

1 JOINT HEARING BEFORE THE NEW YORK STATE SENATE  
2 STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND  
3 CORRECTION  
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  
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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. Gallivan, 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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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----

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