily to the structure of the proposed Parole Commission, the use of hearing examiners by the Commission, and the provisions dealing with the appeal of parole decisions.

As S. 1463 was reported by the Subcommittee, the proposed Parole Commission would consist of nine members appointed, by the President with the advice and consent of the Senate. The Chairman of the Commission would then be designated by the Attorney General. My major concern involves the powers with which the Chairman would be invested. These powers are so sweeping that they would, in my opinion, effectively destroy the independence of the other Commissioners and permit one man to dictate national parole policy. On the theory that it will provide for more efficient administration, for example, it is the Chairman who determines who will serve as Vice-Chairman of the Commission, which of the other eight Commissioners will remain in Washington to serve on the National Appeals Board established by the bill, and which of the Commissioners will be assigned to the five regions. The Chairman is also charged with the appointment, assignment and supervision of all hearing examiners, and it is the Chairman who assigns duties among all personnel of the Commission, including the other Commissioners. As I read the bill, neither the commission as a whole nor the individual Commissioners have any say in this process.

In my judgment, the concentration of such power in the hands of the Chairman is unwise. The central issue is whether the Congress should create a commission structure in which one man on the Commission is given broad designation and appointment powers over those charged with making the parole decisions. I believe this is unwise.

The amendments I proposed would make only two changes in the powers of the Chairman. The most important would provide insulation and stability for the members of the National Appeals Board by requiring the President rather than the Chairman to designate the commissioners to serve on that Board. The Chairman would retain only the power to make temporary assignments to the appeals board to prevent interruption of its functions due to death, illness, or other circumstance making a member of the board unavailable. With this amendment, the Chairman could not dictate policy to this appellate body by shifting commissioners in and out of Washington at will. Even if not used, such power can have its subtle effects. The other amendment concerning the Chairman's powers simply recognizes the full commission's interest in the qualifications of hearing examiners by making the Chairman's appointments to these positions subject to approval by the Commission as a whole. Such changes, in my view, are a minimum necessary to insure independence in the decisionmaking process of the Commission. If some loss of administrative efficiency is the price to pay for this independence of judgment, it is well worth it.

My second area of concern relates to the power of the Commission to delegate the initial decision as to whether parole should be granted, denied, or revoked to panels of hearing examiners. The use of hearing examiners should certainly be encouraged in order to provide a clear record on which the decision on the question of parole can be both made and reviewed. I believe, however, that the decision itself ought not be made by an examiner but rather by an individual who has been appointed by the President and confirmed by the Senate. This decision is not a minor matter. It is the determination of when a criminal, who may have been convicted of the most serious crime, will be allowed back into society and upon what conditions. In many respects this power is analogous to the sentencing power of the United States judges. Such a decision should not devolve upon hearing examiners. If necessary to avoid such a result, the size of the Commission should be increased.

The amendments I am proposing would retain the free use of hearing examiners in the parole process, but would require a Commissioner to make the actual parole decision.

Finally, the appeals process established by the bill contains a serious defect in providing only for a right to appeal decisions adverse to the prisoner/parolee. Clearly society has a legitimate interest to protect in the determination of when a criminal will be given his freedom—the safety of its citizens—and this interest ought to be protected by allowing access to the appellate process of the Commission as well. As the bill now stands, decisions favorable to the prisoner-parolee with respect to the granting or revoking of parole are final at the hearing examiner level, unless a Regional Commissioner, on his own initiative, decides to review a particular case. In the event a Regional Commissioner does review such a case and upholds the decision of the hearing examiner, there is no provision for an appeal to the National Appeals Board.

My proposed amendment in this area would permit the Attorney General to seek a National Appeals Board review of decisions by a Regional Commissioner. Together with the amendments previously discussed, my proposals would, therefore, provide for an initial decision as to parole by a Regional Commissioner, based upon a record and recommendation prepared by a hearing examiner, with a right of appeal in both the prisoner/parolee and the Attorney General.

I realize that there are differences of opinion on the issues that I have raised. In my judgment the issues are serious ones and the amendments suggested necessary to make the bill acceptable. After you have had an opportunity to study the amendments themselves I would very much appreciate receiving your views and your support.

With kind regards, I am
Sincerely yours,

JOHN L. MCCLELLAN.

Enclosure.

S. 1109 makes no attempt to deal with this integration of sentencing philosophy and structure and essentially makes no substantive changes over present law in criteria for release on parole, or in other Federal sentencing statutes. As to other aspects of the parole provisions of the Code bill, as Senator Burdick noted in his statement upon the introduction of S. 1109, "in its procedural and administrative provisions, [S. 1109] is in most ways identical to the code revision bill."

My interest in these procedural and administrative provisions is long standing apart from the necessity to deal with parole problems in the code revision project.

Last Congress, the Subcommittee on National Penitentiaries reported a bill (S. 1463) similar in many ways to S. 1109 but which contained a number of features I strongly felt were unwise and required change before the bill would be acceptable. On July 8, 1974, I sent a letter to each member of the Judiciary Committee highlighting my concerns and indicating my intent to offer amendments in the full Committee and, if necessary, on the Senate floor to deal with these issues. S. 1109 as introduced in the 94th Congress makes changes in the prior legislation to deal with these concerns, however not completely to my satisfaction with respect to the powers of the chairman of the Parole Commission. It is my desire to have the record clearly reflect my views on these issues for the Subcommittee to consider as it proceeds to process a bill for consideration by the full committee. For this purpose, I would submit for the record a copy of S. 1463 in the 93d Congress and my letter of July 8, 1974, discussing what I believed were basic defects in that bill.

As the Subcommittee considers S. 1109, I am confident that language can be retained or worked out within the framework of the language of this new bill which solves my concerns expressed last Congress without unduly hampering effective administration of the parole commission.

○

END