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August 31, 2015

United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue NW
Washington, DC 20001

To the Honorable Judges of the Court:

We the undersigned are writing to explain our understanding and expectations as to the actual practice of the District of Columbia Board of Parole (Parole Board) in making parole decisions under the guidelines and internal policy statements that were in place before parole decisions were transferred to the United States Parole Commission. We understand that our letter will be presented for consideration in a matter concerning whether the Parole Commission's application of guidelines issued in 2000 that provide it the authority to deny parole for any reason in the exercise of its discretion creates a significant risk of increasing the punishment of offenders in comparison with the prior guidelines applied by the Parole Board.

Our perspective is as professional participants in criminal cases in the District of Columbia prior to 2000 – a Parole Board member, judges, and prosecuting and defense attorneys. We are writing as individuals and not as representatives of any government agency, private firm, or other organization.

Before the Parole Commission assumed authority for parole for D.C. Code offenders pursuant to statute, the Parole Board was responsible for deciding when a person serving an indeterminate sentence should be released into the community under parole supervision. The guidelines used to determine parole eligibility were codified in the District of Columbia Municipal Regulations in 1987 and explained in an internal policy statement issued in 1991. The purpose of these guidelines was not to change the aim of making parole decisions based on the merits of each individual case, but rather to make explicit the factors to be considered in each case.

It was our experience and expectation at the time we were involved in these cases that the minimum, or "bottom number," of an indeterminate sentence was the amount of time felt appropriate to serve as punishment for the offense. Absent specific circumstances, such as poor conduct while incarcerated, that led the

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Parole Board to decide that additional incarceration was appropriate, the offender was presumptively expected to be released upon serving the minimum sentence. Decisions not to release at the minimum sentence were required to be based on specific and articulated factors set out in the 1987 regulations as clarified in the 1991 policy statement. In addition, the Parole Board's policy was generally to give a person denied a parole a rehearing at least annually, though the period could extend from fifteen months up to two years if more than five years was left on the sentence.

The signatories to this letter who participated in sentencing -- prosecutors who recommended sentences, public defenders who advised their clients regarding plea offers, and judges who imposed the sentences -- acted based on the presumption that people serving indeterminate sentences would be eligible for release upon serving their minimum sentence, and would be released absent specified aggravating conduct while incarcerated. While not commenting on any specific case, we would be surprised to learn that those whose cases we were involved in were not granted parole at the bottom number, despite having risk scores appropriate to being released and absent disqualifying institutional behavior.

By the same token the signatory to this letter who served on the Parole Board understood that the 1987 and 1991 guidelines significantly constrained the Board's exercise of discretion to deny parole absent the specific circumstances set forth, and that a system that allowed a very broad discretion to deny release would be quite different from the one that we applied. As explained in the report for the Parole Board on development of the Guidelines, the Court's sentence was considered to account for the offense for "purposes of retribution and general deterrence," and the Board was clear that it "does not and will not function in a manner that might be viewed as a usurpation of the functions of the sentencing judge."

It is also our understanding based on our experience that these principles as stated in the 1987 and 1991 guidelines continued prior practice in this regard. For example, the report for the Parole Board also states expressly that the 1987 Guidelines, which the Board adopted in 1985 but were not added to the Municipal Regulations until 1987, declined to adopt the offense severity scale from the then-existing federal grid to make the guidelines "compatible with the Board's philosophy of letting the court-imposed sentence serve as its offense severity indicant."

We hope the Court will take into account whether paroling patterns not consistent with the 1987 regulations and the 1991 policy statement would in practice be lengthening the sentence of incarceration for individuals beyond what those in the courtroom or on the Parole Board expected or intended them to serve under proper application of those guidelines.

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Respectfully submitted,

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