



2018

**JOINT COMMITTEE REPORT OF
THE NEW YORK STATE SENATE**

**EXAMINATION OF NEW YORK STATE'S CURRENT PAROLE STANDARDS
OF RELEASE & GOVERNOR'S EXECUTIVE ORDER GRANTING
PAROLEES CONDITIONAL PARDONS FOR PURPOSE OF VOTING**

A REPORT FROM:

**THE NEW YORK STATE SENATE
STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND CORRECTION**

**Senator Patrick M. Gallivan
Chairman**

**THE NEW YORK STATE SENATE
STANDING COMMITTEE ON ELECTIONS**

**Senator Frederick J. Akshar, II
Chairman**

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

The New York Senate Standing Committee on Crime Victims, Crime and Correction and the Standing Committee on Elections conducted two public hearings in October of 2018 to examine the State's compliance with current parole standards of release and the Governor's Executive Order granting parolees conditional pardons so that they could register to vote. The committees evaluated both issues, in-depth, separately and apart when possible. Moreover, the committees heard testimony from a wide range of stakeholders including a former member of the parole board, representatives of schools and parole officers, and advocates for parolee rights as well as received written testimony. The feedback gleaned was instrumental in the committees' efforts to formulate recommendations. We extend our thanks to all those who participated.

Parole Standards of Release

Members of the New York State Board of Parole, formerly part of the Division of Parole, which merged with the Department of Corrections in 2011 to form the Department of Corrections and Community Supervision, are primarily responsible for making release determinations of persons eligible for parole as well as decisions regarding revocations of release. Board members or "commissioners" as they are commonly known are required pursuant to statute, to adhere to the standards of discretionary release and, importantly, to consider enumerated factors in rendering a decision to release an inmate to parole. The following are the standards as codified within the Executive law under section 259-i (c)(A):

"Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined by after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for the law."

Commissioners must also consider all the identified factors, some codified within the statute, and others required pursuant to case law. No emphasis is applied to any one specific factor under the current statutory construct.

The release of inmates to parole increased dramatically in 2018. Questions have been raised regarding the Board of Parole's compliance with the law as it pertains to such decisions. The release to parole of persons convicted of killing a law enforcement officer has also raised concerns. In an effort to provide further protections to law enforcement, the legislature in 2005, in a near unanimous vote in both the Senate and Assembly, enacted the "crimes against police act". This act, in part, precludes the release to parole for any person who has been convicted of killing a law enforcement officer.

Issues related to parole board transparency and accountability, the formal training of commissioners, identification of skills that ought to be considered when appointing parole commissioners, current number of commissioners, statements of crime victims or victims' representatives, as well as the supervision and accountability of commissioners were all key points of discussion.

Governor's Executive Order

Governor Cuomo issued Executive Order 181 that restores the voting rights to individuals on parole by providing such parolees with a conditional pardon, on April 18, 2018. The Executive Order specifically prescribes that the Department of Corrections and Community Supervision provide to the Governor's office a record of individuals who are currently under parole supervision and a list of individuals who have been released onto parole supervision. Furthermore, the Executive Order directs that "each individual on the eligible list will be reviewed to determine whether he or she will be granted a pardon that will restore voting rights".

According to testimony received from the Commissioner of the Department of Corrections and Community Supervision, as well as information provided to us pursuant to our request for information, the total number of voter pardons issued was 30,666, as of September 18, 2018. Of that number, 646 had their conditional pardon revoked.

We know that several parolees issued a conditional pardon for the purpose of restoring their voting rights were registered sex offenders. Concerns about whether these parolees would be voting in schools was a point of consternation for school officials who testified. In particular, school officials articulated their dissatisfaction with the requirement that Superintendents be the deciding factor as to whether such parolees be allowed to access the school so that they may be able to vote. They further expressed that school Superintendents are accountable for keeping all schoolchildren safe and it therefore is not reasonable to expect that they could explicitly grant permission to a paroled sex offender to vote on school grounds.

The relevance of the executive order notwithstanding, parole officers and representatives from boards of elections also equally expressed concern about the perceived lack of planning regarding the implementation of the order. According to testimony, some 922 parole officers were required to hand deliver pardons to parolees and in order to do so, they were told to cancel delinquency operations, meaning that the execution of parole warrants of absconders was delayed while the process of delivering pardons continued. Nonetheless, the Department appears to have remedied initial rollout concerns by providing direction to Parole Officers on how to administer the process.

Results

Concerns regarding the Board of Parole's adherence to the statutorily mandated standards and factors are noteworthy. While it is recognized that administrative reforms have been made to the parole hearing process, it is clear additional reforms are necessary to ensure that the interests of justice are balanced with the rehabilitation of inmates in the parole decision-making process.

The rationale of Governor Cuomo's Executive Order granting voting rights to parolees is a matter of interpretation. The fact, which is often overlooked, is that persons who have been granted parole are indeed still serving their criminal sentence. Setting aside the implementation concerns raised in witness testimony received on this topic, the substance of the Executive Order directly usurps the authority already vested under existing state law with the courts and by the Governor's own agency to award certificates of relief from disabilities or certificates of good conduct, whichever is applicable, that could restore an eligible offender's voting rights. One must determine whether the deliberative process associated with the issuance of such certificates is more appropriate than the apparent blanket issuance of pardons for such purpose.

To ameliorate the foregoing concerns related to the parole standards of release compliance and Executive Order #181, the committees have compiled a list of recommendations, based partially on the testimony received and the information requested of the executive branch.

RECOMMENDATIONS

Parole Standards/Hearing

- Live stream all parole hearings
- All determinations (both hold and release) must be in writing with justification for either decision clearly articulated.
- Parole hearing transcripts should be accessible to the public via posting on the Department of Corrections and Community Supervision website.
- Collective (entire board) and Individual (commissioner) release rates shall be reported monthly and made available to the public via the Department's website.
- All parole records (inmate file) should be digitized and made available to commissioners, appropriate parole staff and the inmate/parole applicant in a timely manner prior to the hearing to ensure proper preparation. A process should be established to further ensure accuracy of records.
- Ensure Parole Board is fully staffed as authorized by law and ensure diversity of education and expertise in relevant fields.
- Establish in the law the requirement that third party statements are a factor that must be considered in release determinations.
- Ensure commissioners are provided with relevant information regarding an inmate's cognitive impairments and medical information to inform their interactions at hearings and release determinations.
- Ensure adequate discharge planning and reentry preparation.
- Revise Criminal Procedure Law section 380.50 (5) to require that notification to the victim or victim's representative of an inmate's release to parole is made prior to the release of the inmate from custody.
- Establish a procedure to ensure commissioner's compliance with applicable law is properly monitored. Further, require the chair of the board to establish a checklist, to include the standards of release and the statutory factors that must be considered in each

case. This checklist shall be made part of the record accessible to the public (via the website).

- Enhance victim assistance services in the following manner:
 - Provide clear instructions about the parole process to victims/families.
 - Ensure a complaint process is available to victims/families.
 - Require prompt response to victims/families inquires.
 - Ensure quality control of processes for victims/families.
 - Victim notification processes should be done via email or by a telephone call.
- Amend the Executive law to ensure victims/families/representatives and/or district attorneys on behalf of the people have standing to appeal parole board determinations.
- Victim impact hearings should be conducted by commissioners who will conduct the respective inmate's parole hearing. If this cannot be accomplished in person, a video of the victim impact statement should be made available to the commissioner's prior to the parole hearing.
- While recognizing the limitations of a finite number of board members, efforts should be made to vary the commissioners that an individual inmate appears before from hearing to hearing to ensure decisions are made based upon statutory requirements in an objective and unbiased manner.

Governor's Executive Order

- The Executive Order specifically prescribes that persons released under parole supervision will be given consideration for a conditional pardon and that "each individual on the eligible list will be reviewed to determine whether he or she will be granted a pardon that will restore voting rights". The criteria used to review such individuals should be made available to the public.
- The use of schools as voting locations presents several challenges. Procedures put in place to enhance school safety cannot be enforced when a school is used as a polling place. Moreover, the use of space by an applicable board of elections can interfere with school instruction for as long as three days (the time it takes to setup and remove voting equipment). Therefore, the State Board of Elections should conduct a study, on a regional basis, of the use of schools as polling places and issue findings as to whether alternate sites are necessary.
- Sex offenders on parole who have been pardoned for the purpose of being permitted to vote must be required to vote by absentee ballot when such offender's polling place is located in an educational setting (i.e. public or private school, charter school, etc.).

II. SUMMARY OF ALBANY WITNESS TESTIMONY

James Ferguson, Esq.

Mr. Ferguson is a former senior commissioner of the New York State Parole Board, having served 13 years in that capacity. As a commissioner, one of Mr. Ferguson's prime responsibilities was to make release decisions for incarcerated inmates throughout New York's Correctional facilities. Mr. Ferguson's testimony primarily focuses on background related to a commissioner role in the parole hearing process.

- *Inmate interviews* – Parole board commissioners' conduct on average, 30 to 40 inmate interviews per day. These interviews are conducted both in-person and by video conference.
- *Post interview process* – Following the inmate's departure, the commissioners sitting on the review panel, which can consist of two or three commissioners, will commence deliberations. Typically, a decision is rendered shortly after the interview concludes. An inmate will receive a written decision within two weeks of the hearing date, as required by law. Any board decision to deny the release of an inmate that is incongruent with the COMPAS risk and needs assessment must be addressed in writing within the hearing decision pursuant to statute and regulations. This may elevate the consideration of COMPAS as a factor in the decision making process.
- *Statements from Crime Victims/Victim Representatives* – The statements/interviews are conducted separately from and in advance of the parole board hearing. However, such statements or transcripts of the interviews are included within the hearing file for commissioners to review.
- *Parole Board Training* – There is no formal training for parole commissioners and specifically no training is available regarding the “deprecate the seriousness of the crime” standard.
- *Supervision and Accountability* – No one is tasked with making sure that a commissioner is complying with the law. While there is a chairperson of the parole board, they are not like a direct supervisor in the traditional sense.

Holley Carnright, Esq.

Elected to the position of District Attorney (DA) of Ulster County in 2008, DA Carnright previously served as an Assistant District Attorney (ADA) and Chief ADA within the Ulster County District Attorney's office as well as an Ulster County Assistant Public Defender.

- *Process regarding DA input* – The Department of Corrections and Community Supervision sends a correspondence to DAs shortly following the conviction of a person to provide them the opportunity to opine on parole. Notification to the District Attorney regarding the appearance of an inmate before the Parole Board is inconsistent.
- *Next Steps* – There should be a better process, a more timely process, as it relates to DA input. Importantly, the crime victim or victim's representative should be provided an opportunity to review the prior hearing transcript before the board makes any new

decision, in case there was information presented that was in contest. By allowing such review, the victim could convey to the board what really happened.

Michael and Regina Stewart

The Stewart's, advocates for the rights of crime victims and victims' representatives, lost their son – Christopher – as a result of a 2012 motor vehicle accident caused by a person who was under the influence of drugs and alcohol and was texting when he hit the car Christopher was driving with four other people inside.

- *Victim impact statements* – The parole commissioner assigned to take the statement of a victim or a victim's representative may or may not be part of the panel that decides whether to parole the inmate convicted of harming such victim. Therefore, interviews conducted by said commissioner should be videotaped. The videotape should then be shared with the applicable parole commissioners who sit on the panel that will consider the granting of parole.
- *Parole Hearings Timeframe* – The length of time between a denial of parole and reconsideration is too short, leading to increased stress for victims or victim's representatives. Increasing the timeframe to every five years (as proposed in Senate bill 2997a) would alleviate some of that stress.

Chrys Ballerano

Ms. Ballerano is the statewide Sexual Assault and Mental Health Project Director at the New York State Coalition Against Sexual Assault. In that capacity, Ms. Ballerano has learned a great deal about the criminal justice system's approach to managing victims of crime and those who have done harm and violated the rights of survivors.

- *Crime victims' assistance* – Helped crime victims prepare their victim impact statements and made sure they knew how to go about the process. Also, would help victims apply for crime victim's compensation.
 - *Adequacy of current system* – As it relates to victims, the current system is not sufficient. The coalition would rather see public officials take action to ensure that survivors, their families, and communities have the comprehensive resources they need to heal and thrive; that significant investments are made in community services and institutions that will prevent violence from happening in the first place; that people who commit harm are held accountable in a meaningful way that does not perpetuate a cycle of violence; and that people who commit harm have access to the services they need to stop committing harm.
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Patrick J. Lynch

Mr. Lynch is the President of the Patrolmen's Benevolent Association (PBA) of the City of New York. The PBA represents more than 24,000 rank-and-file members of the New York City Police Department.

- *Crimes Against Police Act of 2005* – The PBA strongly supported this act, which established the criminal offense of aggravated murder of police officers and certain other public safety professionals in the performance of their duties, punishable by life imprisonment without parole.
 - *Parole Board decisions* – Until recently and with rare exceptions, the Parole Board has routinely denied cop-killers' requests for parole because of public pressure. That practice changed with the release of Herman Bell, who was convicted of ambush assassination of two NYC police officers in 1971. The panel disregarded the very basic statutory standards for considering parole, including the statutory requirement that it obtain and review the original sentencing minutes in the case.
 - *Parole system broken* – Since the release of Herman Bell, the Board has also granted parole to several other convicted murders of law enforcement officers. These outrageous decisions require that action be taken legislatively to strengthen the parole guidelines and introduce strong institutional controls.
 - *Recommended Reforms* –
 - Repeal amendments to the Executive law regarding the use of risk and needs assessments by the Parole Board;
 - Enact statutory requirements that re-emphasize the seriousness of the instant offense, the welfare of the public and respect for the law in the Parole Board's decision-making process;
 - Amend the Executive law to clarify that crime victims, their members or representatives have standing to appeal Parole board determinations; and
 - Exercise greater scrutiny over Parole Board appointments.
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Richard Wells Peter Kehoe

Mr. Wells is president of the Police Conference of New York (a coalition of over 200 local PBAs, representing 25,000 police officers in the State) and Mr. Kehoe is the Executive Director of the Sheriff's Association of the State of New York (which represents 58 elected sheriffs across New York).

- *Victim Impact Statements* – Concerned that information provided by the crime victim or victims representative may not be forwarded to the parole board hearing panel that will be considering release of an inmate.
- *Law Enforcement Input* – It is important that Police Officers have the opportunity to provide information to commissioners of the parole board, as they are acutely aware of

the impact a release of an inmate may have on the communities they protect. In order to do so, Police Officers should be notified of relevant parole hearings.

- *Parole Release of Certain Inmates* – Concerned that the release of inmates who have killed law enforcement officers affects the profession negatively. Creates a perception that law enforcement is expendable.

Michelle Lewin
Jose Saldana

Ms. Lewin is the Executive Director of the Parole Preparation Project and Mr. Saldana is a Community Organizer for the Release Aging People in Prison Campaign.

- Ms. Lewin read her written statement into the record, which generally provides a background of the work being done by the Parole Preparation Project, but also expresses frustration with statements made by certain elected members of the Senate regarding the standards and factors that Parole board members are required to consider. Of note is the consideration of community opposition, which they believe is “shrouded in secrecy”. Mr. Saldana spoke of his advocacy on behalf of persons who have and continue to languish in prisons as a result of mass incarceration policies and conveyed his displeasure over the lack of recognition, by committee members, of the number of fatalities he portrayed as being committed by law enforcement as well as the worth of people convicted of violent crimes who have been incarcerated for 40 years.
- Both informed the committee members present of their non-support of the hearing, which inhibited their ability to participate in a meaningful way.

Victor Antonio Perez
Gina Lopez

Mr. Perez is a senior parole officer and council leader of Division 236 of the Public Employees Federation (PEF), which represents all parole officers in the State of New York. Ms. Lopez is a parole officer, stationed in the Rochester metro office, and is the assistant council leader of PEF Division 236.

- *Executive Order #181* – Both expressed concern over the implementation of the Governor’s Order that provided parolees the right to vote. In their view, the consideration that was to be given, pursuant to the language within the order, did not occur as they could not identify a parolee in any office that did not get one.
- *Operational Impact of E.O. Issuance* – No formal procedures were established, initially, regarding the pardoning of parolees to restore voting rights. Parole officers were told to cancel delinquency operations, which is executing warrants of parole absconders, in order to expedite the delivery of pardons to parolees. Overall, parole officers expressed great concern with the execution of the order.

Todd Valentine
Jason Schofield
Erik Haight

Messrs. Valentine, Schofield and Haight are representatives of the New York State, Rensselaer and Dutchess Boards of Elections, respectively.

- *Executive Order #181* – Not well thought through. The order was issued on April 18th but it was approximately a month later that the Board received direction from the Governor’s office, via a phone call. Due to the hastily issued order, the Board was forced to develop an ad-hoc procedure incorporating the parolee look-up for the county boards to follow in processing these new applications. Revocation of pardons also continues to be an issue for the Board as there is no process for revoking a pardon once it has been issued.
- *Polling Sites* – Schools utilized as polling places for pardoned parolees, in particular parolees who are sex offenders, is problematic. However, roughly 27 percent of polling sites, statewide, are located in schools and if they were to become unavailable as poll sites, it would be a calamity.

Robert N. Lowery, Jr.
Julie Marlette

Mr. Lowery is deputy director of the New York State Council of School Superintendents. Ms. Marlette is the Director of Governmental Relations for the New York State School Boards Association.

- *Executive Order #181* – Parolees, who are sex offenders, that have been issued a pardon in order to be able to register to vote and have done so, if their polling site is located in a school must receive permission from the Superintendent of such school district for them to be able to access the school for the purpose of voting. This puts Superintendents in difficult position. Given that school Superintendents are accountable for keeping all schoolchildren safe, it is not reasonable to expect that they could explicitly grant permission to a paroled sex offender to vote on school grounds.
- *Safety of Schoolchildren* – Superintendents and boards of education primary responsibility is to provide a safe and secure learning environment for schoolchildren, not to run elections, therefore, school districts should be given the opportunity to decline their designation as a polling place. In addition, as the necessity to implement enhanced safety measures continues, it does not make sense to permit external people to enter school buildings when children are there.

Elizabeth Gaynes

Ms. Gaynes is President and CEO of the Osborne Association, a criminal justice organization established nearly 90 years ago to honor the memory and legacy of founder Thomas Mott Osborne of Auburn, NY. The Association operates a wide range of family, treatment, diversion and reentry programs at sites in New York City as well as in Newburgh, Orange County and soon in Erie County.

- *Programs and Services* – Offenders should be provided with significant rehabilitative services, including education, job training and workforce development. Victims and victims representatives too, deserve more than just the incarceration of the person who caused their harm, they ought to have access to a vast array of support and services, including medical, therapeutic and financial support.
- *Criminal Justice Policy* – Safety, justice and fairness should be the focus of the correctional model in New York. Importantly, the use of Parole should be broadened and strengthened.
- *Recommended Reforms* –
 - Fully staff the Parole Board: 12 of 19 commissioners are not enough commissioners to do this work the way it was meant to be done.
 - Allow all parole records to be digitized and shared with parole staff long before a scheduled hearing.
 - Restore in-person parole hearings. Parole commissioners should not be asked to consider a person's readiness to be released based on a short video conference call.
 - Restore – don't diminish – the role of parole. Review processes should be a meaningful opportunity to demonstrate that the individual is capable of making responsible decisions and does not pose a threat to public safety. Parole boards should be staffed with members who have background in corrections or relevant social services in order to best assess the suitability for release.
 - Expand and increase the mechanisms for releasing aging men and women who pose little risk and can be assets to our communities.
 - Increase utilization of compassionate release and medical parole policies by broadening eligibility criteria and streamlining the process for approval, including the availability of "fast-tracking" medical parole should the individual's condition significantly or suddenly decline.
 - Improve discharge planning and reentry preparation for older adults by expanding or replicating Osborne's Elder Reentry Initiative across the system.
 - Provide the Parole Board with information about cognitive impairments and medical information to inform their interactions at parole hearings and their decisions regarding release.
 - Ensure continuity of care through specialized transitional planning and follow up for the aging population, including connection to geriatricians, health insurance and care coordinators.

III. SUMMARY OF HICKSVILLE WITNESS TESTIMONY

Barbara Connelly
Laura Ahearn, Esq.

Ms. Connelly and Ms. Ahearn are advocates for crime victims' representing the NY Metro Parents and Other Survivors of Murdered Victims Outreach and Crime Victims Center, d/b/a Parents for Megan's Law, respectively. Ms. Connelly co-founded her organization in 1981, in part, to provide a support group to families who have lost children due to homicide. Ms. Ahearn is the Executive Director of Parents for Megan's Law, a licensed social worker and attorney who has worked with over 25,000 victims of crime during her career.

- *Parole Policy and Procedures* – the release of Herman Bell, who was convicted of murdering two NYPD officers in 1971, should not have been possible as parole should not be an option for certain crimes, such as the murder of police officers, brutal sexual assault and murder, and kidnapping and rape. Current parole board procedures revictimize victims and surviving family members by permitting persons to appear before the board every two years. The frequency of such hearings forces family members and victims to relive the most tragic and hurtful events in their lifetimes.
 - *Statements from Crime Victims/Victim Representatives* – The family of 13-year-old Kelly Ann Tynyas and Ms. Jennifer Brooks, who was 10 years old at the time of her victimization, provided statements to the committees' through Ms. Ahearn.
 - Mr. Tynyas described how his daughter was brutally murdered in 1989. He expressed his opposition to the short timeframe between parole hearings indicating, "Two years is torment to their family". He recommends parole hearings take place every five years for inmates convicted of murder. Moreover, victims' families should be permitted to bring with them more family members to a victim impact interview with a member of the parole board.
 - Ms. Brooks explained how she was the youngest victim of the South Shore rapist and how it has been extremely difficult to speak and deliver a victim impact statement. Importantly, Ms. Brooks is concerned that parole board members who took her victim impact statement may not be sitting on the panel that decides whether to issue parole and the process by which information from the victim's advocate is disseminated is unacceptable.
 - *Parole Board Processes* – Critical of the ability of inmates, who have been denied parole, to file Article 78 petitions and the apparent pressure placed on commissioners to follow the COMPAS recommendation due to a recent change in regulations. Relatedly, several Article 78 decisions rendered in favor of the inmate convicted of killing Ms. Connelly's son, which required the scheduling of de novo hearings by the Parole Board for the inmate, increased the number of parole hearings held to approximately every six months for said inmate from 2015 until his release earlier this year.
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Daniel Fitzpatrick
Pat Saunders
James Hughes

Messrs. Fitzpatrick, Saunders and Hughes represent the New York State Association of PBAs, Suffolk County PBA and Suffolk County Detectives Association, respectively.

- *Granting of Parole* –Police officers who are performing their sworn duties, represent our society and our laws and norms. Any aggression toward them is an act against our society not an individual person. It is important that the option of parole not be granted for persons convicted of murdering a law enforcement officer, specifically those who intended to kill such officer, to ensure the safety of our communities. Parole is a privilege, not a right, and should be reserved for non-violent offenders that can be rehabilitated, not subjects evincing the blatant disregard of human life.

Jennifer Morrison, Ed.D.
Michael Nagler, Ed.D.
James Reddan

Drs. Morrison and Nagler are the Superintendents of the New Hyde Park-Garden City Park School District and Mineola Public Schools, respectively. Mr. Reddan is the Corresponding Secretary of the New Hyde Park Memorial High School PTSA.

- *School Safety* – Safety of the students when in school is of paramount importance. Requiring schools to serve as polling places on Primary, Special, and General Election days, when children are present, jeopardizes that safety because schools must leave doors unlocked and cannot properly vet visitors as they are prohibited from asking for identification.
- *Executive Order #181* – Pursuant to State law, Superintendents must provide authorization for a convicted sex offender to enter a school so that they can vote. It is unfair to require Superintendents to make such decisions. The issuance of this order further adds another layer of uncertainty. Notedly, neither Drs. Morrison nor Nagler received any request from a sex-offender to vote.

James Royall
Jared Chausow

Mr. Royall and Mr. Chausow are representatives of Brooklyn Defender Services, an organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, civil legal services, social work support and advocacy for indigent Brooklyn residents.

- *Parole Accessibility*– In order to roll back mass incarceration, New York must expand parole release for those who have rehabilitated themselves and transformed their lives. In particular, the Board of Parole should consider for release all incarcerated people who are 55 years of age and older for parole who have already served 15 years in prison.
- *Parole Board Operations* – The standards of release enumerated under section 259-i of the Executive law must be followed, including the risk assessment. Furthermore, in order to be considered for appointment to the Parole Board, candidates should also possess a more diverse skill set.

IV. SUMMARY OF SUBMITTED TESTIMONY

Alphonso David, Esq.

Mr. David is Counsel to Governor Andrew M. Cuomo. His correspondence to the chairpersons of the sponsoring committees was a result of a request from said committees for information regarding the subject matter at hand.

- *Information Request* – Mr. David stated that the response to the information request of the committees was completely voluntary and reflects a good-faith effort to assist the committees in understanding the issue. The right to object to future information requests is reserved based on separation of powers principles.
- *Executive Order #181* – Mr. David stated that the New York State Constitution expressly provides the Governor broad “power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he or she may think proper....” Issuing pardons to persons on parole to restore the right to register and vote is within the Governor’s purview. Mr. David further stated that the issuance of such pardons is, in part, to invalidate New York’s felony disenfranchisement law, which was a result of an 1874 Constitutional Commission convened to address the implications of the ratification of the Fifteenth Amendment to the US Constitution that prohibited voting restrictions based on race.
- *Executive Order Implementation* – Mr. David stated that the information requested by the committees regarding criteria used to issue said pardons is available to the public on the Governor’s Clemency website. He further indicated that the website also includes information on the factors that are considered when reviewing each candidate, the effect of the pardon, and the circumstances under which the pardon may be revoked.

Anthony J. Annucci

Mr. Annucci is the Acting Commissioner of the Department of Corrections and Community Supervision, having been named to the position by Governor Cuomo in 2013. Mr. Annucci had previously served as Executive Deputy Commissioner and has been with Department since 1984.

- *Background of Issuance Executive Order #181* – Acting Commissioner Annucci stated the values of the Department are the promotion of public safety through rehabilitation of those convicted of crime and the promotion of their productive return to society. He also indicated that the Executive Order furthered both of those principles. In addition, Acting Commissioner Annucci pointed to the passage of the Notice of Voting Rights Act, which requires the Department to notify any person whose maximum sentence of imprisonment has expired, or who is being discharged from community supervision, of his or her right to vote, and to affirmatively provide such person a voter registration application. Acting Commissioner Annucci further indicated that the legislature, by passing such a law,

delivered a resounding message that if formerly incarcerated individuals are to become law-abiding citizens, then they must be allowed and strongly encouraged to vote.

- *Implementation of Order* – Acting Commissioner Annucci stated that since promulgation of the order, a total of 30,666 voter pardons have been issued. He said that parole officers meet with the parolee to provide him or her with the pardon and that the Department also notes that a conditional pardon has been issued on the Parolee Lookup screen on the website.
- *Sex Offenders* – Acting Commissioner Annucci stated that eleven sex offenders requested permission to vote at a location that was identified as a school. He also indicated that protective measures, in the form of special conditions, were put into place regarding sex offenders exercising their right to vote at designated schools. Furthermore, paroled sex offenders were required to inform their parole officers of their travel plans to and from the school in advance of Election Day, and informed that they could only enter schools after 7pm on Election Day to vote.

Tina M. Stanford

Ms. Stanford is the Chairwoman to the Board of Parole. Appointed to the position in 2013, Ms. Stanford previously served, as Director of the State Office of Victim Services and prior to that was Chairwoman of the Crime Victims Board.

- *The Board* – Chairwoman Stanford stated that the Board is currently comprised of 12 commissioners and that the Board’s mission is to ensure public safety by granting parole when appropriate under the governing standards, revoking community supervision when necessary, and discharging individuals from their sentence when it is in society’s best interest. The Chairwoman also mentioned that the board is evenly split between gender and six represent protected classes by race.
- *Board Processes* – Chairwoman Stanford stated that a panel of at least two members must conduct parole release interviews. Such panel must discuss with the subject each applicable factor set forth in statute and regulation. The Chairwoman also indicated that interviews are held 47 weeks out of the year and that the Board uses a Parole Board Random Assignment Scheduling System computer program to assign commissioners to panels.
- *Release Determinations* – Chairwoman Stanford stated that the law requires the granting of release to parole be made based on the enumerated standards and that the Board is guided in their decision making by risk and needs principles, which includes the person’s risk and needs score as generated by a validated risk assessment instrument. The Chairwoman also indicated that the Board must also consider the most current case plan and must adhere to recent regulations when dealing with persons serving a maximum sentence of life imprisonment for a crime committed prior to the individual attaining 18 years of age. The Chairwoman mentioned that lastly, the Board considers the statutory factors. The Chairwoman also stated that decisions are made following review of the written record, interview, contemplation and deliberation and if the Board granted release, it must set the initial conditions that will govern the person’s community supervision and that if it denied release, that it must specify in its decision a date for reconsideration, which must not be more than 24 months from the interview.

Brendan Cox

Mr. Cox is with the Law Enforcement Action Partnership and is the former Chief of the Albany Police Department.

- *Parole and Pardoning of Individuals* – Mr. Cox stated that doing so is in the best interest of everyone as it can make community safer. Mr. Cox also indicated that releasing people who no longer pose a threat to public safety, or when the Governor restores their voting rights, can improve community relations with law enforcement and that these acts contribute to restoring faith in the criminal justice system. Mr. Cox further stated that parole also reduces overcrowding and frees up criminal justice resources to focus on those who really do pose a public safety risk and that incarcerating people who no longer need to be incarcerated drains our financial resources. Mr. Cox mentioned that the savings generated from reduced periods of incarceration could be redirected to victims' services and mental health treatment.

Anthony J. Provenzano

Mr. Provenzano's father was murdered in 1982. As a crime victim's representative, Mr. Provenzano has consistently requested that the Parole Board render decisions to deny parole to the inmate who killed his father.

- *Underlying Crime* – Mr. Provenzano stated that the degree of weight with regard to the underlying offense should be decided based on the circumstances of each particular case as it relates to decision-making process of parole board members. He also questioned how the achievement of academic degrees by a violent felon while incarcerated and their "unblemished" disciplinary record could outweigh the underlying offense as it pertains to death of a uniformed police officer or an ordinary citizen and the devastating affect that it has likely had and will continue to have on the crime victim's representatives.
- *Victim Impact Statement* – Mr. Provenzano stated that the panel of commissioners should be compelled to intently focus on the victim impact statements submitted to ascertain the far-reaching consequences of the magnitude of the underlying crime. He further posed the question "How can we ensure that the surviving members of a victim's family will be given a voice and that their voice(s) will not be stifled and diminished because of those that believe the magnitude of the crime should not be looked at after a mandatory sentence has been served and because it is their view that the commissioners presiding focus "too intently" upon what is expressed in victim impact statements?"

George Schreier

Mr. Schreier is a retired sergeant with the Department of Corrections and Community Supervision and has a son who is currently incarcerated at Collins Correctional Facility. He is also involved in working on parole reform.

- *Parole System* – Mr. Schreier stated that the 2011 reforms made to the Executive law and Correction law, governing parole, have never been fully implemented as intended.
Recommendations – Mr. Schreier stated that Commissioners should review each inmate as an individual with the original crime be considered as a factor, but not the over-riding factor, in determining parole. He also indicated that Commissioners should be strongly encouraged to cease meaningless boilerplate phrases lifted verbatim from the statute when rendering decisions and that parole hearings should NOT be a vehicle for commissioners to express dissatisfaction or disdain for the decision of the sentencing judge. Mr. Schreier further stated that Commissioners who use the COMPAS report as intended should be encouraged to continue doing so and that some way should be found to vary the commissioners an inmate faces from hearing to hearing.

V. DOCUMENTS RECEIVED PURSUANT TO INFORMATION REQUESTS

The following documents, as well as all written testimony, can be viewed in their entirety on our website at: <https://www.nysenate.gov/senators/patrick-m-gallivan>.

- I. Board schedule for January through June 2018
- II. Copy of the COMPAS Risk Assessment and Needs Assessment instrument
- III. Department of Corrections and Community Supervision (DOCCS) Directive re. COMPAS Assessments/Case Plan
- IV. Information pertaining to pardoned sex offenders and voting in schools
- V. Correspondence from DOCCS re. requesting school district superintendents to approve or deny a pardoned sex offender request to vote
- VI. Process by which any individual under parole supervision is granted a conditional pardon as well as the revocation procedure
- VII. DOCCS Directive re. Right to Vote Upon Maximum Expiration or Discharge of Sentence
- VIII. Transcripts from most recent Parole Board hearings of the following:
 - a. Herman Bell
 - b. Mark David Chapman
 - c. Judith Clark
 - d. Jose Saldana
 - e. Anthony Bottom
 - f. John Ruzas
- IX. Statewide summary of all conditional pardons granted as well as detailed information on conditional pardons granted and revoked on May 22nd, June 29th, July 27th, August 17th and September 18th
- X. List of appellate review and determination decisions re. denials of release to parole
- XI. List of parolees, by release date and top count offense, who have received a conditional pardon
- XII. Monroe County Resolution Memorializing the New York State Legislature to Reverse Governor Cuomo's Executive Order #181



State of New York

Executive Chamber

No. 181

EXECUTIVE ORDER

RESTORING THE RIGHT TO VOTE FOR NEW YORKERS ON PAROLE

WHEREAS, the right to vote is a fundamental tenet of our democracy and the underpinning of a representative government;

WHEREAS, the Fifteenth Amendment to the United States Constitution prohibits the federal and state governments from denying a citizen the right to vote based on race, color, or previous condition of servitude;

WHEREAS, under the Election Law of the State of New York, no person who has been convicted of a felony, may register for or vote at any election unless they have been pardoned or restored to the rights of citizenship by the governor, or their maximum sentence of imprisonment has expired, or they have been discharged from parole;

WHEREAS, tens of thousands of New Yorkers who are living in the community while on parole are disenfranchised as a result of a prior conviction and their status on parole;

WHEREAS, these individuals are active participants in society at large who, despite the limitations placed on them by parole conditions, work, pay taxes, and support their families and should be permitted to express their opinions about the choices facing their communities through their votes;

WHEREAS, the disenfranchisement of individuals on parole has a significant disproportionate racial impact thereby reducing the representation of minority populations;

WHEREAS, research indicates a strong positive correlation between the civic engagement associated with voting and reduced rates of recidivism, which improves public safety for all New Yorkers;

WHEREAS, restoration of the right to vote is an important aspect of the reintegration of individuals under parole supervision back into society to become law-abiding and productive citizens;

WHEREAS, New Yorkers who are sentenced to a term of probation are allowed to vote in any election, while New Yorkers on parole are not, even though both individuals on probation and parole are serving sentences in the community and operating under similar restrictions;

WHEREAS, Article IV, Section 4 of the Constitution of the State of New York authorizes the Governor of New York through his pardon power to restore the rights of citizenship that were forfeited by reason of conviction and a sentence of incarceration;

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by the power vested in me by the laws and the Constitution of the State of New York, do hereby order and direct as follows:

- I. From this date forward, individuals being released from incarceration onto parole supervision and individuals who are currently under parole supervision will be given consideration for a conditional pardon that will restore voting rights without undue delay. Effective immediately, the Commissioner of the Department of Corrections and Community Supervision shall submit a record of individuals who are currently under parole supervision to the Governor's Office. Beginning May 1, 2018, the Commissioner shall submit a monthly record of individuals who have been released from prison onto parole supervision in the prior month. Each individual on the eligible list will be reviewed to determine whether he or she will be granted a pardon that will restore voting rights.
- II. Notwithstanding this executive order, offenders may still apply for a Certificate of Relief from Disabilities for a restoration of citizenship rights pursuant to New York Correction Law Article 23. All applications, unless withdrawn, will be processed according to the procedures set forth in New York Correction Law.
- III. The pardons following this executive order, and all future restorations of voting rights, shall not include rights with respect to the receipt, transportation, or possession of firearms as provided by New York State Penal Law Section 400, nor shall it relieve an individual of any unpaid restitution, fine, or other financial obligation resulting from a conviction, nor shall it restore the right to hold public office, nor shall the order cause the underlying conviction to be sealed.
- IV. This executive order, and all future restorations of voting rights, shall not be construed as a remission of guilt or forgiveness of the offense and shall not function as a bar to greater penalties for future offenses. Nothing in the executive order shall be construed to contravene any applicable state or federal law.



BY THE GOVERNOR

M. C.
Secretary to the Governor

G I V E N under my hand and the Privy Seal of the
State in the City of Albany this
eighteenth day of April in the year two
thousand eighteen.

A handwritten signature in black ink, appearing to read "Andrew M. Cuomo", written over a horizontal line.

VI. TRANSCRIPTS OF HEARINGS

ADDENDUM A: ALBANY PUBLIC HEARING

1 JOINT HEARING BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND
CORRECTION
3 AND
4 STANDING COMMITTEE ON ELECTIONS

5 PUBLIC HEARINGS:

6 TO EXAMINE THE STATE'S CURRENT PAROLE POLICIES AND
7 GOVERNOR CUOMO'S EXECUTIVE ORDER ALLOWING
8 CONDITIONAL PARDONS THAT ENABLE PAROLEES TO VOTE

9 Van Buren Hearing Room A
10 Legislative Office Building, 2nd Floor
11 Albany, New York

12 October 1, 2018, at 12:00 p.m.

13 PRESIDING:

14 Senator Patrick M. Gullivan, Chairman
15 NYS Senate Standing Committee on Crime Victims,
16 Crime and Correction

17 Senator Frederick J. Akshar II, Chairman
18 Senate Standing Committee on Elections

19 PRESENT:

20 Senator Joseph A. Griffo

21 Senator Thomas F. O'Mara

22 Senator James N. Tedisco

23 Senator Susan J. Serino
24
25

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4	New York State Board of Parole		
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6	Public Employees Federation (PEF)		
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25	President and CEO		
	Osborne Association		

---oOo---

1 SENATOR GALLIVAN: Good afternoon, everybody.

2 I'm Senator Patrick Gallivan, and I am the
3 Chair of Senate Standing Committee on Crime Victims,
4 Crime and Corrections.

5 I'd like to introduce Senator Fred Akshar,
6 who is the Chair of Senate Standing Committee on
7 Elections;

8 Senator Griffo is to my right, your left;

9 Senator O'Mara to my left;

10 And then Senator Tedisco on the far end.

11 And I do know, at the very least, we'll be
12 joined by Senator Sue Serino.

13 I will call this public hearing to order.

14 We are here today for the purpose -- for a
15 very narrow purpose of examining two different
16 areas:

17 The first area is the statutory procedures
18 parole board members are required to consider when
19 making a decision, and their compliance with same.

20 The second area is the procedures used in
21 issuing conditional pardons, pursuant to the
22 Governor's Executive Order 181.

23 The hearing is conducted under the authority
24 of the Senate rules.

25 There was public notice of this that was

1 published.

2 In some cases, individuals or groups were
3 invited to testify.

4 In other cases -- in other cases, we reached
5 out to ensure that there was representation when
6 we're dealing with the different statutory factors.

7 All members of both committees, both Majority
8 members and Minority members, received the
9 individual notices directly to their office.

10 I have -- had correspondence with -- our
11 office had correspondence with at least two other
12 offices, and I do not know whether or not any
13 Minority members of either committee will be
14 appearing, or will be -- will be here or not.

15 This is the first in the series of two
16 hearings.

17 We are doing this here today.

18 Tomorrow, in the downstate area, we'll be
19 doing a second hearing regarding the same two
20 topics, in Hicksville. And, of course, you're all
21 invited to that as well.

22 And what we've tried to do is, rather than
23 repeat the testimony in both locations, we've tried
24 to make sure that we maximize the testimony, and the
25 testimony -- essentially -- or, the groups are

1 complementary rather than repeating.

2 And, ultimately, we will consider the
3 testimony from both hearings; we will consider
4 written testimony that has been submitted, where
5 it's been invited, or, some have chosen to submit
6 the written testimony, but will not appear and give
7 oral testimony.

8 So that will all be taken into consideration,
9 as well as the request for information that we have
10 made to the Executive Branch, to the Governor's
11 counsel; specifically, to the commissioner of the
12 department of corrections and community supervision,
13 and to the chairwoman of the board of parole.

14 We have received some of the information that
15 will be helpful as we look at these two topic areas.

16 We do not have all of information from them
17 yet, but I am grateful that they have complied with
18 the request and have forwarded some of the requested
19 information.

20 And we, of course, will be following through
21 on that.

22 At the very end of all of this, when we take
23 all this information in, whether it's the testimony,
24 whether it's written, whether it's the examination
25 of the records, we will ultimately issue a report.

1 And I would anticipate that it would come with
2 recommendations as well.

3 So the way that we are -- we have -- we have
4 a list of speakers, and we will -- we'll call them
5 individually. Some will appear in panels.

6 And the way that we've tried to organize it,
7 is to try to take on the topic areas one at a time:
8 First, starting with the standards of release for
9 parole and the parole board's compliance, and then
10 the Governor's executive order.

11 I understand, though, that some testimony
12 that will be given, some organizations or
13 individuals have testimony to offer in both areas.
14 And, of course, we would deal with both areas while
15 the individual person or panel is testifying, as
16 opposed to having you talk about one thing, stand
17 up, and then come back a little bit later.

18 I ask all the people that are testifying to
19 attempt to please limit their comments to the
20 topical areas, to the two specific topics.

21 I mentioned, the standards of release. They
22 are contained in 259-i of the executive law. The
23 factors the board must consider are in Section 259
24 of the executive law as well.

25 The Governor's executive order. We are

1 examining the Governor's executive order; the
2 process that ultimately was put in place, and the
3 concerns that constituents and others have raised
4 about that process.

5 The purpose today is not to have -- not to
6 have a debate on whether or not voting rights for
7 certain individuals -- certain individuals should
8 have voting rights or not. That was not the purpose
9 of the hearing.

10 It is my contention, and I feel strongly
11 about this, that the Governor usurped the power of
12 the Legislature; that the Constitution was not
13 intended to -- to deal in a blanket fashion with
14 tens of thousands of individuals.

15 It was, rather, intended for individual
16 injustices. I may be right, I may be wrong, but
17 I thought it was appropriate to examine that. And,
18 then, the procedures that were put in place.

19 And that is the purpose of that particular
20 area.

21 So I do ask the comments to try to stay
22 contained to the area -- the areas that we're
23 examining. And then, ultimately, of course, we will
24 try to help in that regard.

25 So before we move on, I would like to give

1 the opportunity to the other members of the panel to
2 offer a few comments, starting with the Chair of the
3 Elections Committee, Senator Akshar.

4 SENATOR AKSHAR: I'm going to pass.

5 SENATOR GALLIVAN: Senator Serino?

6 SENATOR SERINO: Nope, nope. I'm good.
7 If they choose to.

8 Comments?

9 SENATOR O'MARA: No, I'm good.

10 SENATOR GALLIVAN: Senator Tedisco?

11 SENATOR TEDISCO: Yeah.

12 SENATOR GALLIVAN: You're lucky.

13 SENATOR TEDISCO: Thank you, Senator Gallivan
14 and Senator Akshar, for putting this hearing
15 together, and the next one that's going to take
16 place, and for all my colleagues being here to
17 listen.

18 It's a very important issue.

19 And let me thank everyone who is here from
20 beyond this region, and I believe across the state,
21 especially those from the 49th Senatorial District,
22 my senatorial district.

23 I especially want to make note of someone
24 we're going hear along the line here, two
25 individuals, Michael and Regina Stewart, two of my

1 constituents.

2 You're probably familiar with the tragedy
3 that took place in their family locally.

4 They lost their son Christopher Stewart,
5 outstanding individual, outstanding student athlete,
6 from Shenendehowa High School, also lost life in
7 that accident that took place.

8 I guess you could call it an accident, but
9 it's not really an accident when somebody,
10 unforgivingly, drinks and drugs, gets impaired, and
11 gets behind the wheel and kills other individuals,
12 innocent law-abiding citizens.

13 Deanna Rivers lost her life in that accident
14 also, and several other students were injured.

15 I want to personally thank them, not only for
16 being here today, but for taking their personal
17 tragedy and turning it into something very positive,
18 I think, for the rest of the families of the
19 49th Senatorial District, this region in the state.

20 They worked very hard on legislation to
21 reform the systems and policies that take place when
22 crimes of this type happen.

23 And are here to testify about the process
24 they've gone through now, in terms of parole, when
25 this situation takes place with someone who doesn't

1 seem to care very much about other individuals on
2 the roadway, and uses drugs, and those impairments
3 that can impact us all.

4 So, I thank them for being here. I look
5 forward to hearing their testimony, as well as all
6 of the individuals' testimony today, and, hopefully,
7 getting some good input on this important issue.

8 Thank you very much, Mr. Chairman.

9 SENATOR GALLIVAN: Thank you, Senator.

10 We did invite three members of the Executive
11 Branch, as I had mentioned, to testify, and, as is
12 customary, we would have asked them to speak first.

13 They are not here, but they did submit
14 written testimony, which we will include as part of
15 the record, as well as our request for information
16 to each of those particular offices.

17 So, we do have written testimony that we will
18 be providing momentarily to each of the members.

19 From Alphonso David, who is counsel to the
20 Governor, he responded in written testimony, dated
21 September 28, 2018.

22 And his testimony -- or, I'm sorry, his
23 letter, rather, had to do with the Governor's
24 executive order, and their authority, where he cited
25 the Constitution and relevant election law to do the

1 same.

2 And that will become part of the record.

3 I'm going to go in reverse order of the topic
4 areas for just a moment.

5 Acting Commissioner Anthony Annucci of the
6 department of corrections and community supervision,
7 also, we had asked for a number of different
8 documents relating to the Executive Order 181, and,
9 department of community and corrections (sic)
10 supervision policies, their implementation of it,
11 their supervision, et cetera.

12 And he has provided some of those records to
13 date, and he has provided written testimony as well.

14 And the written testimony spoke solely with
15 that second topic area, the Governor's executive
16 order, and their implementation, and their process.

17 Later on, during the hearing, we do have
18 somebody representing -- or, an individual
19 representing parole officers, and they will be asked
20 about the implementation of the process and the
21 policy.

22 And if -- if they are not able to fully go
23 into it, I will actually recite some of
24 Commissioner Annucci's testimony.

25 But that also is on its way to all of the

1 members, and made part of the record.

2 And then, finally, from the Executive Branch,
3 Tina Stanford is the chairwoman of the board of
4 parole.

5 She has also submitted written testimony, as
6 well as responded to our request for records.

7 And we have, again, a number of the records
8 that we had asked for.

9 She did indicate that she wasn't able to
10 gather it all before this past Friday, but we will
11 be following up on that as well.

12 And then her written testimony dealt with the
13 topic area, dealing with the board of parole, the
14 standards of release, the commissioner's compliance
15 with that.

16 And I will put that into the record for now
17 and set that aside.

18 We do have a former member of the board of
19 parole who is here, who we will ask about the
20 procedures, the standards, and release, applicable
21 law.

22 And if questions remain unanswered, we may
23 come back to Chairwoman Stanford's written
24 testimony, and I would recite some of that as well.

25 But, ultimately, at the very end, all of this

1 will be contained in and be a part of the report of
2 the Committee.

3 So our first -- our first person that we
4 would call forward now is --

5 SENATOR O'MARA: Before you proceed with
6 that, Mr. Chairman, I would just ask of the Chair,
7 whether any explanation from Alphonso David,
8 Commissioner Annucci, or the -- or Tina Stanford was
9 provided as to why they are not appearing in this
10 hearing for our questioning?

11 SENATOR GALLIVAN: No.

12 SENATOR O'MARA: Thank you.

13 SENATOR GALLIVAN: -- former parole board --

14 SENATOR GRIFFO: If I could just add to that,
15 Mr. Chairman, you did have correspondence, and
16 made direct inquiries, relative to the invitation
17 that was presented to them?

18 They were all presented with an invitation to
19 appear; correct?

20 SENATOR GALLIVAN: Yes, they were all -- all
21 their offices were provided with a written
22 invitation to appear.

23 And Senate counsel spoke with the Governor's
24 counsel, and I personally spoke with
25 Commissioner Annucci and Chairwoman Stanford, and

1 inviting them to attend.

2 SENATOR GRIFFO: None indicated whether or
3 not they would be here at that time?

4 But did they --

5 SENATOR GALLIVAN: At the time of the
6 personal contact, they did not.

7 And, of course, the various heads of agencies
8 in the Executive Branch do report to the Executive
9 Office.

10 And they, of course, at the time that
11 I talked with them, would have to talk with their
12 superiors before making a decision.

13 But, nonetheless, there was both verbal and
14 written.

15 And, I do want to point out again that we did
16 do written requests for information, that they made
17 an effort to comply with, and all provided written
18 testimony.

19 Okay.

20 Anybody else?

21 -- Mr. James Ferguson, who is a former
22 member of the board of parole.

23 JAMES FERGUSON: Good afternoon, Senators.

24 SENATOR GALLIVAN: Good afternoon. Thanks
25 for being here.

1 JAMES FERGUSON: Thank you for having me.

2 SENATOR GALLIVAN: So for the record, would
3 you give us your name, and just talk a little bit
4 about your time of service on the board of parole,
5 including which governor appointed you or -- and/or
6 reappointed you?

7 JAMES FERGUSON: Yes.

8 My names is James Ferguson. I was appointed
9 by Governor Pataki in 2005. Was reappointed by
10 Governor Pataki, and was, subsequently, reappointed
11 by Governor Cuomo.

12 My term expired last year, and I left service
13 as of January of this year.

14 SENATOR GALLIVAN: So how long did you serve
15 as a member?

16 JAMES FERGUSON: About 13 years.

17 SENATOR GALLIVAN: 13 years.

18 JAMES FERGUSON: And I was administrative law
19 judge for the division of parole for about
20 6 1/2 years prior to that.

21 And then before that I was a prosecutor at
22 gangs and major cases in The Bronx.

23 SENATOR GALLIVAN: And are you employed now?

24 JAMES FERGUSON: I am teaching. I am doing
25 contracting and consulting work.

1 SENATOR GALLIVAN: Now, we appreciate the
2 fact that you are willing to be here today.

3 And we're looking to talk about the standards
4 of release, and provisions that are -- may or may
5 not be in place regarding how the parole board's
6 compliance is measured -- is measured, is looked at,
7 if at all. How parole board members get their
8 information. And those types of things.

9 So I don't know if you had opportunity at all
10 to review the law.

11 I do have relevant copies of the executive
12 law here. That is something that I could give you,
13 if you wanted.

14 JAMES FERGUSON: Well, I have 259-i, and
15 8002.

16 SENATOR GALLIVAN: So let's talk about the
17 standards of release first.

18 So what are -- what are the standards that
19 the parole board must consider?

20 JAMES FERGUSON: Well --

21 SENATOR GALLIVAN: I'm sorry.

22 What are the standards that an individual
23 must meet before the individual is approved for
24 release?

25 JAMES FERGUSON: Well, first, it must be

1 determined that the individual is not going violate
2 the law if released; that it's compatible with the
3 welfare of society; and that the seriousness of the
4 instant offense, the release would not deprecate the
5 public's view of the law.

6 We consider multiple factors in coming to
7 that conclusion.

8 SENATOR GALLIVAN: Excuse me, if I may, do
9 you happen to have the -- do you have the executive
10 law there that you had said?

11 JAMES FERGUSON: 259-i?

12 SENATOR GALLIVAN: Yeah.

13 JAMES FERGUSON: Yes.

14 SENATOR GALLIVAN: Okay. Could you -- could
15 you refer to 259-i, Section c, subdivision A.

16 JAMES FERGUSON: Which starts off with
17 "Discretionary release on parole"?

18 SENATOR GALLIVAN: Yes.

19 Could you provide us the first sentence that,
20 it is my belief, are the standards of release?

21 JAMES FERGUSON: "Discretionary release on
22 parole shall not be granted merely as a reward for
23 good conduct or efficient performance of duties
24 while confined, but after considering if there is a
25 reasonable probability that, if such inmate is

1 released, he will live and remain at liberty without
2 violating the law, and that his release is not
3 incompatible with the welfare of society, and will
4 not so deprecate the seriousness of his crime as to
5 undermined respect for the law."

6 SENATOR GALLIVAN: So is it your
7 understanding, generally speaking, that those are
8 the three standards of release that the parole board
9 must base their decision on?

10 JAMES FERGUSON: Yes, sir.

11 SENATOR GALLIVAN: You mentioned "factors."
12 Now, what factors must the parole board
13 consider when they make a release decision?

14 JAMES FERGUSON: There are multiple factors
15 that are enumerated in 259(c).

16 Institutional record, which, of course, would
17 include programming, academic accomplishments, work
18 assignments, therapy, interaction with staff and
19 other inmates;

20 Performance on temporary release;

21 Whether the inmate has a coherent release
22 plan;

23 Any deportation order;

24 Any statements made by crime victims, as well
25 as district attorney and judge letters and

1 recommendations at sentencing;

2 And also consider the seriousness of the
3 offense with due consideration to the type of
4 sentence, length of sentence, and recommendation of
5 the sentencing court, district attorney, and
6 attorney for the inmate, the pre-sentence probation
7 report, as well as consideration of any mitigating
8 and aggravating factors and activities;

9 And, of course, any prior criminal record.

10 SENATOR GALLIVAN: Does 259-i also speak to
11 the nature and pattern of offenses?

12 JAMES FERGUSON: Well, if you look at 259(c),
13 subsection vii, it talks about the seriousness of
14 the offense, with due consideration to the type of
15 sentence.

16 SENATOR GALLIVAN: Does it mention anything
17 else?

18 JAMES FERGUSON: Other than what I've read,
19 it also discusses the nature and pattern of
20 offenses, adjustment to any previous probation or
21 parole supervision?

22 SENATOR GALLIVAN: What about any prior
23 confinement?

24 JAMES FERGUSON: Yes. That would be under
25 "prior criminal record."

1 We consider not only the offenses, but the
2 sentences, especially if there was prior prison.

3 SENATOR GALLIVAN: All right.

4 So all of those -- all of those factors that
5 must be considered are contained in that 259-i,
6 sub (c)(A)?

7 JAMES FERGUSON: Yes, sir.

8 SENATOR GALLIVAN: Now, it's my understanding
9 that there are two other factors that have come
10 about as a result of either state law, or federal
11 law or federal court decisions.

12 And then, ultimately, those two factors were
13 dealt with in a change in parole policy, it had to
14 do with parole policy.

15 Are you familiar with those?

16 JAMES FERGUSON: No, sir.

17 SENATOR GALLIVAN: Are you familiar with the
18 COMPAS; or the risk-assessment tool?

19 JAMES FERGUSON: Yes.

20 SENATOR GALLIVAN: All right.

21 JAMES FERGUSON: Very much so.

22 SENATOR GALLIVAN: All right.

23 You --

24 JAMES FERGUSON: In fact, I was one of the
25 individuals who recommended, in 2008, that we

1 consider a risk-assessment tool as one additional
2 factor, not as a controlling factor, for the
3 commissioner's decisions.

4 SENATOR GALLIVAN: There are a couple of
5 cases that I will refer to right now.

6 One is the matter of Bodecker (ph.) versus
7 Stanford.

8 Another that's a little bit more on point is
9 Montane, M-O-N-T-A-N-E, versus Evans.

10 And both of those deal with COMPAS.

11 Montane versus Evans, in particular, says
12 that the board must consider COMPAS as a factor.

13 I mean, I don't know, are you aware of that,
14 or not?

15 JAMES FERGUSON: Yes.

16 SENATOR GALLIVAN: All right.

17 The other area came about as a result of a
18 Supreme Court decision, and that requires that the
19 board also consider as a factor, their age at the
20 time of events.

21 JAMES FERGUSON: Yes.

22 SENATOR GALLIVAN: Are you familiar with
23 that?

24 JAMES FERGUSON: Yes.

25 SENATOR GALLIVAN: So there came a time,

1 then, that the board adopted regulations to deal
2 with these two areas, introducing them as a
3 factor -- as factors?

4 JAMES FERGUSON: Yes.

5 SENATOR GALLIVAN: Can you just talk about
6 that a little bit?

7 JAMES FERGUSON: Well, I know that there have
8 been additional rules that have been put forth for
9 us to consider.

10 There are other things as well.

11 There's consideration regarding drug
12 sentencing, what an inmate would face today as
13 opposed to the past.

14 There's information regarding, when you
15 talked about youth, to take into consideration:
16 Their age at the time of the offense, their
17 immaturity. What success they've had while
18 incarcerated. If they continue to pose some type of
19 a threat.

20 SENATOR GALLIVAN: So many of those, and
21 especially you're talking about their age, really
22 became, I guess for lack of a better way of saying
23 it, a subset of those other factors that have been
24 articulated?

25 Among the things that must be considered, for

1 instance, their age at the time of the offense,
2 their state of mind, the way that they were raised,
3 the type of case, et cetera, et cetera, I mean,
4 those different things -- a number of things you
5 just mentioned?

6 JAMES FERGUSON: That was something we've
7 always considered.

8 SENATOR GALLIVAN: Okay.

9 So we have the factors.

10 And it's my belief, based on -- based on what
11 is contained in the executive law, and those two
12 other areas that we just mentioned, are the factors
13 that must be considered.

14 Now, to what extent, if -- you know, based on
15 your experience, what weight, if any, is applied to
16 any of those factors when you're making a release
17 decision -- when the board is making a release
18 decision?

19 JAMES FERGUSON: Well, consideration is given
20 to all of those factors, each of them is gone
21 through.

22 Sometimes inmates, either on their own
23 initiative or with the aid of other programs, or
24 attorneys, give us parole packets, as you may
25 recall, having served as a commissioner.

1 We go through each of those components, and
2 we weigh them, and we consider.

3 In particular, of course, we want to know:
4 What type of danger the person may pose if
5 released;

6 What type of successes they may have had
7 while incarcerated;

8 And what's their prospect for future success
9 and reintegration if released.

10 SENATOR GALLIVAN: Now, just -- I am going to
11 ask how you get the information in a moment.

12 But, when you're making the decision, after
13 the interview is done --

14 Which I'm anticipating you'll say, that's how
15 you get some of the information.

16 -- but when you make the decision itself, you
17 have the standards that were articulated a little
18 bit earlier, but, living and remain at liberty, and
19 so on.

20 And you have these -- what appear to be about
21 ten different larger areas, with subsets underneath
22 them, of the factors that must be considered.

23 Is there any requirement that you apply a
24 certain percentage of weight to any or all of those
25 factors?

1 JAMES FERGUSON: No, there's not a specific
2 requirement giving a percentile as to each of the
3 factors.

4 I mean, obviously, one can consider, if an
5 individual has been committing violent crime for
6 20 or 30 years, and has completed an
7 anger-management program in prison, the 20 or
8 30 years of acting out in anger perhaps outweighs
9 the one program completion.

10 So, it's common sense, and it's experience.

11 As you're all aware, many of the individuals
12 who are on the parole board have criminal -- I don't
13 want to say criminal backgrounds, because it might
14 convey the wrong impression, but, having experience,
15 to some extent, that prepares them to be able to
16 make these decisions.

17 SENATOR GALLIVAN: I did neglect one, and
18 I apologize.

19 There is another court case, another court
20 case that is relevant, and that is, for the record,
21 Silmon, S-I-L-M-O-N, versus Travis.

22 And that was decided at the state level, and
23 added -- added a so-called "insight and remorse."

24 But, the idea that the board must consider,
25 if an inmate is talking about their insight into

1 their offense, and remorse, if it's there, that that
2 is another factor to be considered, according to
3 this.

4 Is that your understanding as well?

5 JAMES FERGUSON: Absolutely. A very
6 important factor.

7 SENATOR GALLIVAN: If you give me just a
8 moment, I want to make reference to two other court
9 cases.

10 There is the matter of Serrano,
11 S-E-R-R-A-N-O, versus Alexander, and, Hamilton
12 versus the New York State Division of Parole, that
13 deal with the board's authority.

14 And I will quote from the matter of
15 Serrano versus Alexander.

16 I quote: The board need not enumerate, give
17 equal weight, or explicitly discuss every factor
18 considered, and was entitled, as it did here, to
19 place a greater emphasis on the gravity of his
20 crime.

21 Hamilton speaks more in general to permitting
22 the board to exercise discretion over the weight
23 that they can give any or all of the factors.

24 Now, I don't know -- are you familiar with
25 either of those cases?

1 JAMES FERGUSON: I'm not familiar with
2 Hamilton, no.

3 SENATOR GALLIVAN: All right.

4 In both -- and the briefs from each of these
5 cases will be made part of the record as well.

6 But, nonetheless, was -- is that, that
7 practice, your understanding?

8 JAMES FERGUSON: I'm sorry?

9 SENATOR GALLIVAN: These two court cases --

10 JAMES FERGUSON: Yes?

11 SENATOR GALLIVAN: -- and the notion that the
12 board has the discretion to exercise -- to apply as
13 much weight, or ascribe as much weight, to any or
14 all of factors, as it deems appropriate, was that --
15 was that the practice of the board --

16 JAMES FERGUSON: Absolutely.

17 SENATOR GALLIVAN: -- from -- during --
18 during your time there?

19 JAMES FERGUSON: Yes, that's how 259-i is
20 written: To give the board members the discretion
21 in each factor.

22 SENATOR GALLIVAN: Now -- now let's go back
23 to the consideration of the factors, not the weight
24 that you apply.

25 But, do you have any discretion to not

1 consider any of the statutory factors, or must you
2 consider all?

3 JAMES FERGUSON: No, we're required to
4 consider them all.

5 SENATOR GALLIVAN: And what was your practice
6 during your -- your experience during your time as a
7 member?

8 JAMES FERGUSON: You consider them all. You
9 review the entire record.

10 And as you may remember, it's a daunting
11 task.

12 You get there in the morning, you're given
13 several dozen cases to review.

14 SENATOR GALLIVAN: Okay, let's stop there.
15 Let's go to how you get your information.

16 So, let's talk about how you get the
17 information. And then if you can take us through
18 the interview process.

19 We'll talk about -- I'll ask you about
20 scheduling a little bit later.

21 JAMES FERGUSON: Okay.

22 SENATOR GALLIVAN: So, you've got all of
23 these factors that must be considered?

24 JAMES FERGUSON: Yes, sir.

25 SENATOR GALLIVAN: How do you get that

1 information?

2 JAMES FERGUSON: It's given to us in what's
3 now referred to as an "ISR" (inmate status report).

4 It's a report that is prepared by ORCs
5 (offender rehabilitation coordinators) under the
6 supervision of an SORC.

7 They acquire the --

8 SENATOR GALLIVAN: What's "SORC"? A senior?

9 JAMES FERGUSON: SORC, yes.

10 SENATOR GALLIVAN: A supervisor?

11 JAMES FERGUSON: Yes, who works in ORC.

12 Although, I think everybody --

13 SENATOR GALLIVAN: And if I may, there was
14 a -- I think it was -- perhaps 2011, there was a
15 reorganization --

16 JAMES FERGUSON: Yes.

17 SENATOR GALLIVAN: -- for lack of a better
18 word, if you will.

19 Who does -- so the parole board is
20 autonomous, the board itself, in making its
21 decisions?

22 JAMES FERGUSON: In terms of its decisions,
23 yes, it is.

24 SENATOR GALLIVAN: Now, the offender rehab
25 specialists, and the people preparing that

1 information for you, did they fall under the
2 supervision of the parole board?

3 JAMES FERGUSON: No.

4 SENATOR GALLIVAN: They fell -- accurate to
5 say that they were now classified to be department
6 of corrections, community supervision employees --

7 JAMES FERGUSON: Correct.

8 SENATOR GALLIVAN: -- supervised by the
9 department of --

10 JAMES FERGUSON: Yes.

11 SENATOR GALLIVAN: -- okay.

12 JAMES FERGUSON: Previously you had parole
13 officers in that position.

14 And that was one of the objections many of us
15 made to the merger.

16 And inmates as well.

17 Inmates were afraid of having the ORCs be the
18 people that gather this information and give it to
19 the board.

20 And those fears still exist, and just as of
21 recently, I've been told.

22 SENATOR GALLIVAN: Okay. So the offender
23 rehab specialists, they prepare the information or
24 the file, so to speak?

25 JAMES FERGUSON: Yes, sir.

1 SENATOR GALLIVAN: That you ultimately get?

2 JAMES FERGUSON: Correct.

3 SENATOR GALLIVAN: So how do you get that
4 file?

5 JAMES FERGUSON: You get that file on the day
6 of the parole board. You show up at the location.

7 At this point we're, pretty much, videoing
8 out to almost every facility in the state, with a
9 few exceptions.

10 When you arrive, each of the commissioners
11 are given several folders.

12 Within that folder is contained the inmate
13 status report which will give that you information.

14 SENATOR GALLIVAN: So let's go a little bit
15 more in detail, if you would --

16 JAMES FERGUSON: Sure.

17 SENATOR GALLIVAN: -- with, what is in folder
18 that you get?

19 JAMES FERGUSON: Well, I mean, there's a lot
20 of institutional records which are not really
21 relevant.

22 Communications between the ORC. Information
23 sometimes about lawsuits with the inmate. A variety
24 of other documentation.

25 But you will also have in there certificates

1 of completion for various programs. You'll have a
2 disciplinary record. You'll have a RAP sheet.

3 SENATOR GALLIVAN: A RAP sheet?

4 JAMES FERGUSON: A modified RAP sheet, yeah.

5 SENATOR GALLIVAN: What -- what -- a
6 "RAP sheet" is a criminal history?

7 JAMES FERGUSON: Yes, sir.

8 You'll also have any other supporting
9 documents that have been submitted.

10 If the inmate doesn't submit a formal plan
11 which is self-contained, we will sometimes have a
12 variety of other letters that have been submitted,
13 whether from judges, victims, DAs, people who are
14 supporting the inmate, people who oppose the
15 inmate's release, and a variety of other documents
16 that are contained in the folder.

17 We're given an opportunity, however brief it
18 may be, to review those documents and see what's in
19 there, and assess.

20 We also have probation reports, which is
21 usually the source of the information regarding the
22 underlying offense.

23 SENATOR GALLIVAN: They are all contained
24 within the folder?

25 JAMES FERGUSON: They are supposed to be,

1 yes.

2 SENATOR GALLIVAN: So all those factors, I'll
3 go through them here:

4 The institutional records.

5 So the record of programs, whether it is
6 academic, vocational. Their successes.

7 Interactions with staff or other inmates.

8 Disciplinary, training, records.

9 Essentially, anything that is required that
10 took place within the institution, is that
11 contained?

12 JAMES FERGUSON: Yes.

13 SENATOR GALLIVAN: Is information, if they
14 were on temporary release, contained in that file?

15 JAMES FERGUSON: Yes, it is.

16 SENATOR GALLIVAN: Is information regarding
17 their release plans contained in the file?

18 JAMES FERGUSON: There is some in the actual
19 ISR. And then we also will have -- if the inmate
20 provides a document, we will have his parole plan as
21 well.

22 SENATOR GALLIVAN: And that would have to do,
23 if it's support services that they would anticipate
24 availing themselves of, employment, education,
25 training --

1 JAMES FERGUSON: That is correct.

2 SENATOR GALLIVAN: -- things of that nature.

3 JAMES FERGUSON: And sometimes letters from
4 corrections officers.

5 But, yes, all that information.

6 SENATOR GALLIVAN: And that would be in
7 there?

8 JAMES FERGUSON: Yes, sir.

9 SENATOR GALLIVAN: Information regarding any
10 deportation order, if it exists, is that in that
11 file?

12 JAMES FERGUSON: It's supposed to be, yes.

13 SENATOR GALLIVAN: A victim's statement, if
14 there is one, is that located in the file as well?

15 JAMES FERGUSON: It's a file within a file.

16 Since that statement is confidential, and it
17 is not shared with the inmate, and no one's supposed
18 to even know it's there, except the members of the
19 parole board and the staff, it is a separate file
20 contained within that file.

21 SENATOR GALLIVAN: So information regarding
22 their sentence is in there?

23 JAMES FERGUSON: Sentencing minutes should be
24 in there, along with any recommendations of the
25 judge, a DA, and defense attorney at time of

1 sentencing.

2 SENATOR GALLIVAN: Pre-sentence report, would
3 that be located --

4 JAMES FERGUSON: A PSI is, yes, it's supposed
5 to be in there.

6 SENATOR GALLIVAN: And then information about
7 their particular offense, including mitigating
8 factors, would that be in there?

9 JAMES FERGUSON: The mitigating factors would
10 be brought out potentially by the ORC.

11 The mitigating factors might be brought out
12 by the defense attorney in the sentencing minutes,
13 if we have the sentencing minutes and if the defense
14 attorney made a statement.

15 The probation report will contain, sometimes,
16 if the inmate makes a statement. If there's
17 mitigating factors in there, it might be in the PSI
18 as well.

19 SENATOR GALLIVAN: And then, of course, you
20 talked about the RAP sheet; or the criminal history.
21 That then would deal with the criminal record,
22 nature and pattern of offenses.

23 Prior incarcerations, I'm assuming?

24 JAMES FERGUSON: Correct.

25 SENATOR GALLIVAN: And prior parole or

1 probation, if any?

2 JAMES FERGUSON: Correct.

3 SENATOR GALLIVAN: Now, in that file, I would
4 assume, the age at the time of offense is -- because
5 you have the age and you can calculate that.

6 JAMES FERGUSON: Do it regularly, yes.

7 SENATOR GALLIVAN: So you do have that?

8 JAMES FERGUSON: Yes, that was a regular
9 practice of mine, is to determine the age of the
10 inmate before he came up --

11 SENATOR GALLIVAN: Okay.

12 JAMES FERGUSON: -- (indiscernible).

13 SENATOR GALLIVAN: And then, the
14 risk-assessment tool, then state board of parole
15 uses COMPAS.

16 Is that located in there as well?

17 JAMES FERGUSON: Yes, it is.

18 SENATOR GALLIVAN: So you have this file.

19 Do you get any -- and you say you get it on
20 the day of the hearing?

21 JAMES FERGUSON: Yes.

22 SENATOR GALLIVAN: Do you get any information
23 about any of the cases that you're going to hear
24 prior to the day of hearing?

25 JAMES FERGUSON: Very unusual circumstances.

1 Sometimes we'll get a CD mailed to the
2 office, which may find its way to the commissioners
3 in time.

4 Sometimes you may get --

5 SENATOR GALLIVAN: A CD?

6 JAMES FERGUSON: -- I'm sorry?

7 Like, someone might create a DVD with
8 information on it about the individual's release.
9 Sometimes you'll get release plans through that way.

10 But, 99 percent of time you are getting the
11 information when you show up that day at the parole
12 board.

13 SENATOR GALLIVAN: And that 1 percent of the
14 time, who is sending you that information?

15 JAMES FERGUSON: Usually inmate's attorney is
16 trying to get things to the parole -- presiding
17 parole commissioners prior to the hearing.

18 SENATOR GALLIVAN: Does it come directly to
19 you from the inmate's attorney?

20 JAMES FERGUSON: No. It would go to the
21 office, because the parole board schedule, who's
22 sitting on each and every board, is a secret, so as
23 not to provide an opportunity for any type of
24 influence or collusion, or anything of that sort.

25 So they would send it to the main office.

1 And then the hope would be is that it would get to
2 the presiding commissioner via the internal staff,
3 once they determined who was going to be presiding
4 at those proceedings.

5 SENATOR GALLIVAN: Are there -- is there
6 anything, whether it's called by this or something
7 like that, a pre-board report that comes from --

8 JAMES FERGUSON: We have a pre-board report.
9 And when we had the parole officers there, it was a
10 much more detailed report. You got facts and
11 information about the case.

12 On occasion, you may get a victim statement
13 prior to the parole board.

14 But the information provided to the
15 commissioners, prior to the proceeding, is extremely
16 limited.

17 SENATOR GALLIVAN: The victim impact
18 statement, if there is one, do you get that in
19 advance?

20 JAMES FERGUSON: We sometimes will.

21 There's a transcript made of the proceedings,
22 and we will sometimes get those transcripts prior
23 to -- we're supposed to, prior to the parole board.

24 SENATOR GALLIVAN: I will come back to that
25 shortly as well.

1 So you've got all of this information on the
2 day of the hearing. And you're at -- you're at your
3 seat, so to speak.

4 And the majority are video-conferenced?

5 JAMES FERGUSON: Yes.

6 SENATOR GALLIVAN: Or by teleconference?

7 JAMES FERGUSON: Correct.

8 SENATOR GALLIVAN: Are you able to quantify
9 that, percentage-wise, if you're able to?

10 And it can be -- we'll recognize it's
11 approximate. You don't --

12 JAMES FERGUSON: I think we only have three
13 facilities now that we actually go to.

14 So all of the rest of the facilities are
15 videoed out.

16 SENATOR GALLIVAN: And so you are at --
17 you're not at a facility in a general sense; you're
18 in an office somewhere?

19 JAMES FERGUSON: Correct.

20 SENATOR GALLIVAN: And who's in the room with
21 you at your end of the teleconference?

22 JAMES FERGUSON: The other commissioners, of
23 course.

24 There will be support staff, the ORCs.
25 Usually an SORC. The stenographer. Occasionally an

1 interpreter.

2 SENATOR GALLIVAN: On the other end, with the
3 individual that's being interviewed for potential
4 release, who's in the room with that individual?

5 JAMES FERGUSON: On that end, similarly,
6 there will be staff consisting of ORCs. You may
7 occasionally have a corrections officer in and out
8 of the room, but they're not supposed to be there
9 during the actual proceeding unless there's some
10 type of security risk.

11 SENATOR GALLIVAN: Generally speaking, not
12 counting the exceptions, are they -- is the inmate
13 handcuffed during the interview?

14 JAMES FERGUSON: I'm sorry?

15 SENATOR GALLIVAN: Is the inmate in handcuffs
16 during the interview?

17 JAMES FERGUSON: That's rare.

18 It's -- someone who either has mental-health
19 issues and violent acting out, which would require
20 handcuffs, or, someone who may be being brought down
21 from SHU, will sometimes have inmates who are
22 currently confined because of misconduct. And then
23 they're brought down, and they're brought down under
24 those circumstances.

25 SENATOR GALLIVAN: Who determines if there

1 are -- if there's security issues?

2 JAMES FERGUSON: That's corrections.

3 SENATOR GALLIVAN: Department of corrections?

4 JAMES FERGUSON: Yes.

5 SENATOR GALLIVAN: And the way that we've
6 described it, on the teleconference, anyway, that's
7 at that other location, not a location where you
8 are?

9 JAMES FERGUSON: Correct.

10 SENATOR GALLIVAN: So what are you looking at
11 when your looking at -- if you're constructing the
12 interview, how much of the inmate do you see?

13 JAMES FERGUSON: It was my practice, and
14 I worked with former Commissioner Greenan on this,
15 that we had various specifications as to how things
16 should be conducted as to what we can see, because,
17 not interviewing live, as opposed to interviewing
18 over TV, you have some limitations from the camera
19 as to what you can see.

20 But you can make the camera so you can see
21 the inmate from head to toe.

22 Sometimes it's from the table, or, chest up,
23 if there's a table there, so you can see clearly the
24 inmate and what he or she is saying.

25 SENATOR GALLIVAN: Is it live time or is

1 there a delay?

2 JAMES FERGUSON: There's no lapse. It's
3 live.

4 SENATOR GALLIVAN: How reliable, in your
5 experience, was the equipment?

6 JAMES FERGUSON: Uh, it could probably use
7 some touching up.

8 We have had periods in which -- especially
9 after the transition, after the merger, it was very
10 difficult because, the staff, in my view, was not
11 properly trained.

12 In fact, it was so deficient,
13 Commissioner Elovich and I, and a staff member named
14 Lori Fischer (ph.), came up with our own training
15 program. And then we traveled around the state to
16 try to train the ORCs on how to participate, conduct
17 the hearing, prepare the paperwork, and work with
18 inmates.

19 But, the equipment, I haven't used the
20 equipment in some time, Senator, so, the current
21 status, I couldn't tell you.

22 But when I was there, you did have a fair
23 amount of deficiencies and problems with the
24 equipment.

25 SENATOR GALLIVAN: What would happen if there

1 was problems with the equipment?

2 JAMES FERGUSON: Well, sometimes we would
3 have to wait for hours to try to get it repaired.

4 We've waited an entire day at times.

5 At some point we cut and run, which means we,
6 basically, decide -- the senior commissioner will
7 decide we have to just go to the facility. So then
8 we would drive to that facility.

9 Depending on what the circumstances were, if
10 we felt relatively confident that we would be able
11 to get that equipment up the next day, we might
12 postpone the hearings until the next day.

13 But, generally, if the equipment fails, you
14 are at the mercy of them locating someone who can
15 work on that equipment; otherwise, you have to go to
16 the facility or postpone the proceedings.

17 SENATOR GALLIVAN: All right.

18 Let's go back to the interview now.

19 JAMES FERGUSON: Yes.

20 SENATOR GALLIVAN: So, you've got the file,
21 with the factors that we talked about are in the
22 file, you have them. And -- you have them, and
23 you're ready to conduct an interview.

24 Will you take us -- don't take us through the
25 multiple cases, but just take us through an

1 interview. Like, just talk about the process, not
2 word by word.

3 But, what takes place?

4 JAMES FERGUSON: Do you want me to give you
5 like a mock interview? Or --

6 SENATOR GALLIVAN: No, no, just paraphrase.
7 Just take --

8 JAMES FERGUSON: Okay.

9 SENATOR GALLIVAN: -- what takes place
10 through an interview.

11 JAMES FERGUSON: We would, of course, welcome
12 the inmate into the room, ask them to have a seat.

13 If they have additional documents, they would
14 give us additional documents.

15 We'd introduce the commissioners.

16 We would then go ahead and start asking
17 questions that we have.

18 At that point, you've reviewed this
19 individual's file, so you have made appropriate
20 notes inside the file, so that when the inmate comes
21 into the room, you are prepared to ask certain
22 specific questions, or touch on certain points that
23 you have questions about.

24 The other commissioners are given the
25 opportunity to ask questions if they have questions.

1 And the inmate is given the opportunity to
2 make any final statement or comments that he or she
3 might like to make.

4 SENATOR GALLIVAN: So when we talked about
5 the factors that are required, both by statute and
6 by various court decisions, one was insight and
7 remorse.

8 I didn't ask you if that was located in the
9 file at all.

10 How did you get information regarding the
11 applicant's insight regarding the nature of the
12 offense, or if there was any remorse.

13 JAMES FERGUSON: Through questioning.

14 You would discuss the offense. You would
15 tell him what the official version of the offense
16 is. You would ask the inmate whether or not he or
17 she had a different version of events.

18 You would then ask them:

19 What happened?

20 Why did it happen?

21 What's different today?

22 What have you learned since you've been in
23 that will assure us that this type of conduct won't
24 occur again?

25 So from that we'll get what their insight is,

1 and it is during that time that we would expect them
2 to mention whether or not they have remorse.

3 There are certain questions we don't ask.

4 If you asked someone, "Do you have remorse?"
5 you would have to be an exceptionally dull
6 individual to not say, yes, I have remorse.

7 So there's some questions, Senator, that we
8 leave for the inmate to raise on their own accord.

9 SENATOR GALLIVAN: So we talked about all the
10 information that's in the file that you have?

11 JAMES FERGUSON: Yes.

12 SENATOR GALLIVAN: And you have the applicant
13 in the room with you.

14 Is there a record made of all this -- of all
15 of these factors?

16 JAMES FERGUSON: Yes. There is a
17 stenographer recording the proceedings as we speak.

18 SENATOR GALLIVAN: And I'm assuming there's a
19 transcript, then --

20 JAMES FERGUSON: Yes.

21 SENATOR GALLIVAN: -- for every case --

22 JAMES FERGUSON: Yes.

23 SENATOR GALLIVAN: -- that's completed at
24 some point afterwards?

25 Is it -- does the applicant have the

1 opportunity to talk about those various factors, or
2 to explain or embellish on certain things? Or, if
3 there's information that he or she feels is
4 inaccurate, to talk about that?

5 JAMES FERGUSON: I think the majority of the
6 commissioners give the inmate the opportunity to
7 raise any particular issues they want to raise.

8 Obviously, to sit -- we know what the
9 programs are, so we don't necessarily need someone
10 sitting there and going through, Well, this is what
11 I did in day one in the anger-management program.

12 If they have a special insight that they've
13 gained in programs like that.

14 And experiences, losing their own loved ones,
15 often gives them insight as to the pain and
16 suffering that they've caused other individuals by
17 taking a life.

18 So they will -- they will usually bring that
19 up of their own accord during the course of the
20 discussion where multiple opportunities are provided
21 to interject that information.

22 SENATOR GALLIVAN: So you conduct the
23 interview.

24 And I think you said -- did you say that, at
25 the end, the applicant is given an opportunity to

1 add anything --

2 JAMES FERGUSON: Yes, I mean, unless during
3 the course of the interview, through the various
4 interjections, all the points have been raised,
5 I think, generally, the majority of commissioners
6 will still ask: Is there anything else that we
7 haven't covered that you think we need to know?

8 SENATOR GALLIVAN: So you go through the
9 interview.

10 JAMES FERGUSON: Yes, sir.

11 SENATOR GALLIVAN: And then what?

12 JAMES FERGUSON: After the interview, the
13 inmate is excused. We then have deliberations
14 amongst the commissioners. More and more
15 frequently, it's become "commissioner." You know,
16 there's only one other.

17 It's been two. And as you may recall, it's
18 very challenging to have just two commissioners on
19 the board.

20 Sometimes, I've been on cases where we
21 deliberated over a period of weeks, until,
22 literally, the decision was due that day, at a
23 certain time, and we had to get it in at that time.

24 SENATOR GALLIVAN: And do you know recall
25 what the law requires as far as -- or do you recall

1 what the law requires --

2 JAMES FERGUSON: Two weeks.

3 SENATOR GALLIVAN: -- as far as --

4 JAMES FERGUSON: Two weeks.

5 SENATOR GALLIVAN: -- okay.

6 Thank you.

7 JAMES FERGUSON: Yeah.

8 But, the majority -- the vast overwhelming
9 majority of cases are decided at that point, after
10 the interview, after discussion.

11 You will have cases that people will come
12 back to, because we are still try to get the other
13 people who've been waiting out there for hours, to
14 get them in and move on to the next interview.

15 So if we have a case where we feel we're
16 stuck, we may put it aside and then come back to it
17 later, so as to keep the --

18 SENATOR GALLIVAN: How long is an interview?

19 JAMES FERGUSON: It changes.

20 I'm hearing now that people are being
21 interviewed, on a regular basis, 30, 40 minutes,
22 maybe an hour.

23 When I started -- and the numbers were
24 different when I started. Interviews were generally
25 around 15 minutes.

1 So --

2 SENATOR GALLIVAN: Do you have any -- do you
3 know of any -- what accounts for the difference?

4 If you know.

5 JAMES FERGUSON: Different techniques.

6 There's six new commissioners who I've not
7 trained.

8 But, prior to that, I created a training
9 manual. And with that training manual, there was a
10 training program. I trained many of the
11 commissioners.

12 There's a different technique in
13 interviewing.

14 There's different types of questions that are
15 asked, that have almost never been asked prior to
16 the past few years.

17 SENATOR GALLIVAN: So, you're interviewing
18 the various applicants for parole -- or, those
19 eligible to be considered, and you have two or three
20 commissioners.

21 How many -- how many in a particular --
22 strike that.

23 Does every commissioner have access to
24 information relating to the factors that are
25 required to be considered during the course of the

1 interview?

2 JAMES FERGUSON: Yes.

3 Each commissioner usually has a -- what we
4 call a "courtesy copy" of the ISR, which contains a
5 variety of other documents attached to it; the
6 COMPAS, the RAP sheet, et cetera.

7 So they'll have, that.

8 In addition, if any commissioner feels that
9 he or she needs to look further into the file, the
10 file is handed over. The commissioner goes through
11 whatever he or she is looking for, and, hopefully,
12 finds what they are looking for.

13 SENATOR GALLIVAN: Is there ever a time,
14 prior to the interview, that you are asked to make a
15 decision in favor or against release?

16 JAMES FERGUSON: No.

17 The only qualification, I'll put it -- on
18 that, Senator, is if we receive a victim impact that
19 we read before the proceeding, and we receive an
20 inmate packet before the proceeding, which, of
21 course, that's when we receive it.

22 SENATOR GALLIVAN: Sure. I'll be clearer.

23 Is there anytime that you're directed from a
24 superior --

25 JAMES FERGUSON: Never.

1 SENATOR GALLIVAN: -- or from anybody else in
2 government --

3 JAMES FERGUSON: No.

4 SENATOR GALLIVAN: -- to make a decision one
5 way or the other?

6 JAMES FERGUSON: No.

7 During my interview for the position, that
8 was a question that I asked: Is anybody going to
9 ever tell me what to do?

10 If so, I'll keep my current job, and forgo
11 this one.

12 And I was specifically told by Chauncy Parker
13 that that would never happen.

14 SENATOR GALLIVAN: All right.

15 Briefly, can we talk about COMPAS?

16 So what -- we're saying it's a
17 risk-assessment tool, that I will note, that is
18 required to be utilized, pursuant to a change in the
19 law that the Legislature made I think back in 2011.

20 But, nonetheless, what is your understanding
21 of the purpose of the risk-assessment tool; or
22 COMPAS?

23 JAMES FERGUSON: Well, the original purpose
24 of the risk-assessment tool was to help
25 commissioners, and guide them, into the potential

1 risks that an inmate may pose if released, as well
2 as assist them in understanding what he or she has
3 accomplished while incarcerated, what insights they
4 may have, what resources are available to them if
5 released.

6 So it's supposed to give us a compact piece
7 of information to answer the majority of the
8 concerns that we may have when making a release
9 decision.

10 But, initially, it was supposed to be one of
11 the factors that we considered.

12 SENATOR GALLIVAN: Would it be accurate,
13 both, based on your experience, and what we talked
14 but in the -- and the court cases that I made
15 reference to, that it is now a factor that must be
16 considered, and treated as the other factors, as it
17 relates to the weight when making a decision?

18 JAMES FERGUSON: I think it's becoming a
19 controlling factor, as opposed to --

20 SENATOR GALLIVAN: As required --

21 JAMES FERGUSON: -- (indiscernible) --

22 SENATOR GALLIVAN: -- as required by law,
23 or -- as require -- or as a practice?

24 JAMES FERGUSON: -- well, you do have 259-i
25 and 8002 of Title IX, which indicates that --

1 SENATOR GALLIVAN: And that would be the
2 regulation that was adopted, that we talked about
3 earlier?

4 JAMES FERGUSON: Yes.

5 SENATOR GALLIVAN: Okay.

6 JAMES FERGUSON: -- that requires the
7 commissioners to -- point for point, if they deny
8 someone release, explain why they disagree with
9 COMPAS.

10 So, when you have to explain why you disagree
11 with COMPAS, that elevates COMPAS to a status that,
12 it is my understanding -- when I recommended that we
13 go to a risk-assessment tool in 2008 for
14 consideration, it was one more thing to help us.

15 Now I think it's actually becoming -- and
16 states do have that.

17 There are states that use just the
18 risk-assessment tool to make their decisions. The
19 parole board reviews the risk-assessment tool, and
20 perhaps the file, without an interview, and makes a
21 decision.

22 But that was not my understanding of what the
23 other statutes and the legislative intent was in the
24 other statutes.

25 SENATOR GALLIVAN: Okay.

1 So, you conduct a hearing. We've talked a
2 little bit about COMPAS. You get the information on
3 that particular day.

4 I guess my question is: How do you learn all
5 this stuff? How do you know that you've got to do
6 this stuff?

7 Are you trained?

8 JAMES FERGUSON: Well, when I first came on
9 there was no training.

10 You, basically, followed someone around like
11 a puppy dog, and learned what they did, and observed
12 what they did.

13 And based upon your, usually, decades of
14 experience, you were supposed to be able to pick up
15 how things work.

16 For people who are not from the criminal
17 justice field, I think it's an exceptional challenge
18 for them to be able to make that leap.

19 And they also don't come with having -- at
20 this point in my career, I believe I worked on about
21 50,000 cases.

22 So you don't have that type of raw data
23 underneath your belt when you come from another
24 field.

25 So you're supposed to, Senator, just kind of

1 learn as you go.

2 But as I mentioned before, I wasn't satisfied
3 with that. I didn't think that that was
4 unprofessional.

5 I thought it was unfair to the public,
6 I thought it was unfair to the commissioners,
7 I thought it was unfair to the inmates, to not have
8 formal training.

9 We did start to go into some formal training
10 later on, but we never had a formal comprehensive
11 training manual, which I was able to create.

12 SENATOR GALLIVAN: Okay.

13 Now, so you do your job.

14 JAMES FERGUSON: Yes, sir.

15 SENATOR GALLIVAN: You go through all these.

16 And, the parole board has a number of other
17 functions. We are focusing on the release
18 determination, so -- so we'll just stick with that,
19 the release determinations.

20 Who makes sure that you -- as a commissioner,
21 that you are doing your job properly, and complying
22 with the law?

23 JAMES FERGUSON: No one.

24 I mean, you have the chairperson, but the
25 chairperson is not like a direct supervisor in any

1 other position. "Oye, you got this one wrong."

2 And they're not supposed to, because then
3 that's influencing your decision-making process.

4 There was a time that we did get our release
5 statistics, which gave us a general idea of how many
6 releases that we were involved in.

7 Those statistics were flawed because, if I'm
8 on with Commissioner Elovich, and
9 Commissioner Elovich has the case, she's the lead
10 commissioner, and she decides to release, she would
11 get credited with the release, but I wouldn't, even
12 though, if I said, no, the person would not be
13 released.

14 So the statistics were flawed.

15 And they also don't give feedback, which is
16 something I asked for.

17 As you know, knowledge is the most important
18 thing, information is the most important thing.

19 We should be getting feedback on the
20 decisions we're making.

21 Some of them, unfortunately, is tragic.

22 I've been on boards where people have been
23 released and, subsequently, people have been harmed.

24 I'm on other boards where people were held
25 in, and it turns out they were innocent.

1 So it would be important for commissioners to
2 be able to hone their instincts and abilities, to
3 get this feedback, to show them, in private, not
4 chastised by some supervisor, this is my percentage,
5 this is what I'm doing right.

6 There's a human factor here, which it means
7 anything can happen.

8 So these are incredibly difficult decisions
9 to make. And having any type of information that
10 can help you make a good decision, that secures the
11 safety of the public, protects victims, and helps
12 inmates get a fair decision, would be really
13 valuable.

14 SENATOR GALLIVAN: Do you know what
15 information, if any, regarding the board's
16 activities, the hearings, transcripts, whatever it
17 may be, is made available to the public?

18 JAMES FERGUSON: Well, I know there's been a
19 push lately to try to get the minutes of the
20 proceedings accessible to the public, which
21 I believe they should be.

22 They have to be made available to the inmate;
23 they have to be made available to the inmate with a
24 specified period of time after the proceeding for
25 appellate purposes.

1 But, the only information that gets out to
2 the public is via the possible notification of a
3 victim if someone is released, or, if, for whatever
4 reason, the department of corrections decides to do
5 a press release.

6 Otherwise, unless people inquire and dig,
7 this is all, I don't want to say hidden, because
8 I guess it may connote an intent, but, it's -- the
9 public doesn't have access to nearly the amount of
10 information they should have, in my view.

11 SENATOR GALLIVAN: All right.

12 Do any other -- do members have any
13 additional questions?

14 SENATOR TEDISCO: Yep, this way.

15 SENATOR GALLIVAN: Senator Tedisco, followed
16 by Senator Griffo.

17 SENATOR TEDISCO: Thank you,
18 Commissioner Ferguson, for being here today, for
19 your service, and your patience.

20 JAMES FERGUSON: Thank you, Senator.

21 SENATOR TEDISCO: Factors. We talked about
22 victim impact statement being a factor.

23 On occasion, the injured party cannot make a
24 statement, so the family has the opportunity to make
25 a family victim impact statement on behalf of their

1 family member who is injured, the injured party.

2 Could you explain how that process works when
3 a family member or family members come in to make
4 that impact statement on behalf of their family
5 member?

6 JAMES FERGUSON: Senator, usually what
7 happens is, an individual will register at the time
8 of the processing of the case in the district
9 attorney's office.

10 That information will be forwarded over to
11 our victim-impact unit. They keep that record on
12 file.

13 And what is supposed to happen, and there
14 have been so many difficulties and so many problems,
15 I, literally, have lists here that I could tell you
16 for hours, the difficulties and things that have had
17 to be fixed within parole.

18 But, the victims are supposed to be notified
19 prior to the parole board, and told to come in to
20 make a statement.

21 SENATOR TEDISCO: When you say the "victims,"
22 if they're not able to -- the family members, you
23 mean?

24 JAMES FERGUSON: Whoever it is that has
25 registered.

1 SENATOR TEDISCO: Oh.

2 JAMES FERGUSON: So it could be either the
3 victim, him or herself, or their family members if
4 the person is deceased.

5 Sometimes they will have -- you can even have
6 a representative.

7 As you can imagine, it's very tragic, and
8 it's very painful, for victims to come in and meet
9 with the parole board, and relive all this.

10 And some of them do it every two years for,
11 you know, decades.

12 SENATOR TEDISCO: Well, that's another
13 question to talk about.

14 Let's continue with this one.

15 JAMES FERGUSON: Yes, sir.

16 So they're notified. They call victim
17 impact. They make an appointment to see a
18 commissioner within whatever geographical area
19 they're in.

20 SENATOR TEDISCO: Let's stop right there.

21 A commissioner --

22 JAMES FERGUSON: Yes.

23 SENATOR TEDISCO: -- will that be one of the
24 commissioners that -- why you shaking your head?

25 JAMES FERGUSON: No, sir.

1 That's one of the problems I've had as well,
2 is that you do not have the person actually talking
3 to the commissioners.

4 Victim impact statements are extremely
5 powerful.

6 And I know there are people who advocate for
7 inmates. And there are some, but very few, who
8 advocate for victims.

9 But when you sit down and you listen to the
10 statements, and you see the pain and suffering that
11 people go through, it is extremely compelling, it is
12 extremely powerful.

13 But they do not get to see a presiding
14 commissioner, because they are seeing the presiding
15 commissioner in advance of the proceeding, which now
16 means they know, and have information, of who the
17 commissioner will be; and, therefore, that violates
18 an important practice of the board to keep who's
19 going to be on the boards secret.

20 There is a way to get around that, if -- and
21 they try to, I guess the best they can, is the
22 transcript is made, and that transcript is then
23 sent.

24 But I've had many victims complain that they
25 have not been able to speak to the commissioners who

1 will be making the decisions.

2 SENATOR TEDISCO: Let me get this straight.

3 The commissioner they speak to is prohibited
4 from being a part of the parole --

5 JAMES FERGUSON: They're not prohibited.

6 There were many times I would see people who
7 I would be a commissioner who's going to be on that
8 case.

9 I would not, and could not, disclose that to
10 them, because no one is supposed to know who's
11 supposed to be there.

12 SENATOR TEDISCO: Oh, so they could or could
13 not be?

14 JAMES FERGUSON: It's just chance.

15 SENATOR TEDISCO: Just chance.

16 Is there any an obligation, of whoever is the
17 commissioner hearing it, to get their information on
18 what they heard, besides a transcript being sent out
19 to the commissioners who will be hearing it?

20 Because, other than that, what's the purpose
21 of that person being there?

22 JAMES FERGUSON: I've asked for that to be
23 done.

24 There are many things I've asked to be done,
25 that have not been done by the parole board.

1 And that is one of the things I've asked that
2 we do, is that the presiding commissioner make a
3 recommendation, if not a -- you can't make a
4 recommendation on the case because you haven't
5 reviewed all the facts and you haven't heard from
6 the inmate. So that would be unjust.

7 But you can include information of factors
8 that should be considered by the commissioner, as to
9 what transpired that day, the demeanor of the
10 family.

11 Sometimes families will come in, and they're
12 so distraught, they get lost talking about Christmas
13 and weddings.

14 And I don't -- I don't mean to belittle that
15 component at all, but --

16 SENATOR TEDISCO: Well, they need some relief
17 in some way.

18 JAMES FERGUSON: -- absolutely.

19 SENATOR TEDISCO: And they do it in their own
20 way.

21 JAMES FERGUSON: Absolutely.

22 And it's one of the few times, Senator, that
23 they actually get to participate and be heard in the
24 system.

25 SENATOR TEDISCO: You said there was a way to

1 work around this?

2 What was that again?

3 SENATOR GALLIVAN: Well, by sending the
4 transcript.

5 And you could, as a commissioner, if you
6 wanted to, say something, I guess, at the end of the
7 transcript, if you felt that it was necessary or
8 needed to be said.

9 But there's no formal way for a victim-impact
10 commissioner to give any other information, other
11 than the transcript, to a presiding commissioner.

12 SENATOR TEDISCO: Are the families
13 time-limited when they give their victim impact
14 statement?

15 JAMES FERGUSON: Yes and no.

16 They're not given a specific time. They're
17 not told, you've got an hour.

18 But, if there's another victim impact
19 scheduled in an hour and a half, by default, you
20 sort of have a time limit.

21 And when you do, offices, like my former
22 office, the New York City office, you are regularly
23 doing three or four of them on a Friday, so they're
24 all back-to-back.

25 SENATOR TEDISCO: Okay.

1 So, it really cannot be a factor, because if
2 the real commissioners who are interviewing the
3 person up for parole never get the information, or
4 what the family members have to say, there's no
5 victim impact statement there. There's just a
6 victim's representative speaking, because they're
7 not getting any information.

8 Is that right?

9 JAMES FERGUSON: Well, they'll get the
10 transcript. There's usually a copy of the
11 transcript provided, and it's cumulative.

12 So if a victim appears before a board, and
13 someone gets held for two years, they come back two
14 years later, the prior information is contained in
15 the file.

16 SENATOR TEDISCO: Yeah, a transcript is a lot
17 different from me and you speaking and talking to
18 each other.

19 How about this:

20 How about we change the law so we videotape
21 the family members or the victim, and they're
22 mandated to see it before they go to the parole
23 commissioners to hear the individual who is up for
24 parole?

25 What would be wrong with that?

1 JAMES FERGUSON: I absolutely concur with
2 that recommendation.

3 SENATOR TEDISCO: Would we need legislation
4 to do that? Or --

5 JAMES FERGUSON: I think it could be handled
6 through a rule change on how the parole board
7 conducts the victim impact.

8 I don't think that that's necessary.

9 SENATOR TEDISCO: Who would make the rule
10 change?

11 JAMES FERGUSON: Well, it would have to go
12 through counsel's office, the chair. The board
13 would have to review the different considerations.

14 I think, for the rules and regulations, it's
15 open to public comment.

16 So there is a process to go through to get
17 the change done.

18 Whether or not that's necessary, I think
19 counsel's office would have to answer that question,
20 but, I think that's, perhaps, the best solution.

21 The only problem in the past has been, and
22 this is another one of the areas that I've
23 complained about, and has not been fixed, is, when
24 we get the DVDs, whether it's from the victim, or
25 even from inmates, by the time we get them, there's

1 no equipment, either on the site of the video
2 conferencing or within the individual offices,
3 that's necessarily available to the commissioners to
4 view that.

5 So unless you're taking -- unless you have
6 sufficient time to take that home with you and view
7 it at home, it doesn't get seen.

8 SENATOR TEDISCO: Do you think the family
9 members of the victim feel they don't want to come
10 before the board, knowing what we know about the
11 fact that the real board members who are at the
12 parole hearing may never see their statements?

13 Do you think that has an impact on them being
14 willing to come up, as you mentioned, every two
15 years to go through the trama and the consequences
16 of what happened?

17 JAMES FERGUSON: I think they have a concern.

18 And it's actually something that's been
19 expressed to me quite a bit recently, that they feel
20 that the victim impact means nothing. People are
21 following the COMPAS, and whatever else anybody else
22 says does not matter.

23 I think victims are grossly mistreated in the
24 process. And I've had numerous different
25 suggestions to try to escalate our treatment of

1 victims, that just have not worked --

2 SENATOR TEDISCO: Just quickly, 24 months, is
3 that a good idea, or bad (indiscernible) to have
4 that happen every two years?

5 JAMES FERGUSON: From a victim's standpoint,
6 it's an absolutely terrible idea.

7 I have seen victims -- since I was there for
8 13 years, I have seen victims three and four times.

9 And the pain never goes away.

10 These families are utterly destroyed.

11 Some even remarry and move on, and they still
12 can't move on.

13 It's something that is unfortunate.

14 And I think, again, the victims are just done
15 a disservice in the way the process is handled.

16 SENATOR TEDISCO: Thank you, Commissioner.

17 JAMES FERGUSON: Thank you, Senator.

18 SENATOR GALLIVAN: Senator Griffo.

19 SENATOR GRIFFO: Thanks for being here, Jim.

20 JAMES FERGUSON: Thanks, Senator.

21 SENATOR GRIFFO: Do you agree that parole is
22 probably considered an important part of our
23 criminal justice system and process?

24 JAMES FERGUSON: It's essential.

25 SENATOR GRIFFO: So, you've indicated that

1 you've been very frustrated in your time on the
2 parole board.

3 You had some input in trying to develop some
4 training requirements.

5 But, some of the things you've talked about
6 here are very concerning if you really predicate
7 that on what we just said; that this is an important
8 part of the entire criminal justice process and
9 system.

10 So, what's the root of that frustration,
11 then?

12 Were you not being heard, were members of the
13 board not being heard, relative from either the head
14 of the commission, the chairperson, or the
15 administration?

16 JAMES FERGUSON: Probably a little bit of
17 everything.

18 I think, ultimately, if there's the will in
19 the administration, then there will be the will
20 within the chairperson, and that means things can
21 happen.

22 There are things, I guess, that people don't
23 want to rock the boat on.

24 There are -- sometimes we had to -- taken a
25 stand. Not only as a commissioner, but as an

1 attorney, I felt I had an ethical responsibility
2 under certain circumstances.

3 We would have individuals who would be
4 corrections officers, and they would be the
5 interpreter for the inmate.

6 You know, talk about a conflict of interest.

7 We actually had to stop seeing cases to force
8 them to change this practice, even though we were
9 given a letter telling us not to do that.

10 So, there's a lot of frustration within the
11 process.

12 Regularly, commissioners are not -- and you
13 have decades, if not hundreds of years of experience
14 of people in the criminal justice system on the
15 board. And they are often cast aside to fit the
16 agenda of whatever the administration is.

17 SENATOR GRIFFO: And you think that,
18 basically, then, either designation or the tenor is
19 really more reflected on a political philosophy than
20 on good public-safety philosophy?

21 JAMES FERGUSON: Yeah, I think whichever
22 administration, I think it can go both ways.

23 You know, you have people on both ends of the
24 criminal justice spectrum.

25 There are people who believe that everybody

1 should be in prison and they should all be there
2 forever.

3 Then you have people on the other side who
4 believe that everybody should be released from
5 prison.

6 Obviously, the answer is in the middle, and
7 you have to have an administration that agrees with
8 that philosophy.

9 Unfortunately, what happens is, when you have
10 what we've had, a very prosperous period of low
11 crime, which is, of course, a large part due to new
12 police tactics, but I would submit that it's also,
13 in part, that the parole board, for a period of
14 time, was holding a lot of violent felons in.

15 You have another philosophy that is more
16 geared towards release, and I think that's what
17 we've been seeing lately.

18 SENATOR GRIFFO: So in order to have a fairer
19 system, and a more balanced system, do you believe
20 there's a better way to select commissioners --

21 JAMES FERGUSON: Absolutely.

22 SENATOR GRIFFO: -- to serve on the board of
23 parole.

24 JAMES FERGUSON: Absolutely.

25 SENATOR GRIFFO: And do you believe now

1 they're based more on politics than on professional
2 credentials? Would that be your impression?

3 JAMES FERGUSON: I would say politics is a
4 very significant, and too significant, part of the
5 process.

6 It should be credential-based.

7 When you talk about people having five years
8 of experience to serve on the parole board, I think
9 it should be at least ten, if not more.

10 You talk about medical doctors,
11 psychologists, psychiatrists, sociologists,
12 criminologists, being on the parole board.

13 My personal experience, and maybe I'm biased
14 because I'm a former trial prosecutor, is I think
15 the board should be split even between people who
16 are defense attorneys and people who are
17 prosecutors.

18 I have had the privilege of working with
19 people who are on the complete opposite side of my
20 views in the criminal justice spectrum. But when we
21 were able to sit down and engage one another, some
22 really good decisions were made on cases.

23 So I think it's very important to have that
24 balance.

25 And when you don't, we go back to days where

1 either no one is released, or everybody is released
2 and there's a crime wave as we had back when
3 Giuliani and Pataki were in office.

4 SENATOR GRIFFO: Thank you, Chairman.

5 SENATOR GALLIVAN: Senator Akshar.

6 SENATOR AKSHAR: James, how long have you
7 served -- how long did you serve for?

8 JAMES FERGUSON: Just about 13 years on the
9 parole board.

10 SENATOR AKSHAR: Would you say that members
11 of the board are overworked?

12 JAMES FERGUSON: Without question.

13 SENATOR AKSHAR: On average, how many cases
14 are you seeing a day?

15 If Tuesday was your day, how many cases would
16 you see?

17 JAMES FERGUSON: I'll give you the two worst
18 examples.

19 The two worst examples I had, is we start at
20 7:30 in the morning, reviewing cases. And there
21 was, the worst day I had was, we worked until 1 a.m.
22 of the following morning, without dinner breaks, and
23 things like that.

24 The worst calendar scenario was, we went in
25 and we had 119 cases scheduled to be seen, and that

1 normally was supposed to take place within a two-day
2 range.

3 For the most part, the -- especially with two
4 commissioners.

5 One of the big recommendations I would make
6 to you is, you've got to fill the board up.

7 The board has to be filled up. It's the only
8 way to fairly and properly get through the cases.

9 But without question, Senator, they are --
10 there are too many cases, they're overworked.

11 SENATOR AKSHAR: So you talked a lot -- or,
12 Senator Gallivan talked a lot about, what are the
13 considerations, and what are the factors?

14 So, in such a short period of time, and such
15 a huge caseload, how are you, or anyone else,
16 supposed to make an educated decision about what to
17 do with the life of somebody that is sitting before
18 you?

19 JAMES FERGUSON: That's the unfortunate thing
20 about administrations not respecting institutional
21 knowledge.

22 You need people who have been there for a
23 long time and understand the workings of a variety
24 of cases; they've seen everything.

25 When you talk about trying to get through

1 these cases, fairly and justly, so that you give not
2 only the inmate a fair and accurate hearing, and
3 give them a due opportunity to be heard, but you
4 make sure that you're reading everything that you
5 need to read to protect the public.

6 And, it's challenging, even if you know what
7 to do. With 13 years, I found it still challenging
8 to get through the information I had to get through.

9 It's an unfair process to everybody involved.

10 SENATOR AKSHAR: One of the factors that you
11 consider, is it the opinion of law enforcement and
12 where they fall on a particular case?

13 JAMES FERGUSON: They don't get called.

14 There was a time that a recommendation was
15 made by me to have unions -- law-enforcement unions,
16 since they have a special relationship with the
17 people that are killed, and, perhaps, even
18 assassinated, that they might have the special
19 standing.

20 But many of the unions do a good job of
21 providing letters of opposition to the release of
22 individuals, and law enforcement who have been
23 killed.

24 SENATOR AKSHAR: So you weigh that?

25 JAMES FERGUSON: Oh, absolutely, without

1 question.

2 SENATOR AKSHAR: How about the community at
3 large?

4 Same scenario, if the community was outraged
5 about a particular case, they could opine on that,
6 and then that would be part of your review process
7 as well?

8 JAMES FERGUSON: Yes.

9 SENATOR AKSHAR: Okay.

10 Let me shift my questioning.

11 Every crime is terrible and -- but some
12 criminal action, you know, is referred to as "high
13 profile." Right?

14 A particular homicide case may be high
15 profile. A robbery case may be high profile.

16 If this person, let's just say, for murder of
17 a police officer, was up in 2018, and you sat on
18 that particular case, would you hear that case, and
19 that person was denied parole, would you hear that
20 case again two years later?

21 JAMES FERGUSON: That's another issue,
22 Senator, is that you can have the same commissioner
23 time and time again.

24 I've recommended scheduling adjustments to
25 plan out, if I'm still commissioner in two years,

1 that, on this date, I don't go to this facility
2 where this inmate is.

3 Sometimes the problem with that is, you have
4 inmates that get transferred.

5 So I may make an effort to not be at
6 Otisville, and go to Eastern. But now that person's
7 been transferred to Eastern.

8 But, yes, all too often, commissioners see
9 the same people.

10 SENATOR AKSHAR: Is it uncommon for -- let's
11 say, three commissioners were scheduled to hear the
12 case of a high-profile cop-killer, and shortly
13 before that case came to fruition, a parole board
14 member was changed, was taken off that case, and
15 then someone else was put on.

16 Is that abnormal?

17 JAMES FERGUSON: It's not normal.

18 I don't know that I would say it's abnormal.

19 You do have commissioners that are going to a
20 wedding, their daughter is graduating, and so
21 they -- or they're sick, and they can't be on a
22 panel.

23 So, maybe there's an important case that's
24 going to be heard. So you don't want it to possibly
25 be a lack of consensus with two commissioners, so

1 you schedule a third commissioner there.

2 We try to stay away from that because it has
3 an appearance of impropriety.

4 SENATOR AKSHAR: Sort of like in a
5 Herman Bell case?

6 JAMES FERGUSON: I'm not familiar with the
7 scheduling.

8 I'm familiar with the Bell case. I sat on
9 the Bell case twice before.

10 But I am not familiar with what the
11 scheduling scenario was.

12 SENATOR AKSHAR: Let me ask the question a
13 different way.

14 How far out in advance are the commissioners
15 scheduled to hear a particular case?

16 I'm sorry.

17 JAMES FERGUSON: Again, another one of my
18 bones of contention.

19 Commissioners should be given a schedule for
20 six months, if not the entire year.

21 You spread the commissioners out evenly to
22 every single facility, so the public -- it's shown
23 to the public and to the inmates that there's no
24 fooling around going on. Everybody is equally
25 spread out to every facility.

1 If I have to change something because of a
2 vacation, or something else like that, it should get
3 put in writing, and then changed.

4 I had periods where we, literally, didn't
5 know where we were going to be the next week. And
6 that's just really unacceptable.

7 SENATOR AKSHAR: As a member, have you ever
8 felt the pressures to clear cases, and to clear
9 cases a certain way?

10 JAMES FERGUSON: I've never had anyone
11 specifically say to me to do something with cases.

12 I have heard, high ranking, Oh, you guys
13 don't release enough people.

14 I've heard people say things like that years
15 ago.

16 But, you never get told.

17 You have influences when you are in the
18 parole board, and you're having a meeting, and you
19 are having guest speakers, and all three of those
20 guest speakers are former inmates for murder.

21 One of those people is involved in the murder
22 of a police officer. And I think on that very day
23 there's a plaque being put up on a bridge to one of
24 the officers who were killed. And you're,
25 literally, being lectured. You're a captive

1 audience, you're being lectured to.

2 You always want -- like I said, information
3 is valuable. I think it's important to hear what
4 people have to say.

5 But when, repeatedly, you are getting
6 information that leans towards releasing people, my
7 perception is, is I think that that's an attempt to
8 influence.

9 So whether or not it meets any type of legal
10 standard, you know, that's another story.

11 SENATOR AKSHAR: Yeah, so you talked a little
12 bit about politics coming into play in this
13 particular arena.

14 And so let me ask you a particular question.

15 Are you familiar with anyone trying to
16 influence the outcome of a hearing?

17 JAMES FERGUSON: I mean, you get
18 statements --

19 SENATOR AKSHAR: Directly.

20 JAMES FERGUSON: Directly?

21 SENATOR AKSHAR: Yep.

22 JAMES FERGUSON: -- again, with the exception
23 of getting statements from victims, getting
24 statements from the public or from unions, that, of
25 course, is trying to influence you to make a

1 decision.

2 I have never had, and I've never heard from
3 any of my fellow commissioners, that someone got a
4 call or someone was told, Hey, listen, you know,
5 this case is coming up. You got to do this or that
6 with it.

7 That's never been done.

8 SENATOR AKSHAR: And so, unfortunately, you
9 know, I think you're well-healed, and you have a
10 great deal of experience in this, in this particular
11 arena, much more than many of us up on the dais,
12 maybe with the exception of Senator Gallivan because
13 he served.

14 You know, I'm fearful that politics does, in
15 fact, play a role in the outcome of this particular
16 work, because you made the comment, you know, the
17 will of the administration is generally the -- you
18 know, the will of the chairperson. And then,
19 ultimately, you know, the direction that an
20 administration wants to go is generally the
21 direction the chair wants to go.

22 And I think, while we're talking about direct
23 impact, I think, in fact, politics does come into
24 play, and it does indirectly affect the outcome of
25 what you're trying to do.

1 JAMES FERGUSON: Senator, when the governor
2 appoints people, you know, usually he or she is
3 going to appoint someone that is in concurrence.

4 So people appointed by Governor Pataki are
5 probably going to have a different mindset than
6 people appointed by Governor Paterson.

7 So, in that sense, I think politics is there.

8 But there are certain things that are just so
9 important, that it needs to be above politics.

10 And when you deal with matters of community
11 safety, and you deal with matters of fairness to
12 people who may spend their entire life in prison,
13 and you have to balance that, it's important to have
14 a balance on the board.

15 If you don't, in the end, in my opinion, and
16 from my past experience, disaster usually results.

17 SENATOR AKSHAR: Yeah, the unfortunate part,
18 and I'll end on this, is that, unfortunately, in
19 this city, things change with the wind.

20 And while you may be strong in your
21 convictions, and others who serve as a member of the
22 board may be strong in their convictions, I think
23 that indirect influence, or indirect outcomes of
24 things, changes with political winds, based on what
25 is happening to some.

1 So I just want to publicly thank you for
2 being a member, and for standing firm in your
3 convictions as you tried to do this work.

4 JAMES FERGUSON: Thank you.

5 SENATOR AKSHAR: Chairman, thank you.

6 SENATOR GALLIVAN: Senator O'Mara.

7 SENATOR O'MARA: Yes, thank you,
8 Mr. Ferguson, for being here.

9 JAMES FERGUSON: Thanks.

10 SENATOR O'MARA: How many commissioners are
11 there?

12 JAMES FERGUSON: Currently there's 12.

13 SENATOR O'MARA: And how many are vacant?

14 JAMES FERGUSON: The maximum is 19.

15 SENATOR O'MARA: 19?

16 JAMES FERGUSON: Yes.

17 SENATOR O'MARA: Do you think -- so a third
18 of the commissioners are vacant right -- over a
19 third is vacant right now?

20 JAMES FERGUSON: Yes, sir.

21 SENATOR O'MARA: Do you think 19 is enough to
22 handle the caseload that you have of these parole
23 reviews?

24 JAMES FERGUSON: I was on the board only for
25 a brief moment in my 13 years where we had 19, and,

1 it was night and day.

2 I mean, you were -- and people don't get
3 this.

4 And even -- there was a time that we had to,
5 literally, run around to all the senators to explain
6 to them how we do our work, because there was some
7 political nonsense going on.

8 So we had to go around and explain to all the
9 senators we could, this is what we do and this is
10 how we do it. We're probably the hardest-working
11 board that there is.

12 You travel on Monday.

13 You work on the two days. Now it's
14 stretching into the third day, and then you're
15 supposed to travel back and then do victim impacts
16 and paperwork, which includes three-year discharges,
17 which not a lot of people are familiar with, on that
18 day.

19 But 19, Senator, would be ideal.

20 Could you survive with 18? Yes.

21 Could you do 17? Yes.

22 Once you start to get below that, it's
23 challenging, because you have -- you really should
24 have three commissioners on each board.

25 And right now, with four boards, if they had

1 that, no commissioner could get sick, no
2 commissioner could take vacation, and you would be
3 working every week of the year.

4 SENATOR O'MARA: So every week you're on a
5 panel, that you're working?

6 JAMES FERGUSON: With this number, 12, you're
7 working.

8 There were times where -- when we had
9 numbers, like 19, that you would have an office
10 week. You would get to go in and do paperwork.

11 But with this number of 12, you're either on
12 vacation or you're working. There's no other way
13 out of it.

14 SENATOR O'MARA: So on a given day that
15 you're on a panel, and you're either going to
16 complete that panel -- complete those hearings in
17 one day or two days is what you're allotted to do
18 it.

19 And you go in on a day where you've got, you
20 said your worst day was 119 cases.

21 What would an average day be?

22 JAMES FERGUSON: I would say an average day
23 would probably be in the area of 40 interviews,
24 30 interviews, somewhere around there.

25 Depending on what facility you are in, and

1 sometimes you're bouncing around -- well, you're --
2 video, it would be a video, you're bouncing around.

3 Before we used to have to drive to three or
4 four facilities in a day.

5 But, yeah, I would say, you know, in the "40"
6 range would probably be a reasonable number.

7 SENATOR O'MARA: Yeah, so 40 is a reasonable
8 number, and up to 119 the worst you had.

9 And you get these files the morning you
10 arrive?

11 JAMES FERGUSON: Yes, sir.

12 SENATOR O'MARA: For the board?

13 JAMES FERGUSON: Yes, sir.

14 SENATOR O'MARA: Wouldn't it be preferable to
15 have those files ahead of time?

16 JAMES FERGUSON: Senator, I have said --
17 I didn't want to be too, you know, rambunctious,
18 but, after my second year, and I felt I knew what
19 I was doing, I started to suggest that we have
20 commissioners assigned to specific offices, and we
21 use the technology that states like Texas have been
22 using since 15 years ago, where each commissioner
23 can video out to every prison from every location in
24 the state.

25 So a senator from Buffalo-- excuse me,

1 Senator.

2 A commissioner from Buffalo could video in to
3 Otisville. Me in New York, I could video in to
4 Otisville.

5 Now, I'd go to the office, Monday through
6 Friday, 9 to 5.

7 I would be able to give these files fair
8 review and consideration, which, of course, protects
9 the public and assures the inmate of a fair hearing.

10 Of course, you know, that involves an
11 investment, so, that fell on deaf ears.

12 But that's the only way, really, to do it,
13 to -- you need more time to review these files
14 fairly.

15 SENATOR O'MARA: Are the files digitized
16 or --

17 JAMES FERGUSON: No.

18 SENATOR O'MARA: -- computer-accessible?

19 JAMES FERGUSON: No.

20 And there are states that do have that as
21 well.

22 SENATOR O'MARA: So you show up in the
23 morning and you get handed a box full of files, or
24 manila folders, or whatever the -- what's the
25 physical makeup of the --

1 JAMES FERGUSON: It is, literally, a box, and
2 inside it are folders.

3 Some of them, depending how long the person's
4 been in prison, will have two 8-inch-thick folders.

5 The average folder is probably about 3- or
6 4-inches thick, depending on how long the person has
7 been in and what their history is.

8 But you get a box, or two, or three. And
9 then you get boxes of what we call "paper cases,"
10 which means we have to review the file, and decide
11 what types of conditions (indiscernible).

12 And then there are other emergency cases that
13 come in, that we may have to sign off on and review
14 as well.

15 SENATOR O'MARA: Okay.

16 How far in advance of the actual hearing date
17 do you get the list of inmates that you're going to
18 be reviewing?

19 JAMES FERGUSON: I think it's about a week.

20 SENATOR O'MARA: A week in advance?

21 JAMES FERGUSON: If -- when we used to get
22 the board pre-report -- the pre-board report,
23 I don't even remember the last time I got one of
24 those.

25 And I've been out for a while, but, many

1 things have fell by the wayside as a result of the
2 merger. And that was one of them.

3 SENATOR O'MARA: Uh-huh.

4 Now, you were talking about the video before,
5 and if you were able to do it from your home office,
6 I guess, rather than all getting together as the
7 panel and sitting around the same table.

8 JAMES FERGUSON: Yes.

9 SENATOR O'MARA: What does -- and you all can
10 see the inmate.

11 What does the inmate see?

12 JAMES FERGUSON: The inmate will see
13 whoever's talking.

14 When you first start the interview, the
15 inmate is given a view of all three commissioners.

16 And then, when he sits down, and if I'm the
17 lead commissioner, I would be, like, Good morning,
18 sir. Have a seat.

19 And then the staff will push a button and it
20 will focus on me.

21 If Commissioner Gallivan, or
22 Commissioner Elovich has a question, the camera will
23 pan over to them, and then he will see the person
24 speaking.

25 SENATOR O'MARA: Okay. So the inmate's

1 really only seeing one person at a time?

2 JAMES FERGUSON: Correct.

3 SENATOR O'MARA: Now, if you get that list of
4 cases you're going to review a week ahead of time,
5 if these files were digitized and available online
6 or on the computer, somehow, you would have an
7 opportunity over that week to look at cases, at
8 least maybe cases of greater concern to you than
9 others?

10 JAMES FERGUSON: It depends, Senator, on
11 where you're going to be.

12 If I'm in New York and I'm going to Buffalo,
13 my understanding is, now they're doing this
14 ridiculous practice of "no flying," which means
15 someone would drive from New York City to Buffalo,
16 which actually costs more than flying.

17 If I have to do that, then I'm not going to
18 have time to review even digitized files, unless I'm
19 staying up late on a particular night after how many
20 hours of driving, or how many -- I mean, you know,
21 as I said, I've done, you know, 18-hour days on the
22 parole board.

23 So, if it was digitized, I think there would
24 probably be a way for us to work it out, especially
25 if we had more commissioners, we would be able to

1 have the time to properly and fairly review the
2 files, yes.

3 SENATOR O'MARA: Okay.

4 Who's making the determination of which three
5 commissioners are going to be on a panel, next
6 Wednesday?

7 JAMES FERGUSON: Traditionally, it was the
8 chairperson.

9 Then it went to some computerized system,
10 which, my understanding, was still subject to
11 manipulation. And, of course, still subject to
12 changes after it's made.

13 I am not sure what the current practice is
14 with Chairwoman Stanford, if she's still utilizing
15 that computerized program.

16 SENATOR O'MARA: Okay.

17 So that, that panel, then, could be
18 determined after it's determined what cases are
19 going to be before that panel?

20 JAMES FERGUSON: Absolutely, because you know
21 when somebody's coming up for parole.

22 If I have 15 to life, you know when I'm
23 coming up for parole.

24 So, that panel will be composed with
25 potential aforeknowledge of what cases will be

1 coming.

2 SENATOR O'MARA: Given the caseload that we
3 have, and it's been brought up here about the
4 24-month review period for these cases, and you have
5 to review every parole matter every 24 months, in
6 your experience, are there just certain matters
7 that -- that you know that it's just not time yet,
8 and you really don't need to see that case every
9 two years, and it could go a longer period of time
10 before it might be ripe for a real consideration of
11 release?

12 JAMES FERGUSON: Yes, sir. You can have
13 cases similar to the Berkowitz case, where he
14 received six consecutive 25-to-life sentences.

15 But because of the way New York law is
16 drafted, they all merge, and he's available after
17 25 years, like any other individual who may have
18 killed one person, that he would be up for parole.

19 So -- I'm losing my train of thought here as
20 to what your question was.

21 SENATOR O'MARA: That's okay. It's been a
22 long time.

23 But, really, if there are certain types of
24 cases that, really, longer than 24 months would be
25 an appropriate time, rather than wasting the board's

1 time every two years to look at these cases over and
2 over, and run the victims through it over and over
3 every two years.

4 JAMES FERGUSON: I have seen cases where
5 I believe that the person may merit, you know, a
6 longer hold than 24 months.

7 Other states do holds of 5 and 10 years.
8 It's not unreasonable.

9 The practice is, ultimately, incredibly
10 unfair to the victim.

11 And there are inmates whose cases, you know,
12 such as a multiple-murder case, that person may
13 deserve greater than a 24-month (indiscernible).

14 And, of course, keep in mind, we can always
15 do less. We can do anywhere from the 1 to
16 24 months.

17 SENATOR O'MARA: Right.

18 JAMES FERGUSON: But, I would agree with
19 that, that certain types of cases --

20 SENATOR O'MARA: A current pending piece of
21 legislation has to deal with 48 months for certain
22 high-level violent crimes, such as murder, rape, the
23 most serious of crimes.

24 And then it would even still, then, be in the
25 board's discretion if they wanted to hold one

1 earlier than 48 months.

2 JAMES FERGUSON: Yes, that --

3 SENATOR O'MARA: Does that sound unreasonable
4 to you?

5 JAMES FERGUSON: -- yeah, I would not say it,
6 of course, across the board for all cases. There's
7 not -- you know, the lesser offenses, of course,
8 I don't think even come close to requiring a 5-year
9 hold.

10 But there are, without question, cases in the
11 system that a 5-year hold would be justified.

12 SENATOR O'MARA: Yeah.

13 And the final point I want to go over with
14 you, on the factors to consider for release on
15 parole, the factor of, that "the release on parole
16 will not so deprecate the seriousness of his crime
17 as to undermine respect for the law."

18 That's, obviously, very subjective, as a lot
19 of these criteria are, in making your decision.

20 What type of training, if any, are the
21 commissioners given in whether or not "the release
22 would so deprecate the seriousness of the crime as
23 to undermine respect for the law"?

24 JAMES FERGUSON: None, to my knowledge.

25 SENATOR O'MARA: In your experience, how

1 often does that factor come into play in a
2 particular panel's determination of a case?

3 JAMES FERGUSON: For the very serious
4 offenses, such as cases like the Bell case, there
5 are rape cases where people have received
6 significant sentences.

7 There's a fair number of cases that come in
8 where the inmate can be the perfect inmate. They've
9 done everything they possibly can. They perhaps
10 even demonstrate a genuinely changed person.

11 But, sometimes there's just -- enough time
12 has not been done, because of this component of the
13 serious nature of the offense and undermining
14 respect from the law.

15 You know, what is the public going to say if
16 you release Charles Manson. Okay?

17 So, there are those cases that, without that
18 component, and I know that inmate advocates advocate
19 getting rid of that, but that means every single
20 person who comes in, and does their programs, gets
21 out, even people who are dangerous to the community
22 that they're purporting to serve.

23 So, without question, there are very -- that
24 is a very important part of the more serious
25 offenses that we deal with, that -- having that

1 component.

2 You could have a person who's a perfect
3 inmate.

4 The statute provides, that if you have this
5 "serious nature of the offense" portion of it, you
6 can hold.

7 But, back to the COMPAS, we've started to get
8 to this, that, and the -- and you have to -- I've,
9 literally, had judges say in an overturned case,
10 Don't consider that.

11 So you're telling me to not fulfill my sworn
12 duty as a commissioner and as an attorney to uphold
13 the laws of the state of New York, and ignore this,
14 because you disagree with it?

15 That's how, I think, fanatical the belief is
16 on that.

17 When you realize that that component is
18 necessary, we either have to say that everyone gets
19 out every time they complete their programs, which
20 includes the worst of the worst, or, we have that
21 component which means, there will sometimes be cases
22 we disagree on, that this person should have got out
23 or they shouldn't have gotten out.

24 SENATOR O'MARA: I would agree with you that
25 it's a very important factor for the -- for

1 upholding our criminal justice system as a whole,
2 and not undermining it with premature releases. And
3 certain -- I mean, most people would say,
4 Charles Manson should never get out.

5 I don't think somebody that intentionally
6 assassinates a police officer should ever get out,
7 either. That any release of that individual is
8 undermining our criminal justice system.

9 But, thank you, Mr. Ferguson, for your
10 testimony here today.

11 JAMES FERGUSON: Thanks, Senator.

12 SENATOR GALLIVAN: And, finally,
13 Senator Serino.

14 SENATOR SERINO: Thank you very much,
15 Commissioner.

16 I really learned so much today about -- and
17 sadly, about the flaws in the system. And I think
18 it's so hurtful to the victims and to the inmates.

19 And, actually, the reason I'm here today is
20 because I wanted to learn more about the process,
21 which you're helping me do, from hearing from people
22 in my own district that have had problems with the
23 parole board's decisions that they made.

24 But I'm also a person who believes strongly
25 in a person's ability to reform themselves after

1 incarceration.

2 Of course, I've taken issue with the way this
3 whole thing was rolled out, bypassing the
4 Legislature, not allowing the people to have their
5 voice.

6 It was just terrible on this important issue.

7 And as a mom, not only as state senator, but
8 the problem with allowing sex offenders to go and
9 vote in the school without actually having a process
10 in place.

11 There was no guidance for our election
12 officials or for our school districts.

13 And I know I'm preaching to the choir, but
14 I just wanted to say, thank you again. I feel like
15 I've learned a lot today.

16 So thank you for your testimony.

17 JAMES FERGUSON: Thank you, Senator.

18 SENATOR GALLIVAN: Just a couple follow-up
19 questions, and then we'll move on.

20 You made reference to the type of individual
21 that should serve on the parole board.

22 JAMES FERGUSON: Yes, sir.

23 SENATOR GALLIVAN: Currently, there are --
24 are you aware that there are minimum qualifications
25 for the positions, as outlined in the executive law?

1 JAMES FERGUSON: Yes, sir.

2 Five years of experience, a degree, and then
3 the multiple areas I mentioned before.

4 SENATOR GALLIVAN: In a couple different
5 subject areas, the same ones that you spoke about
6 earlier?

7 JAMES FERGUSON: Yes, sir.

8 SENATOR GALLIVAN: And are you aware of the
9 process, how a member comes to be?

10 Who puts the name forward, in other words?

11 JAMES FERGUSON: Well, I mean, there's --

12 SENATOR GALLIVAN: No, in government, who
13 actually nominates the individual?

14 JAMES FERGUSON: -- oh, well, the governor,
15 of course, is the person who has to nominate the
16 individual. But then the Senate must confirm
17 whether or not that person will be appointed.

18 SENATOR GALLIVAN: And, naturally, because
19 I don't know if you're going there or not, I wasn't
20 going to, but the governor, likely, takes input from
21 different members of the community, those that might
22 have an interest in the type of individual
23 appointed?

24 JAMES FERGUSON: Without question, yes.

25 SENATOR GALLIVAN: But it's, the law,

1 dictates the minimum qualifications. Is that
2 correct?

3 JAMES FERGUSON: Yes, sir.

4 SENATOR GALLIVAN: All right. Thank you.

5 Now, we know the statutory factors. We've
6 gone over those time and time again.

7 Senator Akshar brought up law-enforcement
8 input or input from the community.

9 The law very clearly requires you to consider
10 certain factors; correct?

11 JAMES FERGUSON: Yes, sir.

12 SENATOR GALLIVAN: We've talked about them.

13 Does the law preclude you from considering
14 any other factors that the board deems relevant?

15 JAMES FERGUSON: Well, I mean, there are --

16 SENATOR GALLIVAN: To your knowledge?

17 JAMES FERGUSON: -- yes, there's some basic
18 things.

19 Like, someone may have --

20 And I've had to correct fellow commissioners
21 who don't come from a criminal justice background on
22 this.

23 -- they'll start discussing arrests that the
24 person has, that were dismissed.

25 So there are certain things by law that, you

1 know, we're not allowed to consider, but it's not an
2 exhaustive -- it's not an exhaustive list.

3 SENATOR GALLIVAN: To your knowledge, does
4 the law preclude any type of input from the
5 community or from law enforcement --

6 JAMES FERGUSON: It does not.

7 SENATOR GALLIVAN: -- for consideration,
8 as -- so long as it's relevant to that case?

9 JAMES FERGUSON: It permits it.

10 SENATOR GALLIVAN: All right. Thank you.

11 And, finally, when did you -- when -- would
12 you tell us again when you left the board?

13 You were employed through, when?

14 JAMES FERGUSON: January of this year.

15 SENATOR GALLIVAN: January 2018?

16 JAMES FERGUSON: Yes.

17 SENATOR GALLIVAN: All right.

18 Is there anything else that you might want to
19 add?

20 Now, keep in mind, we want to bring it to --

21 And I know there are things connected.

22 Training is connected, of course. The conduct of
23 the board -- or, the operations of the board are
24 affected as well.

25 -- but, going back to the statute, the

1 statutory factors that must be required, the
2 standards of release, and the board's compliance or
3 accountability towards that?

4 JAMES FERGUSON: I have a list I would love
5 to talk to you all about some other day.

6 But, for today's purposes, before people
7 start throwing at me for being here too long,
8 throwing things at me, is the one thing I would
9 comment on, Senator, is the COMPAS instrument.

10 I, of course, was around for the origination
11 of this instrument, and bringing it in.

12 I objected to it, I objected to it on several
13 grounds, because I feel, I don't know that I would
14 use the word "deficient," but there are problems.

15 One of those problems is, it would treat
16 someone, and I'll use him again, like the Berkowitz
17 case, it didn't have a mechanism to consider the
18 fact that six people were killed, six people were
19 wounded. And on eight other occasions he went out
20 hunting for other victims, but was unsuccessful.

21 So that couldn't be included in his
22 risk-assessment score.

23 It also has issues for juveniles.

24 One of the issues I had, and this is why
25 I made a training tape for OCFS, for the kids that

1 come in, all juveniles are, basically, marked as a
2 high risk because of their age, which is, obviously,
3 patently unfair.

4 Sex offenders and mental-health individuals
5 it also had issues with.

6 So the COMPAS is, by far, not a perfect
7 instrument.

8 And I can tell you that, for quite some time
9 after we had the instrument, I asked for feedback.

10 Where's the -- show me this is working.

11 Show me that the investment of our tax
12 dollars is working, and the trust that we're placing
13 in this to allow people out in our community is
14 well-founded.

15 We've never gotten information back, showing
16 that these are all the people we scored as a low
17 risk. They went out there, and 7 out of 10 did
18 perfectly. Or, we were wrong 7 out of 10 times.

19 Well, now I know there's something that
20 I can't trust about your instrument.

21 So that has never been provided.

22 And as a former attorney, I take -- uh, a
23 former -- current attorney, I take a negative
24 inference on that.

25 If you don't provide something, there must be

1 a reason.

2 So that's something we've asked for for quite
3 some time, Commissioner (sic).

4 And I think what's happening now with the
5 COMPAS instrument, and the way things are being
6 drafted in 8002 and 259-i, is they're trying to put
7 the commissioners back in a corner, that when you
8 get this COMPAS score, you must follow it.

9 If you don't, even if it's a case where you
10 believe the serious nature of the offense should
11 control, you're required to write a novel saying why
12 you disagree with COMPAS.

13 So I think that's the current direction it's
14 heading in, and that's why we are having some of the
15 difficulties that we're having.

16 SENATOR GALLIVAN: If I can clarify, I want
17 to make sure I have this right.

18 The law requires a risk-assessment tool,
19 risk-and-needs assessment tool.

20 COMPAS is one of those tools?

21 JAMES FERGUSON: Yes, sir.

22 SENATOR GALLIVAN: Correct.

23 COMPAS is not required by law.

24 But a -- there could be -- there are other
25 risk-and-needs assessments tools, risk-and-needs

1 analyses, plural, that are out there.

2 This is the one that the State has chose to
3 use.

4 Was that accurate?

5 JAMES FERGUSON: The State has chosen to use
6 it.

7 And, Senator, it's my understanding that it
8 is required to be considered.

9 And I think --

10 SENATOR GALLIVAN: No -- well, that's
11 according to -- the actual law, the executive law,
12 actually, it doesn't name COMPAS.

13 It does talk about a risk-and-needs.

14 JAMES FERGUSON: -- oh, okay.

15 Yeah.

16 SENATOR GALLIVAN: So the criticism of it is
17 that particular instrument?

18 That's what I'm trying to clarify.

19 JAMES FERGUSON: Yes, sir.

20 Yeah, I understand.

21 SENATOR GALLIVAN: Not -- not the notion of
22 the requirement of a risk-and-needs assessment.

23 Just that, in your mind, absent these --
24 absent these criticism or changes in that, that's an
25 inadequate tool?

1 JAMES FERGUSON: Yes, sir.

2 SENATOR GALLIVAN: I don't want to put words
3 in your mouth, but that's -- that's what you're
4 getting at?

5 COMPAS --

6 JAMES FERGUSON: Yes, that specific issue.

7 SENATOR GALLIVAN: -- not the --

8 JAMES FERGUSON: Whether there's a better
9 instrument out there, you know, I couldn't say at
10 this point.

11 SENATOR GALLIVAN: Okay.

12 Appreciate your time.

13 You've been very patient, and it was a little
14 longer than we thought.

15 But we thank you for being here --

16 JAMES FERGUSON: Thank you, all.

17 SENATOR GALLIVAN: -- and for your testimony.

18 JAMES FERGUSON: Thank you.

19 SENATOR GALLIVAN: Ulster County District
20 Attorney Holley Carnright.

21 And while the district attorney is making his
22 way down, if I could put just into the record,
23 I want to reference two provis -- two parts -- two
24 portions, rather, of the chairwoman's,
25 Tina Stanford's, testimony.

1 One has to do with scheduling, and I quote:

2 The parole board random assignment scheduling
3 system computer program is used.

4 The board schedules published monthly to the
5 commissioners.

6 I alone am authorized to make changes in the
7 event of emergencies.

8 I only assign specific commissioners to
9 interview specific individuals when this is required
10 by recision policy, a court order, or administrative
11 appeal decision.

12 Assignments are never made to impact the
13 likelihood of a specific decision.

14 End quote.

15 And regarding the length of interviews, and
16 the deliberations, I will quote: I am satisfied
17 that this present board takes the time they feel
18 that they need with each person and case to be able
19 to render a legitimate and responsible decision.

20 Mr. Carnright, thanks for being here, and
21 thanks for your patience.

22 As you know, as we talked about the statutory
23 factors, one of the factors that is required to be
24 considered is the recommendation of the prosecuting
25 attorney; or the district attorney.

1 And that's what we had hoped to ask you
2 about.

3 So, if you're able, just to talk about your
4 thoughts on that: The process. If the process
5 works. If it doesn't work, what recommendations for
6 change you might have.

7 And then we may have some questions.

8 DA HOLLEY CARNRIGHT: I wish I hadn't been
9 here for the last two hours. I learned a lot of
10 things that I don't want to know.

11 So, in Ulster County --

12 I can't speak for all of the DAs throughout
13 the state.

14 -- but in Ulster County, when I receive a
15 letter from the board, suggesting that an individual
16 is going to go up before consideration, in most
17 instances, I write a note back, saying, "Thank you
18 for your notice," and I don't put anything specific
19 out.

20 But in some instances I do, and those are
21 instances of the types of cases that I think you're
22 concerned with today, and that we've all been
23 talking about.

24 I'm -- based on this last hour and a half --

25 SENATOR GALLIVAN: Excuse me, sir.

1 Could you just pull the microphone closer to
2 you?

3 DA HOLLEY CARNRIGHT: Oh, sorry. Yeah.

4 SENATOR GALLIVAN: And then there should -- a
5 little red dot should appear there that shows it's
6 on.

7 DA HOLLEY CARNRIGHT: I see a red dot.

8 Yeah, okay.

9 SENATOR GALLIVAN: We're good.

10 DA HOLLEY CARNRIGHT: Okay.

11 -- the suggestion that the parole board gets
12 12 minutes to review a file, and the amount of
13 money -- amount of information that's in that file,
14 leads me to believe that they're not looking at
15 anything that I've sent up.

16 But before we even get to that problem, when
17 I get notices on cases, it's shortly after the
18 defendant has been convicted.

19 And many of the cases that I want to respond
20 to will not go before the board for over a decade.

21 Of course, I don't expect to be here at the
22 time, and so I write notes to them. I actually send
23 them things that I think they should have.

24 I send them things like crime-scene pictures.
25 I send them victim statements.

1 I prepare information that I think anyone
2 that's going to make a decision on a person's
3 release, should have.

4 And from what I -- we heard from the previous
5 speaker, they don't even have the equipment to put
6 the CD in a computer and look at the crime scenes.

7 I mean, that's a little bit of, what the
8 heck? honestly.

9 But at any rate, one of the problems that
10 I wanted to address with you this afternoon was the
11 inability, or the lack of, communication, I think,
12 between the people involved in this process and the
13 victims.

14 If you've been the -- if your family has been
15 the victim of a murder, and a person doesn't go
16 before the board for 10 or 12 years, I'm not sure
17 how they reach out and give the appropriate notice
18 to that family to allow them to be there.

19 I'll give you an example of the case that we
20 just had in Ulster County.

21 But the last year I was in law school, a few
22 years ago, a fella named Ronald Krom broke into
23 Trudy Farber's house, tied up her husband, and
24 kidnapped her at gunpoint. And, put her in a box,
25 and put the box in a shallow grave. And went to her

1 father, who was a fairly wealthy individual, seeking
2 ransom.

3 And that individual tried to pay the ransom,
4 it took a day or two.

5 And by the time they got to Trudy, she had
6 died in this -- she was buried alive in a shallow
7 grave.

8 He was just released by the parole board a
9 couple weeks ago.

10 No one contacted to me.

11 This is Ulster County. Of course, I wasn't
12 the DA at the time, but I'm the DA today.

13 And no one reached out to me and said, By the
14 way, do you know that it's possible that this person
15 might be released?

16 I don't know, I don't have the records, of
17 whether they tried to reach Mr. Resnick's family.
18 But I know Mr. Resnick's family is still in
19 Ulster County.

20 That's troubling to me, frankly, a case of
21 that magnitude.

22 You started out your discussion, Senator,
23 about the factors, the three important factors,
24 whether he'll recommit, the seriousness of the
25 offense, and the public confidence.

1 And I think we're kind of 0-for-3 on a case
2 like that.

3 And, of course, I state the obvious, that in
4 order to make an assessment of whether a person is
5 going to reoffend, the primary information we're
6 getting is from that individual, which is, I would
7 argue to you, not a particularly reliable source of
8 information compared to the seriousness of the
9 crime.

10 I mean, you know, what's the -- in essence,
11 what are we doing?

12 We're making a decision to release somebody,
13 and give them an opportunity to scratch an itch
14 that's been there for a long time.

15 It's a very troubling process, not to allow
16 the victims a chance to have direct input.

17 So it -- I don't know if I'm answering your
18 questions, but, in my county, in primary cases
19 that I think warrant the safety of the people
20 I represent, I take the time to write letters and
21 send specific information to the parole board.

22 I don't -- I've never -- there was one
23 instance, it was a fairly minor case, by my
24 standards. It was a grand larceny. A lady stole
25 \$700,000 from a local elderly lawyer. And she's

1 before the parole board a couple years after a
2 5-year sentence.

3 And I wrote a simple letter, saying, Can you
4 explain why she's even before you?

5 I mean, you know, based on the sentence, and
6 my expectation of the working of the sentence, is
7 why are we considering it?

8 I didn't happen to get a response to that.

9 Any way, what kind of questions can I answer
10 for you?

11 SENATOR GALLIVAN: I think you hit on an area
12 of potential concern, really, the process.

13 So if I understood you right, that an
14 individual is convicted. And upon conviction,
15 somebody from the department of community --
16 corrections and community supervision, or the board,
17 is reaching out to you shortly after conviction,
18 asking for your input regarding parole?

19 DA HOLLEY CARNRIGHT: Right away.

20 So, you know, as I get this letter, sometimes
21 two months, three months following the sentencing
22 date. We don't get notice --

23 SENATOR GALLIVAN: And it could be -- all
24 right.

25 So let's just say a 25 to life, you're not

1 getting it -- you're not getting notice or request
2 for input that 25 years later?

3 DA HOLLEY CARNRIGHT: Correct. When --
4 when -- when -- at the time that the individual is
5 actually going before the board, we're not getting
6 any notice of that.

7 And I don't know how they could even reach
8 out to the victims.

9 I mean, what -- what process would be in
10 place, unless the victims have been in this
11 situation where you've mentioned, where they go
12 every two years before the board.

13 Most victims aren't given these kind of
14 notices.

15 Most of them, there's victim services, of
16 course. But I'm not sure that they are even aware
17 of their ability to appear. And that --

18 SENATOR GALLIVAN: That's another -- we --
19 actually, that's another area that we're looking to
20 examine, I mean, how the victims get notice.

21 Are you satisfied that you are -- or, to your
22 knowledge, if you're able to answer, at least the
23 notices that you're getting, that you're getting in
24 every case, where somebody is sentenced to state
25 prison, with the possibility of being eligible for

1 parole, post conviction?

2 DA HOLLEY CARNRIGHT: I think we get -- well,
3 we get a lot of them, so I assume we get all of
4 them.

5 I haven't received -- there are a couple of
6 noteworthy cases I've prosecuted a couple years ago.
7 I had two child beatings, and -- two separate cases.

8 And I -- actually, before I came up, I looked
9 to see what I had sent to the parole board on those
10 cases, and I hadn't received notices on them.

11 But, in general, we do receive notices.

12 SENATOR GALLIVAN: All right.

13 Thank you.

14 Any other questions?

15 SENATOR AKSHAR: I'm good.

16 SENATOR SERINO: I'm good.

17 SENATOR GALLIVAN: All right.

18 You had a very narrow section of the law that
19 applied.

20 DA HOLLEY CARNRIGHT: Well, thank goodness
21 for that. If you were going to --

22 SENATOR GALLIVAN: I appreciate your brevity,
23 but thank you for taking the drive up, for being
24 here.

25 DA HOLLEY CARNRIGHT: Could I mention two

1 things, as long as --

2 SENATOR GALLIVAN: You can.

3 DA HOLLEY CARNRIGHT: -- it's always a danger
4 to give a microphone to a DA, you know.

5 When you -- when you make a note, that when
6 the parole officers -- or, the parole board is
7 receiving their PSIs in order to determine a
8 person's prior criminal history, their juvenile
9 record is not contained in that.

10 And we, unfortunately, have had many people
11 with very serious juvenile records. And, generally
12 speaking, you need a court order to get a family
13 court or a juvenile record, that that would even go
14 into the equation of whether to receive this
15 information.

16 That's something that it might be worth
17 looking at.

18 And I didn't know this, I'm embarrassed to
19 say, I didn't know this until I looked at the
20 statute on the way up here, but, according to the
21 statute, there's a provision where there's a
22 transcript made. And, the victim, or the victim's
23 representative, can receive a copy of that
24 transcript, which I am glad I know that.

25 I'm going to start to let my victims know

1 about that.

2 How hard would it be to give them a chance to
3 review that before the board made a decision, in
4 case they -- you know, if -- if -- let's just say,
5 hypothetically, there was information that was
6 presented that was in contest?

7 The victim could say, Well, he may have told
8 you this, but let me tell you what really happened.

9 It's a pretty simple thing to fix, it seems
10 to me.

11 Thank you so much for your time.

12 SENATOR AKSHAR: Thank you, sir.

13 SENATOR GALLIVAN: Thank you, sir.

14 Michael and Regina Stewart.

15 Good afternoon.

16 REGINA STEWART: Hi.

17 MICHAEL STEWART: Good afternoon.

18 SENATOR GALLIVAN: So how about if we start,
19 how about if you just give us your names, and it
20 doesn't matter to me who goes first, and just a
21 quick background.

22 And I do know that you had a video that you
23 wanted to present as testimony?

24 REGINA STEWART: That would be great.

25 SENATOR GALLIVAN: And we're going to do that

1 at the beginning? Or --

2 MICHAEL STEWART: Yeah, we just have a few
3 slides, because we would like at least a visual,
4 initially, of, you know --

5 SENATOR GALLIVAN: Sure.

6 How about if you just, quick, give us your
7 names, and just a brief background, and then we can
8 move to that.

9 REGINA STEWART: Okay.

10 Well, I'm Regina Stewart.

11 And we're here to talk about our son
12 Christopher, and what happened to us in 2012.

13 MICHAEL STEWART: And my name is
14 Michael Stewart, and I'm Christopher's father.

15 So, we have a couple different things to talk
16 about.

17 First of all, we want to thank the Committee
18 for hearing us today and allowing us to testify on
19 such an important topic to us.

20 And, please keep in mind, you know, this --
21 when we go through this process of parole, we,
22 obviously, went through it for the first time.

23 So we have, obviously, a lot of opinions on
24 things and how things could work better.

25 But we think we've learned a lot already in

1 this first phase that we've gone through, where the
2 offender, in our case, you know, has had his parole,
3 it's been denied.

4 And we've kind of gone through the process,
5 and we think we have a pretty good feel on -- from a
6 victim -- or, a victim's family perspective on how
7 things will work.

8 We're going to be talking briefly, very
9 briefly about, as Regina mentioned, Christopher's --
10 the crash that killed Christopher.

11 But we also want to talk about a couple of
12 initiatives that we know are on the table in terms
13 of specifically extending the parole term, from
14 two years, to five years, when a decision of denial
15 is made.

16 And, at the same time, definitely reinforcing
17 being able to talk with three board commissioners
18 rather than one, and the benefits behind that.

19 So, do you want to talk about the events
20 leading up? Or do you want me to?

21 REGINA STEWART: No, you can.

22 I just wanted to also say that we don't ever
23 do this.

24 I know you just see Mike and I here in front
25 of you, but we come as three.

1 And these are our son's ashes (holding up
2 hand).

3 And we advocate on his behalf, always three
4 of us.

5 So, for those that have a child that's older
6 than 17, we're envious of you.

7 We had a lot of plans with our son as well,
8 and they're not to be.

9 So this is Christopher at 17 (indicating),
10 and he goes with us everywhere.

11 So I just wanted to say that we do this as a
12 family.

13 MICHAEL STEWART: So in 2012, December 1st of
14 2012, you know, a day like any other day for us,
15 Christopher, at this point, is halfway through his
16 senior year at Shenendehowa, and enjoying his
17 football season that he had just finished, and at
18 the same time, anticipating many things; his high
19 school prom, senior prom, high school graduations,
20 preparing for college.

21 All of these things we were so excited about,
22 and Christopher was so excited about.

23 As we mentioned, Christopher, outstanding
24 football player.

25 That's just one thing with Christopher.

1 Big, six-foot-one, 250-, 260-pound person,
2 indestructible, as we could feel in our minds.

3 But, obviously, we found out that big of a
4 person, that strong of a person, in a Ford Explorer,
5 a good car, a good large, safe car, doesn't come to
6 play when you've got a menace on the roads, and the
7 things that lead up to it.

8 So, on December 1, 2012, Christopher was
9 traveling. He went down to a ULV-Siena game down at
10 the Times Union Center. And he was driving with one
11 of his -- or, actually, three friends: his
12 girlfriend, Bailey Wind; his good friend
13 Deanna Rivers, and her boyfriend, Matt Hardy.

14 Chris went to the game.

15 We left him that afternoon, gave him a hug.
16 Said, "Be safe," as we always do.

17 And that particular evening Chris was driving
18 home from the event, was coming straight from the
19 event. Hadn't been out, hadn't been partying.

20 Was just above Exit 8 on the Northway, and
21 was driving the speed limit, as was documented by
22 all the investigations, when this offender, who had
23 been out drinking earlier before, basically, had
24 five different shots of alcohol over the course of a
25 couple of hours, admitted to smoking marijuana

1 earlier in the day, he was speeding in the third
2 lane, going in excess of 80 miles per hour, and he
3 was texting.

4 He decided to pull up behind Christopher at
5 the last moment to get off an exit, hit Christopher,
6 causing Christopher's car to fishtail across three
7 lanes of traffic, until it hit the median dirt, and
8 that's when the car rolled multiple times until it
9 hit a bunch of trees in the median.

10 Christopher was killed instantly.

11 Deanna Rivers was thrown from the car,
12 killed.

13 And, Matt and Bailey somehow survived that
14 particular crash.

15 As you can see, Ford Explorer, very safe car.

16 As you can see to the right, we have no idea
17 how two people got out of this vehicle alive on that
18 particular day.

19 Picture. This is our -- our picture of our
20 family, the last family picture we had, which was
21 Christopher's junior prom the summer before.

22 You know, the pictures we take now, we know
23 Christopher is there, as he's always there, but, for
24 a family to have minus one, whenever family photos
25 come up, it's pretty devastating.

1 And, again, it's important for us, as we do,
2 to take him places with us.

3 But to not see him in pictures anymore is
4 devastating.

5 So, that's kind of the history behind it.

6 We just wanted you to see Christopher, the
7 person, here in this very, very brief video.

8 (Video playing, transcribed as follows:)

9 "INTERVIEWER: What about the
10 interception?

11 "CHRISTOPHER STEWART: Oh, it was so much
12 fun. I've never had that kind of experience.

13 "I saw the quarterback drop back and
14 I kind of knew it was a screen. So I just stuck
15 my hand out there and tipped it, and the next
16 thing I knew, it was in my hands, and it was just
17 kind of off to the races from there.

18 "It was a lot of fun."

19 (End of video, and transcription thereof.)

20 MICHAEL STEWART: That's Chris, always
21 upbeat. Never a bad day in his life.

22 So we got through -- somehow got through the
23 next year.

24 And this offender, he was basically free,
25 from the time he killed our son Christopher, for

1 370 days, by the time he was sentenced.

2 370 days that we had to deal with waiting for
3 him to be sentenced.

4 At that point, we thought that we were away
5 from the word "parole" for at least 4 1/2 years.

6 His sentence was 5-year minimum, 15-year
7 maximum, with also a 10-year conditional release
8 mixed into the decision.

9 We thought we were done with parole for a
10 while.

11 Within five months we get this letter
12 (holding up a paper).

13 "Please be advised that, in July of 2018, the
14 above-referenced inmate is scheduled to appear
15 before the parole board."

16 Five months after, we're being notified
17 already as to when the inmate is going to be up for
18 parole.

19 Not too much time for healing in that four-
20 to five-month period.

21 So, we're going to talk about -- we want to
22 talk about a few things with our involvement with
23 the parole process; things that we think work,
24 things that we think definitely don't work.

25 And if you wouldn't mind just kind of hearing

1 us out, and then, at that point, we would love to
2 entertain any questions that any of you might have.

3 SENATOR GALLIVAN: So the letter, with the
4 notification, was that also the notice that you had
5 the right to be heard?

6 That was the purpose of their letter?

7 MICHAEL STEWART: The notice was, basically,
8 the -- is just notifying us of when his parole was
9 coming up.

10 We had been notified prior to that by the
11 district attorney's office, if we wanted to register
12 to be notified when, in fact, he was going to be
13 coming up for parole, and the provisions and
14 everything behind it, as to if he was going to be
15 moved from one facility to another.

16 That's part of that registration process that
17 we had done prior to.

18 SENATOR GALLIVAN: So, he's coming up for
19 parole, or a parole hearing?

20 MICHAEL STEWART: He came up for parole in
21 July. He had his parole hearing in July of this
22 year, 2018.

23 His first potential release was going to be
24 December of 2018, which would have been five years
25 from the time that he was sentenced.

1 So that's kind of the time frame between
2 then.

3 SENATOR GALLIVAN: And you had the
4 opportunity to provide -- to meet with a member of
5 the board, or --

6 MICHAEL STEWART: We did.

7 SENATOR GALLIVAN: -- provide a statement?

8 MICHAEL STEWART: We had met with the board
9 in June of 2018. And, typically, they talk to
10 families and their inmates 30 days prior to actually
11 interviewing the inmate.

12 SENATOR GALLIVAN: Where did you have go for
13 the interview?

14 REGINA STEWART: We do that right on
15 Central Avenue in Albany --

16 SENATOR GALLIVAN: In a parole office?

17 REGINA STEWART: -- yeah -- uh, yeah, the
18 crime victim --

19 MICHAEL STEWART: It's the office of --
20 office of victim assistance, is what their
21 department is called.

22 They're the group that works with victims or
23 victims' family. They're kind of the interface
24 between the families and the parole board, the
25 parole commissioner's office.

1 SENATOR GALLIVAN: And they're the ones who
2 sent you the notice?

3 MICHAEL STEWART: They -- I believe that,
4 initially, they were the ones that sent us the
5 notice, in terms of, if, in fact, we wanted to
6 register to actually testify in front of a parole
7 board member, yes.

8 SENATOR GALLIVAN: Now, I may have
9 misunderstood that letter.

10 So the hearing has conducted.

11 And was the individual granted a release on
12 parole? Is that what that notice is?

13 REGINA STEWART: So this notice comes from
14 the office of the district attorney from Saratoga
15 County, which is where this crash took place.

16 And so this came from their office in May of
17 2014. And Dennis Drue had been sentenced in
18 December of 2013.

19 So this came five months after his
20 sentencing.

21 SENATOR GALLIVAN: No, I understand that.

22 But I'm trying to ascer -- what's the status
23 of the offender?

24 Was -- has he had --

25 REGINA STEWART: So he --

1 SENATOR GALLIVAN: -- the parole interview?

2 SENATOR AKSHAR: -- yes, he had his parole
3 interview in July. He was denied parole. And so he
4 is still in Collins Correctional Facility in
5 Buffalo.

6 SENATOR GALLIVAN: Were you notified after
7 the hearing, or that's what the registration is
8 about?

9 What do you get with the original
10 registration, I mean, as far as the notification?

11 MICHAEL STEWART: I'm sorry, could you say
12 that again?

13 SENATOR GALLIVAN: When you registered, and
14 you did that with, was -- were you working with
15 victim services from the district attorney's office,
16 or the state office of victim services?

17 MICHAEL STEWART: That's correct, no, it was
18 the victims services advocates for the district
19 attorney's office at that particular time.

20 SENATOR GALLIVAN: And then, ultimately, you
21 would automatically get notice of certain things by
22 registering?

23 MICHAEL STEWART: Correct.

24 We would be notified of, again, when his
25 parole would be coming up at particular times,

1 whether he was going to be moved from one facility
2 to another. And that's pretty much it.

3 I mean, we were not allowed any type of
4 information as to, you know, his participation, his
5 behavior, or anything like that. That's not shared
6 in any of that type of information.

7 SENATOR GALLIVAN: So he was held.

8 Was it -- to your knowledge, was he held for
9 a 2-year period, an additional 24 months?

10 MICHAEL STEWART: So far as we know, yes.

11 SENATOR GALLIVAN: And did they give you an
12 indication that you would have the opportunity to be
13 heard prior to his next hearing?

14 REGINA STEWART: Yes.

15 SENATOR GALLIVAN: And how will you get
16 notice of that?

17 REGINA STEWART: We probably -- I would
18 guess, we're going to get another letter to let us
19 know.

20 So what happens is, they send us a letter.
21 They tell us to call the victim services office to
22 make an appointment, so we can come in and give our
23 impact statement, our victim statement.

24 And we have to be scheduled to do that.

25 So it will say, you know, in our case, it was

1 the month of June, on a Friday in the month of June.

2 MICHAEL STEWART: And at that time, we didn't
3 know specifically when his hearing was going to be.

4 We were told that it would likely be the
5 second or third week in July, but they wanted us to
6 make sure that we were in there at least 30 days
7 prior.

8 And, again, that's something that the
9 commissioner was -- was -- had also referenced, in
10 that, in terms of just the notification process.

11 And they have to have time, obviously, for
12 anything; any documentation, anything that we say,
13 the testimony, the transcript, they need to have
14 time to get that out to the particular facility.

15 So that's the idea of allowing us to come in
16 at least 30 days prior, which kind of ensures the
17 information will get to the people making --

18 SENATOR GALLIVAN: So the current law
19 provides that the victims have a right to be heard.

20 And my question is: Do you think the current
21 law is adequate?

22 And if not, what thoughts may you have, or
23 recommendations, about what it ought to be?

24 REGINA STEWART: Well, I personally feel that
25 it's adequate in letting us know that we do have the

1 option to come in and give a statement, or to be --
2 we were given a choice, actually. We could either
3 send in a written statement. We could appear in
4 person.

5 MICHAEL STEWART: We could send videos.

6 We could send copies of anything that we
7 want.

8 In our particular case, we were very
9 proactive in this.

10 Probably a year before we knew his parole
11 hearing was coming up, we were already talking with
12 the office of victims assistance, because we chose
13 to do so, to find out the process, to find out the
14 things that are beneficial to present to a board
15 member.

16 You know, so we went, and we were prepared.

17 We went with newspaper articles, media
18 coverage, letters from the community, letters from
19 the school districts.

20 We had a petition online that we had over
21 11,000 people sign. We brought copies of that.

22 These were all things that we were proactive,
23 and brought with us, and brought four copies of
24 everything.

25 We made a video, a family video, again, four

1 copies.

2 For us, this was something that we wanted to
3 do.

4 But I think, for many families, it's very
5 difficult to be able to round up all this
6 documentation, put it together, make four copies of
7 everything.

8 You know, for us, we did it because we wanted
9 to. But for most families, I think that's a pretty
10 hard task to do.

11 SENATOR GALLIVAN: Well, I'm sorry for your
12 loss, but grateful that you're here, and appreciate
13 your willingness to stand up and talk about that,
14 and, potentially, help us as we look forward with
15 these procedures.

16 Senator -- I understand you live in
17 Senator Tedisco's district?

18 REGINA STEWART: Correct.

19 SENATOR GALLIVAN: Senator Tedisco.

20 SENATOR TEDISCO: First of all, let me thank
21 you both for being here, and working so hard to help
22 other families who are facing the same tragedy
23 that -- or similar, that you have faced.

24 I'm just wondering, you had to do some
25 research to find out exactly what was going to take

1 place.

2 Did they tell you how long you would be able
3 to speak at this victim impact, or did they give you
4 any limit, or give you any idea of how long they
5 give you for this?

6 REGINA STEWART: Originally, we were told to
7 plan for about an hour.

8 SENATOR TEDISCO: Uh-huh?

9 REGINA STEWART: And in our case, there was
10 not another family that was going to be coming in
11 after we were there, so we were able to stay a
12 little longer.

13 And we felt that we were fully heard, which
14 was soothing in a way, because we -- there's a lot
15 of anxiety, of course, that goes along with what we
16 were going through.

17 It was very stressful knowing that one, or
18 maybe two people, in all of New York State, were the
19 two people that were either going to release
20 Dennis Drue or keep him incarcerated.

21 And that's hard for a family to have to hope
22 for, that we were going to have two quality
23 commissioners, that we don't know.

24 And we did step out a little while ago just
25 to thank Commissioner Ferguson because, had we known

1 someone like him would have been listening, and been
2 the one that was advocating and hearing everything
3 on behalf of our son, I know it made me feel a
4 little bit more at ease, because he seemed to be so
5 thorough and so caring in his thoughts and in his
6 actions.

7 And so, hopefully, every single one of the
8 commissioners acts in the same way.

9 But it's very stressful for parents to know
10 that, after losing so much, you still have this
11 worry that -- you know, that the offender is not
12 going to be released so quickly.

13 SENATOR TEDISCO: Did they give you any idea
14 of what the setting would be like when you showed
15 up?

16 Where you would be sitting?

17 Where the commissioner listening to you --
18 there was only one commissioner there; right?

19 REGINA STEWART: Correct. We only had one
20 commissioner there.

21 And the thing is, as Mike was saying, we were
22 proactive. And the year before, I think it was
23 April of the year before, we actually made an
24 appointment with the victims services office, and
25 asked them if we could come visit them, and have

1 them explain to us what it was we were going to need
2 to prepare for.

3 We wanted to make sure that the hour or so
4 that we spent was thorough, from our perspective,
5 and that we were doing the best for our son that we
6 could do.

7 And so we were actually in the very room that
8 we would have -- that we went back to the next year.

9 So, for us, we knew what the setting was
10 going to be. And, basically, it's just like this, a
11 large wood conference room table, and, you know,
12 probably 15 chairs around it.

13 SENATOR TEDISCO: Was the commissioner
14 attentive to you?

15 REGINA STEWART: Very.

16 SENATOR TEDISCO: Did he ask -- was it a he
17 or --

18 REGINA STEWART: It was a woman.

19 SENATOR TEDISCO: Did she ask questions?

20 REGINA STEWART: She did -- first she
21 explained to us what was going to happen before we
22 went on the record and before the stenographer
23 started taking notes.

24 And, you know, there was water. There were
25 tissues.

1 It was -- they were very accommodating to us.

2 And, took their time, and let us take our
3 time, because it was very emotional for us.

4 And she was -- you know, she waited for us to
5 kind of compose ourselves again and continue on.

6 So, it was not a stressful situation.

7 I mean, it was, but it wasn't -- you know, they were
8 helpful to us, I guess, is what I'm trying to say.

9 MICHAEL STEWART: And I think, too, the one
10 thing to add, I'm sure that most people that go into
11 that have no idea that this isn't one of the people
12 that are going to be making the decision.

13 SENATOR TEDISCO: Well, that's a question
14 I wanted to ask you.

15 Did you know before you went in?

16 MICHAEL STEWART: We knew -- I mean, that was
17 the first question I asked when I -- when we spoke
18 with them a year before, because we knew we were
19 speaking with one person that -- or, we were going
20 to be speaking with one person that day.

21 And the person at the office of victim
22 assistance that was telling us the process, she was
23 very outright to say, no, there is no guarantee.

24 It could be, it could be one of the three, or
25 it could be one of the two; depending upon if they

1 have two or three board members making the decision.

2 But, she was very clear.

3 But, again, that was something that I brought
4 out, the question, because that was important to us.

5 And I think most people are shocked whenever
6 I tell them that that is not one of the people
7 that's going to be guaranteed at least to be either
8 making the decision in the case, or is actually
9 going to be having a verbal communication with the
10 people that are, because they're not.

11 SENATOR TEDISCO: Well, that was -- that was
12 the other question I wanted to ask.

13 There was no guarantee that the person you
14 spoke with would be in contact at all with the real
15 commissioners who would be at -- they'd send the
16 documentation of the event, but that person would
17 not necessarily talk to them about how she felt
18 about in what you said personally?

19 MICHAEL STEWART: That's correct, that's the
20 guarantee you get, is that all of the information
21 that we provide them will be provided to the either
22 two or three board members making the decision.

23 And she also mentioned that, although the
24 information, we'll try to get out there, typically,
25 well in advance, the people, those particular board

1 members, don't necessarily get a chance to review it
2 until the day of.

3 SENATOR TEDISCO: I don't know about the
4 privacy issue that was brought up by
5 Commissioner Ferguson, about not letting anybody
6 know who the real commissioners would be.

7 But, how about the idea of videotaping, and
8 requiring those who will be hearing, see and look at
9 the videotape before they go to the parole hearing
10 with the perpetrator?

11 REGINA STEWART: I think that would be an
12 amazing idea. I think it would be very beneficial
13 to everyone, actually.

14 I know Commissioner Ferguson was saying how
15 exhausted that they were.

16 And, you know, I can tell you, Mike and I
17 would not have wanted for us to have been the
18 119th family that he was hearing, you know, after
19 being up for all those hours.

20 That's very unsettling.

21 And a video, I think, would do a lot of good
22 for everyone.

23 We did provide one on our son's behalf.

24 And --

25 SENATOR TEDISCO: But not required for them

1 to look at it, really.

2 REGINA STEWART: Well, we're hopeful that
3 they did look at it.

4 SENATOR TEDISCO: Right.

5 REGINA STEWART: But, you know,
6 Commissioner Ferguson made us feel a little
7 unsettled about that too.

8 Like, what if they don't have a DVD player?
9 And we were specifically told to make four
10 DVDs.

11 We had to make four of everything we did,
12 because we were told --

13 SENATOR TEDISCO: You had to pay for it?

14 REGINA STEWART: -- that they had to be given
15 to the commissioners that would be hearing --
16 hopefully, hearing.

17 And then one would go into the master folder.

18 MICHAEL STEWART: Yeah, victim-assistance
19 folder.

20 REGINA STEWART: And that, in two years, when
21 Dennis Drue comes up for parole again, that all of
22 the initial information we provided, along with
23 anything new that we want to put in the envelope,
24 would still be there.

25 So I guess it collects and continues on.

1 SENATOR TEDISCO: It's very difficult for
2 those of us who might not have experienced something
3 similar to this, to feel or think about what it's
4 like to go every two years to make this requirement,
5 give that impact again.

6 And I know you mentioned it, but I think,
7 could you say something else about your feelings
8 about the two-year period, over and over coming up,
9 and having to go through this process, and how it
10 impacts you and your family?

11 MICHAEL STEWART: Yeah, well, the two-year,
12 you know, in our particular case there was no trial,
13 you know.

14 He, basically, ended up admitting to guilt
15 58 times the day before the trial was supposed to
16 start.

17 So we didn't have to go through that very
18 stressful point of a trial, where you go through the
19 trial, you relive all the events, and then you hear
20 "guilty," or "not guilty," and the stress leading up
21 to that.

22 You know, we're fortunate that we didn't get
23 that.

24 But, with this two-year process, that's
25 imposed on us every two years.

1 This was no different.

2 On the day that we called the office of
3 victim assistance, that morning, and for those that
4 don't know the process, after the inmate has his
5 particular hearing, after he's been notified of the
6 decision, the information goes to the office of
7 victim assistance.

8 And the families, as us, start calling the
9 following Monday at 8:00 in the morning, to get the
10 answer.

11 So, it wasn't guilty or not guilty, but it
12 was denied or approved.

13 And there's, that feeling, I can tell you
14 right now, I'm sure it was the exact same feeling
15 that anybody feels when they're in trial and they
16 hear "guilty" or "not guilty."

17 And, now we get do that every two years, and
18 have that stress level.

19 Whereas, if it's extended to five years as
20 the possibility, it's a tremendous relief from a
21 family's standpoint.

22 SENATOR TEDISCO: Thank you so much.

23 And sorry you had to go through some of this
24 here today again, but I think it was important for
25 the rest of the families.

1 And we appreciate what you do on behalf of
2 Chris and your family, for the rest of the families.

3 MICHAEL STEWART: Thank you, Senator.

4 SENATOR AKSHAR: Thank you.

5 SENATOR GALLIVAN: Thank you very much.

6 SENATOR SERINO: No questions.

7 SENATOR GALLIVAN: No more questions.

8 REGINA STEWART: Okay. We're happy to answer
9 any.

10 SENATOR GALLIVAN: We do appreciate your
11 time. You've been very helpful.

12 REGINA STEWART: Okay. Thank you very much.

13 SENATOR GALLIVAN: Chrys Ballerano from the
14 New York State Coalition Against Sexual Abuse.

15 Good afternoon.

16 Thank you for being here.

17 Good afternoon.

18 Thank you for being here.

19 CHRYS BALLERANO: My name is Chrys Ballerano,
20 with the New York State Coalition Against Sexual
21 Assault.

22 First, I want to convey my condolences to the
23 Stewarts.

24 I can't imagine.

25 I have one child, she's 30, and she's my

1 life, she's my precious one.

2 And I just want to convey my deepest
3 condolences to the family.

4 I appreciated their comments.

5 I, Christine Ballerano, familiarly known as
6 "Chrys," am giving this testimony today from a place
7 of respect, compassion, and deep empathy with people
8 who have experienced interpersonal violence and
9 other traumatic forms of crime.

10 As an advocate in the sexual-assault movement
11 for over 20 years, over 19 of those serving as
12 statewide project director at the New York State
13 Coalition Against Sexual Assault (NYSCASA), I've
14 learned a great deal about the criminal justice
15 system's approach to managing victims of crime, and
16 those who have done harm and violated the rights of
17 survivors.

18 As a statewide sexual-assault and
19 mental-health project director since 1999, I've
20 heard countless testimonies from survivors for whom
21 the criminal justice system brought no justice;
22 survivors from whom much was taken and not restored,
23 or witnessed in any manner that brought healing for
24 the traumatic injury that was caused.

25 And I'd like to share this statement from our

1 organization's project team, which I shared earlier
2 in our press conference.

3 "Too often, the actions public officials take
4 in the name of crime victims, particularly in the
5 name of survivors of sexual and domestic violence,
6 do not line up with the actual needs and desires of
7 the majority of survivors, especially survivors from
8 communities that are at most risk" -- "most at risk.

9 "As an organization committed to healing and
10 justice for all survivors, and to truly ending
11 sexual violence, NYSCASA recognizes that reliance on
12 a bias and inherently reactive criminal justice
13 system will not achieve these goals.

14 "Like many survivors, we would rather see
15 public officials take action to ensure that
16 survivors, their families, and communities have the
17 comprehensive resources they need to heal and to
18 thrive; that significant investments are made in
19 community services and institutions that will
20 prevent violence from happening in the first place;
21 that people who commit harm are held accountable in
22 a meaningful way that does not perpetuate a cycle of
23 violence; and that people who commit harm have
24 access to the services they need to stop committing
25 harm."

1 As a survivor of sexual child abuse by my
2 paternal grandfather, a rape as an adolescent by a
3 boyfriend I trusted, and sexual assault as a college
4 freshman by a teacher my first semester in college
5 at Stony Brook University, I know firsthand how
6 these crimes go unspoken, unhealed, and, ultimately,
7 made invisible.

8 So you see, this issue is personal for me.

9 And I understand what my colleagues and other
10 survivors refer to as a "rape culture."

11 We continue to have powerful institutions
12 that protect adults who harm kids, and even punish
13 youth for the actions of adults.

14 Although I know of efforts being made in some
15 areas of service provision to be more
16 trauma-informed, there is still a lack of cultural
17 competence and far too great a propensity toward
18 punishment in different forms of violence when a
19 person is seen as non-compliant.

20 Locally, we all saw the tragic results of
21 reactivity in the heartbreaking case of Dontay Ivy.

22 We see this violence play out in
23 victim-blaming scenarios, where bullying, blaming,
24 and harassment run rampant, with people savagely
25 disrespecting other people.

1 At times, this violence is even labeled as
2 appropriate behavior by institutions set to maintain
3 the status quo.

4 As a child, I didn't tell anybody about my
5 sexual abuse because I didn't feel I had the power
6 to speak up against my elder.

7 What I do remember doing, though, again and
8 again, was going to another elder, my maternal
9 stepgrandfather, James Rearer (ph.), who I trusted
10 implicitly and who loved me unconditionally.

11 His love and protection of my spirit was one
12 of the greatest assets of my childhood development.

13 Grandpa Rearer was also an ex-felon from
14 before I was born, having, as a minor, driven the
15 getaway car for his older brother's failed bank
16 robbery in Ohio.

17 I didn't know this fact about him till years
18 later after he had passed away.

19 He had been offered an out for prison by
20 serving in the military during World War II.

21 And I knew he had served.

22 He was always a man of great dignity and love
23 for others.

24 My mother's older sister, my Aunt Fran,
25 described my grandpa as a "knight in shining armor"

1 when I asked her about my biological grandfather who
2 I had never met.

3 She told me about my grandfather's courtship
4 of my grandmother, and how, as an uneducated
5 Sicilian immigrant, my maternal grandmother had
6 endured domestic violence in her first marriage, and
7 had relied upon nuns to help raise her three young
8 daughters, my mother included, during the
9 depression, living in extreme poverty before
10 marrying my Grandpa Rearer.

11 I recall grandpa earning a good living as a
12 union laborer, and how beloved he was by his
13 co-workers, his friends, and all of his family.

14 After coming home from school as a child,
15 I would run to his and my grandmother's house behind
16 our home on Long Island to be with him in the
17 garden, or watch him work in his garage, or just run
18 errands together in his pickup truck for my family.

19 He was my gentle giant protector, and I loved
20 him with all my heart.

21 He was a complete contradictions from the
22 other grandfather who was in my life at the same
23 time.

24 They both lived within walking distance from
25 my home.

1 He was my -- his elder brother, my
2 Uncle John, was also very special to me, and taught
3 me how to fish as a young girl, treating me as a
4 real person, not just as a little girl, giving me
5 confidence in myself at a time when I was most
6 vulnerable.

7 I had the highest respect for these two men.

8 I had no idea that they had each been
9 convicted of felony crimes as young men.

10 They remain in my heart and my memory among
11 my dearest mentors, and I cherish stories and photos
12 that remain of them.

13 I would hate to see us moving backward and
14 pre-judging people for eternity based upon their
15 actions as youths.

16 Taking away an individual's right to vote is
17 another way of dehumanizing the most marginalized
18 citizens of our nation, and as such, it's another
19 form of violence.

20 Such policy has no place in New York State.

21 We should proudly model human rights, not
22 exacerbate systemic oppression.

23 Instead, our policies should foster
24 self-respect, healing, empathy, and prepare
25 incarcerated individuals to participate as citizens

1 on the outside, not discard and disregard people as
2 unworthy of dignity and civil rights.

3 If Nelson Mandela can lead a
4 truth-and-reconciliation tribunal in
5 post-South Africa -- I mean, in post-Apartheid
6 South Africa after suffering decades of brutal
7 imprisonment, what stops us from honoring human
8 rights for all people in the United States?

9 We also know that too many people living
10 behind bars are themselves victims of violence,
11 trauma, tremendous loss, as children, adolescents,
12 and adults.

13 Many are there for non-violent crimes that
14 were survival strategies, the most accessible ways
15 of coping with the traumatic pain that they'd
16 experienced as victims.

17 These young people, like some of us in this
18 room, may have used self-destructive behaviors, like
19 drugs, like alcohol, to get by, to survive,
20 resulting in these survivors being criminalized for
21 their coping strategies.

22 We also know that those who serve the longest
23 and harshest sentences for these offenses are the
24 poor and, disproportionately, people of color.

25 Those early traumas known as "adverse

1 childhood experiences," or "ACES," are often
2 exacerbated by the brutality experienced and
3 witnessed while in prison, and the racism and
4 implicit biased expressed in mainstream culture
5 throughout so many of our institutionalized systems,
6 including our health-care system.

7 I have visited incarcerated survivors, and
8 I know from what I've seen, how broken the system of
9 mass incarceration is from families and individuals
10 seeking healing and/or justice.

11 I recall visiting with a female survivor of
12 domestic and sexual violence in Columbia County's
13 jail in Hudson while I was working as a rape-crisis
14 counselor at the Reach Center of Green and Columbia
15 counties in the '90s.

16 She refused to allow me to tell her family
17 she was in jail because she didn't want them to see
18 her that way.

19 The shame she felt about them seeing her
20 behind bars was too great for her to ask for support
21 that she desperately needed.

22 And as a crime victim, the subsequent
23 isolation did nothing to help her heal from her
24 trauma.

25 Her crime had been a relapse of cocaine use

1 while she was on parole. Again, self-medicating
2 because she'd been raped.

3 I could go on about special housing units for
4 survivors of sexual assault while in custody, and
5 how this practice is the equivalent of torture, but
6 I'll stop here because I'm about out of time.

7 I would like to thank you for listening to my
8 testimony, and discuss this request to recognize the
9 right to vote as a human right; that all people be
10 counted as a human member of our troubled society, a
11 society in great need of healing and restorative
12 practices across all of our human-service
13 institutions, this criminal justice system being
14 just one.

15 Anyone working with people needs to think of
16 them, think of -- needs to think of themselves as
17 human services, or we endanger others by
18 perpetuating pain and trauma instead of providing
19 some form of corrections, restoration, and healing
20 which we state is our intention.

21 Increasing parole rates, and granting voting
22 rights, are positive steps in that direction.

23 Attached to my testimony you will see the
24 "New Vision for Crime Victims" that the Downstate
25 Coalition drafted last year, and that NYSCASA

1 wholeheartedly supports as well.

2 I'm happy to answer any questions you might
3 have as a panel or as individuals.

4 SENATOR GALLIVAN: Absolutely.

5 Thank you for being here.

6 And, thanks for sharing your story, and
7 turning it into something, working over your career
8 now, to help other people.

9 That's really -- and, fortunately, I didn't
10 have to experience that.

11 But, thank you for standing up, appreciate
12 that.

13 Now I have a couple questions.

14 You've touched on many things, many of the
15 challenges that we and our colleagues face in
16 both -- well, not just both, in many areas.

17 You mentioned health care, social-related
18 services, criminal justice, and many other things,
19 much greater than the scope of today.

20 So I want to bring it back, and ask about the
21 victim impact panels.

22 Have you had any experience -- not panels,
23 the victim impact --

24 CHRYS BALLERANO: Statements.

25 SENATOR GALLIVAN: -- do you have any --

1 Yes.

2 -- do you have any experience --

3 CHRYS BALLERANO: Yes, I helped --

4 SENATOR GALLIVAN: -- in dealing with
5 victims?

6 CHRYS BALLERANO: -- yes, I worked in direct
7 services before I came to the coalition, and
8 I assisted victims in drafting their victim impact
9 statements, and making sure they knew how to go
10 about the process. And also helping them with the
11 application for crime -- what used to be called
12 "crime victims compensation."

13 SENATOR GALLIVAN: Is that valuable to
14 victims --

15 CHRYS BALLERANO: Absolutely.

16 SENATOR GALLIVAN: -- that process?

17 CHRYS BALLERANO: It is valuable.

18 SENATOR GALLIVAN: Is it adequate?

19 CHRYS BALLERANO: I don't think it is
20 adequate, no.

21 SENATOR GALLIVAN: How could it be better?

22 CHRYS BALLERANO: Well, I'm a strong believer
23 in restorative practices.

24 I really do believe that that's where we're
25 moving as a culture, very slowly, at the rate of a

1 glacier, perhaps.

2 But I know, in the college sexual-assault
3 area in particular, which is one of the projects
4 I supervised at NYSCASA, and because I was violated
5 when I was in college, it was -- I was actually
6 heading that program before we hired
7 Michelle Carol (ph.), our project director.

8 She's been trained in restorative justice
9 practices. And she's actually been working with the
10 New York State Department of Health, to help them
11 better understand how restorative practices and
12 restorative justice models can be utilized in a
13 campus setting, because in oft -- often, so many
14 cases, survivors really want that more relational
15 model.

16 They want to be able to, not necessarily have
17 the person who did harm toward them incarcerated,
18 but they want them to understand that what they did
19 was wrong; that what they did was violence.

20 And, unfortunately, the way the system
21 operates currently, or has been operating up until
22 now, I mean, Enough is Enough is making some changes
23 for sure, but it's not enough.

24 I know that's what the law is called, "Enough
25 is Enough," but it's not enough.

1 And, so, there's a lot --

2 SENATOR GALLIVAN: I think many -- you'll
3 find many people up here agree with that.

4 CHRYS BALLERANO: -- yeah.

5 So there's a lot more that can be done, and
6 I don't think we should wait till college either.

7 I think that we're seeing more and more
8 issues of children.

9 I myself experienced this child sexual abuse
10 at eight years old.

11 I know people who have experienced it at much
12 younger years, and older years.

13 And so it's, like, we can't wait till college
14 to be dealing with victim impact statements.

15 We can't wait till someone's dead or raped
16 before we're helping the family.

17 You know, we should be doing much more
18 preventive measures, which is one of the things my
19 coalition really stand -- our coalition really
20 stands for, is primary prevention; really stopping
21 the violence before it happens.

22 And, yeah, so victim impact statements are
23 important, but they're no solution.

24 There's so much more that can be done.

25 And I think that it really begins in a

1 cultural competency and understanding what "rape
2 culture" is, and also what "racism" is, and what --
3 what, you know, violence against women is rooted in
4 as well.

5 Violence against anybody who's held in less
6 power, and the power differentials that we see in
7 this country, I think that's where the crux of the
8 matter really is.

9 When you have somebody who feels powerless,
10 how are they going to gain power?

11 SENATOR GALLIVAN: Senator Akshar has some
12 questions.

13 SENATOR AKSHAR: Do you believe that criminal
14 justice reform is appropriate?

15 CHRYS BALLERANO: Do I feel that -- do
16 I believe that criminal justice reform --

17 SENATOR AKSHAR: Justice reform is
18 appropriate.

19 CHRYS BALLERANO: -- yeah.

20 SENATOR AKSHAR: Bail reform is appropriate?

21 CHRYS BALLERANO: Bail?

22 SENATOR AKSHAR: Bail reform is appropriate?

23 CHRYS BALLERANO: Yes.

24 SENATOR AKSHAR: Parole reform is
25 appropriate?

1 CHRYS BALLERANO: Yes.

2 SENATOR AKSHAR: Do you believe it's
3 appropriate to allow violent sex offenders into
4 schools to vote?

5 CHRYS BALLERANO: I don't believe that
6 violent sex offenders ought to be in schools where
7 children are unsupervised while they're voting.

8 But I also want to tell you that those who
9 have been convicted of sex offenses are a drop in
10 the bucket compared to the numbers of people out,
11 walking around, unprosecuted; that most sexual
12 assault crimes have not been reported to law
13 enforcement.

14 80 percent of them have not been.

15 SENATOR AKSHAR: But the purpose of this
16 hearing, though, is to determine, should we be
17 reforming the parole system?

18 And then to talk specifically about the
19 voting rights of some.

20 CHRYS BALLERANO: Correct.

21 SENATOR AKSHAR: My question to you was:
22 Do you think it's appropriate to have violent sex
23 offenders voting within the confines of a school?

24 Or, perhaps, is there a better system that we
25 could put in place?

1 CHRYS BALLERANO: I think there's probably
2 all kinds of better systems we can put in place.

3 SENATOR AKSHAR: Okay. Thank you.

4 That's all.

5 SENATOR GALLIVAN: I think we're done with
6 questions.

7 But you mentioned, right at the very end of
8 your testimony, that you had an attachment?

9 And I don't --

10 CHRYS BALLERANO: I did attach it --
11 I paper-clipped a two-page document to my one-page
12 testimony.

13 So everyone should have received that, unless
14 somebody dis-attached them.

15 SENATOR GALLIVAN: Do you have a copy with
16 you?

17 CHRYS BALLERANO: Unfortunately, I handed
18 them all to the woman that was sitting in the back.

19 SENATOR GALLIVAN: Okay. We will --

20 CHRYS BALLERANO: It's the "New Vision for
21 Crime Victims," and it was written by the Downstate
22 Coalition.

23 SENATOR GALLIVAN: We will track that.

24 We'll connect with you, if not immediately
25 following, but to get that, because I don't think --

1 Never mind.

2 Located.

3 CHRYS BALLERANO: You found it?

4 SENATOR GALLIVAN: Yes.

5 CHRYS BALLERANO: Great.

6 SENATOR GALLIVAN: Thank you very much.

7 CHRYS BALLERANO: Oh, you're welcome.

8 Thank you for your time.

9 SENATOR AKSHAR: Thank you, ma'am.

10 SENATOR GALLIVAN: New York City Police
11 Benevolent Association, Patrick J. Lynch, president.

12 Good afternoon.

13 PATRICK LYNCH: Good afternoon.

14 SENATOR GALLIVAN: Thank you all for your
15 patience, as with all the others that remain and
16 stuck around.

17 How about if everybody introduces themselves,
18 and then we'll get started.

19 JOHN NEVILLE: John Neville, public affairs
20 team member of the PBA.

21 PATRICK LYNCH: I'm Patrick J. Lynch,
22 president of the New York City Patrolmen's
23 Benevolent Association.

24 JAMES WALSH, ESQ.: And I'm Jim Walsh. I'm
25 with Manatt, Phelps & Phillips for legislative

1 counsel for the New York City PBA.

2 SENATOR GALLIVAN: All right. Thank you.

3 Mr. Lynch, we do have written testimony. And
4 I know that you did want to provide a brief
5 statement, and we'll go from there.

6 PATRICK LYNCH: Yes, if I could.

7 SENATOR GALLIVAN: All yours.

8 PATRICK LYNCH: Thank you, Senator.

9 Good afternoon, Senator Gallivan,
10 Senator Akshar, and Senator committee members who
11 sit on this Committee.

12 Thank you for the opportunity to provide
13 testimony on this very important issue.

14 Out of respect for your time, I will
15 summarize my testimony, and refer you to the written
16 statement I've submitted, as we just spoke.

17 As you know, our union represents more than
18 24,000 rank-and-file New York City police officers
19 in the New York City Police Department.

20 As law-enforcement professionals, we
21 recognize that judicious granting of parole release
22 to certain offenders is not only necessary for the
23 efficient operation of our criminal justice system,
24 it is essential to the principles of fairness and
25 justice on which the system is founded; however,

1 like all discretionary aspects of criminal justice,
2 the parole system requires clear, well-considered
3 guidelines and strong institutional controls.

4 Without these guidelines and controls, the
5 parole system become plagued with dysfunction,
6 error, arbitrariness, and its decision-making, and,
7 ultimately, with outright abuse, that jeopardizes
8 public safety and undermines respect for our laws.

9 Unfortunately, recent events suggest we've
10 reached that point in the state of New York.

11 In particular, the New York State Parole
12 Board has, on multiple occasions over the past year,
13 made the unconscionable decision to grant parole
14 release to individuals convicted of murdering
15 New York City police officers and other members of
16 law enforcement in the performance of their duties.

17 The murder of a police officer, one of the
18 most serious offense against the people of our
19 state, because it represents not only the taking of
20 a life, but also an attack on the rule of law and
21 our society as a whole.

22 That understanding was reflected in the
23 Crimes Against Police Acts of 2005, which made the
24 murder of police officers punishable by life
25 imprisonment without parole.

1 However, cop-killers whose crimes predate
2 that law are currently serving sentences that allow
3 parole release.

4 Until recently, and with rare exception, the
5 parole board routinely denied their request for
6 parole.

7 That practice appears to change suddenly and
8 dramatically in March of this year when a parole
9 board panel voted to release Herman Bell.

10 As you know, Bell is one of three domestic
11 terrorists convicted in the brutal 1971 ambush
12 assassination of New York City Police Officers
13 Waverly Jones and Joseph Piagentini. He also later
14 plead guilty to his involvement in the assassination
15 of a San Francisco Police Department sergeant,
16 John Young, that same year.

17 On seven previous occasions, parole board
18 panels had considered the facts and circumstances of
19 Bell's brutal premeditated crimes, and rightfully
20 concluded that his release would be, in quotes,
21 incompatible with the welfare of our society, end
22 quote, and who so depreciate the seriousness of his
23 crime as to undermine the respect of law, end quote.

24 Nonetheless, the current panel disregarded
25 these consistent findings and the very basic

1 statutory standards for considering parole.

2 Bell's release sent a clear message to
3 New Yorkers that there is no crime too vicious and
4 no criminal too depraved to earn a favorable-release
5 hearing and release by the current parole board.

6 Since Bell's release in April, the board has
7 granted parole to two additional cop-killers, as
8 well as the killer of a Bronx prosecutor.

9 These outrageous parole decisions have made
10 it abundantly clear that the parole system is broken
11 and the current parole guidelines are fundamentally
12 flawed.

13 Even with revisions to the guidelines, they
14 will -- they will still require a board that will
15 properly adhere to them as is statutorily required
16 and demanded by the public.

17 The responsibility for addressing these
18 crisis rest in many hands, including those of
19 Governor Cuomo, who appointees form the overwhelming
20 majority of the current parole board members.

21 Ultimately, however, the issue cannot be
22 resolved without affirmative legislative action to
23 strengthen the parole guidelines, and introduce the
24 strong institutional controls that the parole board
25 is so clearly lacking.

1 We, therefore, respectfully request that you,
2 as New York State Senators and members of these
3 combined committees, take action in the following
4 areas:

5 First: The Legislature should repeal the
6 2011 amendment to the executive law which mandates
7 the parole board to be guided by the numerical score
8 generated by a risk-and-assessment needs, a tool in
9 rendering their determinations, and to provide the
10 individualized explanation for any departure from
11 these scores.

12 Second: We urge the Legislature to enact
13 statutory requirements that reemphasize the
14 seriousness of the instant offense; specifically, in
15 connection with the impact on the respect of the law
16 and the welfare of society as a whole in parole
17 board decision-making process, in all of them.

18 Third: We urge the Legislature to pass
19 legislation introduced as Senate 8921 in this
20 session by your colleague Senator Golden, to amend
21 the executive law to clarify that crime victims,
22 their family members, or representatives have
23 standing to appeal the parole board determination.

24 It's extremely important.

25 Fourth, and finally: We urge the Senate to

1 exercise even greater scrutiny over parole board
2 appointees.

3 It is the governor's responsibility in the
4 first instance to screen potential parole
5 commissioners for any form of bias in addition to
6 the basic professional qualifications defined in the
7 statute.

8 However, we urge you and your colleagues to
9 engage in the most thorough vetting process
10 possible, including substantive discussions with the
11 appointees to ascertain their ability or willingness
12 to consider each case on its own merit, using only
13 the criteria defined in the statute and the parole
14 board rules.

15 At present, there are at least 59 killers of
16 New York City police officers appearing regularly
17 before the parole board, meaning dozens of families
18 are preparing to once again oppose the release of
19 their loved ones' killers with the very present fear
20 that these heinous criminals may go free.

21 This week alone, the families of
22 Police Officer Anthony Abruzzo and
23 Police Officer Sean McDonald will both deliver
24 their victim impact statement to the board.

25 And later this month, both the Piagentini and

1 Jones families will appear before the board to argue
2 against the release of Herman Bell's accomplice
3 Anthony Bottom.

4 Each of these families is terrified that this
5 will be their last opportunity to make their voices
6 heard; that the parole board will ignore their pain
7 and fear, and return the individuals who terrorized
8 their families and our society back to that same
9 society.

10 Senators, as you know, and you all can
11 appreciate, there is simply no time to waste in your
12 efforts to fix our broken parole system and restore
13 the proper functioning of the parole board.

14 On behalf of New York City police officers
15 and our families, I thank you all for your efforts
16 in this area so far.

17 We look forward to continuing to work with
18 you towards our shared goal of a stronger, safer,
19 fairer New York.

20 I'm happy to answer any kind of questions
21 today, or continue on as this process moves forward.

22 SENATOR GALLIVAN: Well, I can't ask you
23 about recommendations because you just gave them to
24 us, and we appreciate that.

25 So, I do not have any other questions.

1 I don't know if any of the other members do.

2 SENATOR AKSHAR: Pat, thank you.

3 I'm a former member. And I just want to
4 publicly thank you for standing shoulder to shoulder
5 with the men and women of the NYPD.

6 And let me ask you one particular question.

7 Do you believe that politics has come into
8 play in the parole system?

9 PATRICK LYNCH: Absolutely.

10 What we found is, rather than look at the
11 facts in a case, many times what's not being looked
12 at is the impact this crime had on, not only the
13 families, but society as a whole.

14 And what's happening is, those that yell the
15 most are getting what they want.

16 All we ever asked for as New York City police
17 officers, in any process, including this one, is
18 fairness.

19 Look at all the aspects. Be guided by the
20 law and the statutes.

21 What we find, that has changed, and that's
22 not happening any longer.

23 We cannot stop looking at how this impacted
24 our families.

25 Earlier there was a question about the

1 victims' impact statements.

2 That's extremely important.

3 It's extremely important because it's the one
4 opportunity for our families to sit at a table like
5 this, and read and tell their story, to say how
6 their lives were changed since their mother or
7 father were removed from this earth, since they were
8 so viciously murdered by a criminal; how their lives
9 have changed, and will continue to change.

10 We think it's extremely important that we
11 strengthen that aspect, give the weight to that
12 aspect the most in the criteria, because they're the
13 ones that know most how it affected them.

14 Just because it affected one family doesn't
15 mean in the future it might not affect another.

16 So we think it's important that they're heard
17 from.

18 We think it's important that it's given the
19 paramount amount of weight, because they're the one
20 that's living with the heinous crime that visited
21 their kitchen table.

22 And when you attack a New York City police
23 officer or law enforcement across this country, and
24 even a prosecutor, that's an attack on all of
25 society.

1 If they can kill us, they can kill anyone,
2 and that's the reality of it.

3 We need to keep the humanity in this process.
4 Terrorists should not walk our streets.

5 The members that killed Piagentini and Jones,
6 although it was 1971, they were "terrorists."

7 We didn't use that word as often back then,
8 but they wanted to terrorize society.

9 How did they do it?

10 By killing a -- New York City police
11 officers. By viciously pumping 20 rounds into their
12 body as they begged for their life for their family.

13 Why?

14 Because they knew that would make society
15 fearful.

16 "If we can kill a cop, we can kill anyone."

17 And if they do it right as terrorism, they
18 won't have to kill anyone, because they would have
19 terrorized us into submission, and fear, where we
20 hide in our homes.

21 We can't allow that to happen.

22 Because you go through your sentence, and you
23 learn how to answer the questions, and you have a
24 parole board that's sympathetic and holds you in
25 high regard as a criminal because you lived your

1 life right behind bars?

2 They have no choice but to live their lives
3 right behind bars. They have a correction officer
4 on their left and on their right that make sure you
5 abide by the rules.

6 What we have to look at is, what did they do
7 when they were free?

8 Why did you go 30 years and not be sorry for
9 your act?

10 Not to say, I was wrong, and then on your
11 eighth appearance, all of a sudden we found God?

12 I don't believe that.

13 Keep them behind bars.

14 Let them teach the next generation that what
15 I did as a criminal is not worth it, so you don't do
16 it either. It's not worth it because I'm spending
17 the rest of my life behind bars.

18 That's where they'll do the most good.

19 Because we feed them, because we educate
20 them, and they've learned how to play the system,
21 doesn't mean they should be living next door to us.

22 It doesn't mean they should walking into our
23 schools to vote where our children are.

24 They're violent criminals, they've proved
25 that.

1 If they attack us, they'll attack you.

2 SENATOR AKSHAR: I called Bell "a terrorist"
3 then, and I'll call him "a terrorist" again today,
4 because I believe it.

5 And the critics and the pundits will
6 pontificate about how members of law enforcement
7 don't care about criminal justice reform, don't care
8 about bail reform, parole reform.

9 It's the furthest thing from the truth, would
10 you agree?

11 PATRICK LYNCH: I do.

12 And in any process, for anyone, whatever side
13 of this issue we're on, we should ask for fairness.

14 Look at each case, starting with the initial
15 crime, and then make a decision from there.

16 I find it odd that, all of a sudden this
17 year, (pounding on table) rubber stamps of granting
18 parole.

19 We're not looking at the crime, we're not
20 taking seriously the victim impact statements, and
21 they've skewed the laws.

22 Look, you're never against reform, but you
23 should steer reform towards fairness where everyone
24 in the process feels like they were fairly treated.

25 And how do you do that?

1 It's by looking at just the facts, just the
2 crime, and each aspect from there.

3 Many of the cases we're talking about are not
4 young women and men who made a bad decision as they
5 were growing up.

6 We have people that thought out their
7 process, premeditated, that sat and ambushed
8 New York City police officers, and others.

9 They're talking about, they knew exactly what
10 they were doing. They planned it out.

11 And that evil doesn't go away.

12 And when, year after year, they go to parole
13 board, and they're not sorry, (snaps fingers) then
14 all of a sudden they are?

15 Meanwhile, our families, every two years,
16 have to relive that by telling their stories.

17 I have the opportunity of knowing these
18 families. And their lives have changed, and will
19 never be changed back.

20 Their children grew up without mothers and
21 fathers, who were just going out to put food on the
22 table just like every one of us do each and every
23 day.

24 A terrorist decided, we're going to fight for
25 something that's not right, and you have gotten in

1 our way, and we'll kill you for it?

2 That should be given the most weight, because
3 they feel it every day.

4 Some say there's closure.

5 I don't believe there's closure. I think our
6 families get used to the pain.

7 And what keeps them going sometimes, is
8 keeping their family member's spirit alive, by
9 testifying at functions like this, of standing up
10 and hearing what society says about their heroes.

11 Well, I think the parole board needs to hear
12 that too.

13 And I think those commissioners that listen
14 to the victims' impact statement should put politics
15 aside, look them in the eye, understand their pain,
16 and then vote to keep them behind bars.

17 SENATOR AKSHAR: Well, that's the problem,
18 Patrick. People don't put people before politics,
19 unfortunately, in this crazy city.

20 They don't.

21 They put their political ambitions in front
22 of that.

23 So, you go home to New York City and you tell
24 the sons and daughters and the mothers and fathers
25 they have a friend here.

1 And that I will always advocate for you,
2 because you seek fairness, despite what the critics
3 and despite what the pundits say.

4 You just want a fair system; and you want a
5 fair system not only for the people -- the men and
6 women of the NYPD, but for everybody who finds
7 themselves in the system.

8 It's very simple.

9 Some will choose to spin it a certain way.

10 I choose to speak the truth.

11 Thanks for being here today.

12 PATRICK LYNCH: Thank you, Senator.

13 SENATOR GALLIVAN: I do have a question now.

14 So, a lot of the written testimony, and some
15 of the things you've just added --

16 PATRICK LYNCH: Yes.

17 SENATOR GALLIVAN: -- has to do with the
18 various factors; recommendations on changing the
19 factors, or the parole board giving a certain amount
20 of weight, which, under current law, they're able to
21 do without a requirement.

22 But the standards themselves, I'm interested
23 in your opinions.

24 So the standards are, paraphrasing, the
25 liberty without violating the law, welfare of --

1 consistent with the welfare of society.

2 Then the last one that you mentioned in your
3 testimony, will the release so deprecate the
4 seriousness of the crime as to undermine respect for
5 the law?

6 Essentially, the community standard, or, the
7 community-at-large standard.

8 Is it your opinion that those standards are
9 appropriate ones, to look at not just the inmate,
10 but also the community?

11 PATRICK LYNCH: Yes.

12 SENATOR GALLIVAN: Again, outside, not
13 counting the factors, but just the standards
14 themselves.

15 PATRICK LYNCH: You have to look at the
16 standards and weight them properly.

17 And the highest weight should be given to the
18 nature of the crime, and the impact on the families
19 who are society; New York City police officers who
20 live in our communities.

21 SENATOR GALLIVAN: No, let's go here.

22 So those two things, nature of the crime and
23 impact on families, are factors, all the things to
24 be considered.

25 Then they balance them against those things,

1 the welfare of society, deprecate the seriousness.

2 So just those three.

3 Not what has to be considered.

4 Is this the right standard?

5 Like, so if you consider all these things,
6 the current standard that says above the line or
7 below the line, is that line appropriate?

8 PATRICK LYNCH: No, what we need to do is
9 reform the whole process and look at the fairness of
10 the process.

11 What we find is is that they're not going by
12 the rules at all.

13 They're going by what the crowd is saying
14 outside the door.

15 So I'm fearful that's -- they're not looking
16 at any of the criteria.

17 If you look at the criteria, and look at it
18 fairly, listen to the victims and others, then it
19 would be effective.

20 I don't believe its effective now.

21 SENATOR GALLIVAN: Okay.

22 Thank you, for your service, and for coming
23 up here and testifying.

24 PATRICK LYNCH: Thank you, Senators; thanks
25 to all of you.

1 Thank you.

2 SENATOR GALLIVAN: Thanks, everyone.

3 PATRICK LYNCH: All the best.

4 SENATOR GALLIVAN: Police Conference of
5 New York, Richard Wells, president;
6 New York State Sheriffs Association,
7 Peter Kehoe, executive director.

8 Gentlemen, thank you for being here.

9 RICHARD WELLS: Afternoon, Senators.

10 SENATOR GALLIVAN: So if you look, you should
11 have a red dot there.

12 Just make sure the red dot is lit on the
13 microphones.

14 So, thanks for being here.

15 We are, of course, focused on parole: the
16 standards of release, the factors.

17 And that's my understanding what you're going
18 to -- we're also looking at the parolee voting
19 issue.

20 But we're focused with your testimony
21 interview on the first. Is that correct?

22 OFF-CAMERA SPEAKER: Correct.

23 SENATOR GALLIVAN: Okay.

24 So let me ask you, and -- well, you know
25 what? Before I do, can you each just talk about the

1 agency that you represent and who is represented in
2 that?

3 RICHARD WELLS: My name is Richard Wells,
4 president of the Police Conference of New York.

5 The Police Conference is a coalition of local
6 PBAs throughout the state of New York; over
7 200 local units belong, representing approximately
8 25,000 police officers in the state of New York.

9 PETER KEHOE: And I'm Peter Kehoe, an
10 executive director of the New York State Sheriffs
11 Association, and I represent the 58 sheriffs of
12 New York State; 55 elected, and 3 appointed.

13 SENATOR GALLIVAN: All right. Thank you.

14 So, currently, victims have the right to be
15 heard by the parole board, and get to weigh in
16 before the parole board makes a decision.

17 Do you think that's appropriate?

18 Do you think the current process is working
19 as it relates to victims, or do you have
20 recommendations for change?

21 RICHARD WELLS: The current process is not
22 working in many aspects.

23 But --

24 SENATOR GALLIVAN: Let's stick with victims
25 right now.

1 RICHARD WELLS: -- okay.

2 As far as the victims go, and I didn't know
3 until this morning's testimony from the former
4 commissioner, how bad it actually was.

5 I don't think they're giving the victims'
6 impact statements are given the weight they need to.
7 It doesn't seem like they get to the people it needs
8 to. There's no guarantee that the people hearing --
9 conducting the hearing on the day that it's going to
10 be decided whether somebody should be released,
11 actually even sees it, reads it, hears it, or any
12 part of it.

13 And that needs to be seriously looked at, and
14 amended and revised.

15 PETER KEHOE: And I agree; and I agree with
16 the proposition that the victim should be heard.

17 I think they should be heard in a respectful
18 way, and I think their presentation should be given
19 great weight.

20 And I don't think that's the case.

21 I think it's more perfunctory: We'll listen
22 to what you have to say, and we may or may not relay
23 it to the people who should hear it. But, even if
24 we do, we're not saying it has any weight, or what
25 weight it will have.

1 I think it should have great weight, and that
2 should probably be a matter of statute.

3 SENATOR GALLIVAN: The -- of course, the
4 statutory factors are described in the executive
5 law, and they include the sentencing judge, the
6 district attorney, the defense attorney.

7 Law enforcement is not specifically named,
8 but it's not precluded.

9 Do you have any thoughts on that?

10 RICHARD WELLS: I think police,
11 (indiscernible) organizations, executive
12 organizations, should certainly have a part in this.

13 It's our members that deal -- you know, we
14 initiate somebody going into the criminal justice
15 system. And a police officer is involved in all
16 aspects: through indictment, hearings, trial, and
17 conviction.

18 Then he is later, when somebody comes up for
19 parole, nobody asks for input, nobody really wants
20 our input, it seems many, many times.

21 But, yes, we should certainly be given a seat
22 at that table.

23 PETER KEHOE: And I agree.

24 I think that it gives -- shows the police
25 officer that his work has value; that his opinion

1 has value; that you recognize the tough job that
2 they're doing.

3 And that they are in on the ground level.
4 They know what's going on. And they probably know a
5 lot more about this inmate than anybody else in the
6 system.

7 So I think it would be important for them to
8 have input on the decision.

9 RICHARD WELLS: And in addition to that,
10 Senator, especially in a lot of our smaller
11 communities, which we have many in this state, that
12 the police officer can give some aspect as to what
13 is the release of this person back into a local
14 community where the memories may still be fresh and
15 raw, going to have an effect on that community?

16 SENATOR GALLIVAN: I was just going to go
17 there. So, I mean, I was going to move into the
18 community.

19 First, I suppose, you could blend them
20 together.

21 You know, to what extent should the community
22 have input, if any, prior to the parole board making
23 a decision?

24 And, secondly, what's the input, in your
25 opinion -- or, I'm sorry, the impact on the

1 community, in your opinion, when somebody is
2 released, from a public-safety end of it?

3 RICHARD WELLS: Well, the public safety, of
4 course, obviously depends on the crime that they
5 were convicted for, the likelihood they're going to
6 repeat such a crime.

7 And, again, I think the size of the community
8 will have more an aspect.

9 The smaller community, everybody knows each
10 other. They're all going to know that when the
11 person is coming back into town. And that's going
12 to cause a lot of angst amongst the community if
13 we're talking about a violent crime.

14 And some weight should be given to that.

15 SENATOR GALLIVAN: And my last question,
16 before I would ask for your recommendations, is
17 we've seen -- you know, there's been testimony
18 regarding some of the higher-profile releases of
19 cop-killers.

20 I mean, does that have an impact on the
21 people that you represent, I mean, on the police
22 officers themselves and the job that they do?

23 PETER KEHOE: Absolutely.

24 And we see, you know, the great disrespect in
25 some quarters for the police officer today. And

1 that is exacerbated by things like the release of
2 Bell and other cop-killers.

3 It just says to the police officer: You're
4 expendable. We don't care about you. It's more
5 important that this poor defendant get
6 rehabilitated, by having the right to vote, and
7 being released into society, and all these things.
8 And forget about the police officer who's dead.

9 And I think it has a great impact on the
10 profession.

11 We are -- I think you're probably aware, at
12 least a couple of you have been police officers, you
13 know, probably, the difficulty that police agencies
14 are having in recruiting police officers today.

15 And a lot of that has to do with the Blue
16 Lives Matter and the society that has disrespected
17 the office of police officer.

18 So what young person wants to go into that
19 profession where they're denigrated for the job that
20 they do in protecting those very people that are
21 denigrating them.

22 So, this is just another aspect of that:
23 Showing disrespect for the police officer who's
24 trying to protect society.

25 RICHARD WELLS: And it also sends a message

1 to people who may be thinking about, even things
2 like resisting arrest, fighting with the police,
3 that, attacking cops, even killing cops, is not
4 treated seriously.

5 When you look at the -- Herman Bell, is
6 probably -- I don't know if we can come up with a
7 worse one than that, three police officers he
8 murdered; directly responsible for the cold-blooded,
9 premeditated murder of three police officers, and
10 he's allowed to go back into society?

11 It's beyond disgraceful that that could have
12 even been considered by rational people.

13 SENATOR GALLIVAN: Recommendations regarding
14 parole; the operations of the board as it relates to
15 the standards of release and the factors that should
16 be considered?

17 We've already -- you don't have to repeat the
18 factors that we just --

19 PETER KEHOE: Yeah, and I agree with --
20 I again was enlightened a lot by the former parole
21 board member and his testimony this morning.

22 And I agree wholeheartedly with the comments
23 and the recommendations of my friend Pat Lynch.

24 I think one thing that we would suggest, it
25 go a little further, and I know there are

1 due-process issues and constitutional issues, and
2 all of that stuff, but, there should be a statutory
3 presumption against release on parole for a
4 cop-killer.

5 Right now it seems to be the presumption for
6 anyone who's before the parole board is a
7 presumption that you will be released, unless
8 there's something negative in your file that's
9 really bad to keep you from being released.

10 With respect to a killer of a police officer
11 and other emergency responders, I think there should
12 be a presumption against it, and it would have to be
13 overcome by some extraordinary circumstance favoring
14 release; otherwise, no release.

15 RICHARD WELLS: Certainly, I agree with the
16 increasing from 24 months. I think five years
17 should be a minimum starting base for parole
18 hearings.

19 And perhaps it should --

20 SENATOR GALLIVAN: In all cases, or are we
21 talking about --

22 RICHARD WELLS: -- I'm just going to say,
23 perhaps it should be graded.

24 You know, violent crimes be treated this way.

25 Then we have A, B, C, D, and E felonies.

1 Maybe go by the grade --

2 SENATOR GALLIVAN: Graded according to the
3 seriousness of the crime?

4 RICHARD WELLS: -- absolutely.

5 SENATOR GALLIVAN: Just like the sentencing
6 standards are.

7 RICHARD WELLS: Correct.

8 But this every two years, it's not a good
9 system at all.

10 And, again, for a murder of a police officer,
11 never.

12 SENATOR GALLIVAN: I'm straying just a
13 moment, which I shouldn't be doing, but, do you have
14 thoughts on indeterminate versus determinate
15 sentencing?

16 PETER KEHOE: Probably a lot, but I don't
17 think we have time to develop that, Senator.

18 SENATOR GALLIVAN: Okay.

19 We will pass.

20 We'd like to thank you for being here, and
21 your patience.

22 Of course, the service of all of the members
23 and agencies that you represent, I appreciate the
24 work you do, and the fact that you're willing to be
25 here.

1 RICHARD WELLS: Thanks for the opportunity.

2 PETER KEHOE: Thanks for the opportunity.

3 SENATOR AKSHAR: Thank you.

4 SENATOR GALLIVAN: All right. Our next panel
5 will be, Michelle Lewin, executive director of the
6 Parole Preparation Project;

7 And, Jose Saldana, community organizer for
8 the Release Aging People in Prison Campaign.

9 I'm going to need just a moment, all right,
10 as soon as Niko takes care of you there.

11 Give us two minutes.

12 (Pause in the proceeding.)

13 (The hearing resumed.)

14 SENATOR GALLIVAN: Okay. Ready?

15 MICHELLE LEWIN, ESQ.: Yes.

16 SENATOR GALLIVAN: We just saw statements
17 that you have here, and, we have a copy of the
18 report that was prepared by the -- your two
19 organizations, that we did want to talk about.

20 So there's a lot of materials there.

21 MICHELLE LEWIN, ESQ.: Well, Senator, before
22 you begin, I would like to read my statement.

23 SENATOR GALLIVAN: Pardon me?

24 MICHELLE LEWIN, ESQ.: I would like to read
25 my statement on the record.

1 SENATOR GALLIVAN: It will be on the record
2 anyway.

3 MICHELLE LEWIN, ESQ.: I understand.

4 SENATOR GALLIVAN: My hope would be that
5 could you paraphrase the high points of it, and
6 emphasize, so we can go on to questions.

7 You can read it if you want, but like I said,
8 it is in the record now (indiscernible) --

9 MICHELLE LEWIN, ESQ.: Yeah, I'll go ahead
10 and read it.

11 SENATOR GALLIVAN: -- (indiscernible).

12 MICHELLE LEWIN, ESQ.: Yeah, thank you.

13 SENATOR GALLIVAN: I think because you spoke
14 first, ladies first.

15 Well, unless you want to --

16 MICHELLE LEWIN, ESQ.: No, no, we --

17 SENATOR GALLIVAN: -- (indiscernible) --

18 MICHELLE LEWIN, ESQ.: -- we discussed it, we
19 discussed it.

20 Thank you.

21 My name --

22 SENATOR GALLIVAN: Oh, there we go.

23 All right. Go right ahead.

24 Sorry, I didn't have the microphone on.

25 MICHELLE LEWIN, ESQ.: My name is

1 Michelle Lewin, and I'm an attorney in
2 New York State.

3 I'm the executive director of the Parole
4 Preparation Project.

5 Founded in 2013, the project supports and
6 advocates for the release of people serving life
7 sentences in New York State prisons.

8 We also help lead the statewide campaign for
9 parole justice.

10 In addition to running the Parole Preparation
11 Project, I coordinate a contingent of attorneys
12 working on parole-related litigation across the
13 state, and I'm deeply familiar with parole policy
14 and procedures.

15 I'm considered an expert in this issue, and
16 I consult on cases nationwide.

17 To be plain about it, our work is about
18 advocating for the release of more community-ready
19 people from prison, especially people convicted of
20 violent crime decades ago.

21 It is about ensuring that parole-eligible
22 people have a fair and meaningful opportunity for
23 parole, and that their freedom is not determined by
24 a political agenda, a special-interest group, or an
25 antiquated approach to, quote, law and order.

1 Our work is about promoting public safety,
2 healing, and justice.

3 Before addressing any arguments in greater
4 detail and answering your questions, I want to
5 outline some of the core principles that guide our
6 movement for parole justice, and, from our
7 perspective, should guide the criminal legal system
8 at large.

9 We believe that all people are valuable, and
10 that regardless of the harm a person has caused,
11 they deserve to be treated with dignity, respect,
12 and compassion.

13 Further, no lives are more valuable than any
14 other, including the lives of law enforcement.

15 We also see the humanity in all people, and
16 recognize that people harm others for a whole host
17 of reasons, often related to their own trauma and
18 the ways in which we as a society have failed them.

19 Violence stems from the painful realities of
20 structural oppression, including racism and white
21 supremacy.

22 We also define people by who they are today.

23 We do not define people by the worst thing
24 they've ever done, but by their accomplishments, and
25 their aspirations, their personal transformations,

1 and their acceptance of responsibility.

2 All people are capable of change and of
3 making incredible contributions to their
4 communities.

5 So many of our leaders in the parole-justice
6 movement who are here today with us were convicted
7 of serious crimes decades ago, and have made
8 tremendous contributions to our world.

9 Further, we believe that the only
10 determinative factors that should be used when
11 assessing a person's readiness for release are these
12 forward-looking markers: Their achievements, their
13 personal growth, and their potential risk to public
14 safety.

15 Lastly, and most importantly, we honor the
16 experiences of all those who are harmed by crime and
17 violence.

18 We believe wholeheartedly in a victim's right
19 to seek healing and restoration in the many forms
20 those take.

21 We do not suggest that there should be no
22 accountability for harming other human beings.

23 There absolutely should.

24 We do not support is the current process
25 rooted solely in punishment that serves no other

1 purpose than to banish and indefinitely warehouse
2 those who cause harm.

3 We do not believe such a system helps our
4 communities overcome the effects of crime and
5 violence, nor does it sooth wounds, bring
6 resolution, or keep any of us safe.

7 And just for a bit of history, and we've
8 discussed some of this on the record already, but
9 I'll review:

10 In 2011 the New York State Legislature
11 amended the executive law governing parole, to
12 require the board to use a risk-assessment
13 instrument in their release determinations.

14 The goal was to further a, quote,
15 forward-looking holistic and rehabilitative
16 approach.

17 In September of 2017, the board of parole
18 also revised their regulations in a similar vein,
19 this time with even more emphasis on the role of,
20 quote, risk-and-needs evaluations.

21 The regulations now state, that if the board
22 departs from their risk-assessment instrument and
23 denies release, that it must give, and, quote, an
24 individualized reason for such a departure.

25 What I've heard others testify about today,

1 and what Senator Gallivan has claimed in several
2 public appearances, is that advocates misunderstand
3 the law.

4 Senator Gallivan claims that the executive
5 law that governs parole has within it an inherent
6 requirement that the parole board consider a
7 community's opposition to a person's release when
8 making their determinations, and should weigh that
9 opposition heavily.

10 This is not the law.

11 The passage in dispute states, that release
12 shall will be granted so as long as it is not,
13 quote, incompatible with the welfare of society, and
14 will not so deprecate the seriousness of his crime
15 as to undermine respect for the law.

16 Other than this vague phrase, the executive
17 law contains no factor requiring the board to
18 consider, quote, community opposition, a refrain we
19 hear repeatedly from state senators, and state
20 Republican senators.

21 In fact, courts have held that the only
22 opposition the board may consider is the testimony
23 from victims directly impacted by the crime and
24 their families and the district attorney.

25 It is the job of the parole board, not

1 special-interest groups, to make individualized,
2 independent decisions about someone's freedom.

3 The, quote, community opposition state
4 senators and the parole board reference is also
5 shrouded in secrecy.

6 Parole applicants and their advocates are not
7 permitted access to the so-called "opposition," and
8 in some cases, upon judicial action, have discovered
9 it never really existed at all.

10 In other instances, "community opposition"
11 merely refers to a petition signed by people who
12 have no knowledge of the case or any connection to
13 the victim or their family.

14 There's nothing in the law that prohibits
15 parole applicants from seeing this material.

16 And if Senate Republicans and members of the
17 board are so adamant about its power, then it should
18 be made available to the very people it impacts
19 most.

20 Senate Republicans claim that releasing
21 anyone who has killed a member of the law
22 enforcement would so, quote, deprecate the
23 seriousness of the crime; and, therefore, violate
24 the law.

25 What is actually unlawful is their demand

1 that the board issue blanket denials of people based
2 solely on their crimes of conviction.

3 Senate Republicans are also saying that no
4 amount of time, rehabilitation, or transformation
5 could meet the "deprecate" standard, and that the
6 board of parole should resentence all people with
7 these crimes to life without parole.

8 Sentencing remains within the purview of the
9 courts, not the board.

10 Significantly, and perhaps surprisingly to
11 this Committee, the new regulations published in
12 2017 eliminate altogether the, quote, welfare of
13 society and deprecate language, perhaps in light of
14 how impossible it is to implement such vague
15 premises.

16 While these phrases remain in the executive
17 law, they appear nowhere in the revised version of
18 the regulations.

19 Even if commissioners were permitted to
20 consider input from the general public, the question
21 remains: Which public, and whose community, are you
22 even referring to?

23 It seems you refer just to your own
24 constituency, and even then it is not clear that
25 your throw-away-the-key mentality is shared by your

1 voters.

2 Undermining respect for the law also does not
3 refer to undermining respect for law-enforcement
4 officers.

5 It refers to the legal system.

6 Further, the vast majority of people living
7 in communities where people in prison, and most
8 victims come from, believe that continued
9 incarceration and death behind bars in no way serves
10 the welfare of society.

11 Bringing people home, reuniting families, and
12 restoring fractured communities is the only form of
13 welfare we seek.

14 Distorting the law in this way is an attempt
15 by Senate Republicans to erase the progressive
16 amendments made to the executive law in 2011 and the
17 regulations in September 2017.

18 It is an attempt to amplify and exaggerate
19 the minority of voices in the state who want
20 perpetual punishment and believe death in prison is
21 the only form of justice.

22 It is an attempt to silence Black and Brown
23 communities that have, for decades, fought for the
24 release of their loved ones.

25 The amendments to the regulation, as well as

1 the appointment of new commissioners in June 2017,
2 commissioners this very Committee confirmed, has led
3 to an increase in release rates.

4 Just last month, the parole of board released
5 48 percent who appeared before it.

6 We welcome and celebrate these changes with
7 an air of caution and scepticism.

8 Even with increased releases, more than
9 50 percent of people appearing before the board are
10 denied parole and remain locked up and away from
11 their families.

12 The board's policies still profoundly and
13 disproportionately impact people of color, and more
14 specifically, Black men.

15 The board's practices also systematically
16 deny release to aging and elderly people.

17 Many parole-eligible people serving life
18 sentences are over the age of 50, with some entering
19 their 60s and 70s.

20 This mass aging in prison, which is happening
21 not only in New York State, but across the country,
22 means we are building nursing homes inside prison
23 walls and graveyards on prison grounds.

24 I mean this literally.

25 Let's be clear that, in New York State,

1 repeatedly denying someone parole means sentencing
2 them to die in prison.

3 When Republican Senators say, "people who
4 kill police officers should not be released," what
5 they mean is that they should die behind bars.

6 I want to close that by saying, that while
7 we're here participating in this process, we see
8 these hearings as a political ploy, and as an
9 attempt to scare voters into re-electing you in
10 November.

11 Your proposed policies do not serve any of
12 your stated goals of public safety, protecting
13 victims, or law and order.

14 They are purely for punishment, and nothing
15 else.

16 Further, your characterization of
17 incarcerated people, and those who have been
18 convicted of violence, as dangerous, barbaric,
19 terrorists, and other words I am ashamed to repeat,
20 is not only factually inaccurate, but racist,
21 bigoted, and harmful.

22 The same is true of your efforts to
23 disenfranchise people on parole who only recently
24 obtained the right to vote.

25 Elected officials across this country use

1 fear-mongering, deception, and hate to rally their
2 constituents, and you are no different.

3 I am hopeful that, in November, community
4 opposition will refer not to a small contingent of
5 law enforcement opposing the release of aging people
6 in prison, but the masses who have finally,
7 decidedly, said: Enough. No more perpetual
8 punishment. No more death in prison.

9 SENATOR GALLIVAN: Mr. Saldana.

10 JOSE SALDANA: Yes, I'm a community organizer
11 for RAPP (Release Aging People in Prison) Campaign.

12 We work to end mass incarceration by
13 advocating for the release of the older prisoners in
14 New York State who have languished in prison, some
15 for over four decades.

16 I came here to advocate on their behalf.

17 I think they would want me to speak for them.

18 But I want to pause for a few minutes, and
19 respond to something that occurred just a few
20 minutes ago.

21 You mentioned the murder of two New York City
22 police officers, and the devastation that it caused
23 their family and their community.

24 Made no mention that that very year, '92,
25 teenage boys, young Black men, were murdered by

1 New York State; New York City police officers.

2 92 families, not mentioned, not one single
3 word. Happened the same year.

4 Their lives didn't matter, but they matter to
5 me, and they matter to our community.

6 And all the people who incarcerated for
7 violent crimes for 40 years, their lives matter to
8 us. And they have shown their worse, and I have
9 seen their worth up front.

10 I've languished with them for 38 years.
11 I know who these men are.

12 38 years I've seen them develop the best
13 therapeutic programs possible.

14 Why?

15 Because New York State Department of
16 Corrections does not educate. They do not
17 rehabilitate.

18 So we take it upon ourselves to rehabilitate
19 ourselves; to create programs like the Challenge to
20 Change, to address criminal thinking, attitude, and
21 behavior.

22 We develop victim-awareness programs that
23 will help us develop insight into the harm that our
24 crimes inflicted on innocent people.

25 We develop anti-violent programs,

1 gang-prevention programs, to help these teenagers
2 that are at risk to becoming gang members.

3 And these men have been doing this for
4 decades.

5 They're not faking, because, once they let us
6 out, they have let a few of us out, and they
7 continue to do the same thing, exact same thing.

8 You will find them in the worst
9 neighborhoods, addressing the gang violence, because
10 what happens in our communities matter to us.

11 We are concerned with the plight, the social
12 and economic conditions, in our community.

13 I realize that you -- y'all ain't concerned
14 about that.

15 You weren't concerned back then. You're not
16 concerned now.

17 You're concerned about your own constituents.

18 You're not concerned about Brownsville,
19 Spanish Harlem, east New York.

20 We are.

21 We've come from prison, after decades, to
22 address these issues.

23 That's our worth.

24 That should be the measure, of who we are
25 today, not back in 1979, or 1971.

1 That's all I have to say.

2 [Applause.]

3 SENATOR GALLIVAN: Well, thank you for being
4 here.

5 And I'm very sorry to hear that you're here
6 participating, but you see this as a political ploy.

7 If I saw it as a political ploy, I wouldn't
8 be sitting here, asking questions. I wouldn't have
9 immersed myself in hours and hours of research, and
10 wouldn't go through this.

11 You have your opinion.

12 But I can tell you, from my perspective, and
13 my Co-Chair's perspective, that is not accurate at
14 all.

15 New York State lawmakers, I think it was in
16 2005, or perhaps it was a little bit earlier, they
17 have made the murder of a police officer punishable
18 by life in prison; Democrats and Republicans.

19 That is the state of the current law.

20 The changes that were made to the parole
21 regulations were in response to New York State
22 statute and to the Supreme Court.

23 And I'm not going to read it, but it will be
24 available in the ultimate record, but that is
25 something that the chairwoman of the board clearly

1 articulates.

2 The chairwoman of the board, in her written
3 testimony, also clearly articulates all of the
4 factors that must be considered.

5 She articulates the fact that the courts
6 have, essentially, placed it on the board to
7 determine the weight, and the standards are the
8 standards.

9 And when I speak from that, when I speak in
10 talking about the standards, and I talk in certain
11 cases, where I think members of the parole board
12 failed the citizens that they serve, the citizens
13 they serve, sir, are just like me.

14 Yes, I have a district, but every citizen in
15 the state is a constituent.

16 And I recognize, when I make my decisions,
17 I affect people and families.

18 And my decisions aren't always right, but
19 I recognize the constituency is across the state,
20 and I care about people.

21 You may not know that my uncle was murdered.

22 You may not know that my uncle, lived on the
23 east side of Buffalo in a very poor area, was
24 stabbed 27 times.

25 You may not know much about my personal

1 family, that I'm not going to go into.

2 I understand that you made some very, one in
3 particular, a very inaccurate comment, about my time
4 on the parole board.

5 You don't know what my release rate was.

6 You don't know the people that I released.

7 But I can tell you that the statement that
8 you made about that is absolutely wrong.

9 And, while I don't even think it's merited,
10 but out of respect, like you being at this hearing
11 today, if you would like to sit down and go over
12 that, and I can show you what is accurate, I'm happy
13 to do that.

14 I had wanted to take the time to go into the
15 report, and ask about the objectivity of it, ask
16 about how many cases were looked at, ask about how
17 much information was obtained by the parole board.

18 But because of how you characterize it, I --
19 I -- it appears that there's no need to do that
20 today.

21 But we do appreciate the time that you guys
22 took to be here, and your patience.

23 Thank you very much.

24 Public Employees Federation, represented by
25 Antonio Perez, Division 236 council leader, and

1 Gina Lopez, Division 236 assistant council leader.

2 Give us just a moment.

3 (Pause in the proceeding.)

4 (The proceeding resumed.)

5 SENATOR GALLIVAN: Did you -- have you
6 submitted something written yet?

7 VICTOR ANTONIO PEREZ: I wrote something, but
8 it had so many grammatical errors, I was ashamed to
9 submit it. So, I'll just read it off. It's very
10 short.

11 SENATOR GALLIVAN: That's okay.

12 All right. So, we're just going to wait one
13 moment.

14 Okay.

15 Thank you both for being here, and your
16 patience.

17 GINA LOPEZ: Thank you.

18 SENATOR GALLIVAN: It doesn't matter to me
19 who starts -- oh, maybe you're starting by rank.

20 VICTOR ANTONIO PEREZ: My name is
21 Victor Antonio Perez. I am a senior parole officer.
22 I live in The Bronx. I work out of Westchester.

23 I have been with the former division of
24 parole, and now the department of corrections and
25 community supervision, for a total of 26 years.

1 Ten of those years were inside doing parole boards.

2 I was one of those original facility parole
3 officers that has since been eliminated.

4 And I now am the council leader of
5 Division 236, representing all of the parole
6 officers of the state of New York, as well as the
7 president of the Fraternal Order of Police,
8 Lodge 27, representing all of the parole officers of
9 the state of New York.

10 SENATOR AKSHAR: Thank you.

11 GINA LOPEZ: Hello. I'm Gina Lopez.

12 I am actually a parole officer in the
13 Rochester metro office. I've been a parole officer
14 for 12 years, and I recently was made the assistant
15 council leader of Division 236.

16 SENATOR GALLIVAN: Okay. Thank you.

17 VICTOR ANTONIO PEREZ: Good afternoon,
18 Senator Gallivan and Senator Akshar.

19 Did I pronounce that right, sir?

20 SENATOR AKSHAR: It's fine.

21 VICTOR ANTONIO PEREZ: Thank you for the
22 opportunity to speak before you on this matter of
23 restoring voting rights to those on parole in the
24 state of New York.

25 First and foremost, I want to make it very

1 clear that the parole officers of the state of
2 New York do not oppose the rights -- the restoration
3 of rights to parolees to vote.

4 We do have a problem, however, the way it is
5 being rolled out -- or, the way it was rolled out.

6 After all, we are tasked to make sure, or to
7 assist, in the reintegration of parolees back into
8 society. And I think voting is certainly one of
9 those things that can and should happen.

10 After reviewing Executive Order 181, and how
11 it was to be implemented, the executive order
12 states: Individuals being released from
13 incarceration on to parole supervision, and
14 individuals who are currently under parole
15 supervision, will be given consideration for a
16 conditional pardon that will restore voting rights
17 without undue delay.

18 "Consideration" is not blanket pardons.

19 And though I'm told that it wasn't a blanket
20 pardon, I didn't find anybody in any office that did
21 not get one.

22 There was, as of September 18, 2018,
23 30,676 parolees have been conditionally pardoned.

24 Of that group, already, 646 have been revoked
25 through the parole revocation process.

1 Now, how is that impact the parole officers?

2 Let me share with you what the parole
3 officers that were tasked to do.

4 On these 30,000-plus conditional pardons were
5 to be given and distributed out to by,
6 approximately, 900 -- actually, the number is
7 922 parole officers, we were told to get these
8 pardons out in the hands of parolees. Drop
9 everything that we were doing.

10 The parole officers were told to cancel
11 delinquency operations. That means do not, or at
12 least cancel, or postpone, executing warrants of
13 absconders from parole.

14 Being the good soldiers that we are, we did
15 exactly that, and we dropped everything that we were
16 doing to find parolees all over the place, not only
17 in our counties, but those who have been transferred
18 to other counties.

19 And I've heard stories about parole officers
20 being told to go to Rikers Island, because, at that
21 time, it wasn't clear on whether these parolees were
22 going to get their rights restored or not.

23 So you have parole officers going to
24 Rikers Island simply to deliver the executive
25 pardons.

1 Now, we have parole officers -- because of
2 the COMPAS system that's been well talked about
3 today, there are parole office -- parolees that
4 don't report to parole for four months. And visits
5 are not requested for -- or, mandated for
6 four months.

7 And that's how the ratio of parolees to
8 parole officers are established; and, therefore,
9 their time.

10 So, all of these parolees had to be found,
11 whether they be home. Some of them do not have
12 curfews, and so it was just hit or miss, some two or
13 three times. Some at their jobs.

14 And -- which required just an awful lot of
15 additional work.

16 And, to my knowledge, none of these parole
17 officers were compensated any more than their
18 regular salaries for doing such a task.

19 Now, as to the Level 3 sex offenders, those
20 with SARA conditions, parole officers all
21 reported -- the parole officers that I spoke to,
22 I spoke to about seven parole officers from four
23 different offices around the state, and they all had
24 one thing in common: there was mass confusion.

25 At the beginning, when the pardons were

1 given, there wasn't real correct -- any direction on
2 how to approach the sex offenders going into schools
3 where voting polls were taking place.

4 But that was addressed probably a few weeks
5 after that.

6 And parolees were given letters and
7 conditions, basically stating, that if they wanted
8 to vote, and the voting place was in the school,
9 they must seek approval of the superintendent.

10 Some of the officers weren't aware of who was
11 actually going to make this request.

12 Some officers thought that the parolees were
13 supposed to do it.

14 Parole officers were told to send this
15 request -- some parole officers were told to send
16 those requests to SOMO, which is our central office,
17 and that they would send the request.

18 One officer reports that they sent four
19 requests to SOMO, and -- but only one response was
20 given.

21 And they were a little fearful because,
22 parolees who actually wanted to vote, which were
23 very few, by the way, but those who wanted to vote,
24 three out of those four were not able to vote
25 because of the no-request.

1 One officer reports that there were several
2 requests, didn't give the number, but none of them
3 were responded to by central office.

4 And I assume that that means the
5 superintendent didn't respond to them, but there was
6 no communication as to why, where. And the parolee
7 was left with the inability to vote anyway.

8 One officer was very disturbed to see a
9 parolee under Article 10 of the mental-health law,
10 who had raped multiple minors, to receive the right
11 to vote.

12 That particular parolee was not interested in
13 voting anyway, luckily, so we didn't have to worry
14 about him going into a school.

15 The general consensus of the parole officers
16 that had to execute the Governor's pardons were
17 that, initially, the orders were unclear, that it
18 was a process that was rushed and not very well
19 thought out.

20 The feedback was that, for the most part,
21 very few parolees were even interested in voting.

22 The sex-offender parolees were very reluctant
23 to make their presence known in schools. They spent
24 most of their time in prison hiding the fact that
25 they're sex offenders. And, in public, they try to

1 do the same.

2 Those few that were, did express some
3 interest in voting, wanted to do it in an
4 absentee-ballot situation. And there was not enough
5 information given to anybody on how to go through
6 that process.

7 I don't even know how to do it myself.

8 One sex offender did vote in New York City.

9 And the one that did get permission, another
10 who wanted to vote, was actually on parole.

11 And one of those persons that probably we
12 would have no problem with was on parole for
13 18 months, was doing well, worked two jobs, was
14 actually working with the Fortune Society. But he
15 never got permission from the superintendent, and
16 so, therefore, he could not vote.

17 The consensus was simple.

18 If a massive undertaking like this was going
19 to take place, you would think that somebody would
20 reach out to us, and at least talk to us and see
21 what the hurdles were going to be.

22 And we would have easily just told them, this
23 is what you're going to run into, and how to go
24 about, maybe, just jump over some of those hurdles.

25 The other thing is that, and I speak for all

1 officers that I spoke to, and I think I speak for
2 all officers in the state of New York, that a
3 blanket -- although the administration said it's not
4 a blanket pardon -- I haven't seen anything to
5 refute that -- that the process should be
6 individualized. There should be some kind of
7 evaluation.

8 Just as there's merit parole, the restoration
9 of any other right, the restoration of the right to
10 hold office or the restoration of a right to carry a
11 gun, or whatever, that has a process. It's called a
12 "certificate of relief from disabilities."

13 If they want to shorten that process to make
14 it to vote, that's fine, but make it a process based
15 on evaluation and based on merit.

16 Somebody has to earn their rights back, not
17 just given to them, because I have a problem facing
18 two parolees.

19 One is doing excellent, he has two jobs, he's
20 supporting his kids. He is rehabilitated. He saw
21 the light, and he's living the life.

22 And the other side, he's not living the life.
23 He's turning dirty, hasn't found a job, or, for
24 whatever reason, you know, he's got -- what we would
25 call "pre-delinquent."

1 And those two people have the same right to
2 vote? That's not fair.

3 Not fair.

4 Let them earn it.

5 SENATOR AKSHAR: Thank you.

6 SENATOR GALLIVAN: Miss Lopez.

7 GINA LOPEZ: In my office there are two big
8 things that they saw.

9 One was, like he said, the immediacy to have
10 this be put into place, with the parolees being able
11 to be given their pardons.

12 I'll use me as an example.

13 I have a mixed caseload.

14 On my mixed caseload I cover over 84 people
15 that I have to do visits on, make sure they're going
16 to programs.

17 And, there was just this intense immediacy
18 that this had to be completed immediately.

19 We had to give the numbers every week of when
20 we were getting it done, who we got done, and the
21 list was on and on about making sure that you went
22 for extra home visits, if you had to go to their
23 employment, if you had to go anywhere to catch them
24 to give them to this pardon.

25 And many of them make office reports, when

1 they could have come and gotten it from us by just
2 coming into the office.

3 One of the things that was very difficult in
4 my office was, the sex offenders, I have sex
5 offenders that -- supervised sex offenders.

6 In the executive order it totally talks about
7 making sure that schools are aware that you are
8 going to be coming to the school to vote; however,
9 in my area, many of those voting sites are in
10 recreation centers, where it's not legally obligated
11 for you to let them know that they're coming.

12 But, morally, the parole officers felt that
13 they should make someone aware that someone was
14 going to be coming to a recreational center in that
15 area to be able to vote. And that was the big
16 consensus in my office in regards to that.

17 SENATOR GALLIVAN: Thank you.

18 Do you have any questions?

19 SENATOR AKSHAR: Go ahead. No, I'm good.

20 SENATOR GALLIVAN: I had a number of
21 questions, but, specifically, about the things that
22 you spoke to. And I think you've answered pretty
23 much everything, but, I guess I have one or two
24 more.

25 Was there any -- so within department of

1 corrections and community supervision, when, in a
2 general sense, would it be -- is it fair to say,
3 when something comes out, that there is -- I don't
4 know if it's called the general policy, or a
5 regulation, I'm not sure what you might call it
6 internally --

7 VICTOR ANTONIO PEREZ: Directive.

8 GINA LOPEZ: Directive.

9 SENATOR GALLIVAN: -- a directive comes out,
10 did any directives come out --

11 VICTOR ANTONIO PEREZ: Yes.

12 SENATOR GALLIVAN: -- regarding this topic?

13 VICTOR ANTONIO PEREZ: Yes, they did.

14 SENATOR GALLIVAN: And did they -- did the
15 directives have to do with some of, Mr. Perez, what
16 you testified to?

17 VICTOR ANTONIO PEREZ: Yes, yes.

18 SENATOR GALLIVAN: About how were you to
19 handle it, and all that?

20 Can you tell us what directives -- if you
21 have them, what directives came out and when?

22 VICTOR ANTONIO PEREZ: I do not have that
23 directive.

24 We were given directives.

25 The directives were, pretty much, that

1 everybody who got a pardon was supposed to be
2 hand-delivered that pardon.

3 And there was -- in the directive, I don't
4 believe it had a timetable, but we were told by
5 administration, at first, they wanted everything
6 done in two weeks, and then maybe four weeks, and
7 then that was extended. And so we were able to get
8 them all.

9 SENATOR GALLIVAN: Regarding -- and either,
10 if you have knowledge, regarding the issue related
11 to sex offenders, and the additional special
12 conditions to getting permission, and so on, that
13 I now know does exist, do you recall when that
14 directive came out?

15 VICTOR ANTONIO PEREZ: Yeah, I believe -- I'm
16 not sure if that was a directive or an e-mail or
17 some kind of communication from the office.

18 That came out.

19 The problem was, and it said, and I'm just
20 saying this secondhand, because I didn't see it
21 myself, from the officers, that the central office,
22 SOMO, the sexual -- Sex Offender Management Office
23 in Albany, was supposed to be notified if, in fact,
24 a parole -- a sex-offender parolee that was a SARA
25 case, and was restricted from being in a school,

1 within 1,000 feet of the school, that they were
2 supposed to be notified.

3 My understanding that -- was that, that
4 someone was to notify the superintendent or the
5 administrator of that school. And, somehow, that
6 information would come back to the parole officer,
7 and then to the parolee.

8 The trouble is that, of the seven
9 sex-offender officers that I spoke to directly
10 within the last couple of days, only two knew that.
11 The other five had no idea.

12 And that could have been because that none of
13 their particular sex offenders, you know, expressed
14 a willingness or, you know, a desire to vote.

15 SENATOR GALLIVAN: Were there -- the
16 Governor's executive order was dated April 18th?

17 VICTOR ANTONIO PEREZ: That's correct.

18 SENATOR GALLIVAN: I don't know the exact
19 date that he announced it, but it was dated
20 April 18th?

21 VICTOR ANTONIO PEREZ: Yeah, I saw that date.

22 SENATOR GALLIVAN: Was there any directives
23 or instructions prior to April 18th?

24 VICTOR ANTONIO PEREZ: No, not that I'm aware
25 of.

1 I think that was, May, I believe was when we
2 were notified that there were -- the executive
3 orders were starting to be distributed.

4 SENATOR GALLIVAN: Okay. I do want to note
5 that Commissioner Annucci's written testimony does
6 talk about the actual procedure -- or, the process
7 now for sex offenders.

8 And then there's a reference both from the
9 commissioner and from the Governor's counsel, that
10 the process -- the process for everybody is now
11 listed on the Governor's website.

12 VICTOR ANTONIO PEREZ: Yeah, and let me be
13 the first to -- the department of correction and
14 community supervision are great at directives. They
15 write everything down.

16 The distribution of those directives, and the
17 communications of those directives, don't always get
18 to the person they need to get to.

19 And in this case, I think that was the case.

20 It was because it was a little bit of a
21 rush -- or, no, it was a lot of a rush.

22 And the -- our directives were: Do it, do it
23 now. Drop everything that you're doing. This is
24 our number-one priority.

25 So that, I think, was part of the problem,

1 with the communication. The communication was
2 moving so fast that not all of it came down on a
3 timely basis.

4 SENATOR GALLIVAN: So other than what you've
5 already testified to, regarding process, we can't go
6 backwards, any recommendations, going forward?

7 VICTOR ANTONIO PEREZ: Yeah.

8 Some recommendations are:

9 I don't -- again, you know, the pardons that
10 are given, those pardons that are revoked because of
11 parole violations or new crimes, I would like to see
12 those pardons be scrutinized a little bit more.

13 And like the executive order says, that
14 they -- and I'll quote: That individuals who are
15 currently under parole supervision will be
16 consideration, not guarantee.

17 And so those who do violate the process may
18 be considered, but not given because of their
19 behavior.

20 I do believe that those are things that need
21 to be earned.

22 And somebody could do very, very well in
23 prison.

24 You know, and like the testimony that -- like
25 Mr. Lynch had said, and other people, when they

1 come out, that's the real test. That is the real
2 test.

3 And voting is a right, I understand that, but
4 voting is a right that's been taken away because
5 somebody behaved, you know, criminally. And it has
6 to be restored in a fair -- in a fair manner.

7 I do most parolees will do -- and will do
8 that.

9 But for those who don't, I don't think they
10 should have that right.

11 SENATOR AKSHAR: (Indiscernible).

12 SENATOR GALLIVAN: Oh, I'm sorry.

13 Let me just note, you jogged something in my
14 mind regarding -- regarding the conditional pardon
15 that then is revoked.

16 We are getting a monthly report of that. We
17 are -- that is, we are being made aware of that.

18 And I think, I'm not positive, that might be
19 available publicly on the DOCS website.

20 But at the very least, I know that we are
21 getting a -- we are getting a -- I don't know
22 exactly how it happens, but we do get the monthly
23 report.

24 VICTOR ANTONIO PEREZ: Good.

25 SENATOR GALLIVAN: Sorry.

1 SENATOR AKSHAR: So your testimony today is
2 that, those who sought the right to vote should have
3 went through the current process of obtaining a
4 certificate of relief from disabilities?

5 VICTOR ANTONIO PEREZ: Either that -- that
6 process is already in place.

7 SENATOR AKSHAR: Oh, I understand.

8 VICTOR ANTONIO PEREZ: Right.

9 And if that process is to be changed or
10 altered in any way, and I don't oppose a more
11 expeditious (sic) (ph.), because that's a long
12 process. For somebody, it takes months and months
13 and months for a certificate of relief to -- because
14 an investigation has to happen, prolonged
15 investigation on a parolee, et cetera.

16 But there's some kind of evaluation done.

17 We do merit paroles all the time.

18 Somebody, for non-violent felony offense, has
19 completed one year of successful parole, they're
20 working, they've abided by their conditions of
21 parole; they're not using any illegal substances;
22 they've completed their programs; you know, they
23 report; they're home, you know, when they're
24 supposed of be; those people get off parole, because
25 they earned it.

1 And then, they should.

2 A similar process could happen, you know,
3 maybe after three months after somebody is on
4 parole.

5 90 days is a good, you know, milestone for
6 somebody to -- for a parole officer to evaluate
7 whether a parolee is adjusting well to his
8 supervision.

9 And, let me just say, parole officers do a
10 wonderful job, a marvelous job.

11 And, yes, I'm a little biased because
12 I represent all the parole officers. But, nobody
13 knows how well-adjusted a parolee is more than a
14 parole officer; his or her parole officer.

15 And I think that is where it starts: Let
16 them make an evaluation.

17 SENATOR AKSHAR: Great. Thank you.

18 SENATOR GALLIVAN: Well, thank you both for
19 being here, and for your service, and those of the
20 people that you represent.

21 I know, from our committee work, and from our
22 budget-related work, I know how difficult a job you
23 have.

24 And I appreciate the fact that you're out
25 there, plugging away every day, and for your

1 patience today as well.

2 Thank you.

3 VICTOR ANTONIO PEREZ: If I may acknowledge
4 one thing, today is the first day of Breast Cancer
5 Awareness Month.

6 And having lost my sister just 90 days ago to
7 breast cancer, I just wanted to throw that out
8 there.

9 And anything anybody could do to get those
10 people who need mammograms or breast-cancer exams,
11 to avoid that, I want to put it out there.

12 SENATOR GALLIVAN: Sorry for your loss.

13 Thanks for bringing it up.

14 My wife and mother are survivors, so we're
15 very active in trying to help get the word out.

16 VICTOR ANTONIO PEREZ: Thank you.

17 SENATOR GALLIVAN: But it's wonderful you
18 brought it up.

19 Thank you.

20 VICTOR ANTONIO PEREZ: Thank you.

21 GINA LOPEZ: Thank you.

22 SENATOR GALLIVAN: Our next panel, from the
23 New York State Board of Elections, Todd Valentine;
24 Rensselaer County Board of Elections,
25 Jason Schofield, commissioner;

1 And the Dutchess County Board of Elections,
2 Erik Haight, commissioner.

3 Just a moment, please.

4 TODD VALENTINE: Yes.

5 (Pause in the proceeding.)

6 (The hearing resumed.)

7 SENATOR GALLIVAN: Well, thank you for being
8 here.

9 Could you each introduce yourself, and your
10 titles?

11 JASON SCOFIELD: Jason Schofield, Rensselaer
12 County Commissioner of Elections.

13 TODD VALENTINE: Todd Valentine, co-executive
14 director, New York State Board of Elections.

15 ERIK HAIGHT: And, Erik Haight,
16 Dutchess County Board of Elections.

17 SENATOR GALLIVAN: Well, thank you all for
18 being here.

19 We have some written testimony from
20 Director Valentine.

21 And, we're hoping that you can paraphrase it,
22 or go through it if you wish, and then we can ask
23 questions.

24 Or, each of you can just comment about your
25 concerns.

1 So, obviously, your purpose here today, we're
2 now in our second topic area, and that's the
3 Governor's executive order.

4 And our real interest is, the implications
5 for the various boards of election across the state,
6 polling places, et cetera.

7 And so we'll let Mr. Valentine go first.

8 TODD VALENTINE: Yeah, as you indicated,
9 I had submitted written testimony to you, and I'll
10 just highlight a couple of points.

11 There's really two points we want to make,
12 which is what was already -- as was just previously
13 discussed by the parole officers.

14 First of all, the Executive Order 181, it was
15 not well thought out through.

16 And the second thing, is that we're starting
17 to see a lot of pushback from the schools, and
18 that's going have large election implications.

19 I mean, there were problems from the outset.

20 As you noted previously, the executive order
21 was issued on April 18th, but it wasn't clearly
22 until a month later, in May, that we actually had
23 some direction from the Governor's Office, through a
24 phone call, that they would be announcing the
25 release of the pardons in the upcoming weeks.

1 And on that call they relayed that they would
2 have a plan, where the county boards could look up
3 the information as to whether a parolee had been
4 granted the pardon or not.

5 But there were still a lot of questions that
6 we had.

7 And, specifically, they mentioned about the
8 issue with regard to sex offenders that have
9 limitations on schools that might be poll sites.

10 They indicated that, at that time, there
11 would be no granting or change from the conditions
12 that had already been indicated on the paroles.

13 As was seen later on, the permission process
14 that was already existed in statute was then
15 augmented or changed, with limitations on the time
16 frame, that were not as part of the statute as we're
17 concerned.

18 But none of that information was relayed to
19 either state board of elections, or for us to filter
20 down from the county board of elections.

21 And the revocations of the pardons continue
22 to be an issue.

23 As we've noted, that we asked for who would
24 be granted these paroles, and we did ask what
25 conditions might be, or what review was undertaken.

1 They indicated, nothing -- no formal review,
2 no standards, (indiscernible) pardons.

3 But then when the revocations began, we asked
4 the same question: What is the basis for the
5 revocations, and what is going to be the process in
6 revoking these?

7 Because without this not having been a
8 thought-out process, that, as for many voting
9 rights, those are discussions that take place
10 publicly.

11 Those are the discussions that take place
12 during a statutory debate, during legislative
13 debate; those ideas are floated and discussed, quite
14 often, for lengthy periods of time as we know.

15 But this was -- arisen, and then by fiat, was
16 issued out to the counties, and through us to the
17 county boards.

18 And this is the same thing with the
19 revocations; we've been getting the information, and
20 we've been passing that along to the county boards
21 so they can -- if they have those that are
22 identified in there.

23 But, again, there's no process for revoking a
24 pardon once it's been issued.

25 And, until this time period, it was extremely

1 rare to ever see a pardon issued for a vote -- for
2 voting. And, quite honestly, in my 20 years'
3 experience, I had never heard of it.

4 So -- and, then, to have it all done,
5 thousands issued in fell swoop, while that's within
6 the law, it was also a drastic change in the
7 process.

8 So we were able to put together a procedure,
9 that we could then try to advise the county boards
10 as best we can. And we're still getting questions
11 to this day.

12 But that's now where we're starting to see
13 the pushback from the schools that, you know, in
14 this state, you know, one of the things that you
15 don't think about is, you know, the poll sites that
16 we have, statewide, just under 20 percent of the --
17 our polling places are schools statewide.

18 SENATOR GALLIVAN: I'm sorry, how many?

19 TODD VALENTINE: 27 percent of our polling
20 places, statewide, are schools. And that number
21 increases dramatically as you go -- the further
22 south you go.

23 You know, Nassau County is 49 percent.

24 Suffolk County is 53 percent.

25 You know, the New York City numbers are quite

1 high as well. 70 percent for Queens. 69 percent
2 for Staten Island. 65 percent for The Bronx. And
3 46 percent for Brooklyn.

4 Manhattan is a little lower at 37 percent,
5 but they have a lot more buildings to deal with.

6 But that's why, one of the things I was
7 asking to have, you know, at least two county boards
8 here with me, were Dutchess and Rensselaer, was that
9 they are seeing that experience firsthand; that when
10 they go to put these poll sites into place, you
11 know, that's over 1400 poll sites that we're now
12 getting questions about.

13 And, quite honestly, from an elections'
14 perspective, we're just not prepared for that
15 change.

16 And while the statute can force a public
17 building to be used as a poll site, without the
18 assistance or the help from those buildings, they
19 can make it very difficult to be a poll site.

20 You know, one thing that we wanted to touch
21 on, that we had -- that wasn't raised earlier, is
22 that, you know, New York State is not a permanent
23 voting-bar statement.

24 Our -- we're not -- other states do
25 permanently bar those that are convicted from --

1 felons from registering to vote.

2 We are not one of those states, we have never
3 been one of those states.

4 You are allowed to register to vote once
5 you've completed your sentence. That's the
6 operation of the statute.

7 And parole is a part of your sentence. And
8 once you have completed that, you're eligible to
9 register to vote, so we've never done that.

10 But what this does is change that dynamic of
11 that process, that I don't believe was ever
12 anticipated for in the statute. And it certainly
13 wasn't publicly debated.

14 And, quite honestly, the timing, we talked
15 about April for the parole board.

16 What you need understand is where we were at
17 in April.

18 In April, that was when candidates were
19 filing to get on the congressional ballot, so we're
20 in the middle of the election cycle.

21 May, we're a month out from the June Primary.

22 I mean, that's right around the
23 voter-registration deadline for the June Primary,
24 when directions come out.

25 And as the parole officer union

1 representatives testified earlier, that's when they
2 were given the directions to immediately release
3 these.

4 Whether that's coincidence or not, I don't
5 know, but that's a fact.

6 You know, the timing of that is tied with
7 events that occurred throughout the year, tied to
8 the election.

9 And, you know, whether we like it or not,
10 that's the way it is.

11 But, you know, certainly, the confusion is
12 there. It's still there today. It's an issue we're
13 dealing with.

14 And, now, I don't know if Erik --
15 Commissioner Haight wants to go first and talk a
16 little bit about his experience, and then
17 Commissioner Schofield can go after that?

18 JASON SCOFIELD: Alphabetical.

19 TODD VALENTINE: All right.

20 ERIK HAIGHT: Thank you, Senators.

21 You know, I believe Dutchess County is a
22 microcosm of New York.

23 Depending on who you ask, we're either
24 upstate or downstate. It depends on which way is
25 north or south.

1 But, we have 2 cities and 20 towns. Some
2 areas are very rural, some areas are suburban, and
3 some areas very urban.

4 So of our 105 poll sites, 22 of them are in
5 schools. And some of those places we just simply
6 don't have alternatives.

7 But, where we do have alternatives, those
8 alternatives are usually churches with day-care
9 centers.

10 So, as far as dealing with the confusion of
11 the executive order, we have a March 1st deadline of
12 setting poll sites, well before the executive order
13 was established.

14 In addition to the confusion about how this
15 was rolled out, we don't know really how to deal
16 with the revocations.

17 As was mentioned, there have been 646.
18 A handful of those have been in my county.

19 So we have to go through our database and
20 find those revocations, and cancel those folks'
21 registrations.

22 The parolees themselves are confused.

23 They come in on election day to speak with
24 the duty judge if their name is not in the poll
25 book.

1 And, the duty judges themselves are confused
2 about whether to give a court order for the person
3 that day.

4 So I think some direction should be offered
5 to the office of court administration for the duty
6 judges that are working on election day.

7 As an association, the Elections
8 Commissioners Association of New York, well before
9 the executive order was issued, we've been
10 requesting that schools make it a non-student day, a
11 superintendents' day for hearings, so that the
12 general population isn't intermingling with the
13 student population on election day, because, very
14 often, schools are simply just a necessity because
15 there's no other public buildings available.

16 In addition, the schools, for their own
17 elections, utilize our lists -- our voter lists.

18 So, not only for elections that we
19 administer, elections that the school clerks
20 administer will have a similar sense of confusion as
21 to who's available to vote, and who isn't.

22 So just in my county alone, based on the
23 State's website, there's 691 school districts
24 outside of New York City, 2 of which in Dutchess
25 County are 10th and 27th, as far as Wappinger and

1 Arlington school districts as the largest districts
2 outside of New York City.

3 They make up almost all of our schools that
4 we utilize as websites -- as we utilize as poll
5 sites.

6 And as Mr. Valentine mentioned, we get
7 significant pushback from our poll-side partners.

8 And there's always a rub between their civic
9 duty as not-for-profit entities, and their duty to
10 keep their students safe.

11 So that's a conflict that was made even worse
12 by the rollout of this executive order.

13 I think we all knew that, in 2018, there
14 would be a gubernatorial election. And it would
15 be -- it would have been helpful had this been
16 rolled out in 2017, versus 2018.

17 So, in short, as election commissioners and
18 administrators of the election, it's our job to simply
19 administer the elections.

20 While we may have our own opinions on whether
21 this should have been done or not, the fact is,
22 we're doing our best to comply with the law and
23 administer the elections the best we can.

24 And that's true for every county in the
25 state.

1 JASON SCOFIELD: Thank you.

2 Rensselaer County is having the same issues
3 as Dutchess.

4 We have 2 cities and 14 towns.

5 Some of our schools in the more rural part is
6 really the only place that we could have the
7 election.

8 Town Hall just isn't big enough for the
9 entire town to come in and vote.

10 One of our school districts in one of the
11 rural areas does not want us anymore. We've had to
12 use our own highway money to upgrade the firehouse
13 and ambulance to be used as a polling place.

14 Erik mentioned about making it a non-student
15 day for schools.

16 You can't do that every time there's a
17 Primary Election or a Special Election.

18 I served 15 years on the (indiscernible)
19 school board. The last thing parents want is a day
20 off for their students when they have to work.

21 Also, where do students go on those days?

22 Well, they go to the Boys and Girls Club, or
23 other community -- local town community areas, which
24 also use polling places now.

25 So -- or the libraries, and things like that.

1 Housing areas and -- housing projects, we
2 have our polling places there in some of them.
3 Again, it's just a huge area where someone could
4 just walk in. You wouldn't know if he lives there,
5 or if he's a voter, or what his situation is.

6 So we are experiencing a lot of negative
7 feedback from people who do not want us, and we're
8 running out of barriers to go to, because we have to
9 meet the rigorous handicapped and disabled demands
10 of our -- for our -- the disabled community to have
11 the rights to vote too.

12 So, it's been interesting process, and we are
13 continuing to work to try and deal with these
14 issues.

15 SENATOR GALLIVAN: All right. Thanks.

16 So the process, Governor announces it in
17 April. They reach out in May. A lot of confusion,
18 things that you had to deal with on the fly.

19 If we presume that the executive order
20 continues, many of those things -- it's a problem
21 for the first year.

22 Fair to say?

23 I'm just taking this from your testimony.

24 But, going forward, if the executive order
25 continues, or if the law was to change, the issue

1 that you see is the availability of polling sites,
2 the school districts, is that something that would
3 continue to raise issues --

4 TODD VALENTINE: Well, that's --

5 SENATOR GALLIVAN: -- concerns from school
6 boards -- concerns from schools --

7 TODD VALENTINE: Yes --

8 SENATOR GALLIVAN: -- (indiscernible)?

9 TODD VALENTINE: -- well, schools.

10 And as Commissioner Schofield pointed out, I
11 mean, it's not the only site where -- and as the
12 parole officers previously testified, that there are
13 other spots that are not covered by the permission
14 process that sex offenders have, where the parolees
15 are now going.

16 And they're -- so it encompasses not just
17 school districts, but there are other sites where
18 children do congregate in the afternoons and in
19 evenings that are also poll sites, and other parts
20 of the building where the voting is not occurring.

21 So that's going to continue to be a problem.

22 You know, but, looking forward, or, perhaps
23 lookings backwards, you know, there are other, you
24 know, other -- there may be other alternatives that
25 we need to consider.

1 You know, one of the options, obviously,
2 that's not available is absentee balloting.

3 The Constitution requires you to be out of
4 the state. And that would take a change in the
5 Constitution.

6 And parolees, generally, are restricted to
7 the county where they are, so they can't leave to
8 become absent to go vote.

9 So, you know, some other type of special
10 ballot might need be addressed, because even as the
11 parole officers indicated, a number of the sex
12 offenders may not want to go to the schools, because
13 they're trying to avoid them anyway for their own
14 privacy sakes. They don't want to seek the
15 permission process.

16 So, something needs to be thought about,
17 well, "what are the alternatives?" because nobody
18 wants to deny somebody who's earned the right to
19 vote, the ability to do that vote.

20 But when you put in obstacles or barriers
21 that make it difficult, and the sex offenders are an
22 example, they have to go through a permission
23 process, while maybe they've earned it, but they're
24 afraid to use it.

25 SENATOR GALLIVAN: So we get -- we -- the

1 process is the process, confusing, whatever it may
2 be.

3 Primary Day, were there any problem areas
4 that you were aware of at any of the sites, or, any
5 problems that crept up with this specific issue at
6 any polling site, if you're aware of it?

7 JASON SCOFIELD: In our county, none that I'm
8 aware of with the parolees voting in the Primary.

9 There was issues with, school coming back,
10 schools saying, you know, why is the Primary on
11 Thursday?

12 We scheduled our welcome back for parents and
13 families to meet their teachers, things like that.

14 But we did not have any parole issues, no.

15 TODD VALENTINE: And we don't keep -- and we
16 don't keep a record -- we don't know who the --
17 quite honestly, the county boards don't know who the
18 parolees are. All they know them as "registered
19 voters."

20 So they -- you know, and if they are a
21 registered voter, they come in, they're not going
22 identify themselves as a parolee, or, they're not
23 going to identify themselves of having gotten
24 permission to be in a school where they otherwise
25 wouldn't normally have been.

1 So they're not -- the county boards are not
2 going to notice that.

3 SENATOR GALLIVAN: Would the state board be
4 aware of that?

5 TODD VALENTINE: The state board is not aware
6 of that either.

7 SENATOR GALLIVAN: So it would just be -- so
8 now, then, once they get the pardon, the parole
9 officer notifies them that they have that
10 conditional pardon for that purpose, they make
11 application according to existing law?

12 TODD VALENTINE: Right. The --

13 SENATOR GALLIVAN: And it's just the same
14 process?

15 TODD VALENTINE: -- right.

16 It's the school -- that's an existing process
17 that's been in law for a number of years now.

18 SENATOR GALLIVAN: Same as everybody?

19 TODD VALENTINE: And used to this amount,
20 but -- I'm sorry, what?

21 SENATOR GALLIVAN: Same as anybody who
22 registers to vote?

23 TODD VALENTINE: Yeah, they're treated as any
24 other registered voter. And you would -- and
25 there's no mark in the poll book. You don't know

1 who they are. You don't know -- there's nothing of
2 that.

3 But, the concern has been raised.

4 And I know that there have been other -- you
5 know, police officers that have raised it.

6 You know, as we've heard earlier today, you
7 know, they're worried about the security.

8 And I know, in Nassau County, they had a
9 discussion with the Nassau Police Department about
10 what schools were used, and where they were --
11 where -- where possibly these parolees may go.

12 They don't have answers for that.

13 So even if they wanted to provide security
14 where there might be an issue, they have no idea
15 where they are.

16 Now, I'm not advocating that they be
17 identified for them. That's not fair.

18 But on the other hand, there still needs to
19 be some balance, or at least a public discussion, as
20 to when a voting right is now being restored to
21 somebody, you know: Is this the appropriate time?
22 Should there be a small waiting period?

23 You know, the parole officers' union
24 recommended, perhaps, a 90-day waiting period.

25 I don't know.

1 We don't deal with the --

2 SENATOR GALLIVAN: But that would be separate
3 from --

4 TODD VALENTINE: -- but that would be
5 separate and apart from us.

6 SENATOR GALLIVAN: -- what the board of
7 election's responsibility is; right?

8 TODD VALENTINE: That's not our obligation.

9 All we know is, they're coming, and we need
10 to register the voters. And that's what they're
11 prepared to do, and that's what they have been done.

12 Whether they voted or not, we don't have that
13 record.

14 Presumably, some did, some didn't.

15 SENATOR GALLIVAN: Because you -- that would
16 be because you don't know --

17 TODD VALENTINE: We don't know.

18 SENATOR GALLIVAN: -- who makes up this
19 population?

20 TODD VALENTINE: Right.

21 SENATOR GALLIVAN: I only have one other area
22 for question.

23 You mentioned the revocations.

24 Are you notified -- are the various boards --
25 who's notified if there are revocations?

1 Does it go to the State first, and then
2 farmed out? Or is it -- does it go directly to the
3 county boards?

4 TODD VALENTINE: That comes to the state
5 board. Then we provide that to the county boards.

6 And about once a month we'll get a list of
7 the next round of revocations. And then we send
8 that to all of the county boards.

9 While it -- it indicates a county -- what we
10 believe to be the county of residents. And,
11 presumably, the parolee has not moved. But that
12 provides some information for the county boards to
13 then look up to see, if they had been registered to
14 vote, that they then need to turn around, as
15 Commissioner Haight said, to cancel them, or, they
16 really don't need to do anything, because if they
17 didn't come in to register to vote, the revocation,
18 you know, it doesn't mean anything. They're still
19 under a felony conviction.

20 So, when they do come in to register at some
21 point in the future, they'll see that under the
22 current system for looking parolees up.

23 SENATOR GALLIVAN: Okay. Thank you.

24 SENATOR AKSHAR: So you don't know how many
25 of the actual 30,000 people who got pardons voted?

1 TODD VALENTINE: We do not.

2 SENATOR AKSHAR: You have no idea?

3 You just know number of people who have been
4 revoked?

5 TODD VALENTINE: Correct.

6 SENATOR AKSHAR: Right?

7 But when is the poll book authored?

8 I should know this, I apologize.

9 TODD VALENTINE: Well, the poll book is when
10 you go to sign in. And all that indicates is --

11 SENATOR AKSHAR: No, when does it -- I'm
12 sorry. I should have articulated better.

13 When is that book prepared to send to the
14 polling locations?

15 TODD VALENTINE: Well, that will vary, but
16 it's usually about two weeks ahead of the elections,
17 depending on the size of the election.

18 SENATOR AKSHAR: Erik, you make a good point.

19 We've known for a very long time there was
20 going to be a gubernatorial race.

21 Right?

22 One would think that we could have figured
23 this out, you know, rather than -- you know, much
24 earlier, rather than just a few months before the
25 election took place.

1 Smells of political posturing to me, but
2 that's just me.

3 That's all I have, Chairman. Thank you.

4 SENATOR GALLIVAN: Thank you again.

5 We appreciate your patience and your
6 willingness to be here today.

7 JASON SCOFIELD: Thank you, Senators.

8 TODD VALENTINE: Thank you.

9 JASON SCOFIELD: Thank you.

10 SENATOR AKSHAR: Thank you, guys.

11 SENATOR GALLIVAN: Our next panel will be
12 from the New York State Council of School
13 Superintendents, Robert Lowrey, deputy director;

14 And from the New York State School Boards
15 Association, Julie Marlette, director of government
16 relations.

17 Oh, that was quick.

18 We need just a moment.

19 (Pause in the proceeding.)

20 (The hearing resumed.)

21 SENATOR GALLIVAN: Alphabetical? Right to
22 left? Your choice.

23 Thank you for being here.

24 Can you, though, just before you testify, and
25 we do have your written testimony, feel free to

1 paraphrase if you'd like. But the entire written
2 testimony will be entered into the record.

3 But could you just, you know, tell us your
4 names.

5 We can see them, we know that, but, a little
6 bit about the organizations you represent and who
7 your membership is.

8 ROBERT LOWREY: I'm Robert Lowrey, deputy
9 director of the New York State Council of School
10 Superintendents.

11 We have, probably, represent 99 percent of
12 the superintendents across the state: BOCES
13 superintendents. Regular school-district
14 superintendents. Most of the big five cities. Some
15 specialized school districts. We also represent
16 many assistant superintendents.

17 A few years ago we asked superintendents
18 across the state to tell us, via email, what they
19 most wanted the public to know about their work as
20 superintendents.

21 We got a lot of eloquent responses about the
22 rewards and challenges of being a superintendent,
23 but one was especially poignant.

24 A superintendent wrote, "Every morning I wake
25 up thinking, can we keep everyone safe today?"

1 It was actually Mary Beth Fiori, one of
2 Senator O'Mara's superintendents.

3 And every superintendent feels an obligation
4 to every family to leave nothing undone that could
5 assure the safety of their children while at school.

6 And that sense of obligation extends to
7 protecting other adults as well.

8 And that sense has been heightened in the
9 aftermath of the Parkland tragedy, and other
10 tragedies.

11 In the months since, superintendents boards
12 and their partners in law enforcement have been
13 reexamining their practices, and their buildings,
14 and trying to reassure families that no deficiency
15 is being overlooked and no reasonable improvement
16 will be dismissed.

17 We've done a survey, and we find that
18 districts have been responding.

19 89 percent say they have done at least one
20 thing to improve safety since Parkland.

21 97 percent said they had done things
22 previously.

23 We also found that 82 percent of
24 superintendents said that responding to these
25 community concerns about safety is a significant

1 problem.

2 I think there are two things going on there.

3 One is, just ability to pay for the
4 improvements, and that's common in rural districts.

5 And also just, in some cases, it's -- it may
6 be that the district leaders feel we've done
7 everything we reasonably can to improve safety, but
8 they still feel they need to show the community that
9 they're doing something more.

10 All this provides some context for
11 understanding how we as a superintendents
12 organization have to think about the issue of
13 parolees voting in schools.

14 In the runup to the Primary Election, there
15 were many media reports about the prospect of
16 paroled sex offenders voting in schools.

17 You've heard a bit about how the process is
18 supposed to work.

19 The way we understand it is:

20 First the parole officer grants his or her
21 permission.

22 The parolee is required to disclose the route
23 that he or she would take to reach the school, and
24 it is instructed to leave the school promptly.

25 If the parole officer approves that, then the

1 department of correctional services sends a letter
2 to the superintendent for a final decision on
3 whether the parolee should be allowed to vote in the
4 school building.

5 In the days and weeks leading up to the
6 Primary Election, not a single superintendent
7 contacted us about this issue, either to advise us
8 of a request or to seek our guidance.

9 We contacted the department of corrections
10 two days before the Primary, and learned that there
11 had been no more than 10 parolees who had made
12 requests to their parole officers, and, at that
13 point, only one of which had been approved.

14 In the weeks since, we've informally polled
15 groups of superintendents.

16 We haven't found any who actually received a
17 request, nor were they aware of any colleagues who
18 had done so.

19 It's possible that there will be more of
20 these requests with the General Election.

21 Having said all of this, the process that --
22 that's prescribed in law really puts superintendents
23 in an awful position.

24 I've explained the great sense of obligation
25 that each superintendent feels for assuring the

1 safety of all children, and how that's been
2 amplified since Parkland and other tragedies.

3 So put yourself in the position of a
4 superintendent.

5 Whatever assurances may have been given,
6 whatever your personal beliefs, how would you
7 explain to your board and your community that you
8 had given explicit permission to a convicted sex
9 offender to enter school grounds?

10 We haven't found any superintendent who said
11 they would be willing to do that.

12 So we would hope that paroled sex offenders
13 seeking to exercise the right to vote would be
14 encouraged, directed, or even required to vote by
15 absentee ballot, and we understand that's actually
16 common practice now.

17 There's some other points we'd make about
18 voting and safety of school children.

19 We do support Senator Phillips' bill to give
20 schools the authority to decline to serve as polling
21 places.

22 We've really seen in the last year or more,
23 even before Parkland, a greater sense of anxiety
24 among parents about -- about election days.

25 Also, we, on the other hand, strongly oppose

1 legislation to require school districts to not
2 conduct classes on election day.

3 Not all schools are used as polling places,
4 and there are large areas where not a single school
5 building is used as a polling place.

6 It doesn't make sense to require all of them
7 to close.

8 Also, in some years, for example, when
9 Labor Day falls on September 7th, it would be
10 difficult for districts to fit in the 180 days of
11 required-instruction session days in order to
12 receive full State aide.

13 And in some areas, that challenge has been
14 heightened as they've grown more diverse.

15 We have districts that are now recognizing
16 the Muslim holiday of Eid, and the Hindu holiday of
17 Diwali. Those districts have a special challenge of
18 trying to fit in all of the required instructional
19 days.

20 Joseph Erardi was superintendent of the
21 Newtown public schools when 20 children and
22 6 employees were murdered at that district
23 Sandy Hook Elementary School in 2012.

24 He spoke at our fall conference last week,
25 and he told our members, "Every school leader needs

1 to own school safety, not to delegate it."

2 Given that school superintendents are
3 accountable for keeping all school children safe,
4 it's not reasonable to expect that they could
5 explicitly grant permission to paroled sex offenders
6 to vote on school grounds.

7 Generally, they will not be in any position
8 to assess the risk that any one individual might
9 impose.

10 And because superintendents are accountable,
11 together with their boards, they should be allowed
12 discretion to determine whether schools should be
13 closed on a voting day, and whether voting on school
14 grounds on any day can be accommodated without risk to
15 school children.

16 Thank you for the opportunity to testify.

17 JULIE MARLETTE: Thank you.

18 Now my light's not coming on.

19 Is that better?

20 SENATOR GALLIVAN: Yes.

21 JULIE MARLETTE: Good afternoon.

22 And I just want to echo my colleague's thanks
23 for having us here today.

24 I really welcome the opportunity to speak to
25 you briefly.

1 I'm not going to read my written comments.
2 I'll trust that you'll look at them later. And,
3 certainly, you know how to reach me if you need to
4 follow up.

5 But thought it might be a more useful use of
6 our time together today to maybe just address some
7 of the things I have heard in my time here this
8 afternoon, and then leave an opportunity for you to
9 ask any questions that you might have.

10 I would start by thanking, not just the two
11 of you and your colleagues who had to depart
12 already, but, really, offer our heartfelt thanks to
13 Senator Phillips.

14 Senator Phillips, joined by
15 Assemblyman Russo, has introduced legislation, as
16 Bob indicated, that would allow school districts the
17 opportunity to decline their designation as a
18 polling place.

19 While I know that may seem an extreme
20 measure, it's something that's a significant
21 priority for school districts around the state.

22 My organization represents about 90 percent
23 of all of the school districts in the state of
24 New York.

25 And this is actually one of our official

1 priorities that was actually voted on by our
2 delegates at our delegate meeting annually in 2014,
3 and we've been seeking legislative support for it
4 ever since.

5 I may have a slightly different perspective
6 than some of the people you've heard from today who
7 have focused on, perhaps, concerns caused by the
8 recent executive pardons.

9 From the perspective of my members, this is a
10 situation that has always existed.

11 This is just a situation that got more
12 attention as a result of the executive pardons.

13 And so I actually welcome the opportunity to
14 have it now on more people's radar, and, perhaps,
15 engage more people in the conversation about what we
16 can do to keep our students safe.

17 I know it was referenced by the people
18 speaking directly before me, the same issue Bob
19 raised, about closing on election days as an
20 alternative option to allowing districts to not be
21 used as polling places.

22 I want to echo Bob's opposition to that
23 proposal.

24 We understand that it can be complicated to
25 find a new location, and that it's not maybe the

1 easiest solution.

2 But, ultimately, for all of the reasons he
3 raised, as well as, quite frankly, the increasing
4 number of extreme weather days we face, it's harder
5 and harder to find 180 days in the allowable time
6 frame that you need to conduct session to maintain
7 your State aid.

8 In addition, I would offer this as an
9 alternate perspective:

10 The job of the board of education, in
11 partnership with our the superintendents and
12 business administrators, is not to run elections.

13 It's to run schools, and provide a safe and
14 secure learning environment.

15 I think that's what we should just be allowed
16 to focus on.

17 Let the board of elections be in charge of
18 elections, but, perhaps, not ask us to balance our
19 calendars and our children's both safety and
20 educational experience against the access provided
21 by our school buildings.

22 A final thought that I would just share is,
23 I know that I don't have tell either one of you, or
24 any of your colleagues, the -- both steps that have
25 already been taken, nor the steps that I'm sure

1 you'd like them to be able to take, to make school
2 buildings more secure.

3 Your Conference put forth a more than
4 comprehensive package of school-safety measures this
5 year, that you passed, that dealt in many ways with
6 the hardening of school buildings, with the
7 increasing of school security.

8 Though those weren't enacted into laws, many
9 of those were wonderful ideas that I think many
10 districts would like to take advantage of with or
11 without State aid.

12 It seems there to be a bit of cognitive
13 dissonance to suggest that on two or three, or
14 sometimes four or five or six days a year, depending
15 on how many Special Elections, Primary days, Special
16 district elections, and other reasons you might be
17 designated as a polling place, that you would,
18 essentially, be asked to suspend those safety
19 measures to let people into your building in a
20 somewhat unfettered manner.

21 And that's true, unfortunately, whether
22 they're out on parole, whether they've been a
23 convicted sex offender, or whether they've not,
24 things can happen.

25 We've had reports from districts who have had

1 incidents that required a lockdown on an election
2 day.

3 People who are there to vote or who work as
4 poll workers do not know what the lockdown
5 procedures are for a school.

6 It just doesn't make sense, as we move
7 forward and look at the safety measures that are
8 needed, to continue to insert external people into
9 the building when children are there.

10 And we can't afford to close every time those
11 external people need to be there.

12 And I close by just wanting to applaud the
13 woman from the Sexual Assault Coalition who raised,
14 I think, a really important point that I will
15 reiterate, though it's not in my testimony.

16 For every perpetrator out there that's on a
17 list that you can give to a superintendent, there's
18 a survivor that never reported, and her
19 perpetrator's not on any list, and those people are
20 in our buildings too.

21 SENATOR GALLIVAN: Excellent point. Thank
22 you.

23 So the larger issue is, I think you put it
24 well, you're in the education business, not the
25 election business.

1 So the larger issue is, the school safety as
2 it relates to elections in general, any election.

3 JULIE MARLETTE: Correct.

4 SENATOR GALLIVAN: An imposition on the
5 calendar, and I guess, really, an intrusion into
6 your existing procedures.

7 Commissioner Annucci's written testimony, you
8 had -- Bob, you had given some statistics that you
9 were aware of, one out of ten.

10 Commissioner -- these are probably updated
11 numbers for you, but, Commissioner Annucci's written
12 testimony said that 2 out of 11 was the number of,
13 you know, the registered sex offenders that applied,
14 and ultimately were granted permission.

15 I don't know if they voted, or didn't.

16 Are either of you aware of any school
17 districts that made special provisions?

18 I know of one school district out on
19 Long Island that canceled afternoon activities.

20 Are you aware of anything else like that
21 across the state?

22 ROBERT LOWREY: The only one that I'm aware
23 of is, well, the town on Long Island.

24 SENATOR GALLIVAN: I didn't even know the
25 name of it.

1 That was it?

2 ROBERT LOWREY: Yes.

3 SENATOR GALLIVAN: Okay.

4 All right. Thank you.

5 Senator?

6 SENATOR AKSHAR: Any complaint -- you had
7 mentioned, Bob, that you didn't hear from any of the
8 superintendents directly about issues that arose.

9 Did either of you, or anybody that you
10 represent, hear from the community, and the
11 community complaining about, you know, the new
12 process?

13 ROBERT LOWREY: Not really.

14 Again, we saw that, you know, in Levittown,
15 apparently, members of the community, parents, were
16 sufficiently concerned, and, you know, expressed
17 that concern, that the district decided to cancel
18 evening activities in the school.

19 But that's the only thing that I am aware of.

20 SENATOR AKSHAR: Thank you.

21 JULIE MARLETTE: I'm not aware of anything in
22 addition to that, except the more broader question
23 of, do we make the decision to close or not?

24 SENATOR AKSHAR: Okay.

25 I'm good.

1 SENATOR GALLIVAN: Thank you for your
2 testimony and your patience.

3 SENATOR AKSHAR: Thank you so much.

4 SENATOR GALLIVAN: From the
5 Osborne Association, Elizabeth Gaynes, president and
6 CEO.

7 You really need to be thanked for your
8 patience.

9 ELIZABETH GAYNES: I was actually going to
10 ask you, how you had sit here for five hours, and
11 haven't (speaker whispering/inaudible)...

12 [Laughter.]

13 SENATOR GALLIVAN: I'm getting close right
14 now.

15 That's not part of the record.

16 ELIZABETH GAYNES: I should have brought
17 energy bars.

18 SENATOR GALLIVAN: Funny that you should say
19 that. I was just given one.

20 But I'm good for right now.

21 So, thank you -- all joking aside, thank you
22 for your patience.

23 We've got you placed here because I -- from
24 an earlier conversation, I had presumed, and that
25 you would want to talk about -- provide testimony

1 for both topical areas.

2 So, this is truly a last but not least.

3 And from my time on the parole board, and in
4 my current position, I'm aware -- certainly aware of
5 the work the Osborne Association does.

6 And I know you do good work in the community
7 against incredible odds, and so I just want to
8 acknowledge that, and thank you for that.

9 ELIZABETH GAYNES: Well, I won't say a lot
10 about the election because I think you just heard a
11 lot.

12 I don't think people should ever have their
13 voting rights taken away.

14 Many states, and most countries, don't.

15 And to me, it's the obligation of the citizen
16 to vote.

17 And I'm more concerned, frankly, with how few
18 people on parole registered and voted than about
19 anything else in that process.

20 But I also realize, when I try to go pick up
21 my 8-year-old granddaughter at her school, I need to
22 produce ID, do all of those kinds of things.

23 And so, to me, I agree with the idea of
24 having anybody walking in there.

25 So -- but I would like to see us -- and by

1 the way, the people that were given permission to
2 vote were told to vote between 7 and 9 p.m. There
3 are generally not students there at that time.

4 So I -- I think, going forward, does not have
5 to continue to be an issue.

6 I'm obviously more concerned about the other
7 points.

8 And, so, not burdening you with what I have
9 in my testimony, because I am sure you'll be up all
10 night reading it.

11 So I want to focus on a couple of things.

12 One, particularly things that were said that
13 I think are not accurate.

14 Certainly now, I know Mr. Ferguson hasn't
15 been there for a while. He seemed concerned that
16 the COMPAS was controlling.

17 And I also have problems with algorithmic
18 risk scores. But the reality is, that the parole
19 board, as far as I can tell, would be releasing many
20 more people if they were taking it into account.

21 Virtually, all of the old -- we have a
22 program called "Elder Reentry Initiative" for older
23 adults in the prison system, and many of them are
24 there for years and years. That's how they got to
25 be old in the system, serving life sentences on

1 serious cases.

2 And, most all of them have very low risk
3 scores on COMPAS, and most of them are not being
4 released.

5 So, the notion that it's controlling
6 anything, or that it's that much work for the
7 deciders to have to explain why they departed from
8 it, I have probably read a thousand decisions and a
9 thousand transcripts over the course of the last few
10 years.

11 It is gratifying that, more recently, parole
12 commissioners have been actually giving people an
13 opportunity to speak about what they've
14 accomplished, to really think -- talk about their --
15 what it meant for them to take responsibility and
16 express their remorse, and their efforts at doing
17 that.

18 In the past, generally, and particularly
19 Commissioner Ferguson, started with the crime, and
20 spoke about, and gave very little room to speak
21 about anything else.

22 It is a departure with the new regulations,
23 that people are being asked about what they've
24 accomplished in prison.

25 I saw somewhere that -- where parole

1 commissioners actually asked people, you know, Tell
2 me what you're proud of.

3 It is a way of, one, putting people at ease
4 so that they can share, which is really important,
5 because this video-conferencing business as a way of
6 doing parole hearings, which I guess they don't have
7 much choice with not a fully staffed board, it's
8 terrible.

9 As I said in my -- my granddaughter thinks
10 I'm a monster on FaceTime.

11 So, I can sort of imagine what this is like.

12 And then remember, that most of these older
13 folks in prison who are now in front of this screen,
14 you know, they went to prison before they wore these
15 things. They don't get the technology. They're
16 terrified by it.

17 We had a guy who was denied parole because he
18 seemed aggressive in the hearing, over the board,
19 was because they had pushed him -- he was,
20 typically, was in a bed. And they had put him in
21 this chair, that had him sort of forward. And how
22 he looked to the parole commissioners was, like,
23 this (motioning).

24 Plus, he had like a Tourettes, and he kept
25 going like this (pounding on table).

1 And there was nothing in the record that
2 explained that his health was such, that, of course,
3 he looked like a -- it was terrifying.

4 In that particular case, and I really credit
5 this -- the counsel to the parole board, we've been
6 able to point out that when people with disabilities
7 are being -- going before the board, that they're
8 entitled to a reasonable accommodation, which
9 sometimes includes having a social worker putting
10 them on the calendar earlier in the morning, giving
11 them some extra time.

12 But, mostly, the board actually isn't even
13 aware of the fact that this person is in -- has a
14 cognitive impairment, or some of those other things.

15 We're focused on this because we're working
16 mostly with the older adults.

17 And it's sort of in the file there,
18 somewhere, but it's not noted --

19 And I know, Senator Gallivan, you can
20 remember this.

21 -- it's, like, there's a million pieces of
22 paper there, and it doesn't exactly come to the top.

23 SENATOR GALLIVAN: Not quite a million, but a
24 lot.

25 ELIZABETH GAYNES: There's a lot, there's a

1 lot.

2 And, certainly, for the ones we're talking
3 about, the older adults who have been in for 25,
4 30 years, and, look, you're not -- nobody is in for
5 30 years for singing too loud in church. These are
6 tough cases.

7 And I appreciate this notion about, you know,
8 what the victims are given as an opportunity.

9 But, first of all, should be talking to the
10 DAs, because they are -- they're making agreements
11 on pleas, which allow people to go to the board, but
12 they do not explain to victims.

13 They say: Oh, I got you a life sentence.
14 I got you 25 years.

15 And they are actually not explaining that,
16 What I really did was, I got this guy, who's going
17 to be able to go -- legally, is entitled to be
18 considered for release. And if he meets the
19 standards, will be released after five or twelve, or
20 whatever that number is.

21 And then victims are numbed and surprised and
22 angry, because this seems to be news to them, that
23 now they think the person is being released early.

24 Person's not being released early. That was
25 the sentence.

1 And if the board is doing its job, and
2 considers whether the person has met those
3 requirements, that's the sentence.

4 A lot of what I heard today makes it seem
5 like the parole board is allowed to resentence
6 people.

7 It is not.

8 There's a reason why the regulations say what
9 they are.

10 And by the way, I do not think that to --
11 Mr. Ferguson is correct that the information is
12 not available.

13 We get this information routinely about
14 releases, and things like that. And I'm sure you
15 could too.

16 It's also not true that the victims and the
17 DAs and the judges are not notified.

18 They actually are.

19 My goddaughter works for the Manhattan DA's
20 Office, and she seems to spend her life being
21 assigned to write letters every time somebody from
22 that office is up for parole. And they are given an
23 opportunity to weigh in, she said, sometimes in
24 cases that happened before she was born.

25 And I have a colleague who was chief

1 assistant in that office for many years. And
2 I said, Leroy, before you write these letters,
3 opposing parole for people that you have had no
4 contact with for 20 years, don't you think you
5 should find out what they've done in that time?
6 Because it seems that you always send the same
7 letter, opposing parole.

8 And he said, No, Liz. We send -- we have two
9 letters: One to oppose, and one to strongly oppose.

10 And so you can imagine that sometimes the
11 parole board isn't taking it as seriously as it
12 might because they're getting boilerplate letters,
13 opposing parole in, virtually, every case.

14 The judge is also entitled. But, of course,
15 for some of these cases, where you're talking about
16 20 years, those judges may no longer be sitting.

17 Not only are the victims being notified prior
18 to a parole, we recently had a participant in one of
19 our programs, a man I have known personally for
20 15 years, because he worked for Osborne in
21 Sing Sing. And we worked with his son, who we now
22 have proudly in college.

23 This man did everything one could expect
24 anybody to do. Major transformation of his life.

25 Went to the parole board. He was granted

1 parole. And then it turns out that the letter to
2 the victim in that case hadn't arrived.

3 So the victim then said "no."

4 And the -- his parole was rescinded.

5 The victim was given an opportunity to then
6 make a statement.

7 And I am sad to say that, subsequently, his
8 parole was denied for two more years, obviously,
9 based solely on this one new factor, which was the
10 victim, who was -- would have been notified. But,
11 because it was 20 years ago, or 25 years ago, it did
12 not -- it took a while for it to get routed.

13 The thing that I -- that disturbs me, though,
14 about the victim component of it is, we're using
15 them.

16 Victims -- you know, we did not wait until
17 Osama bin Laden was caught before we did everything
18 for those people victimized on 9/11. We did, and
19 should have, provided them with counseling, with
20 medical care, with financial support.

21 What we do now for most victims, is we offer
22 them jail for the person who did it.

23 And if that's all we're going to tell them
24 is, our response to their pain, is we're going to
25 put this guy in prison, and then leave them to

1 believe that that's how that -- that that's their
2 healing process, well, no wonder people are angry,
3 20 years later.

4 When I hear -- it makes me so sad to hear a
5 widow saying, 20 years later, Every day I have to
6 relive this.

7 I'm not saying pain goes away.

8 I -- you know, all of us have -- many of us
9 have experienced loss.

10 But I keep wanting to know, and I want to ask
11 Patrick Lynch:

12 What are you doing for these folks?

13 Like, from day one, what are you doing, other
14 than parading them back, and making a big
15 (indiscernible) over this.

16 And particularly what concerns me on that
17 particular testimony, about wanting fairness, if
18 Mr. Lynch wants fairness, he cannot say that no
19 one convicted of killing an officer should ever be
20 released.

21 Fairness would require considering release.

22 There's nothing fair about saying,
23 automatically must be denied.

24 That's not a hearing. That's a resentencing.

25 And I -- and you know that of those older

1 folks, people who have done long time, we know that
2 the recidivism rate is close to zero.

3 And so it's not about public safety.

4 And I don't know if you remember this,
5 because you were there when I went, it was a couple
6 of people who were on life parole, and a couple of
7 former parole commissioners. And we met with the
8 board.

9 And you were there.

10 And the former commissioners were saying,
11 this -- there's no threat to pub -- the issue we
12 raised with you, actually, was whether people on
13 life parole could get off parole.

14 Which you, I think, were supportive of.

15 And have -- and -- and -- and I know your
16 record, and you've been supportive of a lot of
17 people. Jerome Wright, and other folks, that have
18 been, you know, pardoned.

19 So I'm not conflating things here.

20 But at that moment, when we said, and the
21 commissioners said, this is -- you know, there's no
22 public-safety challenge here, Mr. Ortloff said,
23 This isn't about public safety. It's about
24 punishment.

25 And that's the remaining concern that I have

1 about much of what I heard today, which is, it was
2 not about following the law.

3 It was about a resentencing.

4 A rule of law -- believe me, I never thought
5 I'd spend my life defending FBI agents and parole
6 commissioners.

7 But, in this -- there's one decision that has
8 triggered this entire kerfuffle. One person.

9 And then going after the two commissioners
10 who voted to release him, putting targets on their
11 back, ending up with them having death threats.

12 Mr. Ferguson made a very good point about
13 wanting parole commissioners who had a certain kind
14 of background.

15 The guy on the parole board who denies parole
16 to everybody, Marc Coppola, is a real-estate agent
17 with no background in criminal justice.

18 The two people who voted to release
19 Mr. Bell, one of them was assistant commissioner
20 at the department of corrections, and a crime
21 survivor; and the other one was a parole officer,
22 and not an easy parole officer.

23 I know this, because he supervised -- when he
24 was -- when (indiscernible) was a parole officer, he
25 supervised some of the staff at Osborne, because we

1 like to hire people who've done these long
2 sentences, because they're credible messengers,
3 they're role models in the community. They've
4 learned, they've developed, they've grown.

5 So, I mean, you could not have had two
6 commissioners who were better prepared to actually
7 judge the case in front of them.

8 And you may notice that they didn't exactly
9 come to a decision the day of the hearing.

10 They must have -- I mean, I don't know,
11 but -- and I had never met Mr. Bell, and wasn't
12 involved in that case, other than writing our
13 standard "reasonable assurance" letter.

14 But, I'll bet you there were eight boxes of
15 files that they went through.

16 And the courage that it must take, knowing
17 that, I mean, Mr. Ferguson said it, and it was
18 obvious with Mr. Lynch, those unions put huge
19 pressure on parole board members. They are
20 terrified to make those decisions.

21 So, to me, "rule of law" means that we should
22 be -- when people who have been vetted, and
23 confirmed by you, and investigated up the wazoo
24 before they get to serve on the parole board, make
25 that decision, I believe that they deserve, by the

1 Senate and the Legislature and the Governor, should
2 have supported them, saying:

3 They were the ones who were looking at all
4 that information.

5 They're the ones that read the victim impact
6 statements. They read the sentencing minutes. They
7 read everything.

8 Like, I don't know what I would have done had
9 I been a parole commissioner, or what others would
10 have done.

11 If anybody says that they for sure know that,
12 automatically, based on that, without reading all
13 the information, without interviewing Mr. Bell,
14 what they would have voted, that's not fairness.

15 That's prejudging something.

16 And part of what we heard today was, that's
17 not what we're supposed to be doing.

18 We're supposed to be giving people a fair --
19 not a resentencing. Following the regulations, as
20 they exist, and making those considerations.

21 So, somebody thought the police should have
22 an impact based on arrests that they made 20 years
23 ago?

24 I know you were a sheriff.

25 I know, I used to work in Buffalo for a

1 brilliant lawyer, Judge Vinny Doyle. And I know his
2 sons, and they were sheriffs.

3 I don't think any of them would have said,
4 gee, I want to be deciding, after a DA, a defense
5 lawyer, and a judge make a deal in a case, or,
6 there's a trial and then there's a sentence.

7 Particularly, there are people that are
8 sentenced to less than 25 to life.

9 19 to life.

10 There's a guy that came to work -- has worked
11 for us, we worked inside.

12 Because he was a -- the victim was an
13 off-duty police officer, Samuel Hamilton was a
14 lookout, the judge gave him 19 to life at age 19,
15 because he said, I believe this guy is redeemable.

16 And then the police unions came, and he
17 was -- went 19, 21, 23.

18 He was 50 years old by the time he was
19 released, even though the judge had indicated,
20 I think this is a redeemable person.

21 But according to the fairness, that the union
22 said, one, they should be able to put pressure on
23 board members, and, two, he should have never been
24 released.

25 Since he's been released, he works for

1 (indiscernible) defenders. He gets up in the
2 morning, he's serving people.

3 People are redeemable.

4 And I know that you know that,
5 Senator Gallivan.

6 I don't know you so well.

7 I assume you are good people.

8 We know that people can change.

9 SENATOR GALLIVAN: He is.

10 ELIZABETH GAYNES: And, so, one is, I think
11 you should put pressure on the DAs to stop misusing
12 victims and misinforming them about the future.

13 I think we need to offer victims a lot more
14 than incarceration.

15 I've got data in my testimony, victims
16 actually want more. They do want restorative
17 practices. They want to see rehabilitation.

18 We have a program with guys who -- just
19 homicide cases, called "Coming to Terms," where they
20 begin to talk about their lives, and the crime that
21 they committed.

22 And we bring in someone who's a survivor,
23 whose sister was murdered by a serial killer.

24 But they start by talking about their own
25 lives.

1 You know, the first time we did this class
2 with 12 men, first one said -- and we asked about
3 their early lives, the first one had seen his mother
4 murdered in front of him when he was 3 years old.

5 Do you know what services and support he got?
6 Nothing.

7 He went into foster care. He was abused by a
8 foster parent.

9 And then, yes, down the road, he committed a
10 homicide, and he was sentenced for it.

11 But we can't just think of the victim of the
12 crime he committed. He was also a victim.

13 Every single one of the men in that class had
14 been exposed to serious violence; had either
15 witnessed it, had a family member murdered, in their
16 early lives.

17 And if we don't push this support for victims
18 earlier on, well, this is what we know: Hurt
19 people. Hurt people.

20 We know this is gonna happen.

21 So, I really appreciate all of the work that
22 you guys do, going forward, to make this a fairer
23 process.

24 But please don't roll back all the reforms
25 and the efforts that are being made by the board now

1 because of one case that people disagree with.

2 Thank you.

3 SENATOR AKSHAR: Thank you.

4 SENATOR GALLIVAN: Thank you.

5 I would -- I would agree that one case
6 started a tremendous amount of focus on the parole
7 board.

8 I'd suggest, though, and I want to ask you
9 about this, that while some of -- some of their
10 decisions -- well, all of the decisions, they have
11 to make subjective decisions based on where they
12 came from, according to the law.

13 And from my experience -- and from where
14 I sit now, and from my experience, no question,
15 they're difficult, especially in the tougher cases,
16 the violent-crime cases.

17 But, nonetheless, I've always thought, when
18 I was there, and now, and my advice to the
19 commissioners as we interview them, when they come
20 through the Committee is: Follow the law. Forget
21 whatever bias you might have about, this, or that,
22 or the other, and follow the law.

23 And, clearly, people are going to disagree in
24 some cases.

25 In some cases, I don't think they did, and

1 that's where I'm coming from on this.

2 And my effort is for them to follow the law.

3 You talked about something, I forget exactly
4 how you said it, but, if somebody holds somebody
5 100 percent of the time, they're the same as
6 somebody you're releasing somebody 100 percent of
7 the time.

8 They're not doing their job.

9 And part of it, I think, is part of --
10 I mean, part of where we go from here is, some
11 things I think the best pursuit is in changing the
12 law.

13 And so, the "deprecate the seriousness"
14 that's translated into the community standard, some
15 people think it should exist, some people think it
16 shouldn't exist.

17 But, anyway, I'm kind of moving off of where
18 I started.

19 But the concern -- when I made the comment
20 that, shedding a light on them, I think, is a good
21 thing, what I think has been consistent, from
22 whether it's law enforcement, whether it's very
23 conservative people, whether it's very liberal
24 people, whether it's inmate advocates, or whatever
25 it might be, and you just briefly mentioned it at

1 the beginning of your written testimony, is the
2 transparency.

3 And we've got something there that the
4 collective "we" are raising questions, despite the
5 differences of opinion.

6 And I know in your recommendations, the
7 digitizing some things, making more information
8 available to the public, making more information
9 available to people, probably answers a lot of
10 questions.

11 The release rates, I think -- I don't know if
12 this is what you meant when you talked about
13 Commissioner Ferguson, about -- the not getting the
14 information about the releases.

15 He might have said it in a couple of areas,
16 but the one that I took, and my experience was
17 always the same, I would have liked to have, as a
18 commissioner, information on what happened to the
19 person that was held or released.

20 ELIZABETH GAYNES: Yes.

21 SENATOR GALLIVAN: And it would -- and it's
22 available, you can chase it down, they have all the
23 data. But it never comes together on one report, so
24 you can't even FOIL it, because it's not kept in the
25 report.

1 ELIZABETH GAYNES: I totally agree.

2 SENATOR GALLIVAN: But that's something that
3 could help to guide the commissioners as -- so my --
4 I guess my point being, and then I want to come back
5 to transparency, and give you a chance to comment,
6 is, there are a lot of concerns that people have,
7 regardless of where they come from, about the parole
8 board.

9 And I think, for all of us, they started the
10 transparency part before we even disagree.

11 But I guess the transparency is, to what
12 extent?

13 So, from your perspective, I mean, do you
14 have any thoughts about, I mean, that transparency
15 part of it? And what recommendations you can
16 make --

17 ELIZABETH GAYNES: Well, certainly, I --

18 SENATOR GALLIVAN: -- (indiscernible) out
19 there?

20 ELIZABETH GAYNES: -- certainly, I would love
21 to see commissioners get feedback, because I think
22 people would release, frankly, more people if they
23 saw how well people that they took -- I mean,
24 because I know, it concerns them.

25 I know that there are people that always want

1 to hold -- they may not turn down parole for
2 everyone, but certain categories. Like, you know,
3 they're never going release a drunk driver, or
4 they're never going release certain cases.

5 I don't know that there are any who release
6 everyone.

7 And if you had a full parole board, and you
8 had three people making these decisions, then even
9 if you had someone who was, in your view, too far
10 one way or the other, there would be two other
11 people.

12 So, having three makes sense.

13 Having it be in person, makes sense, so that
14 you really get more of a feel for the person, and
15 not a 20-minute video.

16 And then not being able to really look at the
17 records because of the way they are.

18 But, when you go to transparency versus this
19 idea that a victim should be able to appeal a
20 decision, our legal system is, The People of the
21 State of New York versus "Patrick Gallivan."

22 Never going to happen.

23 But, the point is, we don't -- victims are
24 represented by the State; and in this case, by the
25 parole board.

1 We don't have a system of frontier justice,
2 of people being able to control that process.

3 And that's a good thing.

4 And as I said, we should give victims a
5 platform, we should give them support.

6 But saying that they could control the
7 outcome, particularly the non-victim
8 representatives, to say -- that makes no sense.

9 But in terms of the information being
10 available, I'm not sure exactly which information.

11 I understand, for instance, we --

12 SENATOR GALLIVAN: That's why I asked.

13 ELIZABETH GAYNES: -- we -- well, one thing
14 is, we think that the victims should be given much
15 more information about what the person did while
16 incarcerated.

17 Because, one of the things that I know from
18 talking to the victims' people, is they very often
19 ask, Well, what did this person do?

20 Like, does he -- there's an Apology Bank.

21 Do you know that?

22 SENATOR GALLIVAN: No.

23 ELIZABETH GAYNES: So it's illegal for an
24 incarcerated person to contact the victim directly,
25 no matter how much they want to apologize, no matter

1 how much they've come to understand the impact of
2 what they did.

3 But they can write an apology letter that
4 goes to a website that DOCS has, called the
5 "Apology Bank."

6 And so if a victim wants to see if someone
7 has posted something there, they can, they have a
8 way of doing that.

9 And it's a safe way for them to be able to
10 get that, because, like in the programs we do, most
11 of the -- most of the people we worked with, by the
12 time they go through this process of actually
13 beginning to understand the harm that they've
14 caused, because, when you have really hurt somebody,
15 you don't really want to face it.

16 And people in prison don't -- nobody ever
17 asks you when you're in, by the way, why are you
18 here?

19 There's no work directly on coming to terms
20 with the crimes that they've committed.

21 And nobody feels good about harming another
22 person.

23 So part of this process we go through is for
24 them to actually get to this place. Like, oh, my
25 God, how do I make amends? How do I apologize?

1 Whether it results in their release or not is
2 not necessarily the point.

3 So I do think that, very often, victims want
4 to know, and should be able to know, as should the
5 DAs writing the letters as well:

6 Did this guy go to the yard every day, and do
7 nothing, and, basically, not participate?

8 Or, did this guy, like, go from having a
9 fifth-grade education when he came to prison, and
10 then he went and got his GED, and then he went to
11 college. And now he's part of this youth program,
12 where people come in, and being able to talk to
13 young people about, why?

14 I mean, you'll notice corrections people are
15 not lined up here saying, don't release these folks.

16 The only reason corrections people don't want
17 lifers out is because they're depending on them to
18 run all the programs in the prisons, because they
19 have so transformed their lives that they are
20 leaders inside.

21 That's why you'll see, if they would allow
22 corrections people to write letters in support of
23 people coming on parole, you would see a lot of
24 them.

25 I was just -- did a tour of Sing Sing the

1 other day, and correction officer was pointing to
2 some guys who had been there for 20 years.

3 He said, what is he doing here?

4 These guys have a master's degrees.

5 So the -- so it's right to give victims that
6 information.

7 They would want to know:

8 Did this guy just do nothing, and get in
9 trouble the whole time, and doesn't give a rat's
10 ass, frankly, about what he did to me?

11 Or, has he been doing all this work trying to
12 atone for that?

13 So I think that's one part of transparency.

14 I also think that the people in -- the people
15 coming up for parole would benefit from knowing a
16 little bit more about what's in their files, because
17 they can't -- you know, they -- the -- they -- you
18 don't get -- they don't get -- they don't share with
19 them their presentence reports from years ago.

20 So they may not necessarily know, unless
21 their defense lawyers --

22 And defense lawyers are as bad as
23 prosecutors, in terms of telling people what the
24 impact of sentencing is.

25 -- they may not know how to contradict

1 something that's in the record that might be
2 incorrect.

3 So they don't even necess -- they don't
4 necessarily know what the parole board is looking
5 at.

6 There may be other kinds of information like
7 that.

8 So I think that if there's transparency, it
9 would be good at many levels.

10 I think the parole commissioners clearly
11 should be able to see things. Victims probably
12 should be able to see more.

13 And, definitely, the outcomes.

14 I know, you know -- a couple of times, I know
15 Mr. Ferguson said there's no training. But we've
16 actually -- several organizations I know have gone
17 to meetings of the parole board and brought lots of
18 information.

19 We did things about geriatrics, because
20 I know they're seeing older people, medical.

21 A lot of people have provided that.

22 And in every one of those meetings, the chair
23 would read a letter that she would have gotten from
24 somebody who was released on parole, saying all the
25 things that they had done since they were released.

1 And I think she did that as just a proxy for
2 being able to give people some encouragement for the
3 fact that, very often, when you finally release
4 somebody, they're -- they really have turned their
5 lives around.

6 So, I don't know what other information you
7 seek.

8 But as long as we haven't -- please put money
9 in the budget to digitize those records.

10 It's insane.

11 Do you know that these poor commissioners
12 have to go to Buffalo, even to just do a video
13 conference if they live in New York City, because
14 there's only one copy of the paper?

15 (Speaker continues in a whisper) Like, that's
16 crazy. That's crazy.

17 SENATOR GALLIVAN: Well, I think they do that
18 for more than just that reason.

19 But nonetheless --

20 ELIZABETH GAYNES: Oh, because they just love
21 being together?

22 SENATOR GALLIVAN: No, I think it has to do
23 with the randomness of assignments.

24 ELIZABETH GAYNES: No, that's true.

25 SENATOR GALLIVAN: And, you know, who is

1 being interviewed, and where, and ensuring some type
2 of rotation so it's not regular.

3 ELIZABETH GAYNES: No, no. I don't mean just
4 go to the closest place.

5 What I mean is, if we had electronic records,
6 then three people could be in three different
7 places.

8 SENATOR GALLIVAN: Exactly.

9 No, no, your point is extremely well taken.

10 But I don't think that's the only reason that
11 they go.

12 But we would have the enhanced technology.

13 And the other thing I would say about the
14 budget, excellent point, budget process does start
15 with the Executive.

16 And to date, or at least in my time in the
17 Senate in this Committee, we haven't seen any
18 initial -- the Governor's presentation of the
19 budget, anything like that included in there.

20 It can start with us.

21 ELIZABETH GAYNES: So if we put forward a
22 proposal, a bill that says, that the -- there should
23 be full funding to fully staff 19 parole board
24 members, and, by the way, could you digitize the
25 records? we could get some support from the

1 Legislature, added.

2 SENATOR GALLIVAN: Well, let's just go one at
3 a time.

4 ELIZABETH GAYNES: I'll ask the Governor
5 first.

6 SENATOR GALLIVAN: That would be good.

7 But as far as the 12 out of -- 12 sitting out
8 of 19, we haven't had a nomination from the
9 Executive's Office since June of 2017.

10 ELIZABETH GAYNES: I'll get to work on that.

11 SENATOR GALLIVAN: So, I mean --

12 ELIZABETH GAYNES: Yes.

13 SENATOR GALLIVAN: -- now -- I guess --

14 ELIZABETH GAYNES: I wasn't blaming you for
15 not putting the names forward.

16 I was just saying, as I think it's -- it
17 would make a big difference to have a fully staffed.

18 SENATOR GALLIVAN: I'm not throwing it -- I'm
19 not --

20 ELIZABETH GAYNES: And I agree. And --

21 SENATOR GALLIVAN: -- I'm not just completely
22 shirking our responsibility.

23 ELIZABETH GAYNES: -- the Governor should be
24 putting names forward.

25 SENATOR GALLIVAN: Both of us can do it, but

1 the budget process starts with him.

2 Both of us can attempt to do it, as you know,
3 so I didn't want to completely -- when it comes to
4 the budget, to say it's all him.

5 ELIZABETH GAYNES: Well, I will talk to them.

6 But, you know, I'm still going to come back
7 to you about opening an office in Western New York,
8 and asking the Senate and the Assembly to help if
9 the Governor doesn't.

10 SENATOR GALLIVAN: We can meet separately
11 about that. I have had that conversation, though.

12 Not with you, but with the people out there.

13 ELIZABETH GAYNES: Okay.

14 SENATOR GALLIVAN: Senator?

15 All right. Thank you very much for your
16 patience, and your time again.

17 ELIZABETH GAYNES: Oh, thank you.

18 SENATOR GALLIVAN: And the work that you do.

19 ELIZABETH GAYNES: Thanks.

20 SENATOR GALLIVAN: I guess it wasn't so bad
21 after all.

22 We will conclude our hearing at this point.

23 Remember, this is the first -- for everybody
24 who's here, the first of two.

25 The rules do require, this was streamed

1 online, I neglected to say it.

2 Tomorrow, because of the actual location, and
3 the technological incapacibilities, it will not be
4 streamed online. But it will be made available
5 within 24 hours of tomorrow's hearing.

6 (Pause in the proceeding.)

7 (The hearing continued.)

8 SENATOR GALLIVAN: And it looks like we may
9 stand corrected on that. That may be streamed
10 online.

11 In any event, both hearings will be on the
12 Senate website.

13 And then, ultimately, all the written
14 testimony, the ultimate information that we get from
15 the Executive Branch and the different departments,
16 what we have to date, and, what we continue to get
17 regarding information, will all be included in the
18 official record and the ultimate report.

19 Thanks, everybody.

20
21 (Whereupon, at approximately 5:10 p.m.,
22 the public hearing concluded, and adjourned.)

23 ---oOo---

24

25

ADDENDUM B: HICKSVILLE PUBLIC HEARING

1 JOINT HEARING BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND
CORRECTION
3 AND
4 STANDING COMMITTEE ON ELECTIONS

PUBLIC HEARINGS:

5 TO EXAMINE THE STATE'S CURRENT PAROLE POLICIES AND
6 GOVERNOR CUOMO'S EXECUTIVE ORDER ALLOWING
7 CONDITIONAL PARDONS THAT ENABLE PAROLEES TO VOTE

8 William P. Bennett Hicksville Community Center
9 28 West Carl Street
10 Hicksville, New York

11 October 2, 2018, at 11:00 a.m.

PRESIDING:

12 Senator Patrick M. Gullivan, Chairman
13 NYS Senate Standing Committee on Crime Victims,
14 Crime and Correction

SPONSOR:

15 Senator Elaine Phillips

PRESENT:

16 Senator John J. Flanagan
17 New York State Senate Temporary President
18 and Majority Leader

19 Senator Philip M. Boyle

20 Senator Carl L. Marcellino

21

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23

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3	Founder		
4	Long Island/New York Metro Parents		
5	and Other Survivors of		
6	Murdered Victims Outreach		
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8	Executive Director		
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10	Parents for Megan's Law		
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13	New York State Association of PBAs		
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15	President of Suffolk County Detectives		
16	Association, and		
17	An Executive Board Member of		
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27	Schools, and		
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31	Representative of		
32	New Hyde Park-Garden City Park		
33	Committee Against Polling in Schools,		
34	and the New Hyde Park Memorial		
35	High School Parent-Teacher-Student		
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SPEAKERS:

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QUESTIONS

James Royall
Reentry Specialist
Jared Chausow
Senior Policy Specialist
Brooklyn Defender Services

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---oOo---

1 SENATOR PHILLIPS: So if everyone could take
2 a seat, we're going to begin.

3 Thank you.

4 If everyone could take a seat, please.

5 Thank you.

6 I just had to look up and find a clock,
7 because I couldn't -- didn't know if it was morning
8 or afternoon, but it is still morning.

9 So, good morning, everyone, and thank you for
10 coming to the 7th Senate District.

11 My name is Senator Elaine Phillips.

12 I am proud to be hosting this event in my
13 Senate district today, beautiful Hicksville.

14 And thank you to the Hicksville Community
15 Center for allowing us to use this.

16 I will be introducing my colleagues in a
17 second.

18 But today's public hearing is from the Senate
19 Standing Committee on Crime Victims, Crime and
20 Correction, and the Senate Standing Committee on
21 Elections.

22 And the purpose of today's public hearing is
23 to examine both the statutory procedures parole
24 board members are required to consider when making a
25 decision, and compliance with same, as well as the

1 procedures used in issuing conditional pardons,
2 pursuant to Executive Order 181.

3 And my colleague, in a few minutes,
4 Senator Pat Gallivan from Western New York, will be
5 going over today's procedures in more detail.

6 But let me explain -- because I'm not on
7 either one of these committees, but let me explain
8 my involvement.

9 And my involvement, really, is taken from
10 school security, and what the impact of these
11 pardons were on our schools.

12 And I'm very fortunate to have two school
13 superintendents who I have dealt with very closely,
14 who will testify today.

15 But, you know, the most important thing that
16 we can do in today's day and age is to make sure
17 that our children are protected.

18 So you'll hear a little bit.

19 In this public hearing, we'll take a
20 little -- probably more time when it comes to the
21 impact on our schools and safety here throughout
22 New York State.

23 So without any further delay, I am truly
24 proud to introduce the Majority Leader of the
25 New York State Senate, and the Temporary President,

1 Senator John Flanagan.

2 SENATOR FLANAGAN: Good morning, everyone.

3 I'm delighted to be here.

4 I'm going to have to find my way to Albany
5 relatively soon, but, great to be with my
6 colleagues:

7 Senator Pat Gallivan, who's a leader, who has
8 a stellar background. Actually was a member of the
9 parole board. So he knows from whence he comes and
10 where he talks. And we're delighted to have him
11 down here.

12 And I want to thank Senator Phillips,
13 Senator Marcellino, and Senator Boyle.

14 You know, the issue that we're talking about
15 today is one that we all take very seriously.

16 And, we have looked at this from a
17 public-policy standpoint, from a governmental
18 standpoint.

19 And I have to tell you, Senator Phillips, for
20 those of you that don't really know her, she's not
21 shy. She's not shy at all. She's outspoken.

22 And we spoke at great length about this,
23 privately, within our Conference, and now publicly,
24 about this type of issue.

25 And this is the type of thing where we are

1 proud to be public servants and elected officials,
2 but we also think we have an extraordinary
3 responsibility to lay out what is exactly involved;
4 where things are going well, where they're not.

5 We welcome the testimony of the folks that
6 are here.

7 And I'm hoping that we can make substantial
8 progress with your input.

9 And, I'm -- I just want to say thank you to
10 all of you for being here.

11 And a particular thanks to Senator Gallivan
12 and Senator Phillips.

13 SENATOR PHILLIPS: Senator Boyle.

14 SENATOR BOYLE: Thank you, Senator.

15 I'd like to thank, senator Phillips for her
16 leadership on this very important issue;

17 Senator Marcellino, and, of course,
18 Pat Gallivan/Senator Gallivan, for traveling this
19 way to host this hearing.

20 And, of course, John Flanagan, our leader.

21 This is a topic that I didn't think any of us
22 thought was going to be a big deal a year ago.

23 A couple sessions ago, I introduced
24 legislation, after some of the violence and some of
25 the things that were going on in our schools, about

1 making it illegal to have a polling place in a
2 school while school was in session.

3 Obviously, on the Presidential election,
4 there's -- the schools are closed. But for the
5 other ones, they're often open.

6 Never in a million years at that time, three
7 or four years ago, did I think that we'd be facing
8 the prospect of criminals going into our schools,
9 with students in classroom, nearby, on polling -- on
10 Election Day.

11 So, I look forward to the testimony of our
12 experts today, to learn what their feelings are on
13 this, and, of course, look for potential legislation
14 to keep our children safe, most importantly, and
15 families of victims getting the due process they
16 deserve.

17 Thank you so much.

18 SENATOR PHILLIPS: Thank you, Senator Boyle.
19 Senator Carl Marcellino.

20 SENATOR MARCELLINO: Thank you very much.

21 Thank you for coming out, and I welcome the
22 attendance. It's good to see people here interested
23 in the process.

24 We're here to listen.

25 I'm here to listen, I want to hear your

1 comments, as to what goes on, and what you think we
2 should be doing, and what you think laws should look
3 like that might affect this process, and make it a
4 better process, so we don't have mistakes happening,
5 and we don't have people let out who, frankly,
6 shouldn't be.

7 And perhaps we can clarify the voting
8 process, as to how they can vote, and when they can
9 vote.

10 So let's hear the testimony.

11 I'm very willing, and ready to listen.

12 SENATOR PHILLIPS: Great. Thank you,
13 Senator.

14 Senator Pat Gullivan, all the way from
15 Western New York.

16 So thank you, Senator Gullivan, for traveling
17 so far.

18 SENATOR GALLIVAN: Thank you, Senator, and to
19 all my colleagues who are here today.

20 I do appreciate the hospitality; your
21 willingness to host this hearing on what I think is
22 a very important topic.

23 So if I -- thank you for your patience.

24 I need just a few minutes to go through a few
25 things, and then we'll jump right into it.

1 So, the hearing came about as a result of two
2 different things:

3 So, first, we saw the release -- several
4 high-profile releases by the parole board of
5 cop-killers, and it raised concerns.

6 Many of us, our constituents had reached out
7 to us, questioning, how can this happen?

8 And so, as we looked into it, and began to
9 focus on the parole board, what my thought was, as
10 Chair of Crime Victims, Crime and Correction
11 Committee, and based on my experience, I had the
12 belief, while some of this is subjective, there are
13 standards in the law and factors that must be
14 considered.

15 And I don't think that, in every single case,
16 several members of the parole board followed the
17 criteria in the law.

18 And I think it's an obligation of our
19 Committee to look at it.

20 So the first area that we are looking at
21 specifically, is the standards of release for --
22 that is, for somebody to be considered for release
23 from parole, and, the factors that must be
24 considered, and the parole board's compliance with
25 that.

1 That's the first topic.

2 The second topic that is part of this
3 hearing, that is done in conjunction with the Senate
4 Standing Committee on Elections, back on April 18th,
5 the Governor issued Executive Order 181, that would
6 grant conditional pardon to parolees for the right
7 to vote.

8 It is, again, many of us had constituents
9 reach out to us. Many of us shared the same belief.

10 I won't put words in my colleagues' mouths,
11 but, I believe that the Governor usurped the
12 authority of the Legislature. That the
13 Constitution, and in particular, the power of
14 clemency and pardon, was not intended to do it in a
15 blanket fashion, or in a mass fashion.

16 It was to look at individual injustices.

17 The lawmakers of this state, through the
18 election law, placed several prohibitions on voting
19 under certain circumstances.

20 And, this is something that, in my belief,
21 should be debated, it should be -- it should be
22 debated, we should look at all the considerations,
23 hear from everybody, and then make an ultimate
24 legislative decision.

25 So the focus is on the gov -- the focus is on

1 the Governor's executive order and the process.

2 This is not intended to be a debate, or focus
3 on whether or not parolees should have the right to
4 vote.

5 It's the process.

6 And in some media accounts, and by some
7 others that have stood up in protest, it's been
8 mischaracterized.

9 So those are two different -- different
10 areas.

11 Now, we conducted two hearings, one in Albany
12 yesterday, and then, of course, we are here today.

13 They're to be taken as one.

14 So we won't go into great detail into both
15 areas today.

16 We spent a good part of yesterday in that
17 first area.

18 We heard from a former parole board member.
19 We examined many of the issues related to parole
20 release and the standards.

21 Today we will hear, our first panel will
22 focus a little bit more in the first area.

23 And then, subsequently, we'll spend a little
24 bit more time on the Governor's executive order.

25 And then, of course, as we wrap it up, we

1 will probably touch on both areas again.

2 But, without us going into what the law says
3 about the standards of release, we did do that
4 yesterday.

5 And all of this is videotaped. It's being
6 streamed live.

7 Both yesterday's hearing and today's hearing
8 will be available on the Senate website. It will be
9 part of the record.

10 All the testimony will be part of the record.

11 A report will be issued afterwards for
12 everybody.

13 And my hope is, that we'll come up with
14 recommendations, so that the questions that we are
15 asking, we don't have to ask in the future, and
16 we're dealing with some of the problems, and,
17 hopefully, we can do government in a better way.

18 Now, the committees are the ones that have
19 called this hearing.

20 It's important to know that every member of
21 the Committee, the Crime and Corrections Committee,
22 was personally invited.

23 Despite media reports, I personally contacted
24 several members of the Minority, and personally
25 invited them.

1 I had several conversations with one of the
2 committee members.

3 The Ranking Member, in the media account, had
4 said that he wasn't contacted.

5 That is not accurate.

6 We contacted their office multiple times.

7 I did not get a return call.

8 And I'm very disappointed that they chose not
9 to participate.

10 They could walk in and participate, and I'd
11 welcome that.

12 We also invited the Executive, the Governor's
13 Office, to testify, and the chairwoman of parole,
14 and the commissioner of department of corrections
15 and community supervision.

16 They elected not to testify; however, we do
17 have -- we do have written testimony from each of
18 them that was entered into the record yesterday, as
19 well as responses to a request for a tremendous
20 amount of records related to both areas.

21 And, I am grateful that they did endeavor to
22 comply with our request for records. It's not
23 complete yet.

24 They did submit a substantial amount of
25 records that, again, will all be entered into the

1 official record, and be made available to everybody.

2 But, they did have the opportunity to appear
3 in person, and, unfortunately, they are not here.

4 So, we will move into this.

5 SENATOR PHILLIPS: (Indiscernible)

6 housekeeping.

7 SENATOR GALLIVAN: Okay. One other thing?

8 SENATOR PHILLIPS: Yes.

9 Oh, one housekeeping.

10 One, please, make sure you know where the
11 exits are.

12 And, two, I am going to be the person that
13 keeps us on time.

14 So we're asking each panel group to stick to
15 about 10 minutes, if you would, please, just for
16 those that are waiting.

17 So, thank you.

18 SENATOR GALLIVAN: Yeah.

19 So what we'll do, and we'll ask each panel
20 member, we do -- I know that you've submitted
21 written testimony, which will be entered into the
22 record in its entirety, available to everybody on
23 the website, and the report afterwards.

24 And it would be -- if you're able to do it,
25 it would be great if you just talked about the high

1 points.

2 I do know that, I forget, that you did want
3 to read from somebody that's a victim, that
4 submitted something to you, and that's fine.

5 OFF-CAMERA SPEAKER: (Indiscernible.)

6 SENATOR GALLIVAN: Oh, okay. Got it.

7 LAURA AHEARN, ESQ.: Yeah, I have two
8 victims.

9 SENATOR GALLIVAN: And that's fine.

10 But, nonetheless, it would be best if you
11 just tell us what your concerns are, and, let us
12 answer some questions, and we can move through that,
13 if possible.

14 So our first panel is:

15 Barbara Connelly, who's the founder of the
16 Long Island/New York Metro Parents and Other
17 Survivors of Murdered Victims Outreach;

18 And, Laura Ahern, executive director of the
19 Crime Victim Center and Parents for Megan's Law.

20 And the reason that victims are relevant to
21 this is that, the factors that the parole board
22 must -- among the factors the parole board must
23 consider is what the victims have to say.

24 The victims have the right to enter a victim
25 impact statement; either meet with a member of the

1 parole board or submit a written testimony to the
2 parole board.

3 And that is the area that we are looking to
4 delve into with you.

5 So it doesn't matter to us which one of you
6 starts.

7 Alphabetical, perhaps? Or right to left?

8 Your choice. Go right ahead.

9 Thank you for being here.

10 LAURA AHEARN, ESQ.: Good morning.

11 My name is Laura Ahern. I'm the executive
12 director of the Crime Victim Center.

13 I am so thankful that you are giving me an
14 opportunity to give victims a voice.

15 Good morning, Senate Majority Leader,
16 Senator John Flanagan;

17 Chairperson of the Committee on Crime
18 Victims, Crime and Correction, Senator Gallivan;

19 Senators Marcellino, Phillips, and
20 Senator Boyle;

21 And distinguished colleagues and guests.

22 I have worked with over 25,000 victims of
23 violent crime, and that violent crime includes
24 victims of sexual assault, domestic violence,
25 stalking, gang violence, assault, arson, vehicular

1 crimes, federal crimes, terrorism, and survivors of
2 homicide, including the surviving family members of
3 MS-13 victims in Brentwood.

4 It is really my honor to have this
5 opportunity to offer testimony on behalf of crime
6 victims and surviving family members.

7 I'm going to start with New York State parole
8 policies and procedures.

9 In May of 1971, Herman Bell was part of a
10 group that lured and ambushed two New York City
11 police officers, shooting them both in the back and
12 killing them.

13 Three months after he murdered
14 Officers Piagentini and Jones, Mr. Bell murdered
15 San Francisco Police Sergeant John Young in his
16 station house.

17 His guilt and actions were never in dispute.

18 Their families had to endure eight parole
19 board hearings.

20 And in the last hearing, by a 2-1 margin,
21 Bell was granted parole.

22 The response was swift from the family and
23 police unions across the country.

24 What is particularly telling, however, was
25 the response from two high-profile elected officials

1 in New York:

2 Mayor de Blasio, who urged the state parole
3 board to reconsider its tragic and incomprehensible
4 decision.

5 He wrote to the board, that murdering a
6 police officer in cold blood is a crime beyond the
7 frontiers of rehabilitation or redemption.

8 Governor Cuomo himself, when asked if he
9 supported the parole board's decision to release
10 Bell, said, if he were on it, he wouldn't have.

11 Herman Bell should have never been released.

12 His release appears inconsistent with
13 New York State statutory procedures regarding
14 discretionary release on parole.

15 Pursuant to the statute, an inmate's release
16 must not be incompatible with the welfare of
17 society, and will not so deprecate the seriousness
18 of his crime as to undermine respect for law.

19 For some crimes, parole must not be an
20 option.

21 The current parole board procedures, when
22 considering whether to deny or grant parole to an
23 inmate, are revictimizing victims and surviving
24 family members.

25 Every two years, victims -- at least every

1 two years, victims and surviving family members are
2 forced to relive the trauma associated with the
3 often brutal crimes that are committed against them
4 or their loved one.

5 For victims and surviving family members,
6 this process effectively amounts to a
7 state-scheduled posttraumatic stress disorder,
8 wherein victims or loved ones themselves feel
9 sentenced themselves to have to relive and recount
10 the horrific details of the most tragic and hurtful
11 events in their lifetime.

12 I'm now going to read a statement from
13 surviving family members of 13-year-old
14 Kelly Ann Tinyes, and a statement from
15 Jennifer Brooks, who was 10 years old when the
16 South Shore rapist kidnapped her from her home to
17 rape her.

18 Both statements support the need to effect
19 significant changes in the New York State Parole
20 Board's process, to prevent victims and family
21 members from further enduring even more suffering,
22 not only related to the individual process of having
23 to appear before the parole board, but the process
24 leading up to that.

25 On March 3, 1989, Robert Golub lured

1 13-year-old Kelly Ann Tinyes to his home, where he
2 beat, stabbed, mutilated, and strangled her.

3 He then put her body in a garbage bag like
4 she was trash, and hid her in the basement.

5 She was found the next day.

6 It was a horribly heinous crime, one he
7 should spend the rest of his life in prison for.

8 I'm going to read a statement from
9 Richard Tinyes, Senior, Kelly Ann Tinyes's father,
10 dated October 1, 2018, which is yesterday.

11 "To Whom It May Concern:

12 "On March 3, 1989, our beautiful daughter
13 Kelly Ann Tinyes was brutally murdered in the Golub
14 house down the block from where we live.

15 "Robert Golub was there when Kelly entered
16 the house.

17 "Robert Golub was waiting for her, and he
18 beat her head and body so badly, we had to close her
19 coffin at the funeral.

20 "Kelly's head was beaten so badly it was
21 swollen to almost twice its normal size.

22 "He then took a knife, and cut her throat,
23 slashed her breast numerous times, and then he took
24 the knives and cut her vagina to her anus.

25 "Robert Golub is coming up for parole again

1 in November. And every two years, this family has
2 to endure reliving what he did to Kelly for months
3 before the parole hearing."

4 Two years is torment to their family.

5 It should at least be every five years.

6 "At the first parole hearing, they were
7 allowed to bring" -- "we were allowed to bring
8 numerous family members with us for support.

9 "Now we're only allowed to bring immediate
10 family members, which is four people, and two
11 additional relatives, who aren't allowed to speak.

12 "This has affected our lives in so many ways.

13 "My business was affected because no one
14 wanted to face the worst nightmare.

15 "No matter where I went, people would stare,
16 or some people would ask if I was Richard Tinyes.

17 "Wherever I went, Aruba; Florida; Charlotte,
18 North Carolina; people would recognize us.

19 "My wife, Vicki, is very upset, because she
20 believes there's a chance that Robert Golub could be
21 released on parole.

22 "The State should make parole hearings every
23 five years for murderers, to give peace to victims'
24 families.

25 "The families should also be able to bring

1 more people with them for support, and those people
2 should be allowed to be heard.

3 "Sincerely,

4 "The Tinyes family."

5 After a brief introduction, I'm going to read
6 an excerpt from a statement by
7 Ms. Jennifer Brooks.

8 The full statement is provided in your
9 packet.

10 On June 22, 1988, the South Shore rapist,
11 Scott Carroll, was sentenced to 650 years in prison
12 for terrorizing and sexually assaulting multiple
13 women.

14 He kidnapped and raped a 10-year-old child.
15 That child was named Jennifer Brooks.

16 I'm now going to read an excerpt -- excerpts
17 from Jennifer Brooks' statement, which are dated
18 October 1, 2018, yesterday.

19 "My name is Jennifer Brooks, and in 1986
20 I became the youngest victim of the South Shore
21 rapist.

22 "I was 10 years old when he kidnapped me from
23 my bedroom and took me to an empty lot to rape me.

24 "I was lucky that he was eventually caught
25 and charged in four counties throughout New York and

1 Florida.

2 "It went to trial in three of those counties,
3 all leading up to convictions on multiple counts of
4 rape, attempted rape, burglary, sodomy, and in one
5 case, attempted murder.

6 "For reasons I will never understand, this
7 man, who was in his 20s at the time of his
8 sentencing, and was out on parole from a burglary
9 conviction when he raped all of us, and was given
10 the chance of parole starting when he was now 51,
11 plenty of the time to pick up where he left off, and
12 continue raping little girls and women.

13 "I was glad to be given an opportunity to
14 speak and deliver a victim impact statement.

15 "It was extremely difficult for me, but
16 I believed it did matter, so I did it.

17 "The first time, I was told a member of the
18 parole board was going to be there.

19 "It wasn't explained to me until afterwards
20 that the people in the room were not members of the
21 parole board who would hear his case, and were just
22 going to write a transcript of what I said, to be
23 delivered to them.

24 "I could have just written it myself if
25 I would have known.

1 "But, did my in-person appearance matter?

2 "Did it carry any weight than if I just had
3 written a statement?

4 "I couldn't get any straight answers about
5 it.

6 "Numerous times over the years, I wrote to
7 the victims' assistance e-mail address with
8 questions.

9 "Sometimes, I got no response back at all.

10 "When I got responses, they were always
11 unsigned, and I had no idea who I was talking to,
12 and the answers were generally cold and not helpful.

13 "It's a terrifying prospect realizing that,
14 every year or two, you have to freshly beg for
15 strangers to care about you enough to keep the men
16 who terrorized you and dozens of other women away
17 from society.

18 "So far, parole has come up every two years,
19 but I've been told that it can be changed to yearly
20 at any time.

21 "Every time it comes up, I am a mess for
22 months, stressed out like crazy about what I would
23 ever do if this guy is set free.

24 "I'm a single mom of an 11-year-old daughter,
25 and I have no choice but to live where he raped me

1 and where he still has family.

2 "Three years ago I had a close call.
3 I called to find out whether the parole board made
4 its decision, and was told that they got an
5 extension because they wanted to see more of his
6 trial records, particularly the sentencing notes
7 which were not in the files because they had been
8 destroyed after a certain number of years, a fact
9 that still stuns me.

10 "That was October, and I was told I should
11 get a decision right around Christmas.

12 "Preparing for Christmas was miserable that
13 year.

14 "It broke me apart that I had sent in my
15 victim's impact statement, describing what this man
16 had done to me, and how he had ripped my life apart,
17 and that it wasn't enough.

18 "The parole board had heard all that, and
19 were seriously considering setting him loose anyway.

20 "Thank God they didn't, but the time for
21 parole came up. I went all out.

22 "Since my story didn't matter enough last
23 time, I asked everyone I could to" -- "everyone
24 I could think of to write letters.

25 "I never got instructions about where to send

1 the letters.

2 "So, at first, they were all e-mailing to the
3 same e-mail address that I was, and getting no
4 responses. And, finally, I found a website that was
5 meant for this type of use.

6 "However, right away, friends started telling
7 me that the form was broken. It was rejecting
8 letters with nearly any form of punctuation, like
9 apostrophes or quotation marks. It was severely
10 limiting the word count of submissions to about
11 one paragraph.

12 "Many of my friends gave up because, no
13 matter what they sent, they couldn't get it to go
14 through.

15 "I'm also told to call in each day, after a
16 certain date, to find out the decision, or, wait for
17 a letter in the mail.

18 "Why?

19 "When you have cases like this, how hard
20 would it be to have someone make a phone call right
21 away to let me know, so I can sleep again, or
22 prepare for the worst.

23 "Getting any kind of advice or real answers
24 has just been about impossible.

25 "And to this day, I have no idea what the

1 parole board considers or doesn't consider, and what
2 they were thinking before they nearly set a serial
3 rapist free.

4 "What I want more than anything are two
5 things:

6 "Much longer periods between parole hearings
7 and complete transparency about the process.

8 "I want to speak with at least one member of
9 the parole board that's speaking to him. I want
10 them to hear my voice, not just his.

11 "I want" -- "I want clear instructions about
12 what the parole board considers, and I want
13 compassion and support during this process.

14 "It shouldn't feel like I'm speaking to a
15 neutral third party when I contact victims'
16 assistance.

17 "I want them to hear that I'm staying up till
18 dawn every single day, and working near my front
19 window so I can watch the house and keep my daughter
20 safe.

21 "I want them to understand that I spent
22 four years trapped in my house with agoraphobia, and
23 I changed my name to make it harder for him to find
24 me.

25 "I want them to see how hard I fight every

1 single day for my sanity and to live in this world.

2 "And I want to believe that what happened to
3 me matters, and that it will be used to make sure
4 that it doesn't ever happen again to the next
5 10-year-old girl.

6 "Thank you for your consideration."

7 So based on our work at the Crime Victims
8 Center, with victims of violent crime, like Jenna,
9 and also surviving family members like the Tinyes
10 family, and surviving family members of MS-13 gang
11 victims, I just have some basic recommendations, and
12 this is on page 7 of my testimony.

13 Pursuant to the statute, an inmate's release
14 must not be incompatible with the welfare of
15 society, and will not so deprecate the seriousness
16 of his crime as to undermine respect for the law.

17 For some crimes, such as the murder of police
18 officers, the brutal sexual assault and murder of
19 Kelly Ann Tinyes, and the kidnapping and rape of
20 10-year-old Jenna Brooks by the South Shore rapist,
21 parole must not be an option for those types of
22 heinous violent crimes.

23 Number two: Parole hearings should not be
24 granted at least every two years.

25 Instead, there should be consideration to

1 longer periods in between, such as maybe five years
2 for murderers and rapists, to prevent
3 revictimization.

4 Number three: Surviving family members
5 should be able to be accompanied to parole hearings
6 by more than immediate family members, such as
7 cousins and friends of the victim, for support, and
8 those people should be allowed to be heard.

9 Number four: Parole board victim-assistance
10 services should be more responsive and more
11 transparent to address victims' and surviving family
12 members' concerns.

13 Clear instructions about the process need to
14 be provided to every victim and surviving family
15 member. And if procedures are not followed, there
16 needs to be a complaint process, a real complaint
17 process.

18 A real person answering the phone.

19 A real person reading the e-mails that are
20 coming from tortured family members.

21 Victims-assistance e-mails have to be
22 responded to, and questions have to be clearly
23 answered.

24 Electronic forms designed to provide
25 supporters of victims an opportunity to write

1 letters have to always be functional, and there has
2 to be quality control. Someone has to be watching
3 that those e-mails are actually being read and
4 responded to.

5 Victim-notification process should be
6 automated via e-mail, like VINE is, or, an automated
7 call.

8 So, victims-information notification every
9 day, you can actually register to have a
10 notification anytime inmate status changes.

11 But you can do the same for parole hearings
12 as well, and decisions on whether or not they're
13 going to release.

14 So, in closing, I would like to also express
15 our strong opposition to Governor Cuomo's 2018
16 executive order, enabling paroles to vote, as it
17 grants registered sex offenders access to schools
18 which serve as polling places.

19 School grounds where children play and
20 congregate must be a sanctuary from those who
21 already are determined by New York State corrections
22 law, "Meghan's Law," to pose a risk to public
23 safety.

24 Whether that risk is a low risk, a moderate
25 risk, or a high risk, those are individuals that are

1 deemed to pose a risk to public safety by law.

2 The implications of this order potentially
3 place children and our most vulnerable at increased
4 risk, and adequate safeguards are not currently in
5 place.

6 Registered sex offenders should not be
7 granted access to our schools.

8 If sex offenders on parole, as well as other
9 parolees convicted of violent crimes, wish to
10 exercise their right to vote, we believe they should
11 be given absentee ballots, postage-paid if they're
12 indigent, to cast their ballots.

13 Thank you for this opportunity to speak on
14 behalf of the victims we represent and the
15 communities we serve.

16 SENATOR GALLIVAN: Barbara.

17 SENATOR PHILLIPS: Thank you, Laura.

18 BARBARA CONNELLY: Thank you.

19 Well, it's almost afternoon, but I'll say,
20 good morning.

21 Can you hear me okay?

22 SENATOR GALLIVAN: I can, yes.

23 BARBARA CONNELLY: Okay.

24 I want to thank Senator Marcellino,
25 Senator Phillips, Senator Gallivan,

1 Senator Flanagan, and Senator Boyle.

2 I find it very important at this time in my
3 life, and in other victims' lives, that this hearing
4 is taking place.

5 I will say one thing: Laura has echoed a lot
6 of what has been going on in my life, my family's
7 life, and at least six other families who have had a
8 murderer released in the last six months.

9 So these are important things.

10 I was asked to tell a little bit about
11 myself, and then to discuss the reasons what I think
12 that would be important.

13 So let me just start with this:

14 My name is Barbara Connelly, and I am a
15 mother of Kathleen, James, Patricia, Barbara, and
16 Terrence (ph.). I'm the widow of James P. Connelly.

17 To make this easier on all of us, I chose to
18 submit a timeline before and after January 1979 with
19 the parole board, as a view of the Connelly family's
20 interaction with the New York State Parole Board and
21 its appointed commissioners.

22 So I'll start this way:

23 In 1972, of May, we moved to Long Island.

24 In 1974, April, we bought a house in Shirley.

25 1976, in January, that house burnt down. We

1 lost everything that we ever had; every little thing
2 that our children made in kindergarten to put on the
3 Christmas trees, every little Mother's Day gift,
4 every little Father's Day's gift.

5 We lost everything, but our family, all of
6 it, was safe.

7 A teenaged boy named Jimmy Murray was hit by
8 a car, and died the same night our house burnt down.

9 He had called to see if my daughter Kathleen
10 could go out for pizza with him and his friends.

11 It was the night before school would start,
12 after Christmas vacation.

13 We didn't let her go.

14 The next day, the school asked if there was
15 anything they could do for us.

16 They knew we lost everything in a fire;
17 clothing, Christmas gifts, pictures, and every
18 memento, as I said.

19 We asked that they, please, help the family
20 of Jimmy Murray. We had insurance.

21 1974 to 1978, after rebuilding home and life,
22 we lived like most other families at the time: Dad
23 worked, mom stayed home, we took care of the house,
24 home, and family, even mother watering the new lawn
25 every single day, 30 minutes a day, keeping

1 (indiscernible) the sprinkler.

2 I hated it. Couldn't wait till he got home
3 on the weekends.

4 My husband was general manager of a small but
5 well-placed electronics firm.

6 In May 1978 he received a sizable raise,
7 which included a car, and soon to include paid
8 family vacations.

9 Life was beginning to look pretty prosperous
10 for a family of seven.

11 Our remaining -- our oldest child was in
12 Catholic high school, our remaining four in public
13 school.

14 Life was beginning to look pretty good.

15 We had a pet dog, like everyone, and mom
16 taught catechism every week.

17 For three years, we had three Christmas
18 pageants, which my class participated in and the
19 families attended, in our home.

20 1978, Christmastime.

21 I share this part because it's the most
22 important in our lives. It's important for you to
23 know who we are, and where we were, before Jimmy was
24 murdered.

25 I told my children to make lists, and we

1 would pick five things from each list.

2 They were to be given allowance, to buy each
3 of the siblings a separate gift.

4 We did that every year, and it was an annual
5 outing.

6 They decided to buy mom an identification
7 bracelet with their money.

8 When they found one they liked, they were
9 told it would cost additional money to have it
10 engraved.

11 The most they could afford, after paying for
12 it, was ten letters.

13 All of them had chipped in \$5 already.

14 If they had the engraving done, they wouldn't
15 have enough to buy a gift for each other.

16 Kathleen and Jimmy chose the engraving. They
17 wouldn't buy each other a gift.

18 The front of the bracelet was easy. It says
19 "Mom."

20 They all struggled for the inscription for
21 the back.

22 I was told, for two hours, between the oldest
23 of them, they could only go back and forth, because
24 they only had put in seven letters.

25 They wanted to put all five of their names,

1 but I can't honestly say which of them came up with
2 "Love'Us," seven letters, with an apostrophe.

3 I had re-read their lists on the 23rd of
4 December, and for some unknown reason, bought each
5 of them one more thing and tagged it "From Santa."

6 Cathy wanted long peacock-feather earrings.
7 Jimmy wanted a suede head hat.

8 Both gifts I was opposed to, but I did it
9 anyway.

10 I will never forget the picture of that
11 Christmas Eve, even when my husband and I watched
12 them open their gifts, Cathy and Jimmy in
13 particular.

14 They both looked at each other, and with
15 surprised faces, and they said, You said you
16 wouldn't! We weren't going to.

17 Cathy was the first to answer, "I didn't!"

18 Everyone looked at me.

19 You see, they had made a pact, their last
20 pact.

21 I was Santa, they knew it.

22 Mom, their mom, would never buy the hat, and
23 the earrings.

24 So, you buy it for me, Jimmy, and I'll buy it
25 for you, which got changed due to the engraving on

1 the bracelet.

2 Dad and mom did not know about the pact, but,
3 somewhere, somehow, mom bought them each a Santa
4 gift.

5 "The happiest Christmas, ever." They have
6 all said it.

7 Cathy said, they all talked about how lucky
8 they were, because they had friends who weren't
9 going to have as much as they.

10 Cathy used her gift-allowance money for the
11 younger kids' gifts, and put Jimmy's name on them.

12 Jimmy had a friend, Al Young, who was going
13 to have a baby, and he had lost his job just before
14 Christmas.

15 Jimmy used his money for them, to help them.

16 I only learned that after 1979.

17 1979, January, Jimmy was murdered at the age
18 of 15, on January 23, 1979, by 19-year-old
19 John Duffy.

20 He was chased, and stabbed more than 22 times
21 in his head, heart, lungs, and back, according to
22 the Nassau County Medical Examiner report.

23 Lastly, his throat was cut three times.

24 He was left bleeding alone in the cold night.

25 The murderer ran, lied, received help from

1 family and known mob affiliates in Queens, and
2 disappeared for 18 months.

3 My 35-year-old husband had a heart attack at
4 the morgue.

5 They didn't recognize it was a heart attack.

6 They gave him a couple of shots of scotch and
7 they thought it was going to help him.

8 No one knew.

9 He was identifying our son, and he wouldn't
10 let me go with him.

11 He never worked again.

12 Never.

13 We lost our home, our car, and our financial
14 stability. Some of us, our health. Not even enough
15 to pay for a funeral.

16 1980, July, John Duffy returned and turned
17 himself in with an attorney.

18 He was let out on bail.

19 1980, November, I started a support group
20 called "FAITH"; Friends Aiding in the Healing, for
21 parents whose children died in all kind of ways --
22 accidents, cancer, other illnesses, including
23 suicide -- in Mastic and Shirley. We met in
24 St. Jude's Church.

25 I couldn't teach religion classes any longer.

1 It wasn't going be easy to say "turn the other
2 cheek."

3 Through that group, I was able to give
4 information on how many children were ill, or died
5 of cancer, to local politicians who were
6 investigating the quality of water in our area.

7 I had the only compiled list, as the parents
8 were members of the support group at the time.

9 That was because of Jimmy.

10 1981, January, while out on bail, Duffy
11 attacked someone else with a weapon. She was
12 hospitalized. She was from Huntington.

13 He used a cousin's name, was placed on bail,
14 and "I guess he slipped through the cracks," they
15 said.

16 1981, April, I co-founded the first support
17 group for homicide survivors with another family,
18 Long Island/New York Parents of Murdered Children.

19 It was the third national chapter.

20 A name change in 1995 to Long Island/New York
21 Parents and Other Survivors of Murdered Victims
22 Outreach.

23 I had read about a family in "People
24 Magazine" in March of 1981.

25 I wrote them a letter, and the rest is

1 history. It was the first Parents of Murdered
2 Children meeting in Ohio.

3 1981, October to November, Duffy was tried
4 and convicted of murder. Finally.

5 He had a lawyer, Herb Lyons (ph.), a
6 well-known mob lawyer.

7 The second victim dropped her charges. She
8 thought that he was going to stay in prison for a
9 long time.

10 He was imprisoned that day, and waiting to be
11 sentenced. He refused seven weeks to show up for
12 sentencing.

13 1982, January, almost three years to the date
14 he killed our Jimmy, he was sentenced, finally, to
15 20 to life.

16 Even though the ADA asked for 25 to life, the
17 judge "felt bad," he said, in the sentencing minutes
18 that had got lost, for us too. He felt bad for
19 sentencing a young man to life in prison.

20 He never mentioned our Jimmy.

21 In those years, we were not allowed to speak
22 at sentencing.

23 We had nothing that could be said.

24 Our shattered hearts have never been
25 repaired.

1 We go on.

2 1987, February, I became a widow, with a
3 16-year-old child to raise.

4 2001, September 11th, first parole hearing
5 for John Duffy.

6 My picture and my son was on the first
7 edition of "News Day" that day. It was split with a
8 picture of somebody they said -- I think they said,
9 "Criminal within," and it was talking about violence
10 and terrorism.

11 My picture.

12 It was postponed until October 11, 2011 --
13 2001.

14 The first parole hearing, there are only five
15 of us now, four children and mom.

16 We promised my husband we would fight his
17 release.

18 We did, all the way up until July 2018.

19 2016, July, a notice of decision to release
20 him, and then an immediate rescission hearing was
21 imposed.

22 It was both based on information discovered,
23 which had not been given to the parole board in 2001
24 and 2007.

25 Videotapes, which were parts of our impact

1 hearings we had submitted, but they were overlooked.

2 2018, July 5th, Office of Victim Assistance,
3 telephone call.

4 The New York State court overturns the
5 New York State Parole Board's rescission hearing of
6 December 16th.

7 2018, July 7th, July 8th, July 9th,
8 July 10th, July 11th, July 14th, July 15th, I argued
9 with the New York State Attorney General's counsel.

10 Why, why, were they not asking the New York
11 State Supreme Court for a leave of their decision?

12 They told me it was being considered.

13 Because that decision for John Duffy was
14 based on a 2016 Article 78, he would be due to go
15 out any day, they kept telling me.

16 July 18, 2018, I had a letter from OVA.

17 "He will be released."

18 Nothing else.

19 No date. None "around."

20 Contact this person.

21 Nothing.

22 I have proof of every single thing I'm
23 speaking about.

24 July -- 2018, July 24th, we found out,
25 online, he was released.

1 He was either released the 18th and 19th, the
2 20th or 21st, the 22nd, the 23rd, or the 24th,
3 because it says his leave picture was taken on
4 July 18th.

5 But, they told me on the telephone, OVA,
6 Janet Koupash, that, no, he was let out on the 24th,
7 one of six violent felons released in the last five
8 months.

9 I know this is cutting into the 10 minutes
10 allotted each of us.

11 I've gone over it for days. It's almost
12 impossible to stay focused at times.

13 I needed to explain why I was involved with
14 the parole board.

15 I wanted you to see through a large window of
16 our life that brought us there.

17 Please ask me about the five things I have
18 listed.

19 Ask what I would change about the New York
20 State Parole Board.

21 We know it better than most families. We
22 were in front of it eight times, from 2011 to 2015.

23 Each time he would be denied, he filed
24 Article 78s, almost every time, which were denied.

25 He had his 2015 hearing late, as he was still

1 waiting for another Article 78 decision.

2 We had five more parole impact hearings,
3 every six months, from 2015.

4 All together, we had 13 hearings in 16 years.

5 He was able to postpone, just like he did his
6 sentencing, and parole-commissioner shop.

7 He would go in. If he didn't like who was
8 there, he would step out and say, I'm not being
9 heard today.

10 He did that four times.

11 He should not, he should not, have been
12 allowed to do that.

13 I attended every hearing, except July 5,
14 2018, when Governor Andrew Cuomo closed the
15 Long Island roads due to the storm.

16 It killed me that I lived in Shirley.

17 My daughter Kathleen lived in Babylon.

18 Her husband drove us through that storm, to
19 Hempstead, I think it was, Fulton Street, and
20 Kathleen gave her impact statement.

21 I had a phone interview that same afternoon,
22 with the same parole commissioner that Kathleen met
23 with.

24 And they were not prepared.

25 They mixed up our names. They mixed up my

1 son's name. They mixed up my husband's name.

2 At one point they said, "Your brother John."

3 John was the murderer.

4 In 16 years, we had 13 parole impact
5 hearings.

6 He was released. We found out online.

7 The letter that I have did not give me a
8 date.

9 We blame a parole board commissioner, and I'm
10 going to say her name here: Christina Hernandez.

11 We blame the process that should have been
12 followed, and was not.

13 I have requested FOIL information in July.

14 I have not received it yet.

15 I would like you to ask me about the
16 following:

17 The weight of the inmate program, in example,
18 the COMPAS.

19 I contacted the gentleman who developed the
20 COMPAS program on the date that I knew there was
21 going to be rescission.

22 He told me: It wasn't made for murderers.
23 It was made for inmates.

24 And that he did advise, that when they
25 consider COMPAS, they should add 15 to 20 percent

1 more, against.

2 They don't.

3 Parole board commissioners, twisting and
4 twisting verbal input, specifically, to minimize
5 crime during an inmate's hearing to ensure release.

6 Christina Hernandez, in the hearing, said to
7 him: Well, it says here, 10 times that you stabbed
8 him.

9 How dare she put that in that hearing for
10 him.

11 He stabbed my son 22 times, and it's written
12 everywhere.

13 Plus, plus cut my son's throat.

14 The necessity to amend Criminal Procedure
15 Law 380.50, the notification to victims prior to
16 inmate release from prison, "Jenna's Law," must be
17 amended.

18 The notification today that we get when
19 somebody is to be released from prison, a violent
20 offender, we get VINE calling us six hours after
21 they get the information.

22 We found it out online.

23 We still hadn't gotten the letter from OVA.

24 The letter from OVA was mailed on the 25th.

25 He was already out.

1 There should be a "parole board commissioner"
2 checklist as they're going through their hearings,
3 to make the procedure crucial to our well-being when
4 a murderer is to be heard, with each checked piece
5 of review information, and provided to victim
6 survivors.

7 Also, there should be similar, but not
8 including, a handbook for families and friends of
9 victims, just like the handbook for families and
10 friends of inmates.

11 I am trying to put one together.

12 For all these years, for almost 38 years,
13 I've been the voice of the victims, helping to try
14 to do these things for people.

15 When up in Janet Koupash's office, OVA, Well,
16 Barbara, what do you think we should do?

17 Your letter is faulty to victims. There is
18 nothing in your letter that can help us.

19 There is nothing -- no one to call us and
20 say, the murderer is going out.

21 I asked, Were the special conditions put in
22 place?

23 "Oh, yes, they were."

24 Well, I have a copy of his signed special
25 conditions:

1 Stay out of Nassau and Suffolk.

2 He was supposed to stay out of Manhattan
3 where my granddaughter works.

4 He was supposed to stay out of certain places
5 where our -- I've got 11 grandchildren now.

6 He was supposed to stay away from things like
7 that.

8 He was supposed to have electric monitoring.

9 He has been made a Schedule 4 -- Level 4.

10 "Level 4" means the least conditions an
11 inmate has when they get out of prison.

12 He could have stole gum, and gotten -- been a
13 Level 4.

14 When I asked about that, they said, it was
15 put in place by the parole board at the hearing
16 that -- which was Christina Hernandez, who voted,
17 and got somebody to help her, let him out.

18 My complaint is not about the parole board.
19 It's about the procedures.

20 Because, to be very, very honest, for the
21 first eight times that we had to go, we had the best
22 parole commissioners, ever, decent human beings who
23 did not want to even hear our story.

24 And after a while, we were told, Don't tell
25 what happened to Jimmy. We don't want to know that.

1 We want to know how you're doing.

2 Now, we only get one hour.

3 If there is five of us, we have to break it
4 into, like, 13 1/2 minutes for us to speak.

5 That has to be changed.

6 We cannot have people making those decisions
7 for us.

8 I don't want to say any more, but Niko (ph.)
9 knows that we have a complaint against the judge
10 that allowed all of our information, confidential
11 information for crime victims, said at every parole
12 hearing, "This is confidential information."

13 It went out, Judge Richard Mart (ph.).

14 My daughter was chastised for complaining to
15 him so many times.

16 So what happened to Jimmy doesn't matter any
17 longer.

18 What's going to happen now, it matters to all
19 the others of us coming out, all of the other
20 families that we represent, that Laura represents,
21 that maybe a lot of other people here represent.

22 That you represent.

23 What's going to happen to them?

24 Changes have to come. We need it.

25 And we need all of you to back us.

1 I'm 78 years old. I started this when I was
2 38.

3 How much longer is it going to have to be the
4 voice of the victim, not to be revictimizing
5 themselves, and all of the others.

6 I present to you.

7 SENATOR PHILLIPS: Mrs. Connelly, thank you;
8 thank you very much for sharing your story.

9 BARBARA CONNELLY: You're welcome.

10 SENATOR PHILLIPS: Are there questions?

11 SENATOR BOYLE: I have one quick question.

12 You mentioned your son's murderer, when he
13 was up for the hearing, I guess, for the release, he
14 walked in and he saw what who was there on the
15 panel, and then walked back out again?

16 They're allowed to do that?

17 BARBARA CONNELLY: Four times, because he had
18 an Article pending, Article 78.

19 I asked about it every single time, and they
20 kept saying, yes.

21 SENATOR BOYLE: Wow.

22 All right. Thank you.

23 BARBARA CONNELLY: But, the good part of that
24 was, every time that happened, as long as it was
25 six months, we could fight it again.

1 SENATOR BOYLE: Okay. Thank you.

2 SENATOR PHILLIPS: Mrs. Connelly, I have one
3 question.

4 What do you believe the message -- what is
5 the message that's being sent to the public by
6 granting these wholesale pardons?

7 BARBARA CONNELLY: "Politics," that's the
8 message.

9 SENATOR PHILLIPS: Thank you.

10 SENATOR GALLIVAN: Thank you both for your
11 testimony, and sharing that.

12 And -- yep, go right ahead.

13 SENATOR MARCELLINO: I just have a question
14 for Laura, if that's possible?

15 Okay.

16 Laura, in the statement that you presented,
17 it's a New York State parole policies' procedures,
18 you talked about, and there were eight parole board
19 hearings the families had to endure.

20 Is there a reasoning behind this, or a
21 justification for this?

22 LAURA AHEARN, ESQ.: I'm sorry, what section
23 are you referring to?

24 SENATOR MARCELLINO: The first page, where
25 you talk about "New York State Parole Policies and

1 Procedures."

2 LAURA AHEARN, ESQ.: That's just my heading
3 there, to separate out my testimony?

4 SENATOR MARCELLINO: Yes.

5 LAURA AHEARN, ESQ.: What is the question?

6 SENATOR MARCELLINO: This first section it
7 says:

8 "In May of '71, Herman Bell was a part of a
9 group that lured and ambushed two New York City
10 police officers.

11 "His guilt and actions were never in dispute.

12 "The families had to endure eight hearings.

13 "In the last hearing" --

14 LAURA AHEARN, ESQ.: He was granted parole.

15 SENATOR MARCELLINO: -- "by 2-1."

16 Was there a justification given by the parole
17 board as to why they did what they did?

18 LAURA AHEARN, ESQ.: Well, my guess is, that
19 they're following the same procedures and policies
20 that they have already now.

21 So, that's what needs to be changed, because
22 the procedures that they're guided by are allowing
23 for the release of individuals, like Bell, who can
24 murder our police officers, and go back out on the
25 street.

1 Guys like the South Shore rapist, who attack
2 women and children, and go to jail for -- or, are
3 sentenced to 650 years, and then can be released.

4 So, clearly, there's something very wrong
5 with the procedures they're following in order to
6 release those offenders.

7 BARBARA CONNELLY: And may I interrupt and
8 interject on that?

9 SENATOR MARCELLINO: Sure.

10 BARBARA CONNELLY: They used a COMPAS as a --
11 it's like a -- I'm going to say like a schedule.

12 And any tickets they have gotten in the last
13 two, three, four, five years, and they know when
14 they can start to discount some of their tickets.

15 But the COMPAS plays a very big part, because
16 they mentioned "COMPAS" in every single hearing.
17 And their good behavior.

18 SENATOR MARCELLINO: Thank you.

19 SENATOR GALLIVAN: To Senator Marcellino's
20 question, the board in the Bell case did issue a
21 written decision.

22 That is among the records that we did
23 request, and we received it, and it will be a part
24 of the record, their -- the commissioners who voted
25 in favor, their rationale for it, as well as the

1 opposing commissioner.

2 So we do have that, and that's available --
3 it will be available for all members.

4 SENATOR MARCELLINO: Thank you.

5 SENATOR GALLIVAN: We do thank you for your
6 testimony, and willingness to stand up on behalf of
7 victims.

8 Especially, very sorry for your loss, but,
9 thrilled that you've been standing up all these
10 years for victims' voices to be heard.

11 You both were very, very comprehensive in
12 your testimony.

13 And you should know, some of the victim or
14 victim groups that testified yesterday spoke to many
15 of the same things.

16 So, the combination of that, and your
17 comprehensive testimony, I don't have many
18 questions.

19 I only have one, and, Laura, it is for you.

20 You talked about the parole hearings not
21 granted every two years. But then suggested at
22 least every five years for murderers and rapists.

23 Does that mean a graduated scale, depending
24 on the severity of the crime, is what you're
25 suggesting, or recommending?

1 LAURA AHEARN, ESQ.: That's what the Tinyes
2 family had requested, and also Jenna Brooks as well,
3 that there be some type of system to -- maybe a
4 point system, something, to make a determination as
5 to when it will limit the trauma.

6 So, if you have a guy who -- like in the
7 Tinyes' case, who committed such a violent, heinous
8 crime, should it really be an opportunity for an
9 offender like that to be requesting parole hearings
10 after two years, after two years, after two years?

11 Like, where we have here, with Barbara, where
12 she's continually going to try to prevent somebody
13 from being released.

14 That in itself is traumatizing.

15 So whatever -- whatever type of a system that
16 the Senate can develop and recommend, I'm confident
17 that victims and surviving family members would be
18 supportive of that, because, right now, it's -- it's
19 at least every two years.

20 So, Barbara was subjected to situations where
21 it was once every six months, you had said?

22 BARBARA CONNELLY: At the end.

23 LAURA AHEARN, ESQ.: At the end.

24 SENATOR GALLIVAN: Because of the appeals,
25 and --

1 BARBARA CONNELLY: Because of the appeals.

2 LAURA AHEARN, ESQ.: Right.

3 BARBARA CONNELLY: But I do want to say to
4 that, because I don't know if you know this, there's
5 an Assembly bill, and there's a Senate bill --

6 LAURA AHEARN, ESQ.: Yes.

7 BARBARA CONNELLY: -- for those five years.

8 People from our group, the Hennesseys (ph.),
9 they fought hard for that.

10 I mean, there's no darned reason why it
11 shouldn't be passed. They don't have to get five
12 years, but at least it gives them a space where they
13 can say, well, this is too heinous, and we are gonna
14 keep you the five years, or it could be two, three,
15 four, or six months.

16 But five years should be there.

17 LAURA AHEARN, ESQ.: It should be at least
18 five years.

19 SENATOR GALLIVAN: Thank you both for your
20 time --

21 BARBARA CONNELLY: Thank you.

22 LAURA AHEARN, ESQ.: Thank you very much.

23 SENATOR GALLIVAN: -- and your testimony.

24 SENATOR PHILLIPS: So if we could have the
25 New York State Association of PBAs,

1 Daniel Fitzpatrick, and Suffolk County PBA,
2 Pat Saunders.

3 SENATOR GALLIVAN: And James Hughes,
4 Suffolk County Detectives Association President.

5 SENATOR PHILLIPS: Thank you.

6 I'm sorry, James.

7 SENATOR GALLIVAN: We do appreciate it.

8 And, let me thank you in advance for the --
9 your service, and the service of the people that you
10 represent.

11 Could you each, just for the record, state
12 your name and your title, and then whatever order
13 you want to proceed is okay with us.

14 DANIEL FITZPATRICK: Sure.

15 Daniel Fitzpatrick. I'm the treasurer of the
16 New York State Association of PBAs.

17 JAMES HUGHES: James Hughes. I am the
18 president of the Suffolk detectives, as well as an
19 executive board member for the New York State
20 Association of PBAs.

21 PAT SAUNDERS: I'm Pat Saunders. I'm the
22 sergeant at arms for the Suffolk County PBA.

23 DANIEL FITZPATRICK: Good afternoon,
24 Senators.

25 Thank you, Senator Gallivan,

1 Senator Phillips, Senator Marcellino, Senator Boyle.

2 Thank you for inviting us and giving us a
3 voice to be heard today.

4 As I said, my name is Daniel Fitzpatrick.
5 I'm a representative of the New York State
6 Association of PBAs.

7 We're an organization that represents
8 approximately 40,000 law-enforcement officers in
9 New York State.

10 I'm here to share with you the perspective of
11 all law enforcement as it relates to granting of
12 parole.

13 New York State has always been a leader for
14 change and innovation, and parole is just one
15 example.

16 The first use of parole in New York State --
17 in the United States was instituted in New York in
18 1817.

19 It has evolved to where we are now, 200 years
20 in the making.

21 The last major change was in 1998 with the
22 enacting of Jenna's Law. Jenna's Law strengthened
23 the penalties for violent felony convictions.

24 As we move forward 20 years from the passage
25 of Jenna's Law, we find New York a less safe place

1 for both law enforcement and for the community.

2 Earlier in 2018, the New York State Board of
3 Parole released the most violent of violent felons.

4 In January 2018, Christopher Thomas was given
5 parole.

6 Mr. Thomas was convicted of the 1984
7 manslaughter of 10 people, 8 of which were children.

8 Mr. Thomas's sentence was 10 consecutive
9 prison terms, which could have totaled 83 to
10 250 years.

11 Judge Ronald Aiello stated that
12 Mr. Thomas's sentence, as it was his -- it was
13 intention -- Aiello's intention at sentencing that
14 Mr. Thomas serve every single day, every single
15 hour, and every single minute of his sentence.

16 But due to state law, Mr. Thomas's sentence
17 was capped at 50 years, and was paroled after
18 serving only 32 years.

19 Think about it: 3.2 years per victim, 8 of
20 them being children.

21 If Mr. Thomas had to complete the 50 years
22 of his sentence, he would still be incarcerated till
23 the year 2035, which is 17 years from now.

24 But by far, for law enforcement, the most
25 egregious release came on April of this year, in

1 2018, with the parole of Herman Bell.

2 Mr. Bell and his co-defendants
3 Anthony Bottoms and Albert Washington were convicted
4 in 1971 of the execution of New York City Police
5 Officers Joseph Piagentini and Waverly Jones.

6 Officer Jones was once -- shot once in the
7 back of the head, execution style, by Mr. Bell.
8 And then Mr. Bell took Officer Piagentini's gun
9 and executed the officer while he pleaded for his
10 life, firing 22 rounds into the body of
11 Officer Piagentini.

12 Mr. Bell and Mr. Bottom were also
13 convicted of the 1971 killing of San Francisco
14 Sergeant John Victor Young.

15 Officer Piagentini's service revolver was
16 discovered in San Francisco shortly after the murder
17 of Sergeant Young.

18 Mr. Bell was denied parole in his first
19 six attempts, and it was not until his last appeal
20 that he took responsibility for his heinous and
21 cowardly acts.

22 Mr. Washington passed away in prison, and
23 Mr. Bottom (sic) is still currently incarcerated.

24 If Mr. Thomas and Mr. Bell were sentenced
25 under today's guidelines, they would still be in

1 prison today.

2 While the laws cannot be changed that
3 retroactively adjust sentences of a convicted
4 felony -- violent felony offenders, solutions must
5 be sought to ensure that the most violent felons be
6 kept in prison to ensure the safety and community of
7 our fam -- ensure the safety of our community and
8 that of law enforcement.

9 As far as the condition of pardons, as we
10 look to voting rights, the last -- the most glaring
11 of these issues, as it represents to law enforcement
12 is: Is law enforcement going to be notified if
13 these people are going to be voting?

14 If you -- you know, the most -- sex
15 offenders, are the notifications going to be made to
16 the police department that they are going to be
17 voting?

18 And if they are going to be voting, you're
19 going to have to have an officer at every single
20 polling place?

21 Which, quite honestly, seems somewhat
22 impractical.

23 Are you going to notify the detective units
24 that these sex offenders have to register with?

25 Are they going to escort them there?

1 Are they going to have to notify them before
2 they go, or are they going to have to notify them
3 after?

4 There's a whole host of issues which have not
5 yet to be addressed.

6 The New York State Association of PBAs looks
7 forward to working with the Senate, the Assembly,
8 and the Governor's Office to find solutions that
9 address these issues.

10 Finally, I would like to thank the panel for
11 affording me the opportunity to speak with you
12 today.

13 SENATOR PHILLIPS: Thank you; thank you very
14 much.

15 SENATOR GALLIVAN: Jim.

16 JAMES HUGHES: Good afternoon, Senators.

17 I thank you for the opportunity to appear
18 before you here today and to speak to you.

19 I want to relate to you the story of a
20 parolee, and the attempted murder of an on-duty
21 Suffolk County police officer.

22 The date was November 5, 1980, the time was
23 1:17 in the morning.

24 On November 5, 1980, a police officer in
25 Suffolk County's third precinct was operating his

1 sector unit, when he observed an unfamiliar male
2 subject walking south on Islip Avenue and
3 Islip Terrace.

4 The subject did not look familiar to the
5 officer who knew his sector well, and, in fact,
6 resembled the police sketch of a subject -- of a
7 suspect doing gas station robberies in the third
8 precinct.

9 The officer pulled his vehicle near the
10 subject and engaged him in conversation.

11 The officer spoke to him about our new
12 President --

13 This was the day after Election Day and
14 Ronald Reagan had just been elected the new
15 President.

16 -- and gathered information, to include the
17 subject's name, home address, subject's
18 destination -- and the subject's destination at that
19 late hour.

20 Subject indicated he had lived in Brentwood
21 and was en route to Bay Shore.

22 After the brief conversation, the subject
23 continued on his way south on Route 111.

24 The officer, still suspicious of this
25 subject, ran computer checks on the name and

1 information provided, and radioed a long-time sector
2 operator in the Brentwood area to inquire if he knew
3 this subject or knew of anyone that lived in the
4 address that he provided.

5 Brentwood officer did not recognize the name
6 provided.

7 Police officer continued to patrol his area
8 around the area of 111, and a short time later, he
9 observed the subject again, this time walking north
10 on 111 and looking into parked cars.

11 The officer again approached the suspect --
12 the subject and asked what he was doing.

13 He asked the subject if he had any ID on him.

14 Before the officer could exit his vehicle,
15 the subject approached the driver's window and said
16 he had a learner's permit.

17 When asked to produce it, the subject stepped
18 back and reached into his rear waist band.

19 The officer turned just as the subject fired
20 into the officer's face.

21 The officer threw his arm out, pushing the
22 subject away from the car, and drew his weapon.

23 The subject continued to fire at the police
24 officer, and the officer returned fire.

25 After three shots, the officer's weapon

1 became inoperable.

2 The subject continued firing, and then fled
3 north up Islip Avenue.

4 The officer radioed for assistance, and was
5 transported to the hospital, where he underwent
6 surgery for gunshot wounds to the face and leg.

7 "I survived."

8 This case was investigated by the homicide
9 squad.

10 My assailant was arrested a short time later,
11 and confessed to shooting the officer, fearing he
12 would be found to be in possession of the
13 9-millimeter handgun he carried.

14 The examination of my jammed weapon revealed
15 that an incoming round from his assailant -- from
16 this assailant had struck the front trigger guard on
17 my 38-caliber revolver and rendered it inoperable.

18 It should be noted that this weapon had been
19 held extended in front of my chest, and had it not
20 hit the trigger guard, it would, in all probability,
21 have struck me in the chest and possibly killed me.

22 Investigation revealed the arrestee was on
23 parole from a robbery conviction at the time of the
24 shooting.

25 Recovered during this investigation was a

1 list of police officer names the defendant had
2 planned to kill.

3 The officer described... I'm sorry.

4 I was not on that particular list. I was a
5 target of opportunity, I guess.

6 The above-subject stood trial for attempted
7 murder, first degree, and was sentenced, as charged.

8 20 to life he was sentenced to.

9 Today, every year this defendant stands up
10 for parole, and, periodically, I will appear before
11 the parole board and let my sentiments be known.

12 I do not believe that this subject should
13 ever be paroled, and made those wishes known to the
14 parole board, because of the fact that he had a list
15 of police officers he wished to kill.

16 I mean, the desire to kill anyone, be it a
17 police officer, or the people the police officers
18 protect, is abhorrent to this society, or should be.

19 It can only be hoped that a parole board will
20 continue to recognize the threat this man represents
21 to us all and keep him in prison for the life
22 sentence he truly deserved.

23 Thank you.

24 SENATOR PHILLIPS: Thank you.

25 SENATOR GALLIVAN: Pat.

1 PAT SAUNDERS: Good morning, Senators, and
2 assembled guests.

3 My name again is Pat Saunders, and I'm here
4 on behalf of the Suffolk County PBA and our
5 president, Noel DiGerolamo.

6 Thank you for allowing me to speak on this
7 important issue.

8 I begin my remarks with two historical dates.

9 In 1817, New York became the first state in
10 the nation to enact a good-time law with respect to
11 prison sentencing.

12 On July 1, 1930, the division of parole was
13 established in the Executive Branch of New York.

14 In the ensuing 88 years, parole for serious
15 felony crimes has fluctuated with New York State's
16 death-penalty arguments.

17 With 201 years of history, New York has the
18 most experience with parole in the nation.

19 Unfortunately, over the course of the last
20 50 years, we have wrestled with the issue of a death
21 sentence, life without parole, and parole for the
22 crimes we hold as the most vicious.

23 One theme continues to resonate amongst all
24 the arguments, however: The killing of a police
25 officer performing his official duties deserves the

1 most stringent of penalties.

2 In the last two years, some of our residents
3 have seemingly forgot that.

4 A police officer at work is not an
5 individual. They are representative of society and
6 our laws and norms.

7 Aggression towards them is an act against
8 society and demonstrates either complete disregard
9 or mental illness.

10 After adjudication, if a defendant is found
11 competent and guilty, the process of parole must
12 take in account the people's wish to incarcerate the
13 subject to keep society safe.

14 The killings of Police Officers
15 Waverly Jones, Joseph Piagentini, and
16 Trooper Emerson Dillon, amongst countless others,
17 were not heat-of-the-moment accidental killings.

18 They were planned and vicious assassinations,
19 and were found to be so by a jury.

20 It boggles the mind how a subject who
21 committed the ultimate act of evil against another
22 person, and by extension, all of society, could ever
23 truly be reformed.

24 The benefit of the doubt should be given to
25 the victims, their families, and co-workers.

1 The victims were contributing to society and
2 helping others. The convicted felons were not.

3 New York State's correctional-system
4 population is rife with prisoners who are eligible
5 for parole: Serial killers David Berkowitz and
6 Joel Rifkin, spree killers Colin Ferguson and
7 Julio Gonzalez, numerous cop-killers who I cannot
8 and will not identify by name, along with the
9 infamous Long Island diner felons who committed more
10 than 100 felonies in a tragic morning.

11 That diner is five miles from where we sit
12 right now.

13 Is the parole system really designed to let
14 these felons out?

15 As a lifelong New Yorker, I certainly would
16 hope not.

17 Reading the parole hearing minutes of the
18 murder of POs Jones and Piagentini showed me no
19 sense of remorse or responsibility. Instead, the
20 felon spoke of his role in a war against society.

21 Do we really believe those feelings ever
22 change?

23 If these prisoners are purportedly helping
24 other inmates, I say leave them in prison and let
25 them continue. The risk to us is too great to take

1 a chance.

2 I'll conclude with an example of parole gone
3 wrong.

4 In 1967, Joe "Mad Dog" Sullivan was convicted
5 of manslaughter.

6 In 1971 he escaped the Attica Correctional
7 Facility, the first person having done so.

8 He was recaptured six weeks later.

9 Amazingly, he was paroled in 1975.

10 Over the course of the next six years, he was
11 suspected in close to 20 murders as a contract
12 killer.

13 In 1981 he was convicted of three murders,
14 and died in prison.

15 Parole is a privilege, not a right, and
16 should be reserved for non-violent offenses that can
17 be rehabilitated, not subjects evincing the blatant
18 disregard of human life.

19 Thank you.

20 SENATOR GALLIVAN: I have one question.

21 Dan, you made reference in your testimony to
22 "under today's current sentencing standards."

23 Is that a reference to the murder of a --
24 police officers, punishable by life without
25 parole --

1 DANIEL FITZPATRICK: (Indiscernible.)

2 SENATOR GALLIVAN: -- life imprisonment
3 without parole?

4 DANIEL FITZPATRICK: Yes.

5 SENATOR GALLIVAN: And that is a current
6 status, I believe, from 2005, when the Legislature
7 enacted that --

8 DANIEL FITZPATRICK: Yes.

9 SENATOR GALLIVAN: -- and the governor signed
10 that?

11 DANIEL FITZPATRICK: Violent felony statutes
12 also increased in 1998 with the enactment of
13 Jenna's Law. And his -- especially, Mr. Thomas's
14 crime was committed prior to that.

15 SENATOR GALLIVAN: Okay. Thanks.

16 SENATOR PHILLIPS: I have a question for any
17 of you.

18 Were you notified of the individuals that
19 were pardoned, particularly the Level 3 sex
20 offenders, and the murderers, before they were
21 pardoned, or afterwards? Were you given the
22 individuals' names?

23 DANIEL FITZPATRICK: I'm sorry, pardoned?

24 SENATOR PHILLIPS: Through this last round of
25 the Governor's pardoning, were -- was there any

1 notification that --

2 DANIEL FITZPATRICK: Not to my knowledge.

3 SENATOR PHILLIPS: -- these individuals --

4 DANIEL FITZPATRICK: Not to my knowledge.

5 JAMES HUGHES: Nor mine.

6 SENATOR GALLIVAN: Senator Marcellino.

7 SENATOR MARCELLINO: Let me ask you just a
8 quick question about, the person who is being given
9 the right to vote, what would you think about the
10 use of only voting for these people by absentee
11 ballots?

12 They would not be allowed to go near a school
13 and enter a building. But if they were going to
14 vote, they could vote by absentee ballot only.

15 DANIEL FITZPATRICK: I think that would be
16 acceptable means.

17 I mean, to let a sex offender into a school?

18 Who has -- who has to answer that?

19 That's ridiculous. That's inane.

20 SENATOR MARCELLINO: Couldn't agree with you
21 more.

22 PAT SAUNDERS: Senator, I would even say, let
23 them vote with their parole officer when they check
24 in for a hearing.

25 If they're being supervised release, let them

1 vote when they respond there.

2 SENATOR GALLIVAN: Senator Boyle.

3 SENATOR BOYLE: I agree, that just the idea
4 that these convicts are supposed to be -- only be
5 allowed in the schools between 7 p.m. and 9 p.m.,
6 just that have you to say that alone makes it so
7 ridiculous, that it should not happen at any point
8 in time during the course of the day, if any.

9 But just like to thank you gentlemen.

10 And, Jim, I've known you many years and never
11 heard that story.

12 Thank you very much for sharing it.

13 And on behalf of you, and other victims,
14 particularly Diane Piagentini, a constituent of
15 mine, the widow of Officer Piagentini, in letting
16 any police officer -- the murderer of a police
17 officer free at any time makes no sense whatsoever.

18 Thank you.

19 SENATOR GALLIVAN: Thank you, all.

20 SENATOR PHILLIPS: Thank you very much.

21 SENATOR GALLIVAN: Next we will have:

22 New Hyde Park-Garden City Park

23 superintendent --

24 SENATOR PHILLIPS: Dr. Jennifer Morrison.

25 SENATOR GALLIVAN: Oh, I didn't have

1 "Doctor."

2 -- Dr. Jennifer Morrison;

3 Mineola superintendent, Michael Nagler --

4 SENATOR PHILLIPS: "Doctor."

5 SENATOR GALLIVAN: -- another doctor. Sorry.

6 And New Hyde Park Memorial High School PTSA,
7 corresponding secretary, James Reddan.

8 JAMES REDDAN: Just "Jim."

9 SENATOR GALLIVAN: Jim Reddan.

10 JAMES REDDAN: Everybody else had titles, so
11 I take it, I'm just "Jim."

12 SENATOR PHILLIPS: I'd like to go -- I don't
13 think -- I'd like to go on record here.

14 I have a little bit of research that we did
15 in our office, and let me emphasize the word
16 "research," because there was no known way -- or,
17 the way we had to figure this out was complicated.

18 But, in Nassau County, we found 23 sex
19 offenders, including 9 -- let me repeat --
20 9 Level 3s.

21 And for those of you that don't know the
22 difference between Level 1, Level 2, and Level 3,
23 Level 3s are determined to be the high risk of
24 repeat offense and a threat to public safety, and
25 Level 3 sex offenders must register for life.

1 These sex offenders included 10 child
2 rapists, 14 child victims as young as 2 years old.

3 And it was my office who provided this
4 information to the Nassau County Police.

5 SENATOR GALLIVAN: So we appreciate the fact
6 that you are here, and your patience, of course.

7 And as with the others, we are -- it doesn't
8 matter who goes first. But, when you testify, could
9 you just start first with your name and your title,
10 and you can proceed right into your testimony.

11 DR. JENNIFER MORRISON: I guess I'll go
12 first.

13 Okay. My name is Dr. Jennifer Morrison.
14 I'm the superintendent of schools of New Hyde
15 Park-Garden City Park School District, and I'm here
16 to thank you, first, for having me.

17 I appreciate you listening.

18 And I'd also like to impress upon you the
19 importance of keeping our children secure and safe.

20 We work tirelessly to keep our children safe
21 in school.

22 And on Primary, Special, and General Election
23 days, the law requires schools to allow parolees,
24 unidentified strangers, and unvetted election
25 workers to enter and vote in our children's school

1 buildings.

2 We are expected to keep our children safe.

3 Schools have added visitor identification
4 systems, security guards, security vestibules with
5 mantraps, and security cameras to do so.

6 Our front doors are locked to our schools all
7 day, every single day. No one is permitted to enter
8 the building without first showing photo
9 identification.

10 On polling days, when children are present,
11 we are required to leave the doors unlocked, and we
12 are not allowed to require visitors to present
13 identification, which poses significant safety
14 concerns.

15 Anyone on election polling day can walk into
16 our schools unannounced.

17 Anyone.

18 Anyone can walk into our schools unannounced.

19 Our school buildings were built in the early
20 and mid-1900s. They were designed to be community
21 schools for the education of elementary school
22 children.

23 None were designed with the idea that
24 visitors would be entering during the school day to
25 vote, and, certainly, none were designed in an era

1 when anyone even thought of the possibility of
2 school shootings.

3 In one of our buildings, visitors entering to
4 vote have to pass by a student classroom and the
5 nurse's office.

6 Students in our adjacent hallways must pass
7 these visitors throughout the day to go to the
8 bathroom, to the nurse, to lunch, to gym, to music,
9 or to go to mandated services such as speech.

10 Keep in mind, these students are as young as
11 four years old.

12 In this age of horrific school shootings, we
13 owe our children better than to have polling in our
14 school buildings.

15 The board of elections offers no assistance
16 assuring the safety of our students, teachers, and
17 employees on election days, nor will the police
18 department station police officers at our buildings.

19 I asked for that help, and was advised that
20 the police department would not assign an officer on
21 election days to be at our polling places; there
22 simply aren't enough of them.

23 The board of elections will not send security
24 guards to guard our children, or even our doors.

25 This responsibility falls on school

1 districts.

2 The board of election does, however, send
3 election workers to our buildings who are not
4 background checked, and have absolutely no
5 familiarity with the school-safety plans.

6 Every employee in our school system that
7 enters our buildings has been fingerprinted as --
8 and is trained in emergency procedures.

9 Election workers are not.

10 On polling days they are in our facilities
11 all day long.

12 We have even had instances where election
13 workers have roamed through our buildings and used
14 student restrooms while elementary school students
15 were in there, rather than wait for the staff
16 bathroom to become available.

17 A few years ago the vote was moved out of one
18 of our schools, New Hyde Park Road School,
19 subsequent to a lockdown having been called while
20 voters were in the building.

21 Voters and election workers ignored the
22 lockdown, as they were not familiar with the
23 procedures that we use to keep our children safe.

24 Our school staff, and the police upon their
25 arrival, were unable to determine who belonged in

1 the building, and who or what might have been the
2 cause of the lockdown.

3 It was chaotic.

4 As I stated earlier, on election days, we are
5 not allowed to ask for visitor identification.

6 By Governor Cuomo's executive order, the
7 rights of approximately 24,000 sex offenders to vote
8 were restored, and the department of corrections has
9 implemented a procedure so that sex offenders are
10 allowed to enter schools to vote after 7 p.m.

11 They must get written permission from their
12 parole office if they intend to vote at a school,
13 and then from the school superintendent.

14 I assure you that I will not be granting my
15 permission for any sex offender to enter my school
16 buildings and vote, even after 7 p.m.

17 Ever.

18 Our doors do not close at 7 p.m.

19 There are sports practices and other
20 activities in our school buildings that are attended
21 by children.

22 Our school buildings are the center of our
23 communities. They're in use all the time.

24 But even if I deny that permission, how would
25 we know if a sex offender or a murderer or a

1 cop-killer was entering our schools on a polling day
2 anyway, as we are not allowed to check
3 identification?

4 This is why polling does not belong in our
5 schools.

6 This initiative is misguided, and will allow
7 dangerous felons, amongst others, into schools to
8 vote.

9 To keep our children safe, our district
10 safety plan requires visitors be buzzed into the
11 building every time they visit, and that, upon entry
12 into the building, the visitor must show photo
13 identification.

14 The visitor then receives a badge and is
15 escorted to the main office.

16 At the main office, the person is accompanied
17 to their destination.

18 At the end of their visit, they have to sign
19 out and return their badge.

20 In light of the recent nationwide security
21 concern, this process should not be expected to be
22 bypassed on election days as it contradicts the
23 procedures we have implemented to keep our children
24 safe on a daily basis.

25 These procedures were implemented based upon

1 recommendations received from the Nassau County
2 Police Department, among others.

3 The district's request for Nassau County
4 police officers to provide security at two of
5 New Hyde Park-Garden City Park schools, Manor Oaks
6 and Hillside Grade, during the Primary Election,
7 which was scheduled to be held in both buildings on
8 Thursday, September 13, 2018, while children were in
9 the building, was denied.

10 Our request for traffic control during
11 arrival and dismissal times at Manor Oaks School
12 located on busy and crowded Hillside Avenue, was
13 denied.

14 The volume of students, parents, and voters
15 caused us a significant safety issue at these times.

16 It also displaces our staff from parking in
17 the limited spaces when they come to work.

18 Our lots become so congested that, last
19 Election Day, a voter had a car accident in our
20 parking lot.

21 In addition to all the concerns I have
22 stated, this is a huge disruption to exactly what
23 we're supposed to be doing every day, which is
24 instruction.

25 Using schools as a voting location interferes

1 with library classes and mandated physical-education
2 instruction for three days:

3 The day before the vote, when the voting
4 machines and the polling-related items are delivered
5 and set up;

6 Then the day of the polling;

7 And the day after the polling while we wait
8 for the board of elections to remove these items.

9 New Hyde Park-Garden City Park School
10 District is working with Senator Phillips, presiding
11 Officer Nicoletto, Assemblyman Ed Ra, and
12 Councilman Ferrara, to have all elections
13 permanently removed from our school buildings.

14 In the meantime, we need your assistance to
15 keep our children safe, and keep the vote and the
16 parolees out of our schools.

17 Thank you.

18 SENATOR GALLIVAN: Thank you.

19 Dr. Nagler.

20 DR. MICHAEL NAGLER, Ph.D.: Thank you.

21 I wrote "good morning," but it's "good
22 afternoon" now.

23 Senators, I appreciate the time.

24 My name is Michael Nagler. I'm the
25 superintendent of Mineola Public Schools. I also

1 currently serve as the president of Nassau County
2 Council of School Superintendents.

3 I'm going to paraphrase some of my remarks
4 because they're a repeat of what Jen's already said.

5 What she described as a typical procedure for
6 a parent entering the building is common in all of
7 our buildings. That's the new reality.

8 The days where parents just come in to drop
9 off lunch, and go into the classrooms, are done.

10 In fact, we typically have what we call
11 "mantraps," which are secured vestibules.

12 They have to leave things there.

13 To get an instrument, if you forgot your
14 lunch, leave it there. We'll take it to your child.

15 So that's the reality for our parents, and,
16 obviously, using schools as polling places is a
17 contradiction to that.

18 As Jen said, the polling place and procedures
19 contradict all of our procedures for school safety.

20 I would add a few things.

21 In my case, in Mineola, our answer has been
22 to limit voting to a classroom.

23 We find a classroom with an exterior door.
24 We put the machines in that classroom. And we use a
25 separate entrance as a polling place.

1 And we don't want people wandering around our
2 buildings.

3 We hire security. So we incur the cost to
4 Mineola, to hire additional security in every
5 polling place, to ensure the public doesn't wander
6 to where our children are.

7 In spite of that, we had an incident in the
8 last Primary.

9 We also -- it's not a very comfortable place
10 for voters.

11 When you typically go to your polling place,
12 you'll have five or six machines, based on the EDs,
13 the ADs, and there's just six, seven people show up,
14 which doesn't really happen anymore. But, when they
15 do, it's not really a manageable space.

16 But that's our solution instead of opening up
17 a gymnasium.

18 When children aren't in the building, voting
19 really is a non-issue.

20 But it's fairly common practice for schools
21 to close on Election Day, although, two years ago,
22 Mineola was open.

23 The reason we were open, is because the -- we
24 have restrictions on when school can start and when
25 it ends, and within that timeframe, we have to fit

1 in contractual obligations.

2 All of our districts have different number of
3 days. In some -- some districts are 186, some are
4 182.

5 But, that is becoming harder and harder to
6 fit within that time frame.

7 The granting of new religious -- not new
8 religious holidays, but, additional religious
9 holidays has made that more problematic.

10 I'm aware of Senator Funke's bill that
11 proposes, that it will require schools to close on
12 Election Day.

13 I think that would further exacerbate the
14 problem, and that bill does not account for
15 primaries.

16 So when you have election days, great.

17 Obviously, the mid-term and the presidential
18 elections, we get a lot more voters. But primaries
19 pose the same problems.

20 There's also that discussion about early
21 voting. I'm not quite sure how that's going to
22 work.

23 But it would certainly be, if you're having
24 multiple days for voting, that would even exacerbate
25 the problem even further.

1 I'd like to comment on parolees and voting in
2 schools.

3 The notion that superintendents should grant
4 permission for convicted sex offenders to vote in
5 our buildings is ridiculous.

6 No superintendent is going to agree to that,
7 and I don't think it's fair to place that decision
8 in our laps.

9 I am aware that the law dates back to 2006.

10 It doesn't make sense then, it doesn't make
11 sense now.

12 We really don't want any part of a political
13 hot potato, especially when the obvious solution is,
14 just use an absentee ballot.

15 And, frankly, I believe it's a complete
16 disregard for school communities to have that occur.

17 We're asking for the ability to work with the
18 board of elections.

19 We understand that voting has to happen.

20 We understand it has to be in accessible
21 buildings.

22 What -- we're supportive of Senator Phillips'
23 bill that gives us the ability to decline serving as
24 a polling place, similar to the discretion allowed
25 other entities, but not allowed schools.

1 And my colleagues and I are prepared to work
2 with the board of elections to find alternative
3 solutions, such as firehouses, village halls,
4 libraries; the obvious public places, because, at
5 this point, based on current circumstances, those
6 venues make more sense.

7 I thank you for the opportunity to testify.

8 SENATOR GALLIVAN: Mr. Reddan.

9 JAMES REDDAN: Thank you, Senator.

10 Good morning.

11 My name is James Reddan.

12 My proudest title is a husband, and dad to
13 Courtney (ph.), James, and Kelsey (ph.).

14 I am also a veteran of the United States
15 Army.

16 I appear before you today to offer testimony
17 in the topic of elections.

18 I have been authorized by a vote of the
19 membership of the New Hyde -- to express the opinion
20 of the New Hyde Park-Garden City Park Committee
21 Against Polling in Schools, by the New Hyde Park
22 Memorial High School Parent-Teacher-Student
23 Association.

24 Here with me today, just behind me to my
25 right, is Danielle Messina and Kathryn Canese.

1 These talented women, along with
2 Liz Sollecito, are the driving force behind the
3 committee and the PTSA.

4 I will skip the pleasantries, but thank you
5 very much for letting me be here. I'm trying to
6 truncate my statements.

7 SENATOR GALLIVAN: Excellent.

8 JAMES REDDAN: The New Hyde Park-Garden City
9 Park community began its fight against polling in
10 our schools before the Governor signed Executive
11 Order 181.

12 Our issue is, and always has been, the safety
13 of our children.

14 For many years, three of our elementary
15 schools were polling locations.

16 It was acceptable in the past, but times have
17 changed.

18 Our story begins on Election Day, 2014.

19 On that day, at New Hyde Park Road School,
20 the alarm was triggered and a lockdown was
21 initiated.

22 Our children, teachers, and staff were locked
23 in the school for about two hours. Everyone in a
24 locked office or locked classroom, waiting for the
25 all-clear; every teacher and administrator complying

1 with the school safety plan.

2 The Nassau County Police, Third Precinct, did
3 an excellent job, and secured our school.

4 However, during the lockdown, the election
5 process continued.

6 Voters and poll workers were free to roam
7 portions of the school, enter and leave as they
8 pleased; thus, defeating the purpose of a lockdown.

9 We decided on that day polling in our schools
10 is unacceptable and a potential security threat.

11 Our community organized a petition drive, and
12 we were successful in removing Election Day polling
13 from New Hyde Park Road School.

14 Unfortunately, voting remained at Manor Oaks
15 and Hillside Grade schools.

16 The voting at Manor Oaks is under the control
17 of the school board. The school board moved that
18 election in the May 2017 election year to the
19 Michael J. Tully Park.

20 Through the collective efforts of the
21 residents in our community, we have been successful
22 in facilitating the removal of polling from Hillside
23 Grade School. That happened this year.

24 Our elementary schools were no longer subject
25 to the potential safety threat. The school safety

1 plan would no longer be compromised by the election
2 process.

3 For that we thank everyone that helped us,
4 and the Nassau County board of elections.

5 We breathed a sigh of relief.

6 The board of elections was offered two
7 reasonable locations.

8 The New Hyde Park Fire District offered the
9 use of their firehouses.

10 We secured -- also secured Michael J. Tully
11 Park as an optional site.

12 New Hyde Park-Garden City Park School
13 District holds their budget and trustee vote at
14 Tully Park.

15 The site is an approved voting location.

16 Simple, we thought.

17 Tax -- Tully Park is taxpayer-funded,
18 handicap-accessible, offers a large parking field,
19 and is a well-known and convenient location within
20 our community.

21 After offering these locations as
22 alternatives, the board of elections surveyed these
23 locations.

24 Progress, we thought.

25 We waited for a decision; we waited all

1 summer.

2 We became aware of the new location when the
3 board of elections mailed out the voter-registration
4 cards.

5 Unfortunately, the board of elections
6 selected New Hyde Park Memorial High School for the
7 September 13th Primary vote and the November 6th
8 General Election.

9 We were shocked.

10 What could we do now? The cards were mailed,
11 the location selected, the Primary two weeks away.

12 We fought back is what we did.

13 We made calls, we sent e-mails, and let our
14 voices be heard to anyone that would listen.

15 Thankfully, someone did listen.

16 The board of elections changed the location
17 of the Primary. They moved it to Tulley Park, one
18 of our original alternative locations.

19 The move occurred one week prior to the
20 Primary vote.

21 Again, a collective sigh of relief, but we
22 are not done, our mission is not complete.

23 The board of elections has selected New Hyde
24 Park Memorial High School as the voting location for
25 the November 6th General Election.

1 The selection of the high school as an
2 alternative to the elementary schools is baffling to
3 us.

4 The same children that attend our schools
5 have brothers, sisters, cousins, and friends that
6 attend the high school. The same families are
7 affected.

8 Today, as I speak to you, 1860 children, aged
9 11 through 18, are in attendance at New Hyde Park
10 Memorial High School.

11 1860 children -- our children.

12 The selection of the high school as a polling
13 location is unacceptable and unnecessary.

14 I have been voting for 39 years.

15 New Hyde Park Memorial High School has never
16 been a polling location during that time.

17 We are pleading with the Nassau County Board
18 of Elections to utilize Tulley Park on November 6th,
19 the same park that was used by the board of
20 elections to conduct the September 13th Primary
21 Election.

22 I told you our story because you and I should
23 not have to fight to remove voting from our schools.

24 We shouldn't have to compromise the safety of
25 our children because of an election.

1 The perceived inconvenience of moving a
2 polling location should not be more important than
3 our children.

4 There are alternatives.

5 We should be afforded a simple solution: Give
6 the individual school districts the legal authority
7 to opt out.

8 Before I continue about a possible opt-out
9 option, I would like to comment on Executive
10 Order 181.

11 Executive Order 181 went into effect May 1st
12 this year.

13 The order could, potentially, give tens of
14 thousands of felons on parole the right to vote.

15 The Governor says these parolees are
16 disenfranchised voters. That many of them are
17 contributing to society, and it is unfair to prevent
18 them from voting.

19 There is no doubt that some of these parolees
20 will go on to continue productive lives and
21 contribute to our society. People do make mistakes.

22 But New York State law has a way for the
23 parolee to restore his right to vote. It is called
24 a "relief from civil disabilities." It is granted
25 by a judge by a motion to the Court.

1 But it is also true that there are some
2 parolees that will never change.

3 Some of those parolees are convicted sexual
4 predators.

5 Allowing them to vote allows them access to
6 our schools; allows them to enter our schools on
7 Election Day.

8 To enter the schools in New Hyde Park and
9 Garden City Park, you need to produce
10 identification.

11 If you do not have identification, you do not
12 get in.

13 Very simple.

14 During an election, the schools have to open
15 up their doors to the voting public.

16 Schools are not allowed to ask voters for
17 identification.

18 They have no record of who enters the
19 building during an election.

20 So it is more than possible that a sexual
21 predator will feel emboldened by this executive
22 order, and will enter one of our schools, or wander
23 around outside, just waiting for the opportunity to
24 harm one of our children.

25 That, is unacceptable.

1 My community wanted elections out of our
2 schools before Executive Order 181.

3 Now we believe that it is imperative.

4 In the near future, thanks to
5 Senator Phillips, it may be possible for our schools
6 to opt out.

7 Selecting a school as a polling location for
8 elections poses a serious potential threat to the
9 safety of our children, staff, and teachers, a
10 threat that may be easily eliminated.

11 Senator Phillips has proposed legislation
12 known as S9155. The bill, if approved by the
13 Legislature and signed by the Governor, would allow
14 schools to opt out of polling.

15 This is an important step, a commonsense
16 piece of legislation.

17 We know our communities and the schools that
18 our children attend better than any county board of
19 election.

20 Our local elected school boards, and the
21 superintendents that of our individual school
22 districts -- of our individual school districts,
23 know our schools better than anyone else.

24 In fact, school-safety plans are designed by
25 the superintendent based on the specific needs of

1 their individual schools.

2 Our superintendents, and the school boards
3 that serve us, should determine if an election may
4 be safely conducted within our schools, not an
5 unelected county official.

6 Senator Phillips' bill, if passed, would do
7 just that.

8 The legislation would give our school
9 districts the legal right to tell the board of
10 elections, "Not in our schools, we opt out."

11 Schools cannot enforce a school-safety plan
12 and conduct an election.

13 School-safety plans and the election process
14 are mutually exclusive.

15 As I conclude my remarks, I ask all of you
16 for my help -- for help.

17 Executive Order 181 adds another layer of
18 uncertainty.

19 It makes no sense to allow a convicted
20 predator entry into the schools.

21 Schools do not have the financial resources,
22 nor do they have the manpower, to provide the
23 necessary level of security.

24 To our elected representatives, vote "yes"
25 when given the opportunity. Make this bill a law.

1 To all of you in the audience, thank you for
2 coming.

3 Please call your representatives and urge
4 them to support S9155.

5 Our communities take school safety seriously.
6 Tell them our schools should not be allowed
7 to opt out of acting as polling -- should be allowed
8 to opt out of polling locations for elections if
9 that individual school district so chooses.

10 Finally, to the Nassau County Board of
11 Elections: We ask that you do not hold the
12 November 6th General Election at New Hyde Park
13 Memorial High School.

14 Tulley Park held the September 13th Primary
15 vote.

16 Tulley Park should also be the location of
17 the November 6th General Election.

18 Common sense, and the safety of our children,
19 should count for something.

20 No one should be allowed to compromise the
21 safety of our school children because of a vote.

22 The perceived inconvenience of moving polling
23 out of a school should not trump a child's
24 well-being or safety.

25 Thank you for the opportunity to offer

1 testimony.

2 Thank you all for listening.

3 SENATOR PHILLIPS: Thank you.

4 [Applause.]

5 SENATOR PHILLIPS: I have a few questions,
6 but if Senator Boyle or Marcellino --

7 SENATOR MARCELLINO: Go right ahead.

8 SENATOR PHILLIPS: -- go ahead.

9 SENATOR BOYLE: Thank you, panelists.

10 And thank you for your principled stances on
11 this.

12 As I mentioned earlier, a reference to a bill
13 that I had introduced a number of years ago about
14 banning polling in schools, I can tell you that, as
15 soon as I introduced that piece of legislation,
16 I was getting barraged by phone calls from around
17 the state, from board of election commissioners,
18 telling me, Do you know how much this is going to
19 cost?

20 And this was before the recent rash of school
21 shootings.

22 I mean -- and so my question is:

23 I know you talked about mantraps.

24 Do any of you, or do you know of any other
25 school districts in Nassau or Suffolk county, that

1 have metal detectors?

2 DR. MICHAEL NAGLER, Ph.D.: We typically
3 don't typically have metal detectors.

4 Other security measures would be panic
5 alarms, lockdown buttons, security bollards. In
6 some cases, armed guards.

7 It's -- it's reached the point, even --
8 between Sandy Hook and Parkland.

9 Now, post-Parkland, it's reached the point
10 where you really can't get in a school building.

11 It's -- there are electronic doors, there's
12 (indiscernible) keys; there are all sorts of
13 measures to limit who comes in and out of the
14 buildings.

15 SENATOR BOYLE: And you can't get into a
16 school, except one day a year, on Election Day --

17 DR. MICHAEL NAGLER, Ph.D.: Well, multiple
18 days, because there are multiple --

19 SENATOR BOYLE: -- there's primaries too.

20 And, remember, in Presidential.

21 Because we haven't changed the laws in
22 New York State, there's a separate Presidential
23 Primary.

24 So we have three times that it -- it ended up
25 becoming Presidential Election.

1 I would just add, parenthetically, that, you
2 know, some of these school-shooters, obviously,
3 they're evil individuals, but they're evilly smart
4 too. And they plan things out. We see some of the
5 shootings.

6 So there's some sicko out there, getting
7 ready, realizing, when they're -- this is an
8 opportunity.

9 And, God help us, if we allow that to happen.

10 And I support Senator Phillips' bill.

11 Thank you for your leadership on that,
12 Senator.

13 SENATOR MARCELLINO: Can one of you go
14 through the idea of not closing on Election Day?

15 I believe, Mr. Nagler -- Dr. Nagler, that you
16 had talked about that, that that wasn't feasible.

17 Can you go through that again, please?

18 DR. MICHAEL NAGLER, Ph.D.: We have to start
19 school in the month of September.

20 The earliest we can do it is September 1st,
21 by law. And we conclude the last day of regents, by
22 law.

23 Within that time --

24 SENATOR MARCELLINO: Which is usually around
25 June?

1 DR. MICHAEL NAGLER, Ph.D.: Well, this year
2 it's very late.

3 But, normally, it's around the 22nd, the
4 last -- the third Friday in June.

5 SENATOR MARCELLINO: (Indiscernible)
6 June 20th, or something like that.

7 Okay.

8 DR. MICHAEL NAGLER, Ph.D.: Within that, we
9 all have contractual obligations of how many days
10 our teachers and staff work, as high as 186 days, as
11 low as 180.

12 We're also mandated, we cannot receive State
13 aid if we don't have a minimum of 180 days.

14 So all of those things factor in around the
15 three breaks we take: The February, the
16 Christmas/Hanukkah holiday, and the Passover/Easter
17 break.

18 Recently we've been adding additional
19 holidays. Lunar New Year.

20 And not all of us do -- not every district.
21 It's based on communities.

22 But, every day you add, you take away a day
23 of flexibility to get you 182 in.

24 I'm using that as my example, is 182.

25 This year was easy, because the regents ended

1 on the last Wednesday. So we actually gained three
2 days that we never had before.

3 Next year it will be problematic again. The
4 way the holidays fall, it shrinks our window.

5 So, sometimes, we need to open on Election
6 Day.

7 And, again, depending on the polling places
8 and the district, it's less problematic for some
9 districts than others.

10 That's why I appreciate the way the bill was
11 written, is it's the option of the district.

12 If you can manage a secure polling place, so
13 be it.

14 If you cannot, then it's in your interest to
15 change it.

16 DR. JENNIFER MORRISON: Especially when there
17 are other available locations.

18 For example, in New Hyde Park or in City
19 Park, Mr. Reddan talked about Tulley Park. It's
20 right across the street from the Memorial High
21 School.

22 It's got a better facility, better access...
23 better everything.

24 And the board of elections is choosing to put
25 the vote in our high school.

1 SENATOR MARCELLINO: Did they give you a
2 reason for that?

3 DR. JENNIFER MORRISON: I have my guesses,
4 which I probably shouldn't --

5 SENATOR MARCELLINO: No, I want to know.

6 JAMES REDDAN: No, there was no reason given.

7 DR. JENNIFER MORRISON: I can give you a few
8 guesses.

9 JAMES REDDAN: Well, we all know why.

10 Because they took it out of our schools --

11 DR. JENNIFER MORRISON: They took it out of
12 the elementary schools.

13 JAMES REDDAN: -- and they didn't want to
14 take it out of the school for us, because, if they
15 did that for us, they might have to do that for
16 other locations.

17 DR. MICHAEL NAGLER, Ph.D.: I would just add
18 that the New Hyde Park is an elementary district.
19 And the high school is Sewanhaka District.

20 So, technically, it's two different
21 districts.

22 SENATOR MARCELLINO: Different districts.

23 Okay.

24 DR. JENNIFER MORRISON: Same families.

25 DR. MICHAEL NAGLER, Ph.D.: So they did move

1 it out of one district.

2 JAMES REDDAN: Yes --

3 DR. JENNIFER MORRISON: Completely.

4 JAMES REDDAN: -- New Hyde Park is a school
5 district unto itself. It covers the four elementary
6 schools.

7 The Sewanhaka Central High School District
8 covers five high schools, one of which is New Hyde
9 Park Memorial High School.

10 Two of the members that sit on the board of
11 education at New Hyde Park Gardens sit on the
12 Sewanhaka board.

13 The board of elections knows the location, it
14 knew our community, and it chose to put it in our
15 school, when Tulley Park is a better location.

16 First-floor access, handicap-accessible.
17 A gigantic parking field.

18 No reason, really.

19 In our location, at least in my community, it
20 might -- this might not be true of all communities,
21 we have various places to hold elections.

22 The volunteer firemen in our community, both
23 in the Garden City Park Fire District and the
24 New Hyde Park Fire District, are more than willing
25 to offer their firehouses to help us in our cause.

1 The board of elections surveyed New Hyde
2 Park's firehouses. They surveyed Tulley Park.

3 And they chose New Hyde Park Memorial High
4 School for the Primary.

5 We fought.

6 Senator Phillips -- we called
7 Senator Phillips, Assemblyman Ed Ra, Councilman
8 Town -- Town of North Hempstead Councilman
9 Andrew Ferrara, and Assembly -- excuse me,
10 Richard Nicoletto.

11 They helped us; they moved that Primary vote.

12 But they still, at least as far as we know,
13 intend on holding the General Election at New Hyde
14 Park Memorial High School.

15 That's unacceptable.

16 The school is not set up for that. Never has
17 been a polling location.

18 SENATOR PHILLIPS: Let me make one comment
19 to -- that was stated.

20 We -- I attempted, and in the Senate, to pass
21 legislation that would give school districts the
22 option of starting school up to three days before
23 September 1st and get State aid for it.

24 You can now, but they don't get State aid for
25 it.

1 And I, literally, almost got booted out of the
2 Senate chamber by the Minority's party.

3 So much for that idea.

4 I tried, thinking it would give school
5 districts an option, given the amazing diversity we
6 have here on Long Island, and, really, throughout
7 New York State.

8 So, I have a couple of questions for the
9 school superintendents:

10 How are your schools notified that specific
11 registered sex offenders would be appearing at your
12 schools on Primary and election days?

13 DR. MICHAEL NAGLER, Ph.D.: We were not
14 notified.

15 DR. JENNIFER MORRISON: No, not at all.
16 We were not notified.

17 SENATOR PHILLIPS: Maybe a phone call from
18 me.

19 DR. JENNIFER MORRISON: No, I mean, we did
20 not receive anything --

21 SENATOR PHILLIPS: No notification?

22 DR. JENNIFER MORRISON: -- whatsoever.
23 No notification.

24 SENATOR PHILLIPS: And was there any
25 notification given to you when the decision on

1 September 7th was made by the Department of
2 Criminal -- I think, is it the DOCCS?

3 DR. JENNIFER MORRISON: The department of
4 corrections.

5 SENATOR PHILLIPS: Thank you.

6 -- was there any notification to you that the
7 sex offenders would be allowed after 7 p.m.?

8 DR. JENNIFER MORRISON: No.

9 I actually read it in the newspaper.

10 DR. MICHAEL NAGLER, Ph.D.: I received no
11 notification.

12 SENATOR PHILLIPS: And one of you mentioned
13 that you provide -- I think it was Dr. Nagler,
14 that you provide additional security on election
15 days, and that's a cost.

16 Who absorbs that cost?

17 DR. MICHAEL NAGLER, Ph.D.: The Mineola
18 taxpayers.

19 SENATOR PHILLIPS: Thank you.

20 SENATOR GALLIVAN: So neither of your
21 schools, you didn't get any requests at all to do
22 with sex-offender voting at the school?

23 DR. MICHAEL NAGLER, Ph.D.: No.

24 DR. JENNIFER MORRISON: No, we did not.

25 SENATOR GALLIVAN: You mentioned an incident.

1 You had one incident on Primary Day?

2 What was it?

3 DR. MICHAEL NAGLER, Ph.D.: We had a voter
4 find their way to a bathroom, and it had fecal
5 matter on the walls. Had some cleaning to do after
6 they used the facility.

7 SENATOR GALLIVAN: So more related to your
8 security concerns, as opposed to the gov -- in
9 general --

10 DR. MICHAEL NAGLER, Ph.D.: (Indiscernible.)

11 SENATOR GALLIVAN: -- as opposed to the
12 Governor's --

13 DR. MICHAEL NAGLER, Ph.D.: Yes.

14 SENATOR GALLIVAN: -- so that was unrelate --
15 incident unrelated to the Governor's executive
16 order?

17 DR. MICHAEL NAGLER, Ph.D.: Correct.

18 SENATOR GALLIVAN: Is it fair to say that all
19 of you would agree that you're in the education
20 business and shouldn't be in the election business?

21 DR. JENNIFER MORRISON: Oh, wholeheartedly.

22 SENATOR GALLIVAN: Is that a fair statement?

23 DR. MICHAEL NAGLER, Ph.D.: Absolutely, yes.

24 SENATOR GALLIVAN: So you know, we did have
25 testimony yesterday from the New York State

1 Association of School Superintendents, and their
2 New York State School Boards Association, very --
3 you know, very similar to all of your testimony
4 today with the points that you made.

5 And one additional point, and I think, Jim,
6 I think you mentioned this, about the process
7 regarding a certificate of release -- relief going
8 to a judge.

9 DR. MICHAEL NAGLER, Ph.D.: Yes.

10 SENATOR GALLIVAN: This is really just for
11 information.

12 Their process -- there's another way to do
13 it.

14 Somebody who has been in state prison can
15 make application to the parole board as well, and
16 they have the authority, separately, to issue a
17 certificate of relief.

18 So, that provision did exist, that they could
19 ask at any time for that.

20 So I just want to point that out.

21 You did mention the other part in the law.

22 I just want to make it part of the record.

23 JAMES REDDAN: It's on the books.

24 The Legislature passed that, and allowed
25 everybody to do that, which is why Executive

1 Order 181 really doesn't make sense, because, you,
2 along with your colleagues in Albany, are the ones
3 that are supposed to create law; not the Governor.

4 SENATOR GALLIVAN: Thank you all for your
5 testimony.

6 DR. JENNIFER MORRISON: Thank you.

7 SENATOR MARCELLINO: (Indiscernible.)

8 JAMES REDDAN: Excuse me?

9 SENATOR MARCELLINO: Can we have you on the
10 record telling him that?

11 JAMES REDDAN: I'll come up to Albany. I'll
12 shake his hand and tell him, What are you doing?

13 SENATOR GALLIVAN: Thank you again.

14 SENATOR PHILLIPS: Thank you.

15 SENATOR GALLIVAN: Next we have will
16 James Royall, and, Jared, I apologize, Chausow --
17 Have I pronounced it correctly?

18 JARED CHAUSOW: Not bad.

19 SENATOR GALLIVAN: -- from the Brooklyn
20 Defender Services.

21 Mr. Royall, did I pronounce you correctly as
22 well?

23 Okay. Good.

24 Thank you for your patience.

25 SENATOR PHILLIPS: Yes, thank you very much.

1 SENATOR GALLIVAN: We appreciate your
2 willingness to be here today, and to testify.

3 And my understanding is, Mr. Royall, you're
4 going to present the testimony?

5 JAMES ROYALL: Yes, I am.

6 SENATOR PHILLIPS: If I could --

7 SENATOR GALLIVAN: Excuse me.

8 SENATOR PHILLIPS: -- I apologize, for one
9 more second, because I do want to announce that the
10 Nassau County Board of Elections have been in the
11 audience, Mr. Joe Ra and Mr. Steve Marks.

12 I want to thank them.

13 They were unable to testify, but they did
14 want to listen to the testimony.

15 So, thank you for coming.

16 SENATOR GALLIVAN: And also scheduled to
17 testify is a representative from the Suffolk Board
18 of Elections?

19 SENATOR PHILLIPS: Yes. Nicholas LaLota.

20 Nicholas, are you here?

21 SENATOR GALLIVAN: Which we understand, he is
22 now not going to be able to attend?

23 All right. Thank you.

24 All right. Mr. Royall.

25 JAMES ROYALL: Well, first, I would like to

1 say that, thank you for having me, and, you know,
2 allowing me to testify on this important issue.

3 My name is James Royall. I'm a reentry
4 advocate at Brooklyn Defender Services.

5 And we provide criminal defense, family
6 defense, immigration, civil legal services,
7 social-work support, and tools for self-advocacy in
8 nearly 35,000 cases involving indigent Brooklyn
9 residents every year.

10 As part of the reentry unit, I provide a
11 comprehensive support for people upon release from
12 prisons or jails, and direct advocacy on behalf of
13 our clients while they are incarcerated.

14 I know the meaning of parole release, the
15 heartbreak and devastation of being denied, and of
16 the joy when it is granted.

17 I also know the hardship of incarceration for
18 families.

19 In fact, I'm also here on behalf of the
20 New Hour in Brentwood, the Nassau County Jail
21 Advocates, prison families, (indiscernible), and
22 Universalist Unitarian Congregation at Shelter Rock,
23 and the Second Chance Reentry.

24 By countless indicators, incarceration
25 throughout the United States, including in New York,

1 is historically a global anomaly.

2 States, including New York, there are more
3 people under correctional supervision across the
4 country than were in the Gulag at its in early
5 1950s.

6 Until the spread of a mandatory minimum
7 sentence and regimes that developed as a part of the
8 War on Drugs in the 1970s and the 1980s, the
9 incarceration rates across the country had remained
10 relatively constant for a long time.

11 Here in New York, the average rate of
12 incarceration was less than 75 incarcerated people
13 per 100,000 people for a century, until it more than
14 quintupled during this period, that decade from the
15 '70s to the '80s.

16 Here in New York State, the stark and
17 persistent racial disparities in incarceration
18 rates, and every other aspect of the criminal legal
19 system, had led many to call it the "New Jim Crow."

20 Notably, incarceration rates for White people
21 did not substantially rise under the new harsher
22 sentencing laws and guidelines.

23 Now, thanks to part of the new drug law
24 enforcement reforms, the current incarceration rate
25 in New York has fallen by a quarter since its peak

1 in 1999 and crimes rates have plummeted.

2 But, New York's incarceration rate is still
3 nearly double of that in Maine, and about
4 3 1/2 times of that of Germany.

5 To truly roll back mass incarceration,
6 New York must expand parole release for those who
7 have rehabilitated themselves and transformed their
8 lives.

9 It has been said that those that had once
10 been deprived of it is the ones that's closer to the
11 solution.

12 And, even as New York's prison population has
13 gradually declined, a number of incarcerated people
14 age 50 or older jumped by 46 percent.

15 So the elderly population has grown as the
16 New York's population, overall, has declined.

17 These are mostly men and women who have
18 committed serious crimes decades ago, or who have
19 taken advantage of every opportunity permitted by
20 the difficult incarcerated environment to turn their
21 lives around and make amends, and want to rejoin the
22 fabric of society, their families.

23 And, when I say "make amends," is giving
24 back.

25 It's making sure 10, 12, 20 people don't do

1 the same thing that one person did a long time ago.

2 That's a beneficial process.

3 That's very beneficial for the state of our
4 affairs.

5 That is the order of the day.

6 Yet, far too often, New Yorkers, especially
7 older adults, are dying in prison after being denied
8 parole multiple times, including nearly 1,000 such
9 deaths under the current governor.

10 We can and must safely expand parole release,
11 and that is the key --

12 [Cell phone ringing.]

13 I don't know how that happened.

14 Excuse me.

15 SENATOR GALLIVAN: Glad it was yours, and not
16 mine.

17 JAMES ROYALL: It was mine.

18 I'm sorry.

19 [Laughter.]

20 JAMES ROYALL: -- so -- yet, far too often,
21 New Yorkers, especially older adults, are dying in
22 prison after being denied parole multiple times,
23 including nearly 1,000 such under the current
24 governor.

25 We can, and must, safely expand parole

1 release, while reinvesting the savings produced by
2 decreased populations and meaningful support in
3 crime -- and meaningfully supporting crime victims
4 and their families, including those who themselves
5 have committed -- who may have committed crimes.

6 One of the things about safely expanding
7 parole release and reinvesting in savings, that is
8 definitely my favorite line, "the order of the day."

9 When you are able to use individuals that has
10 once have been the problem, and they are now the
11 solution, and they have been evaluated, they are not
12 their worst mistake.

13 You know, there's an evaluative process.

14 They have spoke about the risk assessment,
15 but it's not just the risk assessment alone.

16 You know, there's a whole history, a
17 historical background, on this individual.

18 They are being (indiscernible).

19 We're not saying let all individuals that
20 are -- the mistake they made 20, 30, 40 years ago,
21 even 10 years ago.

22 We're saying, evaluate these individuals, and
23 let them go if they pass that test.

24 This is how we can bring safety and justice
25 to New York, and stop the cycles of trauma and

1 violence.

2 We must come together and work together.

3 John MacKenzie's tragic death is a symbolic
4 of a broken parole system that continues to
5 undermine the presumed rehabilitative nature of our
6 criminal legal system.

7 Presumed rehabilitative nature of our
8 criminal legal system.

9 John was an extraordinary person, a
10 Long Island resident, who took full responsibility
11 for his serious crime, and did everything to make
12 amends.

13 He started a victim-awareness program,
14 obtained multiple college degrees, and helped
15 countless young men transform their lives through
16 group therapy and direct mentorship.

17 He would have been a crucial asset to the
18 community if given the chance.

19 In fact, Justice Maria Rosa of the
20 New York State Supreme Court in Dutchess County held
21 the parole board in contempt for refusing to give
22 any justification for denying Mr. MacKenzie's
23 release beyond his original crime.

24 After throwing out an earlier denial, and
25 ordering a new hearing, at which the board's

1 decision was virtually the same, the New York State
2 parole risk assessment, COMPAS, had found that
3 70-year-old John MacKenzie posed absolutely no
4 threat to society, but he was still denied parole
5 for the tenth time.

6 A week later, he committed suicide. He
7 hanged himself with a sheet.

8 His adult daughters will never see him free,
9 or at all, despite all that he did to make positive
10 changes in so many lives; not only his self, but so
11 many lives.

12 That is (indiscernible) that repeated in
13 unjustifiable parole denials wreak on our loved ones
14 and community members.

15 That is why Brooklyn Defender Services joins
16 with our allies in the parole justice movement to
17 say, Bring our elders home.

18 In addition, I applaud Governor Cuomo's
19 executive order, giving people on parole the
20 opportunity to vote, which turned the page on a
21 shameful Jim Crow error policy, and helped to affirm
22 our state's commitment to democracy.

23 Any rollback of this long overdue reform
24 would be a huge injustice and an embarrassment to
25 our state.

1 The fact that some politicians may have
2 managed to link expanded voting rights and alleged
3 public safety threats is -- excuse me, let me say
4 that again.

5 The fact that some politicians have managed
6 to link expanded voting rights with alleged public
7 safety threats is reminiscent of the infamous
8 southern strategy of stroking wide fear and anger.

9 So I ask, please, can we come together to
10 improve safety and end the injustices of our state
11 without demonizing people, without demonizing us?

12 We need to come together and work together.

13 Thank you.

14 SENATOR PHILLIPS: Thank you, sir.

15 SENATOR GALLIVAN: Thank you, sir.

16 [Applause.]

17 SENATOR GALLIVAN: You did make some
18 recommendations in your written testimony, on
19 "Conclusion," a reference to two different bills
20 that I am familiar with, and the composition of the
21 parole board.

22 So I do note that, and that will be part of
23 the record also.

24 I've got a question, but, you what?

25 Let me first say, at the very end, you talked

1 about coming together and working together.

2 I concur, I share that.

3 And I think if we had more of that in public
4 service, we would do much better for our
5 communities.

6 So, thank you for saying that, and keep
7 talking to your elected officials about that, all of
8 us.

9 I appreciate that.

10 Beyond that, question in two areas.

11 It's pretty interesting to me, and this is
12 among the reasons that I articulated earlier for
13 holding these hearings, specifically with the parole
14 board itself.

15 My observation has been:

16 That we've got those that might focus on law
17 and order are unhappy with the parole board.

18 Those that focus on inmate advocacy are
19 unhappy with the parole board.

20 Those that are elected as Republicans seem
21 unhappy, have expressed unhappiness.

22 Those elected as Democrats have expressed
23 unhappiness.

24 Upstate, downstate, east and west.

25 So, clearly, there's an issue.

1 So I want to ask you about two different
2 areas, unless you're satisfied that these areas are
3 adequate.

4 The first has to do with transparency of the
5 parole board operations, and second has to do with
6 parole board accountability.

7 And I'm curious if you have any thoughts
8 about either one of them.

9 JAMES ROYALL: Well, I think that the answer
10 to both questions is with this one answer:

11 I believe that the standards and the
12 structured 259-i -- Executive Order 259-i, that's
13 standard, and the risk assessment is standard.

14 I believe those are some viable structures;
15 however, it has to be followed.

16 That's the broken part of the parole system
17 for me.

18 For the other side, the broken part is that
19 they are letting individuals go. Some individuals
20 are coming home.

21 However, there is one individual that may be
22 released out of ten, may have, I would call it
23 "recidivate." Then there's a big hoopla about that.
24 And then the other nine individuals has to suffer
25 for that.

1 So that's a broken part, and they blame that
2 on the parole board.

3 But that's the individual.

4 That's -- I don't believe anything is
5 100 percent.

6 That's one out of 10 that they missed, but
7 everybody else shouldn't have to suffer from that.

8 So the tools that's in place should be in
9 place, and it should be followed.

10 SENATOR GALLIVAN: Okay. Thank you for that.

11 Other questions?

12 SENATOR PHILLIPS: I have a question for
13 Mr. Royall.

14 Thank you.

15 And, again, I want to echo what
16 Senator Gallivan said; that this is -- it really
17 seems to be a broken system. And the only way we're
18 going to fix it is we all work together.

19 So, thank you.

20 You used the word "presumed" rehabilitation.

21 And I carefully listened to you use the word
22 "presumed."

23 So, please, correct me if I'm wrong, but it
24 sounds like the system isn't great when it comes to
25 rehabilitation.

1 Do you have suggestions on how we might
2 legislatively guide the parole board, or to help
3 that rehabilitation process?

4 Isn't that what our goal is for an
5 individual?

6 JAMES ROYALL: Well, the rehabilitation
7 process, for me, is not a job of the parole board.

8 SENATOR PHILLIPS: Right?

9 JAMES ROYALL: It's the job of the prison
10 system.

11 SENATOR PHILLIPS: Of the prison system.

12 JAMES ROYALL: So, I don't believe that
13 there's many structures in place inside the prison
14 system, created by the prison system, that speaks to
15 rehabilitation.

16 On paper, you might see that they have a
17 school in every prison. They may have programs in
18 every prison.

19 And for the paper, it looks good.

20 But individual (indiscernible) --

21 SENATOR PHILLIPS: But in reality?

22 JAMES ROYALL: -- in reality, of course, it's
23 not like that.

24 It's like a basketball team has beautiful
25 people on their team. It looks like they're going

1 to win, and then they're in last place.

2 So, what actually happens, when I said --
3 also spoke about self-rehabilitation, self-advocacy,
4 these individuals, they utilize those programs, they
5 ace those programs, and then they're stuck. There's
6 no more left.

7 When they're sitting in front of the parole
8 board, they speak about all of the
9 incarcerated-individuals' created programs, or the
10 organizations that have created programs, that
11 programs that are viable to society, programs that
12 speaks to recidivism.

13 Not programs that just speaks to education,
14 which there is none there.

15 You know, you have two to, maybe, three
16 different types of educational systems in there.

17 You have an adult basic education system, and
18 that's for anybody that is not over, I believe, the
19 ninth-, or eighth-grade, reading level.

20 Everybody goes into this one class.

21 Everybody is not on the same level.

22 Then you have the pre-GED and GED class. And
23 we know what those are about.

24 So, I believe they just have to restructure,
25 really look at these things inside of the prison,

1 restructure it, because it's presumed from the
2 outside, from society, that rehabilitation is going
3 on, and that's why individuals are getting released.

4 But, they are getting released because of the
5 creative programs; those programs that speaks to the
6 growth, the programs that speaks to the development,
7 the programs that are progressive, that allows them
8 to speak to their transformation, to their paradigm
9 shift, and make the release.

10 SENATOR PHILLIPS: Thank you.

11 I'd like to just mention one thing.

12 It's slightly off topic, but, through the
13 Heroin and Opiate Task Force that
14 Senator Fred Akshar -- who else is co-chairing --
15 and Senator Jacobs, and there's someone else, but
16 I can't remember -- and Senator Amedore -- thank
17 you -- we did public hearings across New York State,
18 to listen on how the Senate could get involved and
19 help the epidemic that we have throughout our
20 country.

21 And one of the many things that we heard was
22 in our jail systems.

23 And that it was Sheriff Apple in the
24 Albany County that showed us, that if we could
25 invest some state dollars, our taxpayer dollars,

1 into programs in the jail system, the level of
2 recidivism goes down significantly.

3 So, I am proud to say, here in Nassau County,
4 we were able to give them over \$200,000 just a
5 couple weeks ago for exactly that; to help sponsor
6 rehabilitation programs when it comes to drug
7 addiction, so they can capture these individuals so
8 the recidivism rate goes down.

9 JAMES ROYALL: That's great.

10 SENATOR GALLIVAN: Well, thank you for your
11 testimony.

12 SENATOR PHILLIPS: Yeah, thank you very much.

13 SENATOR GALLIVAN: I would like to thank
14 everybody for their testimony, and their patience,
15 of course.

16 Oral testimony, as I mentioned earlier, is --
17 will be available immediately on the Senate website
18 from yesterday and today.

19 Ultimately, all the written testimony, the
20 various information-request submissions, will also
21 be on the Senate website.

22 The written testimony will not be immediate.

23 And the ultimate report that comes out of
24 this, and recommendations, again, can be found
25 there.

1 I would like to thank -- oh, sir, go right
2 ahead, if you have more.

3 JAMES ROYALL: I do have one additional thing
4 I just wanted to mention.

5 When I was speaking of John MacKenzie, that's
6 a serious situation.

7 The individual committed suicide.

8 He was a very progressive individual. Very.

9 There's a lot of individuals in there like
10 John MacKenzie, and they're going to the board,
11 getting hit eight times.

12 I know of a fellow named Marvin Lewis.

13 He's a graduate of RTA (rehabilitation
14 through the arts). He has numerous college degrees.

15 He hasn't had an infraction within 30 years.

16 He doesn't have a homicide, or anything like
17 that, but he do have involvement -- (indiscernible)
18 involvement with a police officer.

19 The police officer is not opposing his
20 release, yet he's still getting hit.

21 These are the things I'm talking about.

22 You know, this individual is helping
23 individuals inside. He's doing a lot, he's reaching
24 out.

25 And these are the very things, before we, you

1 know, have these individuals killing themselves, you
2 know, we have to look into this stuff.

3 You know, and accountability is a big part of
4 it, which you spoke about. You gave dollars to the
5 prison system.

6 There has to be accountability somewhere
7 here, because giving it just to the system, somebody
8 in the system is not doing their jobs.

9 So there has to be some type of
10 accountability, measurement, some type of barometer,
11 for our dollars that's going in there.

12 SENATOR GALLIVAN: That's exactly what I was
13 getting at with the transparency and accountability.

14 So we get to the point of, the law is the
15 law, currently. We have factors to consider and
16 standards to meet.

17 It's my belief that the board hasn't followed
18 that, and -- all standards in all the cases. And
19 I think other people share that.

20 But then beyond that, I don't know that
21 there's any mechanism in place, from the Executive
22 Branch, to ensure that they're -- they are following
23 the standards.

24 They are independent; however, there should
25 be some sort of check and balance, in my view, that

1 if they're not doing what the law requires, that
2 somebody can address the individual.

3 And it might just simply be training.

4 It might be greater transparency in
5 reporting; that there's more public reporting of
6 their activities that are out there.

7 But that's actually what I was getting at,
8 the point that you made.

9 And thanks for bringing that up.

10 JAMES REDDAN: All right.

11 SENATOR GALLIVAN: Okay. Are you good now?

12 JAMES ROYALL: Yeah.

13 SENATOR GALLIVAN: All right.

14 I am going to turn over in a moment to
15 Senator Phillips.

16 But I just want to remind people about
17 everything, it will be on the website, ultimately.

18 And I thank everybody for being here, and
19 dealing with these very -- in my view, very
20 important public-policy topics.

21 And I'll turn it back over to our Long Island
22 Senators.

23 SENATOR MARCELLINO: Excuse me.

24 What's the deadline for anybody submitting
25 written testimony?

1 Is there a final deadline?

2 SENATOR GALLIVAN: No, but we can make one.
3 We can go one week from -- seven days from
4 today.

5 That was not asked.

6 SENATOR PHILLIPS: So I just would like to
7 end, to thank you all again for coming to the
8 7th Senate District, particularly Senator Gallivan
9 who traveled the farthest, Senator Marcellino and
10 Senator Boyle, for participating in this;

11 For the school board superintendents;

12 For the PTA, or, PTS, participants here;

13 For the Nassau County Board of Elections, for
14 being here to listen;

15 Law enforcement;

16 And the defenders' organizations.

17 But probably the -- our heartfelt thanks to
18 those, the victims' families, who were kind enough
19 to come and share their stories.

20 So have a wonderful afternoon, everyone.

21 God bless you all, and God bless our great
22 country.

23 (Whereupon, at approximately 1:16 p.m.,
24 the public hearing concluded, and adjourned.)

25 ---oOo---

