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

PUBLIC HEARINGS:

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

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

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

PRESIDING:

Senator Patrick M. Gallivan, Chairman
NYS Senate Standing Committee on Crime Victims, Crime and Correction

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

PRESENT:

Senator Joseph A. Griffo

Senator Thomas F. O'Mara

Senator James N. Tedisco

Senator Susan J. Serino

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SENATOR GALLIVAN: Good afternoon, everybody.

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

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

Senator Griffo is to my right, your left;

Senator O'Mara to my left;

And then Senator Tedisco on the far end.

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

I will call this public hearing to order.

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

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

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

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

There was public notice of this that was

published.

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

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

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

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

This is the first in the series of two hearings.

We are doing this here today.

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

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

complementary rather than repeating.

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

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

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

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

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

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

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

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

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

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

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

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

The Governor's executive order. We are

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

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

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

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

And that is the purpose of that particular area.

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

So before we move on, I would like to give

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

SENATOR AKSHAR: I'm going to pass.

SENATOR GALLIVAN: Senator Serino?

SENATOR SERINO: Nope, nope. I'm good.

If they choose to.

Comments?

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

SENATOR GALLIVAN: Senator Tedisco?

SENATOR TEDISCO: Yeah.

SENATOR GALLIVAN: You're lucky.

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

It's a very important issue.

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

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

constituents.

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

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

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

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

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

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

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

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

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

Thank you very much, Mr. Chairman.

SENATOR GALLIVAN: Thank you, Senator.

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

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

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

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

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

same.

And that will become part of the record.

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

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

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

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

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

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

But that also is on its way to all of the

members, and made part of the record.

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR GALLIVAN: No.

SENATOR O'MARA: Thank you.

SENATOR GALLIVAN: -- former parole board --

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

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

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

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

inviting them to attend.

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

But did they --

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

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

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

But, nonetheless, there was both verbal and written.

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

Okay.

Anybody else?

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

JAMES FERGUSON: Good afternoon, Senators.

SENATOR GALLIVAN: Good afternoon. Thanks for being here.

JAMES FERGUSON: Thank you for having me.

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

JAMES FERGUSON: Yes.

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

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

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

JAMES FERGUSON: About 13 years.

SENATOR GALLIVAN: 13 years.

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

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

SENATOR GALLIVAN: And are you employed now?

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

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

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

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

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

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

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

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

JAMES FERGUSON: Well --

SENATOR GALLIVAN: I'm sorry.

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

JAMES FERGUSON: Well, first, it must be

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

We consider multiple factors in coming to that conclusion.

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

JAMES FERGUSON: 259-i?

SENATOR GALLIVAN: Yeah.

JAMES FERGUSON: Yes.

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

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

SENATOR GALLIVAN: Yes.

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

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

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

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

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: You mentioned "factors."

Now, what factors must the parole board consider when they make a release decision?

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

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

Performance on temporary release;

Whether the inmate has a coherent release plan;

Any deportation order;

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

recommendations at sentencing;

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

And, of course, any prior criminal record.

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

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

SENATOR GALLIVAN: Does it mention anything else?

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

SENATOR GALLIVAN: What about any prior confinement?

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

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

SENATOR GALLIVAN: All right.

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

JAMES FERGUSON: Yes, sir.

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

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

Are you familiar with those?

JAMES FERGUSON: No, sir.

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: All right.

JAMES FERGUSON: Very much so.

SENATOR GALLIVAN: All right.

You --

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

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

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

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

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

And both of those deal with COMPAS.

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

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: All right.

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: Are you familiar with that?

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: So there came a time,

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

JAMES FERGUSON: Yes.

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

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

There are other things as well.

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

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

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

Among the things that must be considered, for

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

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

SENATOR GALLIVAN: Okay.

So we have the factors.

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

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

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

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

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

In particular, of course, we want to know:

What type of danger the person may pose if released;

What type of successes they may have had while incarcerated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Is that your understanding as well?

JAMES FERGUSON: Absolutely. A very important factor.

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

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

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

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

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

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

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

SENATOR GALLIVAN: All right.

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

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

JAMES FERGUSON: I'm sorry?

SENATOR GALLIVAN: These two court cases --

JAMES FERGUSON: Yes?

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

JAMES FERGUSON: Absolutely.

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

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

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

But, do you have any discretion to not

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

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

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

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

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

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

SENATOR GALLIVAN: Okay, let's stop there.

Let's go to how you get your information.

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

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

JAMES FERGUSON: Okay.

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

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: How do you get that

information?

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

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

They acquire the --

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

JAMES FERGUSON: SORC, yes.

SENATOR GALLIVAN: A supervisor?

JAMES FERGUSON: Yes, who works in ORC. Although, I think everybody --

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

JAMES FERGUSON: Yes.

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

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

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

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

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

JAMES FERGUSON: No.

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

JAMES FERGUSON: Correct.

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: -- okay.

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

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

And inmates as well.

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

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

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

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: That you ultimately get?

JAMES FERGUSON: Correct.

SENATOR GALLIVAN: So how do you get that file?

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

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

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

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

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

JAMES FERGUSON: Sure.

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

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

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

But you will also have in there certificates

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

SENATOR GALLIVAN: A RAP sheet?

JAMES FERGUSON: A modified RAP sheet, yeah.

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

JAMES FERGUSON: Yes, sir.

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

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

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

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

SENATOR GALLIVAN: They are all contained within the folder?

JAMES FERGUSON: They are supposed to be,

yes.

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

The institutional records.

So the record of programs, whether it is academic, vocational. Their successes. Interactions with staff or other inmates. Disciplinary, training, records.

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

JAMES FERGUSON: Yes.

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

JAMES FERGUSON: Yes, it is.

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

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

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

JAMES FERGUSON: That is correct.

SENATOR GALLIVAN: -- things of that nature.

JAMES FERGUSON: And sometimes letters from corrections officers.

But, yes, all that information.

SENATOR GALLIVAN: And that would be in there?

JAMES FERGUSON: Yes, sir.

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

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

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

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

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

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

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

sentencing.

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

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

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

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

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

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

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

Prior incarcerations, I'm assuming?

JAMES FERGUSON: Correct.

SENATOR GALLIVAN: And prior parole or

probation, if any?

JAMES FERGUSON: Correct.

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

JAMES FERGUSON: Do it regularly, yes.

SENATOR GALLIVAN: So you do have that?

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

SENATOR GALLIVAN: Okay.

JAMES FERGUSON: -- (indiscernible).

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

Is that located in there as well?

JAMES FERGUSON: Yes, it is.

SENATOR GALLIVAN: So you have this file.

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

JAMES FERGUSON: Yes.

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

JAMES FERGUSON: Very unusual circumstances.

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

Sometimes you may get --

SENATOR GALLIVAN: A CD?

JAMES FERGUSON: -- I'm sorry?

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

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

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

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

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

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

So they would send it to the main office.

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

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

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

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

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

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

JAMES FERGUSON: We sometimes will.

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

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

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

And the majority are video-conferenced?

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: Or by teleconference?

JAMES FERGUSON: Correct.

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

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

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

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

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

JAMES FERGUSON: Correct.

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

JAMES FERGUSON: The other commissioners, of course.

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

interpreter.

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

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

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

JAMES FERGUSON: I'm sorry?

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

JAMES FERGUSON: That's rare.

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

SENATOR GALLIVAN: Who determines if there

are -- if there's security issues?

JAMES FERGUSON: That's corrections.

SENATOR GALLIVAN: Department of corrections?

JAMES FERGUSON: Yes.

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

JAMES FERGUSON: Correct.

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

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

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

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

SENATOR GALLIVAN: Is it live time or is

there a delay?

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

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

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

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

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

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

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

SENATOR GALLIVAN: What would happen if there

was problems with the equipment?

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

We've waited an entire day at times.

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

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

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

SENATOR GALLIVAN: All right.

Let's go back to the interview now.

JAMES FERGUSON: Yes.

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

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

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

But, what takes place?

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

SENATOR GALLIVAN: No, no, just paraphrase.

Just take --

JAMES FERGUSON: Okay.

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

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

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

We'd introduce the commissioners.

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

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

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

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

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

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

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

JAMES FERGUSON: Through questioning.

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

You would then ask them:

What happened?

Why did it happen?

What's different today?

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

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

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

There are certain questions we don't ask.

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

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

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

JAMES FERGUSON: Yes.

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

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

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

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: -- for every case --

JAMES FERGUSON: Yes.

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

Is it -- does the applicant have the

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

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

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

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

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

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

SENATOR GALLIVAN: So you conduct the interview.

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

add anything --

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

SENATOR GALLIVAN: So you go through the interview.

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: And then what?

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

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

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

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

what the law requires --

JAMES FERGUSON: Two weeks.

SENATOR GALLIVAN: -- as far as --

JAMES FERGUSON: Two weeks.

SENATOR GALLIVAN: -- okay.

Thank you.

JAMES FERGUSON: Yeah.

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

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

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

SENATOR GALLIVAN: How long is an interview?

JAMES FERGUSON: It changes.

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

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

So --

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

If you know.

JAMES FERGUSON: Different techniques.

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

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

There's a different technique in interviewing.

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

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

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

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

interview?

JAMES FERGUSON: Yes.

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

So they'll have, that.

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

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

JAMES FERGUSON: No.

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

SENATOR GALLIVAN: Sure. I'll be clearer.

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

JAMES FERGUSON: Never.

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

JAMES FERGUSON: No.

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

JAMES FERGUSON: No.

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

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

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

SENATOR GALLIVAN: All right.

Briefly, can we talk about COMPAS?

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

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

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

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

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

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

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

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

SENATOR GALLIVAN: As required --

JAMES FERGUSON: -- (indiscernible) --

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

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

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

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: Okay.

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

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

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

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

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

SENATOR GALLIVAN: Okay.

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

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

Are you trained?

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

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

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

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

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

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

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

learn as you go.

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

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

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

SENATOR GALLIVAN: Okay.

Now, so you do your job.

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: You go through all these.

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

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

JAMES FERGUSON: No one.

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

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

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

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

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

So the statistics were flawed.

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

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

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

Some of them, unfortunately, is tragic.

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

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

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

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

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

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

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

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

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

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

SENATOR GALLIVAN: All right.

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

SENATOR TEDISCO: Yep, this way.

SENATOR GALLIVAN: Senator Tedisco, followed by Senator Griffo.

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

JAMES FERGUSON: Thank you, Senator.

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

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

family member who is injured, the injured party.

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

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

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

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

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

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

JAMES FERGUSON: Whoever it is that has registered.

SENATOR TEDISCO: Oh.

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

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

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

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

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

Let's continue with this one.

JAMES FERGUSON: Yes, sir.

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

SENATOR TEDISCO: Let's stop right there.

A commissioner --

JAMES FERGUSON: Yes.

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

JAMES FERGUSON: No, sir.

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

Victim impact statements are extremely powerful.

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

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

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

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

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

will be making the decisions.

SENATOR TEDISCO: Let me get this straight.

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

JAMES FERGUSON: They're not prohibited.

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

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

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

JAMES FERGUSON: It's just chance.

SENATOR TEDISCO: Just chance.

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

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

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

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

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

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

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

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

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

JAMES FERGUSON: -- absolutely.

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

JAMES FERGUSON: Absolutely.

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

SENATOR TEDISCO: You said there was a way to

work around this?

What was that again?

SENATOR GALLIVAN: Well, by sending the transcript.

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

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

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

JAMES FERGUSON: Yes and no.

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

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

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

SENATOR TEDISCO: Okay.

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

Is that right?

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

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

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

How about this:

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

What would be wrong with that?

JAMES FERGUSON: I absolutely concur with that recommendation.

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

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

I don't think that that's necessary.

SENATOR TEDISCO: Who would make the rule change?

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

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

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

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

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

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

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

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

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

JAMES FERGUSON: I think they have a concern.

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

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

victims, that just have not worked --

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

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

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

And the pain never goes away.

These families are utterly destroyed.

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

It's something that is unfortunate.

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

SENATOR TEDISCO: Thank you, Commissioner.

JAMES FERGUSON: Thank you, Senator.

SENATOR GALLIVAN: Senator Griffo.

SENATOR GRIFFO: Thanks for being here, Jim.

JAMES FERGUSON: Thanks, Senator.

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

JAMES FERGUSON: It's essential.

SENATOR GRIFFO: So, you've indicated that

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

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

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

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

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

JAMES FERGUSON: Probably a little bit of everything.

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

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

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

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

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

You know, talk about a conflict of interest.

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

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

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

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

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

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

There are people who believe that everybody

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

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

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

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

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

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

JAMES FERGUSON: Absolutely.

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

JAMES FERGUSON: Absolutely.

SENATOR GRIFFO: And do you believe now

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

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

It should be credential-based.

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

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

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

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

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

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

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

SENATOR GRIFFO: Thank you, Chairman.

SENATOR GALLIVAN: Senator Akshar.

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

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

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

JAMES FERGUSON: Without question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When you talk about trying to get through

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

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

It's an unfair process to everybody involved.

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

JAMES FERGUSON: They don't get called.

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

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

SENATOR AKSHAR: So you weigh that?

JAMES FERGUSON: Oh, absolutely, without

question.

SENATOR AKSHAR: How about the community at large?

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

JAMES FERGUSON: Yes.

SENATOR AKSHAR: Okay.

Let me shift my questioning.

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

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

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

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

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

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

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

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

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

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

Is that abnormal?

JAMES FERGUSON: It's not normal.

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

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

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

you schedule a third commissioner there.

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

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

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

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

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

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

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

I'm sorry.

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

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

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

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

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

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

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

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

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

But, you never get told.

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

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

audience, you're being lectured to.

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

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

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

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

And so let me ask you a particular question.

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

JAMES FERGUSON: I mean, you get statements --

SENATOR AKSHAR: Directly.

JAMES FERGUSON: Directly?

SENATOR AKSHAR: Yep.

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

decision.

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

That's never been done.

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

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

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

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

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

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

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

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

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

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

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

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

JAMES FERGUSON: Thank you.

SENATOR AKSHAR: Chairman, thank you.

SENATOR GALLIVAN: Senator O'Mara.

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

JAMES FERGUSON: Thanks.

SENATOR O'MARA: How many commissioners are there?

JAMES FERGUSON: Currently there's 12.

SENATOR O'MARA: And how many are vacant?

JAMES FERGUSON: The maximum is 19.

SENATOR O'MARA: 19?

JAMES FERGUSON: Yes.

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

JAMES FERGUSON: Yes, sir.

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

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

it was night and day.

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

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

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

You travel on Monday.

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

But 19, Senator, would be ideal.

Could you survive with 18? Yes.

Could you do 17? Yes.

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

And right now, with four boards, if they had

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

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

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

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

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

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

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

What would an average day be?

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

Depending on what facility you are in, and

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

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

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

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

And you get these files the morning you arrive?

JAMES FERGUSON: Yes, sir.

SENATOR O'MARA: For the board?

JAMES FERGUSON: Yes, sir.

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

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

So a senator from Buffalo-- excuse me,

Senator.

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

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

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

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

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

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

JAMES FERGUSON: No.

SENATOR O'MARA: -- computer-accessible?

JAMES FERGUSON: No.

And there are states that do have that as well.

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

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

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

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

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

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

SENATOR O'MARA: Okay.

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

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

SENATOR O'MARA: A week in advance?

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

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

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

SENATOR O'MARA: Uh-huh.

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

JAMES FERGUSON: Yes.

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

What does the inmate see?

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

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

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

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

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

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

really only seeing one person at a time?

JAMES FERGUSON: Correct.

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

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

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

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

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

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

SENATOR O'MARA: Okay.

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

JAMES FERGUSON: Traditionally, it was the chairperson.

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

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

SENATOR O'MARA: Okay.

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

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

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

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

coming.

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR O'MARA: Right.

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

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

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

earlier than 48 months.

JAMES FERGUSON: Yes, that --

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

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

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

SENATOR O'MARA: Yeah.

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

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

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

JAMES FERGUSON: None, to my knowledge.

SENATOR O'MARA: In your experience, how

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

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

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

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

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

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

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

component.

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

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

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

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

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

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

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

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

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

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

JAMES FERGUSON: Thanks, Senator.

SENATOR GALLIVAN: And, finally, Senator Serino.

SENATOR SERINO: Thank you very much, Commissioner.

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

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

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

incarceration.

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

It was just terrible on this important issue.

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

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

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

So thank you for your testimony.

JAMES FERGUSON: Thank you, Senator.

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

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

JAMES FERGUSON: Yes, sir.

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

JAMES FERGUSON: Yes, sir.

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

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

JAMES FERGUSON: Yes, sir.

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

Who puts the name forward, in other words?

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

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

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

SENATOR GALLIVAN: And, naturally, because I don't know if you're going there or not, I wasn't going to, but the governor, likely, takes input from different members of the community, those that might have an interest in the type of individual appointed?

JAMES FERGUSON: Without question, yes.

SENATOR GALLIVAN: But it's, the law,

dictates the minimum qualifications. Is that correct?

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: All right. Thank you.

Now, we know the statutory factors. We've gone over those time and time again.

Senator Akshar brought up law-enforcement input or input from the community.

The law very clearly requires you to consider certain factors; correct?

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: We've talked about them.

Does the law preclude you from considering any other factors that the board deems relevant?

JAMES FERGUSON: Well, I mean, there are --

SENATOR GALLIVAN: To your knowledge?

JAMES FERGUSON: -- yes, there's some basic things.

Like, someone may have --

And I've had to correct fellow commissioners who don't come from a criminal justice background on this.

-- they'll start discussing arrests that the person has, that were dismissed.

So there are certain things by law that, you

know, we're not allowed to consider, but it's not an exhaustive -- it's not an exhaustive list.

SENATOR GALLIVAN: To your knowledge, does the law preclude any type of input from the community or from law enforcement --

JAMES FERGUSON: It does not.

SENATOR GALLIVAN: -- for consideration, as -- so long as it's relevant to that case?

JAMES FERGUSON: It permits it.

SENATOR GALLIVAN: All right. Thank you.

And, finally, when did you -- when -- would you tell us again when you left the board?

You were employed through, when?

JAMES FERGUSON: January of this year.

SENATOR GALLIVAN: January 2018?

JAMES FERGUSON: Yes.

SENATOR GALLIVAN: All right.

Is there anything else that you might want to add?

Now, keep in mind, we want to bring it to --

And I know there are things connected. Training is connected, of course. The conduct of the board -- or, the operations of the board are affected as well.

-- but, going back to the statute, the

statutory factors that must be required, the standards of release, and the board's compliance or accountability towards that?

JAMES FERGUSON: I have a list I would love to talk to you all about some other day.

But, for today's purposes, before people start throwing at me for being here too long, throwing things at me, is the one thing I would comment on, Senator, is the COMPAS instrument.

I, of course, was around for the origination of this instrument, and bringing it in.

I objected to it, I objected to it on several grounds, because I feel, I don't know that I would use the word "deficient," but there are problems.

One of those problems is, it would treat someone, and I'll use him again, like the Berkowitz case, it didn't have a mechanism to consider the fact that six people were killed, six people were wounded. And on eight other occasions he went out hunting for other victims, but was unsuccessful.

So that couldn't be included in his risk-assessment score.

It also has issues for juveniles.

One of the issues I had, and this is why I made a training tape for OCFS, for the kids that

come in, all juveniles are, basically, marked as a high risk because of their age, which is, obviously, patently unfair.

Sex offenders and mental-health individuals it also had issues with.

So the COMPAS is, by far, not a perfect instrument.

And I can tell you that, for quite some time after we had the instrument, I asked for feedback.

Where's the -- show me this is working.

Show me that the investment of our tax dollars is working, and the trust that we're placing in this to allow people out in our community is well-founded.

We've never gotten information back, showing that these are all the people we scored as a low risk. They went out there, and 7 out of 10 did perfectly. Or, we were wrong 7 out of 10 times.

Well, now I know there's something that I can't trust about your instrument.

So that has never been provided.

And as a former attorney, I take -- uh, a former -- current attorney, I take a negative inference on that.

If you don't provide something, there must be

a reason.

So that's something we've asked for for quite some time, Commissioner (sic).

And I think what's happening now with the COMPAS instrument, and the way things are being drafted in 8002 and 259-i, is they're trying to put the commissioners back in a corner, that when you get this COMPAS score, you must follow it.

If you don't, even if it's a case where you believe the serious nature of the offense should control, you're required to write a novel saying why you disagree with COMPAS.

So I think that's the current direction it's heading in, and that's why we are having some of the difficulties that we're having.

SENATOR GALLIVAN: If I can clarify, I want to make sure I have this right.

The law requires a risk-assessment tool, risk-and-needs assessment tool.

COMPAS is one of those tools?

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: Correct.

COMPAS is not required by law.

But a -- there could be -- there are other risk-and-needs assessments tools, risk-and-needs

analyses, plural, that are out there.

This is the one that the State has chose to use.

Was that accurate?

JAMES FERGUSON: The State has chosen to use it.

And, Senator, it's my understanding that it is required to be considered.

And I think --

SENATOR GALLIVAN: No -- well, that's according to -- the actual law, the executive law, actually, it doesn't name COMPAS.

It does talk about a risk-and-needs.

JAMES FERGUSON: -- oh, okay.

Yeah.

SENATOR GALLIVAN: So the criticism of it is that particular instrument?

That's what I'm trying to clarify.

JAMES FERGUSON: Yes, sir.

Yeah, I understand.

SENATOR GALLIVAN: Not -- not the notion of the requirement of a risk-and-needs assessment.

Just that, in your mind, absent these -- absent these criticism or changes in that, that's an inadequate tool?

JAMES FERGUSON: Yes, sir.

SENATOR GALLIVAN: I don't want to put words in your mouth, but that's -- that's what you're getting at?

COMPAS --

JAMES FERGUSON: Yes, that specific issue.

SENATOR GALLIVAN: -- not the --

JAMES FERGUSON: Whether there's a better instrument out there, you know, I couldn't say at this point.

SENATOR GALLIVAN: Okay.

Appreciate your time.

You've been very patient, and it was a little longer than we thought.

But we thank you for being here --

JAMES FERGUSON: Thank you, all.

SENATOR GALLIVAN: -- and for your testimony.

JAMES FERGUSON: Thank you.

SENATOR GALLIVAN: Ulster County District Attorney Holley Carnright.

And while the district attorney is making his way down, if I could put just into the record, I want to reference two provis -- two parts -- two portions, rather, of the chairwoman's, Tina Stanford's, testimony.

One has to do with scheduling, and I quote:

The parole board random assignment scheduling system computer program is used.

The board schedules published monthly to the commissioners.

I alone am authorized to make changes in the event of emergencies.

I only assign specific commissioners to interview specific individuals when this is required by recision policy, a court order, or administrative appeal decision.

Assignments are never made to impact the likelihood of a specific decision.

End quote.

And regarding the length of interviews, and the deliberations, I will quote: I am satisfied that this present board takes the time they feel that they need with each person and case to be able to render a legitimate and responsible decision.

Mr. Carnright, thanks for being here, and thanks for your patience.

As you know, as we talked about the statutory factors, one of the factors that is required to be considered is the recommendation of the prosecuting attorney; or the district attorney.

And that's what we had hoped to ask you about.

So, if you're able, just to talk about your thoughts on that: The process. If the process works. If it doesn't work, what recommendations for change you might have.

And then we may have some questions.

DA HOLLEY CARNRIGHT: I wish I hadn't been here for the last two hours. I learned a lot of things that I don't want to know.

So, in Ulster County --

I can't speak for all of the DAs throughout the state.

-- but in Ulster County, when I receive a letter from the board, suggesting that an individual is going to go up before consideration, in most instances, I write a note back, saying, "Thank you for your notice," and I don't put anything specific out.

But in some instances I do, and those are instances of the types of cases that I think you're concerned with today, and that we've all been talking about.

I'm -- based on this last hour and a half --

SENATOR GALLIVAN: Excuse me, sir.

Could you just pull the microphone closer to you?

DA HOLLEY CARNRIGHT: Oh, sorry. Yeah.

SENATOR GALLIVAN: And then there should -- a little red dot should appear there that shows it's on.

DA HOLLEY CARNRIGHT: I see a red dot.

Yeah, okay.

SENATOR GALLIVAN: We're good.

DA HOLLEY CARNRIGHT: Okay.

-- the suggestion that the parole board gets 12 minutes to review a file, and the amount of money -- amount of information that's in that file, leads me to believe that they're not looking at anything that I've sent up.

But before we even get to that problem, when I get notices on cases, it's shortly after the defendant has been convicted.

And many of the cases that I want to respond to will not go before the board for over a decade.

Of course, I don't expect to be here at the time, and so I write notes to them. I actually send them things that I think they should have.

I send them things like crime-scene pictures. I send them victim statements.

I prepare information that I think anyone that's going to make a decision on a person's release, should have.

And from what I -- we heard from the previous speaker, they don't even have the equipment to put the CD in a computer and look at the crime scenes.

I mean, that's a little bit of, what the heck? honestly.

But at any rate, one of the problems that I wanted to address with you this afternoon was the inability, or the lack of, communication, I think, between the people involved in this process and the victims.

If you've been the -- if your family has been the victim of a murder, and a person doesn't go before the board for 10 or 12 years, I'm not sure how they reach out and give the appropriate notice to that family to allow them to be there.

I'll give you an example of the case that we just had in Ulster County.

But the last year I was in law school, a few years ago, a fella named Ronald Krom broke into Trudy Farber's house, tied up her husband, and kidnapped her at gunpoint. And, put her in a box, and put the box in a shallow grave. And went to her

father, who was a fairly wealthy individual, seeking ransom.

And that individual tried to pay the ransom, it took a day or two.

And by the time they got to Trudy, she had died in this -- she was buried alive in a shallow grave.

He was just released by the parole board a couple weeks ago.

No one contacted to me.

This is Ulster County. Of course, I wasn't the DA at the time, but I'm the DA today.

And no one reached out to me and said, By the way, do you know that it's possible that this person might be released?

I don't know, I don't have the records, of whether they tried to reach Mr. Resnick's family. But I know Mr. Resnick's family is still in Ulster County.

That's troubling to me, frankly, a case of that magnitude.

You started out your discussion, Senator, about the factors, the three important factors, whether he'll recommit, the seriousness of the offense, and the public confidence.

And I think we're kind of 0-for-3 on a case like that.

And, of course, I state the obvious, that in order to make an assessment of whether a person is going to reoffend, the primary information we're getting is from that individual, which is, I would argue to you, not a particularly reliable source of information compared to the seriousness of the crime.

I mean, you know, what's the -- in essence, what are we doing?

We're making a decision to release somebody, and give them an opportunity to scratch an itch that's been there for a long time.

It's a very troubling process, not to allow the victims a chance to have direct input.

So it -- I don't know if I'm answering your questions, but, in my county, in primary cases that I think warrant the safety of the people I represent, I take the time to write letters and send specific information to the parole board.

I don't -- I've never -- there was one instance, it was a fairly minor case, by my standards. It was a grand larceny. A lady stole $700,000 from a local elderly lawyer. And she's

before the parole board a couple years after a 5-year sentence.

And I wrote a simple letter, saying, Can you explain why she's even before you?

I mean, you know, based on the sentence, and my expectation of the working of the sentence, is why are we considering it?

I didn't happen to get a response to that.

Any way, what kind of questions can I answer for you?

SENATOR GALLIVAN: I think you hit on an area of potential concern, really, the process.

So if I understood you right, that an individual is convicted. And upon conviction, somebody from the department of community -- corrections and community supervision, or the board, is reaching out to you shortly after conviction, asking for your input regarding parole?

DA HOLLEY CARNRIGHT: Right away.

So, you know, as I get this letter, sometimes two months, three months following the sentencing date. We don't get notice --

SENATOR GALLIVAN: And it could be -- all right.

So let's just say a 25 to life, you're not

getting it -- you're not getting notice or request for input that 25 years later?

DA HOLLEY CARNRIGHT: Correct. When -- when -- when -- at the time that the individual is actually going before the board, we're not getting any notice of that.

And I don't know how they could even reach out to the victims.

I mean, what -- what process would be in place, unless the victims have been in this situation where you've mentioned, where they go every two years before the board.

Most victims aren't given these kind of notices.

Most of them, there's victim services, of course. But I'm not sure that they are even aware of their ability to appear. And that --

SENATOR GALLIVAN: That's another -- we -- actually, that's another area that we're looking to examine, I mean, how the victims get notice.

Are you satisfied that you are -- or, to your knowledge, if you're able to answer, at least the notices that you're getting, that you're getting in every case, where somebody is sentenced to state prison, with the possibility of being eligible for

parole, post conviction?

DA HOLLEY CARNRIGHT: I think we get -- well, we get a lot of them, so I assume we get all of them.

I haven't received -- there are a couple of noteworthy cases I've prosecuted a couple years ago. I had two child beatings, and -- two separate cases.

And I -- actually, before I came up, I looked to see what I had sent to the parole board on those cases, and I hadn't received notices on them.

But, in general, we do receive notices.

SENATOR GALLIVAN: All right.

Thank you.

Any other questions?

SENATOR AKSHAR: I'm good.

SENATOR SERINO: I'm good.

SENATOR GALLIVAN: All right.

You had a very narrow section of the law that applied.

DA HOLLEY CARNRIGHT: Well, thank goodness for that. If you were going to --

SENATOR GALLIVAN: I appreciate your brevity, but thank you for taking the drive up, for being here.

DA HOLLEY CARNRIGHT: Could I mention two

things, as long as --

SENATOR GALLIVAN: You can.

DA HOLLEY CARNRIGHT: -- it's always a danger to give a microphone to a DA, you know.

When you -- when you make a note, that when the parole officers -- or, the parole board is receiving their PSIs in order to determine a person's prior criminal history, their juvenile record is not contained in that.

And we, unfortunately, have had many people with very serious juvenile records. And, generally speaking, you need a court order to get a family court or a juvenile record, that that would even go into the equation of whether to receive this information.

That's something that it might be worth looking at.

And I didn't know this, I'm embarrassed to say, I didn't know this until I looked at the statute on the way up here, but, according to the statute, there's a provision where there's a transcript made. And, the victim, or the victim's representative, can receive a copy of that transcript, which I am glad I know that.

I'm going to start to let my victims know

about that.

How hard would it be to give them a chance to review that before the board made a decision, in case they -- you know, if -- if -- let's just say, hypothetically, there was information that was presented that was in contest?

The victim could say, Well, he may have told you this, but let me tell you what really happened.

It's a pretty simple thing to fix, it seems to me.

Thank you so much for your time.

SENATOR AKSHAR: Thank you, sir.

SENATOR GALLIVAN: Thank you, sir.

Michael and Regina Stewart.

Good afternoon.

REGINA STEWART: Hi.

MICHAEL STEWART: Good afternoon.

SENATOR GALLIVAN: So how about if we start, how about if you just give us your names, and it doesn't matter to me who goes first, and just a quick background.

And I do know that you had a video that you wanted to present as testimony?

REGINA STEWART: That would be great.

SENATOR GALLIVAN: And we're going to do that

at the beginning? Or --

MICHAEL STEWART: Yeah, we just have a few slides, because we would like at least a visual, initially, of, you know --

SENATOR GALLIVAN: Sure.

How about if you just, quick, give us your names, and just a brief background, and then we can move to that.

REGINA STEWART: Okay.

Well, I'm Regina Stewart.

And we're here to talk about our son Christopher, and what happened to us in 2012.

MICHAEL STEWART: And my name is Michael Stewart, and I'm Christopher's father.

So, we have a couple different things to talk about.

First of all, we want to thank the Committee for hearing us today and allowing us to testify on such an important topic to us.

And, please keep in mind, you know, this -- when we go through this process of parole, we, obviously, went through it for the first time.

So we have, obviously, a lot of opinions on things and how things could work better.

But we think we've learned a lot already in

this first phase that we've gone through, where the offender, in our case, you know, has had his parole, it's been denied.

And we've kind of gone through the process, and we think we have a pretty good feel on -- from a victim -- or, a victim's family perspective on how things will work.

We're going to be talking briefly, very briefly about, as Regina mentioned, Christopher's -- the crash that killed Christopher.

But we also want to talk about a couple of initiatives that we know are on the table in terms of specifically extending the parole term, from two years, to five years, when a decision of denial is made.

And, at the same time, definitely reinforcing being able to talk with three board commissioners rather than one, and the benefits behind that.

So, do you want to talk about the events leading up? Or do you want me to?

REGINA STEWART: No, you can.

I just wanted to also say that we don't ever do this.

I know you just see Mike and I here in front of you, but we come as three.

And these are our son's ashes (holding up hand).

And we advocate on his behalf, always three of us.

So, for those that have a child that's older than 17, we're envious of you.

We had a lot of plans with our son as well, and they're not to be.

So this is Christopher at 17 (indicating), and he goes with us everywhere.

So I just wanted to say that we do this as a family.

MICHAEL STEWART: So in 2012, December 1st of 2012, you know, a day like any other day for us, Christopher, at this point, is halfway through his senior year at Shenendehowa, and enjoying his football season that he had just finished, and at the same time, anticipating many things; his high school prom, senior prom, high school graduations, preparing for college.

All of these things we were so excited about, and Christopher was so excited about.

As we mentioned, Christopher, outstanding football player.

That's just one thing with Christopher.

Big, six-foot-one, 250-, 260-pound person, indestructible, as we could feel in our minds.

But, obviously, we found out that big of a person, that strong of a person, in a Ford Explorer, a good car, a good large, safe car, doesn't come to play when you've got a menace on the roads, and the things that lead up to it.

So, on December 1, 2012, Christopher was traveling. He went down to a ULV-Siena game down at the Times Union Center. And he was driving with one of his -- or, actually, three friends: his girlfriend, Bailey Wind; his good friend Deanna Rivers, and her boyfriend, Matt Hardy.

Chris went to the game.

We left him that afternoon, gave him a hug. Said, "Be safe," as we always do.

And that particular evening Chris was driving home from the event, was coming straight from the event. Hadn't been out, hadn't been partying.

Was just above Exit 8 on the Northway, and was driving the speed limit, as was documented by all the investigations, when this offender, who had been out drinking earlier before, basically, had five different shots of alcohol over the course of a couple of hours, admitted to smoking marijuana

earlier in the day, he was speeding in the third lane, going in excess of 80 miles per hour, and he was texting.

He decided to pull up behind Christopher at the last moment to get off an exit, hit Christopher, causing Christopher's car to fishtail across three lanes of traffic, until it hit the median dirt, and that's when the car rolled multiple times until it hit a bunch of trees in the median.

Christopher was killed instantly.

Deanna Rivers was thrown from the car, killed.

And, Matt and Bailey somehow survived that particular crash.

As you can see, Ford Explorer, very safe car.

As you can see to the right, we have no idea how two people got out of this vehicle alive on that particular day.

Picture. This is our -- our picture of our family, the last family picture we had, which was Christopher's junior prom the summer before.

You know, the pictures we take now, we know Christopher is there, as he's always there, but, for a family to have minus one, whenever family photos come up, it's pretty devastating.

And, again, it's important for us, as we do, to take him places with us.

But to not see him in pictures anymore is devastating.

So, that's kind of the history behind it.

We just wanted you to see Christopher, the person, here in this very, very brief video.

(Video playing, transcribed as follows:)

"INTERVIEWER: What about the interception?

"CHRISTOPHER STEWART: Oh, it was so much fun. I've never had that kind of experience.

"I saw the quarterback drop back and I kind of knew it was a screen. So I just stuck my hand out there and tipped it, and the next thing I knew, it was in my hands, and it was just kind of off to the races from there.

"It was a lot of fun."

(End of video, and transcription thereof.)

MICHAEL STEWART: That's Chris, always upbeat. Never a bad day in his life.

So we got through -- somehow got through the next year.

And this offender, he was basically free, from the time he killed our son Christopher, for

370 days, by the time he was sentenced.

370 days that we had to deal with waiting for him to be sentenced.

At that point, we thought that we were away from the word "parole" for at least 4 1/2 years.

His sentence was 5-year minimum, 15-year maximum, with also a 10-year conditional release mixed into the decision.

We thought we were done with parole for a while.

Within five months we get this letter (holding up a paper).

"Please be advised that, in July of 2018, the above-referenced inmate is scheduled to appear before the parole board."

Five months after, we're being notified already as to when the inmate is going to be up for parole.

Not too much time for healing in that four- to five-month period.

So, we're going to talk about -- we want to talk about a few things with our involvement with the parole process; things that we think work, things that we think definitely don't work.

And if you wouldn't mind just kind of hearing

us out, and then, at that point, we would love to entertain any questions that any of you might have.

SENATOR GALLIVAN: So the letter, with the notification, was that also the notice that you had the right to be heard?

That was the purpose of their letter?

MICHAEL STEWART: The notice was, basically, the -- is just notifying us of when his parole was coming up.

We had been notified prior to that by the district attorney's office, if we wanted to register to be notified when, in fact, he was going to be coming up for parole, and the provisions and everything behind it, as to if he was going to be moved from one facility to another.

That's part of that registration process that we had done prior to.

SENATOR GALLIVAN: So, he's coming up for parole, or a parole hearing?

MICHAEL STEWART: He came up for parole in July. He had his parole hearing in July of this year, 2018.

His first potential release was going to be December of 2018, which would have been five years from the time that he was sentenced.

So that's kind of the time frame between then.

SENATOR GALLIVAN: And you had the opportunity to provide -- to meet with a member of the board, or --

MICHAEL STEWART: We did.

SENATOR GALLIVAN: -- provide a statement?

MICHAEL STEWART: We had met with the board in June of 2018. And, typically, they talk to families and their inmates 30 days prior to actually interviewing the inmate.

SENATOR GALLIVAN: Where did you have go for the interview?

REGINA STEWART: We do that right on Central Avenue in Albany --

SENATOR GALLIVAN: In a parole office?

REGINA STEWART: -- yeah -- uh, yeah, the crime victim --

MICHAEL STEWART: It's the office of -- office of victim assistance, is what their department is called.

They're the group that works with victims or victims' family. They're kind of the interface between the families and the parole board, the parole commissioner's office.

SENATOR GALLIVAN: And they're the ones who sent you the notice?

MICHAEL STEWART: They -- I believe that, initially, they were the ones that sent us the notice, in terms of, if, in fact, we wanted to register to actually testify in front of a parole board member, yes.

SENATOR GALLIVAN: Now, I may have misunderstood that letter.

So the hearing has conducted.

And was the individual granted a release on parole? Is that what that notice is?

REGINA STEWART: So this notice comes from the office of the district attorney from Saratoga County, which is where this crash took place.

And so this came from their office in May of 2014. And Dennis Drue had been sentenced in December of 2013.

So this came five months after his sentencing.

SENATOR GALLIVAN: No, I understand that.

But I'm trying to ascer -- what's the status of the offender?

Was -- has he had --

REGINA STEWART: So he --

SENATOR GALLIVAN: -- the parole interview?

SENATOR AKSHAR: -- yes, he had his parole interview in July. He was denied parole. And so he is still in Collins Correctional Facility in Buffalo.

SENATOR GALLIVAN: Were you notified after the hearing, or that's what the registration is about?

What do you get with the original registration, I mean, as far as the notification?

MICHAEL STEWART: I'm sorry, could you say that again?

SENATOR GALLIVAN: When you registered, and you did that with, was -- were you working with victim services from the district attorney's office, or the state office of victim services?

MICHAEL STEWART: That's correct, no, it was the victims services advocates for the district attorney's office at that particular time.

SENATOR GALLIVAN: And then, ultimately, you would automatically get notice of certain things by registering?

MICHAEL STEWART: Correct.

We would be notified of, again, when his parole would be coming up at particular times,

whether he was going to be moved from one facility to another. And that's pretty much it.

I mean, we were not allowed any type of information as to, you know, his participation, his behavior, or anything like that. That's not shared in any of that type of information.

SENATOR GALLIVAN: So he was held.

Was it -- to your knowledge, was he held for a 2-year period, an additional 24 months?

MICHAEL STEWART: So far as we know, yes.

SENATOR GALLIVAN: And did they give you an indication that you would have the opportunity to be heard prior to his next hearing?

REGINA STEWART: Yes.

SENATOR GALLIVAN: And how will you get notice of that?

REGINA STEWART: We probably -- I would guess, we're going to get another letter to let us know.

So what happens is, they send us a letter. They tell us to call the victim services office to make an appointment, so we can come in and give our impact statement, our victim statement.

And we have to be scheduled to do that.

So it will say, you know, in our case, it was

the month of June, on a Friday in the month of June.

MICHAEL STEWART: And at that time, we didn't know specifically when his hearing was going to be.

We were told that it would likely be the second or third week in July, but they wanted us to make sure that we were in there at least 30 days prior.

And, again, that's something that the commissioner was -- was -- had also referenced, in that, in terms of just the notification process.

And they have to have time, obviously, for anything; any documentation, anything that we say, the testimony, the transcript, they need to have time to get that out to the particular facility.

So that's the idea of allowing us to come in at least 30 days prior, which kind of ensures the information will get to the people making --

SENATOR GALLIVAN: So the current law provides that the victims have a right to be heard.

And my question is: Do you think the current law is adequate?

And if not, what thoughts may you have, or recommendations, about what it ought to be?

REGINA STEWART: Well, I personally feel that it's adequate in letting us know that we do have the

option to come in and give a statement, or to be -- we were given a choice, actually. We could either send in a written statement. We could appear in person.

MICHAEL STEWART: We could send videos.

We could send copies of anything that we want.

In our particular case, we were very proactive in this.

Probably a year before we knew his parole hearing was coming up, we were already talking with the office of victims assistance, because we chose to do so, to find out the process, to find out the things that are beneficial to present to a board member.

You know, so we went, and we were prepared.

We went with newspaper articles, media coverage, letters from the community, letters from the school districts.

We had a petition online that we had over 11,000 people sign. We brought copies of that.

These were all things that we were proactive, and brought with us, and brought four copies of everything.

We made a video, a family video, again, four

copies.

For us, this was something that we wanted to do.

But I think, for many families, it's very difficult to be able to round up all this documentation, put it together, make four copies of everything.

You know, for us, we did it because we wanted to. But for most families, I think that's a pretty hard task to do.

SENATOR GALLIVAN: Well, I'm sorry for your loss, but grateful that you're here, and appreciate your willingness to stand up and talk about that, and, potentially, help us as we look forward with these procedures.

Senator -- I understand you live in Senator Tedisco's district?

REGINA STEWART: Correct.

SENATOR GALLIVAN: Senator Tedisco.

SENATOR TEDISCO: First of all, let me thank you both for being here, and working so hard to help other families who are facing the same tragedy that -- or similar, that you have faced.

I'm just wondering, you had to do some research to find out exactly what was going to take

place.

Did they tell you how long you would be able to speak at this victim impact, or did they give you any limit, or give you any idea of how long they give you for this?

REGINA STEWART: Originally, we were told to plan for about an hour.

SENATOR TEDISCO: Uh-huh?

REGINA STEWART: And in our case, there was not another family that was going to be coming in after we were there, so we were able to stay a little longer.

And we felt that we were fully heard, which was soothing in a way, because we -- there's a lot of anxiety, of course, that goes along with what we were going through.

It was very stressful knowing that one, or maybe two people, in all of New York State, were the two people that were either going to release Dennis Drue or keep him incarcerated.

And that's hard for a family to have to hope for, that we were going to have two quality commissioners, that we don't know.

And we did step out a little while ago just to thank Commissioner Ferguson because, had we known

someone like him would have been listening, and been the one that was advocating and hearing everything on behalf of our son, I know it made me feel a little bit more at ease, because he seemed to be so thorough and so caring in his thoughts and in his actions.

And so, hopefully, every single one of the commissioners acts in the same way.

But it's very stressful for parents to know that, after losing so much, you still have this worry that -- you know, that the offender is not going to be released so quickly.

SENATOR TEDISCO: Did they give you any idea of what the setting would be like when you showed up?

Where you would be sitting?

Where the commissioner listening to you -- there was only one commissioner there; right?

REGINA STEWART: Correct. We only had one commissioner there.

And the thing is, as Mike was saying, we were proactive. And the year before, I think it was April of the year before, we actually made an appointment with the victims services office, and asked them if we could come visit them, and have

them explain to us what it was we were going to need to prepare for.

We wanted to make sure that the hour or so that we spent was thorough, from our perspective, and that we were doing the best for our son that we could do.

And so we were actually in the very room that we would have -- that we went back to the next year.

So, for us, we knew what the setting was going to be. And, basically, it's just like this, a large wood conference room table, and, you know, probably 15 chairs around it.

SENATOR TEDISCO: Was the commissioner attentive to you?

REGINA STEWART: Very.

SENATOR TEDISCO: Did he ask -- was it a he or --

REGINA STEWART: It was a woman.

SENATOR TEDISCO: Did she ask questions?

REGINA STEWART: She did -- first she explained to us what was going to happen before we went on the record and before the stenographer started taking notes.

And, you know, there was water. There were tissues.

It was -- they were very accommodating to us.

And, took their time, and let us take our time, because it was very emotional for us.

And she was -- you know, she waited for us to kind of compose ourselves again and continue on.

So, it was not a stressful situation. I mean, it was, but it wasn't -- you know, they were helpful to us, I guess, is what I'm trying to say.

MICHAEL STEWART: And I think, too, the one thing to add, I'm sure that most people that go into that have no idea that this isn't one of the people that are going to be making the decision.

SENATOR TEDISCO: Well, that's a question I wanted to ask you.

Did you know before you went in?

MICHAEL STEWART: We knew -- I mean, that was the first question I asked when I -- when we spoke with them a year before, because we knew we were speaking with one person that -- or, we were going to be speaking with one person that day.

And the person at the office of victim assistance that was telling us the process, she was very outright to say, no, there is no guarantee.

It could be, it could be one of the three, or it could be one of the two; depending upon if they

have two or three board members making the decision.

But, she was very clear.

But, again, that was something that I brought out, the question, because that was important to us.

And I think most people are shocked whenever I tell them that that is not one of the people that's going to be guaranteed at least to be either making the decision in the case, or is actually going to be having a verbal communication with the people that are, because they're not.

SENATOR TEDISCO: Well, that was -- that was the other question I wanted to ask.

There was no guarantee that the person you spoke with would be in contact at all with the real commissioners who would be at -- they'd send the documentation of the event, but that person would not necessarily talk to them about how she felt about in what you said personally?

MICHAEL STEWART: That's correct, that's the guarantee you get, is that all of the information that we provide them will be provided to the either two or three board members making the decision.

And she also mentioned that, although the information, we'll try to get out there, typically, well in advance, the people, those particular board

members, don't necessarily get a chance to review it until the day of.

SENATOR TEDISCO: I don't know about the privacy issue that was brought up by Commissioner Ferguson, about not letting anybody know who the real commissioners would be.

But, how about the idea of videotaping, and requiring those who will be hearing, see and look at the videotape before they go to the parole hearing with the perpetrator?

REGINA STEWART: I think that would be an amazing idea. I think it would be very beneficial to everyone, actually.

I know Commissioner Ferguson was saying how exhausted that they were.

And, you know, I can tell you, Mike and I would not have wanted for us to have been the 119th family that he was hearing, you know, after being up for all those hours.

That's very unsettling.

And a video, I think, would do a lot of good for everyone.

We did provide one on our son's behalf. And --

SENATOR TEDISCO: But not required for them

to look at it, really.

REGINA STEWART: Well, we're hopeful that they did look at it.

SENATOR TEDISCO: Right.

REGINA STEWART: But, you know, Commissioner Ferguson made us feel a little unsettled about that too.

Like, what if they don't have a DVD player?

And we were specifically told to make four DVDs.

We had to make four of everything we did, because we were told --

SENATOR TEDISCO: You had to pay for it?

REGINA STEWART: -- that they had to be given to the commissioners that would be hearing -- hopefully, hearing.

And then one would go into the master folder.

MICHAEL STEWART: Yeah, victim-assistance folder.

REGINA STEWART: And that, in two years, when Dennis Drue comes up for parole again, that all of the initial information we provided, along with anything new that we want to put in the envelope, would still be there.

So I guess it collects and continues on.

SENATOR TEDISCO: It's very difficult for those of us who might not have experienced something similar to this, to feel or think about what it's like to go every two years to make this requirement, give that impact again.

And I know you mentioned it, but I think, could you say something else about your feelings about the two-year period, over and over coming up, and having to go through this process, and how it impacts you and your family?

MICHAEL STEWART: Yeah, well, the two-year, you know, in our particular case there was no trial, you know.

He, basically, ended up admitting to guilt 58 times the day before the trial was supposed to start.

So we didn't have to go through that very stressful point of a trial, where you go through the trial, you relive all the events, and then you hear "guilty," or "not guilty," and the stress leading up to that.

You know, we're fortunate that we didn't get that.

But, with this two-year process, that's imposed on us every two years.

This was no different.

On the day that we called the office of victim assistance, that morning, and for those that don't know the process, after the inmate has his particular hearing, after he's been notified of the decision, the information goes to the office of victim assistance.

And the families, as us, start calling the following Monday at 8:00 in the morning, to get the answer.

So, it wasn't guilty or not guilty, but it was denied or approved.

And there's, that feeling, I can tell you right now, I'm sure it was the exact same feeling that anybody feels when they're in trial and they hear "guilty" or "not guilty."

And, now we get do that every two years, and have that stress level.

Whereas, if it's extended to five years as the possibility, it's a tremendous relief from a family's standpoint.

SENATOR TEDISCO: Thank you so much.

And sorry you had to go through some of this here today again, but I think it was important for the rest of the families.

And we appreciate what you do on behalf of Chris and your family, for the rest of the families.

MICHAEL STEWART: Thank you, Senator.

SENATOR AKSHAR: Thank you.

SENATOR GALLIVAN: Thank you very much.

SENATOR SERINO: No questions.

SENATOR GALLIVAN: No more questions.

REGINA STEWART: Okay. We're happy to answer any.

SENATOR GALLIVAN: We do appreciate your time. You've been very helpful.

REGINA STEWART: Okay. Thank you very much.

SENATOR GALLIVAN: Chrys Ballerano from the New York State Coalition Against Sexual Abuse.

Good afternoon.

Thank you for being here.

Good afternoon.

Thank you for being here.

CHRYS BALLERANO: My name is Chrys Ballerano, with the New York State Coalition Against Sexual Assault.

First, I want to convey my condolences to the Stewarts.

I can't imagine.

I have one child, she's 30, and she's my

life, she's my precious one.

And I just want to convey my deepest condolences to the family.

I appreciated their comments.

I, Christine Ballerano, familiarly known as "Chrys," am giving this testimony today from a place of respect, compassion, and deep empathy with people who have experienced interpersonal violence and other traumatic forms of crime.

As an advocate in the sexual-assault movement for over 20 years, over 19 of those serving as statewide project director at the New York State Coalition Against Sexual Assault (NYSCASA), I've learned a great deal about the criminal justice system's approach to managing victims of crime, and those who have done harm and violated the rights of survivors.

As a statewide sexual-assault and mental-health project director since 1999, I've heard countless testimonies from survivors for whom the criminal justice system brought no justice; survivors from whom much was taken and not restored, or witnessed in any manner that brought healing for the traumatic injury that was caused.

And I'd like to share this statement from our

organization's project team, which I shared earlier in our press conference.

"Too often, the actions public officials take in the name of crime victims, particularly in the name of survivors of sexual and domestic violence, do not line up with the actual needs and desires of the majority of survivors, especially survivors from communities that are at most risk" -- "most at risk.

"As an organization committed to healing and justice for all survivors, and to truly ending sexual violence, NYSCASA recognizes that reliance on a bias and inherently reactive criminal justice system will not achieve these goals.

"Like many survivors, we would rather see public officials take action to ensure that survivors, their families, and communities have the comprehensive resources they need to heal and to thrive; that significant investments are made in community services and institutions that will prevent violence from happening in the first place; that people who commit harm are held accountable in a meaningful way that does not perpetuate a cycle of violence; and that people who commit harm have access to the services they need to stop committing harm."

As a survivor of sexual child abuse by my paternal grandfather, a rape as an adolescent by a boyfriend I trusted, and sexual assault as a college freshman by a teacher my first semester in college at Stony Brook University, I know firsthand how these crimes go unspoken, unhealed, and, ultimately, made invisible.

So you see, this issue is personal for me.

And I understand what my colleagues and other survivors refer to as a "rape culture."

We continue to have powerful institutions that protect adults who harm kids, and even punish youth for the actions of adults.

Although I know of efforts being made in some areas of service provision to be more trauma-informed, there is still a lack of cultural competence and far too great a propensity toward punishment in different forms of violence when a person is seen as non-compliant.

Locally, we all saw the tragic results of reactivity in the heartbreaking case of Dontay Ivy.

We see this violence play out in victim-blaming scenarios, where bullying, blaming, and harassment run rampant, with people savagely disrespecting other people.

At times, this violence is even labeled as appropriate behavior by institutions set to maintain the status quo.

As a child, I didn't tell anybody about my sexual abuse because I didn't feel I had the power to speak up against my elder.

What I do remember doing, though, again and again, was going to another elder, my maternal stepgrandfather, James Rearer (ph.), who I trusted implicitly and who loved me unconditionally.

His love and protection of my spirit was one of the greatest assets of my childhood development.

Grandpa Rearer was also an ex-felon from before I was born, having, as a minor, driven the getaway car for his older brother's failed bank robbery in Ohio.

I didn't know this fact about him till years later after he had passed away.

He had been offered an out for prison by serving in the military during World War II.

And I knew he had served.

He was always a man of great dignity and love for others.

My mother's older sister, my Aunt Fran, described my grandpa as a "knight in shining armor"

when I asked her about my biological grandfather who I had never met.

She told me about my grandfather's courtship of my grandmother, and how, as an uneducated Sicilian immigrant, my maternal grandmother had endured domestic violence in her first marriage, and had relied upon nuns to help raise her three young daughters, my mother included, during the depression, living in extreme poverty before marrying my Grandpa Rearer.

I recall grandpa earning a good living as a union laborer, and how beloved he was by his co-workers, his friends, and all of his family.

After coming home from school as a child, I would run to his and my grandmother's house behind our home on Long Island to be with him in the garden, or watch him work in his garage, or just run errands together in his pickup truck for my family.

He was my gentle giant protector, and I loved him with all my heart.

He was a complete contradictions from the other grandfather who was in my life at the same time.

They both lived within walking distance from my home.

He was my -- his elder brother, my Uncle John, was also very special to me, and taught me how to fish as a young girl, treating me as a real person, not just as a little girl, giving me confidence in myself at a time when I was most vulnerable.

I had the highest respect for these two men.

I had no idea that they had each been convicted of felony crimes as young men.

They remain in my heart and my memory among my dearest mentors, and I cherish stories and photos that remain of them.

I would hate to see us moving backward and pre-judging people for eternity based upon their actions as youths.

Taking away an individual's right to vote is another way of dehumanizing the most marginalized citizens of our nation, and as such, it's another form of violence.

Such policy has no place in New York State.

We should proudly model human rights, not exacerbate systemic oppression.

Instead, our policies should foster self-respect, healing, empathy, and prepare incarcerated individuals to participate as citizens

on the outside, not discard and disregard people as unworthy of dignity and civil rights.

If Nelson Mandela can lead a truth-and-reconciliation tribunal in post-South Africa -- I mean, in post-Apartheid South Africa after suffering decades of brutal imprisonment, what stops us from honoring human rights for all people in the United States?

We also know that too many people living behind bars are themselves victims of violence, trauma, tremendous loss, as children, adolescents, and adults.

Many are there for non-violent crimes that were survival strategies, the most accessible ways of coping with the traumatic pain that they'd experienced as victims.

These young people, like some of us in this room, may have used self-destructive behaviors, like drugs, like alcohol, to get by, to survive, resulting in these survivors being criminalized for their coping strategies.

We also know that those who serve the longest and harshest sentences for these offenses are the poor and, disproportionately, people of color.

Those early traumas known as "adverse

childhood experiences," or "ACES," are often exacerbated by the brutality experienced and witnessed while in prison, and the racism and implicit biased expressed in mainstream culture throughout so many of our institutionalized systems, including our health-care system.

I have visited incarcerated survivors, and I know from what I've seen, how broken the system of mass incarceration is from families and individuals seeking healing and/or justice.

I recall visiting with a female survivor of domestic and sexual violence in Columbia County's jail in Hudson while I was working as a rape-crisis counselor at the Reach Center of Green and Columbia counties in the '90s.

She refused to allow me to tell her family she was in jail because she didn't want them to see her that way.

The shame she felt about them seeing her behind bars was too great for her to ask for support that she desperately needed.

And as a crime victim, the subsequent isolation did nothing to help her heal from her trauma.

Her crime had been a relapse of cocaine use

while she was on parole. Again, self-medicating because she'd been raped.

I could go on about special housing units for survivors of sexual assault while in custody, and how this practice is the equivalent of torture, but I'll stop here because I'm about out of time.

I would like to thank you for listening to my testimony, and discuss this request to recognize the right to vote as a human right; that all people be counted as a human member of our troubled society, a society in great need of healing and restorative practices across all of our human-service institutions, this criminal justice system being just one.

Anyone working with people needs to think of them, think of -- needs to think of themself as human services, or we endanger others by perpetuating pain and trauma instead of providing some form of corrections, restoration, and healing which we state is our intention.

Increasing parole rates, and granting voting rights, are positive steps in that direction.

Attached to my testimony you will see the "New Vision for Crime Victims" that the Downstate Coalition drafted last year, and that NYSCASA

wholeheartedly supports as well.

I'm happy to answer any questions you might have as a panel or as individuals.

SENATOR GALLIVAN: Absolutely.

Thank you for being here.

And, thanks for sharing your story, and turning it into something, working over your career now, to help other people.

That's really -- and, fortunately, I didn't have to experience that.

But, thank you for standing up, appreciate that.

Now I have a couple questions.

You've touched on many things, many of the challenges that we and our colleagues face in both -- well, not just both, in many areas.

You mentioned health care, social-related services, criminal justice, and many other things, much greater than the scope of today.

So I want to bring it back, and ask about the victim impact panels.

Have you had any experience -- not panels, the victim impact --

CHRYS BALLERANO: Statements.

SENATOR GALLIVAN: -- do you have any --

Yes.

-- do you have any experience --

CHRYS BALLERANO: Yes, I helped --

SENATOR GALLIVAN: -- in dealing with victims?

CHRYS BALLERANO: -- yes, I worked in direct services before I came to the coalition, and I assisted victims in drafting their victim impact statements, and making sure they knew how to go about the process. And also helping them with the application for crime -- what used to be called "crime victims compensation."

SENATOR GALLIVAN: Is that valuable to victims --

CHRYS BALLERANO: Absolutely.

SENATOR GALLIVAN: -- that process?

CHRYS BALLERANO: It is valuable.

SENATOR GALLIVAN: Is it adequate?

CHRYS BALLERANO: I don't think it is adequate, no.

SENATOR GALLIVAN: How could it be better?

CHRYS BALLERANO: Well, I'm a strong believer in restorative practices.

I really do believe that that's where we're moving as a culture, very slowly, at the rate of a

glacier, perhaps.

But I know, in the college sexual-assault area in particular, which is one of the projects I supervised at NYSCASA, and because I was violated when I was in college, it was -- I was actually heading that program before we hired Michelle Carol (ph.), our project director.

She's been trained in restorative justice practices. And she's actually been working with the New York State Department of Health, to help them better understand how restorative practices and restorative justice models can be utilized in a campus setting, because in oft -- often, so many cases, survivors really want that more relational model.

They want to be able to, not necessarily have the person who did harm toward them incarcerated, but they want them to understand that what they did was wrong; that what they did was violence.

And, unfortunately, the way the system operates currently, or has been operating up until now, I mean, Enough is Enough is making some changes for sure, but it's not enough.

I know that's what the law is called, "Enough is Enough," but it's not enough.

And, so, there's a lot --

SENATOR GALLIVAN: I think many -- you'll find many people up here agree with that.

CHRYS BALLERANO: -- yeah.

So there's a lot more that can be done, and I don't think we should wait till college either.

I think that we're seeing more and more issues of children.

I myself experienced this child sexual abuse at eight years old.

I know people who have experienced it at much younger years, and older years.

And so it's, like, we can't wait till college to be dealing with victim impact statements.

We can't wait till someone's dead or raped before we're helping the family.

You know, we should be doing much more preventive measures, which is one of the things my coalition really stand -- our coalition really stands for, is primary prevention; really stopping the violence before it happens.

And, yeah, so victim impact statements are important, but they're no solution.

There's so much more that can be done.

And I think that it really begins in a

cultural competency and understanding what "rape culture" is, and also what "racism" is, and what -- what, you know, violence against women is rooted in as well.

Violence against anybody who's held in less power, and the power differentials that we see in this country, I think that's where the crux of the matter really is.

When you have somebody who feels powerless, how are they going to gain power?

SENATOR GALLIVAN: Senator Akshar has some questions.

SENATOR AKSHAR: Do you believe that criminal justice reform is appropriate?

CHRYS BALLERANO: Do I feel that -- do I believe that criminal justice reform --

SENATOR AKSHAR: Justice reform is appropriate.

CHRYS BALLERANO: -- yeah.

SENATOR AKSHAR: Bail reform is appropriate?

CHRYS BALLERANO: Bail?

SENATOR AKSHAR: Bail reform is appropriate?

CHRYS BALLERANO: Yes.

SENATOR AKSHAR: Parole reform is appropriate?

CHRYS BALLERANO: Yes.

SENATOR AKSHAR: Do you believe it's appropriate to allow violent sex offenders into schools to vote?

CHRYS BALLERANO: I don't believe that violent sex offenders ought to be in schools where children are unsupervised while they're voting.

But I also want to tell you that those who have been convicted of sex offenses are a drop in the bucket compared to the numbers of people out, walking around, unprosecuted; that most sexual assault crimes have not been reported to law enforcement.

80 percent of them have not been.

SENATOR AKSHAR: But the purpose of this hearing, though, is to determine, should we be reforming the parole system?

And then to talk specifically about the voting rights of some.

CHRYS BALLERANO: Correct.

SENATOR AKSHAR: My question to you was: Do you think it's appropriate to have violent sex offenders voting within the confines of a school?

Or, perhaps, is there a better system that we could put in place?

CHRYS BALLERANO: I think there's probably all kinds of better systems we can put in place.

SENATOR AKSHAR: Okay. Thank you.

That's all.

SENATOR GALLIVAN: I think we're done with questions.

But you mentioned, right at the very end of your testimony, that you had an attachment?

And I don't --

CHRYS BALLERANO: I did attach it -- I paper-clipped a two-page document to my one-page testimony.

So everyone should have received that, unless somebody dis-attached them.

SENATOR GALLIVAN: Do you have a copy with you?

CHRYS BALLERANO: Unfortunately, I handed them all to the woman that was sitting in the back.

SENATOR GALLIVAN: Okay. We will --

CHRYS BALLERANO: It's the "New Vision for Crime Victims," and it was written by the Downstate Coalition.

SENATOR GALLIVAN: We will track that.

We'll connect with you, if not immediately following, but to get that, because I don't think --

Never mind.

Located.

CHRYS BALLERANO: You found it?

SENATOR GALLIVAN: Yes.

CHRYS BALLERANO: Great.

SENATOR GALLIVAN: Thank you very much.

CHRYS BALLERANO: Oh, you're welcome.

Thank you for your time.

SENATOR AKSHAR: Thank you, ma'am.

SENATOR GALLIVAN: New York City Police Benevolent Association, Patrick J. Lynch, president.

Good afternoon.

PATRICK LYNCH: Good afternoon.

SENATOR GALLIVAN: Thank you all for your patience, as with all the others that remain and stuck around.

How about if everybody introduces themselves, and then we'll get started.

JOHN NEVILLE: John Neville, public affairs team member of the PBA.

PATRICK LYNCH: I'm Patrick J. Lynch, president of the New York City Patrolmen's Benevolent Association.

JAMES WALSH, ESQ.: And I'm Jim Walsh. I'm with Manatt, Phelps & Phillips for legislative

counsel for the New York City PBA.

SENATOR GALLIVAN: All right. Thank you.

Mr. Lynch, we do have written testimony. And I know that you did want to provide a brief statement, and we'll go from there.

PATRICK LYNCH: Yes, if I could.

SENATOR GALLIVAN: All yours.

PATRICK LYNCH: Thank you, Senator.

Good afternoon, Senator Gallivan, Senator Akshar, and Senator committee members who sit on this Committee.

Thank you for the opportunity to provide testimony on this very important issue.

Out of respect for your time, I will summarize my testimony, and refer you to the written statement I've submitted, as we just spoke.

As you know, our union represents more than 24,000 rank-and-file New York City police officers in the New York City Police Department.

As law-enforcement professionals, we recognize that judicious granting of parole release to certain offenders is not only necessary for the efficient operation of our criminal justice system, it is essential to the principles of fairness and justice on which the system is founded; however,

like all discretionary aspects of criminal justice, the parole system requires clear, well-considered guidelines and strong institutional controls.

Without these guidelines and controls, the parole system become plagued with dysfunction, error, arbitrariness, and its decision-making, and, ultimately, with outright abuse, that jeopardizes public safety and undermines respect for our laws.

Unfortunately, recent events suggest we've reached that point in the state of New York.

In particular, the New York State Parole Board has, on multiple occasions over the past year, made the unconscionable decision to grant parole release to individuals convicted of murdering New York City police officers and other members of law enforcement in the performance of their duties.

The murder of a police officer, one of the most serious offense against the people of our state, because it represents not only the taking of a life, but also an attack on the rule of law and our society as a whole.

That understanding was reflected in the Crimes Against Police Acts of 2005, which made the murder of police officers punishable by life imprisonment without parole.

However, cop-killers whose crimes predate that law are currently serving sentences that allow parole release.

Until recently, and with rare exception, the parole board routinely denied their request for parole.

That practice appears to change suddenly and dramatically in March of this year when a parole board panel voted to release Herman Bell.

As you know, Bell is one of three domestic terrorists convicted in the brutal 1971 ambush assassination of New York City Police Officers Waverly Jones and Joseph Piagentini. He also later plead guilty to his involvement in the assassination of a San Francisco Police Department sergeant, John Young, that same year.

On seven previous occasions, parole board panels had considered the facts and circumstances of Bell's brutal premeditated crimes, and rightfully concluded that his release would be, in quotes, incompatible with the welfare of our society, end quote, and who so depreciate the seriousness of his crime as to undermine the respect of law, end quote.

Nonetheless, the current panel disregarded these consistent findings and the very basic

statutory standards for considering parole.

Bell's release sent a clear message to New Yorkers that there is no crime too vicious and no criminal too depraved to earn a favorable-release hearing and release by the current parole board.

Since Bell's release in April, the board has granted parole to two additional cop-killers, as well as the killer of a Bronx prosecutor.

These outrageous parole decisions have made it abundantly clear that the parole system is broken and the current parole guidelines are fundamentally flawed.

Even with revisions to the guidelines, they will -- they will still require a board that will properly adhere to them as is statutorily required and demanded by the public.

The responsibility for addressing these crisis rest in many hands, including those of Governor Cuomo, who appointees form the overwhelming majority of the current parole board members.

Ultimately, however, the issue cannot be resolved without affirmative legislative action to strengthen the parole guidelines, and introduce the strong institutional controls that the parole board is so clearly lacking.

We, therefore, respectfully request that you, as New York State Senators and members of these combined committees, take action in the following areas:

First: The Legislature should repeal the 2011 amendment to the executive law which mandates the parole board to be guided by the numerical score generated by a risk-and-assessment needs, a tool in rendering their determinations, and to provide the individualized explanation for any departure from these scores.

Second: We urge the Legislature to enact statutory requirements that reemphasize the seriousness of the instant offense; specifically, in connection with the impact on the respect of the law and the welfare of society as a whole in parole board decision-making process, in all of them.

Third: We urge the Legislature to pass legislation introduced as Senate 8921 in this session by your colleague Senator Golden, to amend the executive law to clarify that crime victims, their family members, or representatives have standing to appeal the parole board determination.

It's extremely important.

Fourth, and finally: We urge the Senate to

exercise even greater scrutiny over parole board appointees.

It is the governor's responsibility in the first instance to screen potential parole commissioners for any form of bias in addition to the basic professional qualifications defined in the statute.

However, we urge you and your colleagues to engage in the most thorough vetting process possible, including substantive discussions with the appointees to ascertain their ability or willingness to consider each case on its own merit, using only the criteria defined in the statute and the parole board rules.

At present, there are at least 59 killers of New York City police officers appearing regularly before the parole board, meaning dozens of families are preparing to once again oppose the release of their loved ones' killers with the very present fear that these heinous criminals may go free.

This week alone, the families of Police Officer Anthony Abruzzo and Police Officer Sean McDonald will both deliver their victim impact statement to the board.

And later this month, both the Piagentini and

Jones families will appear before the board to argue against the release of Herman Bell's accomplice Anthony Bottom.

Each of these families is terrified that this will be their last opportunity to make their voices heard; that the parole board will ignore their pain and fear, and return the individuals who terrorized their families and our society back to that same society.

Senators, as you know, and you all can appreciate, there is simply no time to waste in your efforts to fix our broken parole system and restore the proper functioning of the parole board.

On behalf of New York City police officers and our families, I thank you all for your efforts in this area so far.

We look forward to continuing to work with you towards our shared goal of a stronger, safer, fairer New York.

I'm happy to answer any kind of questions today, or continue on as this process moves forward.

SENATOR GALLIVAN: Well, I can't ask you about recommendations because you just gave them to us, and we appreciate that.

So, I do not have any other questions.

I don't know if any of the other members do.

SENATOR AKSHAR: Pat, thank you.

I'm a former member. And I just want to publicly thank you for standing shoulder to shoulder with the men and women of the NYPD.

And let me ask you one particular question.

Do you believe that politics has come into play in the parole system?

PATRICK LYNCH: Absolutely.

What we found is, rather than look at the facts in a case, many times what's not being looked at is the impact this crime had on, not only the families, but society as a whole.

And what's happening is, those that yell the most are getting what they want.

All we ever asked for as New York City police officers, in any process, including this one, is fairness.

Look at all the aspects. Be guided by the law and the statutes.

What we find, that has changed, and that's not happening any longer.

We cannot stop looking at how this impacted our families.

Earlier there was a question about the

victims' impact statements.

That's extremely important.

It's extremely important because it's the one opportunity for our families to sit at a table like this, and read and tell their story, to say how their lives were changed since their mother or father were removed from this earth, since they were so viciously murdered by a criminal; how their lives have changed, and will continue to change.

We think it's extremely important that we strengthen that aspect, give the weight to that aspect the most in the criteria, because they're the ones that know most how it affected them.

Just because it affected one family doesn't mean in the future it might not affect another.

So we think it's important that they're heard from.

We think it's important that it's given the paramount amount of weight, because they're the one that's living with the heinous crime that visited their kitchen table.

And when you attack a New York City police officer or law enforcement across this country, and even a prosecutor, that's an attack on all of society.

If they can kill us, they can kill anyone, and that's the reality of it.

We need to keep the humanity in this process.

Terrorists should not walk our streets.

The members that killed Piagentini and Jones, although it was 1971, they were "terrorists."

We didn't use that word as often back then, but they wanted to terrorize society.

How did they do it?

By killing a -- New York City police officers. By viciously pumping 20 rounds into their body as they begged for their life for their family.

Why?

Because they knew that would make society fearful.

"If we can kill a cop, we can kill anyone."

And if they do it right as terrorism, they won't have to kill anyone, because they would have terrorized us into submission, and fear, where we hide in our homes.

We can't allow that to happen.

Because you go through your sentence, and you learn how to answer the questions, and you have a parole board that's sympathetic and holds you in high regard as a criminal because you lived your

life right behind bars?

They have no choice but to live their lives right behind bars. They have a correction officer on their left and on their right that make sure you abide by the rules.

What we have to look at is, what did they do when they were free?

Why did you go 30 years and not be sorry for your act?

Not to say, I was wrong, and then on your eighth appearance, all of a sudden we found God?

I don't believe that.

Keep them behind bars.

Let them teach the next generation that what I did as a criminal is not worth it, so you don't do it either. It's not worth it because I'm spending the rest of my life behind bars.

That's where they'll do the most good.

Because we feed them, because we educate them, and they've learned how to play the system, doesn't mean they should be living next door to us.

It doesn't mean they should walking into our schools to vote where our children are.

They're violent criminals, they've proved that.

If they attack us, they'll attack you.

SENATOR AKSHAR: I called Bell "a terrorist" then, and I'll call him "a terrorist" again today, because I believe it.

And the critics and the pundits will pontificate about how members of law enforcement don't care about criminal justice reform, don't care about bail reform, parole reform.

It's the furthest thing from the truth, would you agree?

PATRICK LYNCH: I do.

And in any process, for anyone, whatever side of this issue we're on, we should ask for fairness.

Look at each case, starting with the initial crime, and then make a decision from there.

I find it odd that, all of a sudden this year, (pounding on table) rubber stamps of granting parole.

We're not looking at the crime, we're not taking seriously the victim impact statements, and they've skewed the laws.

Look, you're never against reform, but you should steer reform towards fairness where everyone in the process feels like they were fairly treated.

And how do you do that?

It's by looking at just the facts, just the crime, and each aspect from there.

Many of the cases we're talking about are not young women and men who made a bad decision as they were growing up.

We have people that thought out their process, premeditated, that sat and ambushed New York City police officers, and others.

They're talking about, they knew exactly what they were doing. They planned it out.

And that evil doesn't go away.

And when, year after year, they go to parole board, and they're not sorry, (snaps fingers) then all of a sudden they are?

Meanwhile, our families, every two years, have to relive that by telling their stories.

I have the opportunity of knowing these families. And their lives have changed, and will never be changed back.

Their children grew up without mothers and fathers, who were just going out to put food on the table just like every one of us do each and every day.

A terrorist decided, we're going to fight for something that's not right, and you have gotten in

our way, and we'll kill you for it?

That should be given the most weight, because they feel it every day.

Some say there's closure.

I don't believe there's closure. I think our families get used to the pain.

And what keeps them going sometimes, is keeping their family member's spirit alive, by testifying at functions like this, of standing up and hearing what society says about their heroes.

Well, I think the parole board needs to hear that too.

And I think those commissioners that listen to the victims' impact statement should put politics aside, look them in the eye, understand their pain, and then vote to keep them behind bars.

SENATOR AKSHAR: Well, that's the problem, Patrick. People don't put people before politics, unfortunately, in this crazy city.

They don't.

They put their political ambitions in front of that.

So, you go home to New York City and you tell the sons and daughters and the mothers and fathers they have a friend here.

And that I will always advocate for you, because you seek fairness, despite what the critics and despite what the pundits say.

You just want a fair system; and you want a fair system not only for the people -- the men and women of the NYPD, but for everybody who finds themself in the system.

It's very simple.

Some will choose to spin it a certain way.

I choose to speak the truth.

Thanks for being here today.

PATRICK LYNCH: Thank you, Senator.

SENATOR GALLIVAN: I do have a question now.

So, a lot of the written testimony, and some of the things you've just added --

PATRICK LYNCH: Yes.

SENATOR GALLIVAN: -- has to do with the various factors; recommendations on changing the factors, or the parole board giving a certain amount of weight, which, under current law, they're able to do without a requirement.

But the standards themselves, I'm interested in your opinions.

So the standards are, paraphrasing, the liberty without violating the law, welfare of --

consistent with the welfare of society.

Then the last one that you mentioned in your testimony, will the release so deprecate the seriousness of the crime as to undermine respect for the law?

Essentially, the community standard, or, the community-at-large standard.

Is it your opinion that those standards are appropriate ones, to look at not just the inmate, but also the community?

PATRICK LYNCH: Yes.

SENATOR GALLIVAN: Again, outside, not counting the factors, but just the standards themselves.

PATRICK LYNCH: You have to look at the standards and weight them properly.

And the highest weight should be given to the nature of the crime, and the impact on the families who are society; New York City police officers who live in our communities.

SENATOR GALLIVAN: No, let's go here.

So those two things, nature of the crime and impact on families, are factors, all the things to be considered.

Then they balance them against those things,

the welfare of society, deprecate the seriousness.

So just those three.

Not what has to be considered.

Is this the right standard?

Like, so if you consider all these things, the current standard that says above the line or below the line, is that line appropriate?

PATRICK LYNCH: No, what we need to do is reform the whole process and look at the fairness of the process.

What we find is is that they're not going by the rules at all.

They're going by what the crowd is saying outside the door.

So I'm fearful that's -- they're not looking at any of the criteria.

If you look at the criteria, and look at it fairly, listen to the victims and others, then it would be effective.

I don't believe its effective now.

SENATOR GALLIVAN: Okay.

Thank you, for your service, and for coming up here and testifying.

PATRICK LYNCH: Thank you, Senators; thanks to all of you.

Thank you.

SENATOR GALLIVAN: Thanks, everyone.

PATRICK LYNCH: All the best.

SENATOR GALLIVAN: Police Conference of New York, Richard Wells, president;

New York State Sheriffs Association, Peter Kehoe, executive director.

Gentlemen, thank you for being here.

RICHARD WELLS: Afternoon, Senators.

SENATOR GALLIVAN: So if you look, you should have a red dot there.

Just make sure the red dot is lit on the microphones.

So, thanks for being here.

We are, of course, focused on parole: the standards of release, the factors.

And that's my understanding what you're going to -- we're also looking at the parolee voting issue.

But we're focused with your testimony interview on the first. Is that correct?

OFF-CAMERA SPEAKER: Correct.

SENATOR GALLIVAN: Okay.

So let me ask you, and -- well, you know what? Before I do, can you each just talk about the

agency that you represent and who is represented in that?

RICHARD WELLS: My name is Richard Wells, president of the Police Conference of New York.

The Police Conference is a coalition of local PBAs throughout the state of New York; over 200 local units belong, representing approximately 25,000 police officers in the state of New York.

PETER KEHOE: And I'm Peter Kehoe, an executive director of the New York State Sheriffs Association, and I represent the 58 sheriffs of New York State; 55 elected, and 3 appointed.

SENATOR GALLIVAN: All right. Thank you.

So, currently, victims have the right to be heard by the parole board, and get to weigh in before the parole board makes a decision.

Do you think that's appropriate?

Do you think the current process is working as it relates to victims, or do you have recommendations for change?

RICHARD WELLS: The current process is not working in many aspects.

But --

SENATOR GALLIVAN: Let's stick with victims right now.

RICHARD WELLS: -- okay.

As far as the victims go, and I didn't know until this morning's testimony from the former commissioner, how bad it actually was.

I don't think they're giving the victims' impact statements are given the weight they need to. It doesn't seem like they get to the people it needs to. There's no guarantee that the people hearing -- conducting the hearing on the day that it's going to be decided whether somebody should be released, actually even sees it, reads it, hears it, or any part of it.

And that needs to be seriously looked at, and amended and revised.

PETER KEHOE: And I agree; and I agree with the proposition that the victim should be heard.

I think they should be heard in a respectful way, and I think their presentation should be given great weight.

And I don't think that's the case.

I think it's more perfunctory: We'll listen to what you have to say, and we may or may not relay it to the people who should hear it. But, even if we do, we're not saying it has any weight, or what weight it will have.

I think it should have great weight, and that should probably be a matter of statute.

SENATOR GALLIVAN: The -- of course, the statutory factors are described in the executive law, and they include the sentencing judge, the district attorney, the defense attorney.

Law enforcement is not specifically named, but it's not precluded.

Do you have any thoughts on that?

RICHARD WELLS: I think police, (indiscernible) organizations, executive organizations, should certainly have a part in this.

It's our members that deal -- you know, we initiate somebody going into the criminal justice system. And a police officer is involved in all aspects: through indictment, hearings, trial, and conviction.

Then he is later, when somebody comes up for parole, nobody asks for input, nobody really wants our input, it seems many, many times.

But, yes, we should certainly be given a seat at that table.

PETER KEHOE: And I agree.

I think that it gives -- shows the police officer that his work has value; that his opinion

has value; that you recognize the tough job that they're doing.

And that they are in on the ground level. They know what's going on. And they probably know a lot more about this inmate than anybody else in the system.

So I think it would be important for them to have input on the decision.

RICHARD WELLS: And in addition to that, Senator, especially in a lot of our smaller communities, which we have many in this state, that the police officer can give some aspect as to what is the release of this person back into a local community where the memories may still be fresh and raw, going to have an effect on that community?

SENATOR GALLIVAN: I was just going to go there. So, I mean, I was going to move into the community.

First, I suppose, you could blend them together.

You know, to what extent should the community have input, if any, prior to the parole board making a decision?

And, secondly, what's the input, in your opinion -- or, I'm sorry, the impact on the

community, in your opinion, when somebody is released, from a public-safety end of it?

RICHARD WELLS: Well, the public safety, of course, obviously depends on the crime that they were convicted for, the likelihood they're going to repeat such a crime.

And, again, I think the size of the community will have more an aspect.

The smaller community, everybody knows each other. They're all going to know that when the person is coming back into town. And that's going to cause a lot of angst amongst the community if we're talking about a violent crime.

And some weight should be given to that.

SENATOR GALLIVAN: And my last question, before I would ask for your recommendations, is we've seen -- you know, there's been testimony regarding some of the higher-profile releases of cop-killers.

I mean, does that have an impact on the people that you represent, I mean, on the police officers themselves and the job that they do?

PETER KEHOE: Absolutely.

And we see, you know, the great disrespect in some quarters for the police officer today. And

that is exacerbated by things like the release of Bell and other cop-killers.

It just says to the police officer: You're expendable. We don't care about you. It's more important that this poor defendant get rehabilitated, by having the right to vote, and being released into society, and all these things. And forget about the police officer who's dead.

And I think it has a great impact on the profession.

We are -- I think you're probably aware, at least a couple of you have been police officers, you know, probably, the difficulty that police agencies are having in recruiting police officers today.

And a lot of that has to do with the Blue Lives Matter and the society that has disrespected the office of police officer.

So what young person wants to go into that profession where they're denigrated for the job that they do in protecting those very people that are denigrating them.

So, this is just another aspect of that: Showing disrespect for the police officer who's trying to protect society.

RICHARD WELLS: And it also sends a message

to people who may be thinking about, even things like resisting arrest, fighting with the police, that, attacking cops, even killing cops, is not treated seriously.

When you look at the -- Herman Bell, is probably -- I don't know if we can come up with a worse one than that, three police officers he murdered; directly responsible for the cold-blooded, premeditated murder of three police officers, and he's allowed to go back into society?

It's beyond disgraceful that that could have even been considered by rational people.

SENATOR GALLIVAN: Recommendations regarding parole; the operations of the board as it relates to the standards of release and the factors that should be considered?

We've already -- you don't have to repeat the factors that we just --

PETER KEHOE: Yeah, and I agree with -- I again was enlightened a lot by the former parole board member and his testimony this morning.

And I agree wholeheartedly with the comments and the recommendations of my friend Pat Lynch.

I think one thing that we would suggest, it go a little further, and I know there are

due-process issues and constitutional issues, and all of that stuff, but, there should be a statutory presumption against release on parole for a cop-killer.

Right now it seems to be the presumption for anyone who's before the parole board is a presumption that you will be released, unless there's something negative in your file that's really bad to keep you from being released.

With respect to a killer of a police officer and other emergency responders, I think there should be a presumption against it, and it would have to be overcome by some extraordinary circumstance favoring release; otherwise, no release.

RICHARD WELLS: Certainly, I agree with the increasing from 24 months. I think five years should be a minimum starting base for parole hearings.

And perhaps it should --

SENATOR GALLIVAN: In all cases, or are we talking about --

RICHARD WELLS: -- I'm just going to say, perhaps it should be graded.

You know, violent crimes be treated this way.

Then we have A, B, C, D, and E felonies.

Maybe go by the grade --

SENATOR GALLIVAN: Graded according to the seriousness of the crime?

RICHARD WELLS: -- absolutely.

SENATOR GALLIVAN: Just like the sentencing standards are.

RICHARD WELLS: Correct.

But this every two years, it's not a good system at all.

And, again, for a murder of a police officer, never.

SENATOR GALLIVAN: I'm straying just a moment, which I shouldn't be doing, but, do you have thoughts on indeterminate versus determinate sentencing?

PETER KEHOE: Probably a lot, but I don't think we have time to develop that, Senator.

SENATOR GALLIVAN: Okay.

We will pass.

We'd like to thank you for being here, and your patience.

Of course, the service of all of the members and agencies that you represent, I appreciate the work you do, and the fact that you're willing to be here.

RICHARD WELLS: Thanks for the opportunity.

PETER KEHOE: Thanks for the opportunity.

SENATOR AKSHAR: Thank you.

SENATOR GALLIVAN: All right. Our next panel will be, Michelle Lewin, executive director of the Parole Preparation Project;

And, Jose Saldana, community organizer for the Release Aging People in Prison Campaign.

I'm going to need just a moment, all right, as soon as Niko takes care of you there.

Give us two minutes.

(Pause in the proceeding.)

(The hearing resumed.)

SENATOR GALLIVAN: Okay. Ready?

MICHELLE LEWIN, ESQ.: Yes.

SENATOR GALLIVAN: We just saw statements that you have here, and, we have a copy of the report that was prepared by the -- your two organizations, that we did want to talk about.

So there's a lot of materials there.

MICHELLE LEWIN, ESQ.: Well, Senator, before you begin, I would like to read my statement.

SENATOR GALLIVAN: Pardon me?

MICHELLE LEWIN, ESQ.: I would like to read my statement on the record.

SENATOR GALLIVAN: It will be on the record anyway.

MICHELLE LEWIN, ESQ.: I understand.

SENATOR GALLIVAN: My hope would be that could you paraphrase the high points of it, and emphasize, so we can go on to questions.

You can read it if you want, but like I said, it is in the record now (indiscernible) --

MICHELLE LEWIN, ESQ.: Yeah, I'll go ahead and read it.

SENATOR GALLIVAN: -- (indiscernible).

MICHELLE LEWIN, ESQ.: Yeah, thank you.

SENATOR GALLIVAN: I think because you spoke first, ladies first.

Well, unless you want to --

MICHELLE LEWIN, ESQ.: No, no, we --

SENATOR GALLIVAN: -- (indiscernible) --

MICHELLE LEWIN, ESQ.: -- we discussed it, we discussed it.

Thank you.

My name --

SENATOR GALLIVAN: Oh, there we go.

All right. Go right ahead.

Sorry, I didn't have the microphone on.

MICHELLE LEWIN, ESQ.: My name is

Michelle Lewin, and I'm an attorney in New York State.

I'm the executive director of the Parole Preparation Project.

Founded in 2013, the project supports and advocates for the release of people serving life sentences in New York State prisons.

We also help lead the statewide campaign for parole justice.

In addition to running the Parole Preparation Project, I coordinate a contingent of attorneys working on parole-related litigation across the state, and I'm deeply familiar with parole policy and procedures.

I'm considered an expert in this issue, and I consult on cases nationwide.

To be plain about it, our work is about advocating for the release of more community-ready people from prison, especially people convicted of violent crime decades ago.

It is about ensuring that parole-eligible people have a fair and meaningful opportunity for parole, and that their freedom is not determined by a political agenda, a special-interest group, or an antiquated approach to, quote, law and order.

Our work is about promoting public safety, healing, and justice.

Before addressing any arguments in greater detail and answering your questions, I want to outline some of the core principles that guide our movement for parole justice, and, from our perspective, should guide the criminal legal system at large.

We believe that all people are valuable, and that regardless of the harm a person has caused, they deserve to be treated with dignity, respect, and compassion.

Further, no lives are more valuable than any other, including the lives of law enforcement.

We also see the humanity in all people, and recognize that people harm others for a whole host of reasons, often related to their own trauma and the ways in which we as a society have failed them.

Violence stems from the painful realities of structural oppression, including racism and white supremacy.

We also define people by who they are today.

We do not define people by the worst thing they've ever done, but by their accomplishments, and their aspirations, their personal transformations,

and their acceptance of responsibility.

All people are capable of change and of making incredible contributions to their communities.

So many of our leaders in the parole-justice movement who are here today with us were convicted of serious crimes decades ago, and have made tremendous contributions to our world.

Further, we believe that the only determinative factors that should be used when assessing a person's readiness for release are these forward-looking markers: Their achievements, their personal growth, and their potential risk to public safety.

Lastly, and most importantly, we honor the experiences of all those who are harmed by crime and violence.

We believe wholeheartedly in a victim's right to seek healing and restoration in the many forms those take.

We do not suggest that there should be no accountability for harming other human beings.

There absolutely should.

We do not support is the current process rooted solely in punishment that serves no other

purpose than to banish and indefinitely warehouse those who cause harm.

We do not believe such a system helps our communities overcome the effects of crime and violence, nor does it sooth wounds, bring resolution, or keep any of us safe.

And just for a bit of history, and we've discussed some of this on the record already, but I'll review:

In 2011 the New York State Legislature amended the executive law governing parole, to require the board to use a risk-assessment instrument in their release determinations.

The goal was to further a, quote, forward-looking holistic and rehabilitative approach.

In September of 2017, the board of parole also revised their regulations in a similar vein, this time with even more emphasis on the role of, quote, risk-and-needs evaluations.

The regulations now state, that if the board departs from their risk-assessment instrument and denies release, that it must give, and, quote, an individualized reason for such a departure.

What I've heard others testify about today,

and what Senator Gallivan has claimed in several public appearances, is that advocates misunderstand the law.

Senator Gallivan claims that the executive law that governs parole has within it an inherent requirement that the parole board consider a community's opposition to a person's release when making their determinations, and should weigh that opposition heavily.

This is not the law.

The passage in dispute states, that release shall will be granted so as long as it is not, quote, incompatible with the welfare of society, and will not so deprecate the seriousness of his crime as to undermine respect for the law.

Other than this vague phrase, the executive law contains no factor requiring the board to consider, quote, community opposition, a refrain we hear repeatedly from state senators, and state Republican senators.

In fact, courts have held that the only opposition the board may consider is the testimony from victims directly impacted by the crime and their families and the district attorney.

It is the job of the parole board, not

special-interest groups, to make individualized, independent decisions about someone's freedom.

The, quote, community opposition state senators and the parole board reference is also shrouded in secrecy.

Parole applicants and their advocates are not permitted access to the so-called "opposition," and in some cases, upon judicial action, have discovered it never really existed at all.

In other instances, "community opposition" merely refers to a petition signed by people who have no knowledge of the case or any connection to the victim or their family.

There's nothing in the law that prohibits parole applicants from seeing this material.

And if Senate Republicans and members of the board are so adamant about its power, then it should be made available to the very people it impacts most.

Senate Republicans claim that releasing anyone who has killed a member of the law enforcement would so, quote, deprecate the seriousness of the crime; and, therefore, violate the law.

What is actually unlawful is their demand

that the board issue blanket denials of people based solely on their crimes of conviction.

Senate Republicans are also saying that no amount of time, rehabilitation, or transformation could meet the "deprecate" standard, and that the board of parole should resentence all people with these crimes to life without parole.

Sentencing remains within the purview of the courts, not the board.

Significantly, and perhaps surprisingly to this Committee, the new regulations published in 2017 eliminate altogether the, quote, welfare of society and deprecate language, perhaps in light of how impossible it is to implement such vague premises.

While these phrases remain in the executive law, they appear nowhere in the revised version of the regulations.

Even if commissioners were permitted to consider input from the general public, the question remains: Which public, and whose community, are you even referring to?

It seems you refer just to your own constituency, and even then it is not clear that your throw-away-the-key mentality is shared by your

voters.

Undermining respect for the law also does not refer to undermining respect for law-enforcement officers.

It refers to the legal system.

Further, the vast majority of people living in communities where people in prison, and most victims come from, believe that continued incarceration and death behind bars in no way serves the welfare of society.

Bringing people home, reuniting families, and restoring fractured communities is the only form of welfare we seek.

Distorting the law in this way is an attempt by Senate Republicans to erase the progressive amendments made to the executive law in 2011 and the regulations in September 2017.

It is an attempt to amplify and exaggerate the minority of voices in the state who want perpetual punishment and believe death in prison is the only form of justice.

It is an attempt to silence Black and Brown communities that have, for decades, fought for the release of their loved ones.

The amendments to the regulation, as well as

the appointment of new commissioners in June 2017, commissioners this very Committee confirmed, has led to an increase in release rates.

Just last month, the parole of board released 48 percent who appeared before it.

We welcome and celebrate these changes with an air of caution and scepticism.

Even with increased releases, more than 50 percent of people appearing before the board are denied parole and remain locked up and away from their families.

The board's policies still profoundly and disproportionately impact people of color, and more specifically, Black men.

The board's practices also systematically deny release to aging and elderly people.

Many parole-eligible people serving life sentences are over the age of 50, with some entering their 60s and 70s.

This mass aging in prison, which is happening not only in New York State, but across the country, means we are building nursing homes inside prison walls and graveyards on prison grounds.

I mean this literally.

Let's be clear that, in New York State,

repeatedly denying someone parole means sentencing them to die in prison.

When Republican Senators say, "people who kill police officers should not be released," what they mean is that they should die behind bars.

I want to close that by saying, that while we're here participating in this process, we see these hearings as a political ploy, and as an attempt to scare voters into re-electing you in November.

Your proposed policies do not serve any of your stated goals of public safety, protecting victims, or law and order.

They are purely for punishment, and nothing else.

Further, your characterization of incarcerated people, and those who have been convicted of violence, as dangerous, barbaric, terrorists, and other words I am ashamed to repeat, is not only factually inaccurate, but racist, bigoted, and harmful.

The same is true of your efforts to disenfranchise people on parole who only recently obtained the right to vote.

Elected officials across this country use

fear-mongering, deception, and hate to rally their constituents, and you are no different.

I am hopeful that, in November, community opposition will refer not to a small contingent of law enforcement opposing the release of aging people in prison, but the masses who have finally, decidedly, said: Enough. No more perpetual punishment. No more death in prison.

SENATOR GALLIVAN: Mr. Saldana.

JOSE SALDANA: Yes, I'm a community organizer for RAPP (Release Aging People in Prison) Campaign.

We work to end mass incarceration by advocating for the release of the older prisoners in New York State who have languished in prison, some for over four decades.

I came here to advocate on their behalf.

I think they would want me to speak for them.

But I want to pause for a few minutes, and respond to something that occurred just a few minutes ago.

You mentioned the murder of two New York City police officers, and the devastation that it caused their family and their community.

Made no mention that that very year, '92, teenage boys, young Black men, were murdered by

New York State; New York City police officers.

92 families, not mentioned, not one single word. Happened the same year.

Their lives didn't matter, but they matter to me, and they matter to our community.

And all the people who incarcerated for violent crimes for 40 years, their lives matter to us. And they have shown their worse, and I have seen their worth up front.

I've languished with them for 38 years. I know who these men are.

38 years I've seen them develop the best therapeutic programs possible.

Why?

Because New York State Department of Corrections does not educate. They do not rehabilitate.

So we take it upon ourselves to rehabilitate ourselves; to create programs like the Challenge to Change, to address criminal thinking, attitude, and behavior.

We develop victim-awareness programs that will help us develop insight into the harm that our crimes inflicted on innocent people.

We develop anti-violent programs,

gang-prevention programs, to help these teenagers that are at risk to becoming gang members.

And these men have been doing this for decades.

They're not faking, because, once they let us out, they have let a few of us out, and they continue to do the same thing, exact same thing.

You will find them in the worst neighborhoods, addressing the gang violence, because what happens in our communities matter to us.

We are concerned with the plight, the social and economic conditions, in our community.

I realize that you -- y'all ain't concerned about that.

You weren't concerned back then. You're not concerned now.

You're concerned about your own constituents.

You're not concerned about Brownsville, Spanish Harlem, east New York.

We are.

We've come from prison, after decades, to address these issues.

That's our worth.

That should be the measure, of who we are today, not back in 1979, or 1971.

That's all I have to say.

[Applause.]

SENATOR GALLIVAN: Well, thank you for being here.

And I'm very sorry to hear that you're here participating, but you see this as a political ploy.

If I saw it as a political ploy, I wouldn't be sitting here, asking questions. I wouldn't have immersed myself in hours and hours of research, and wouldn't go through this.

You have your opinion.

But I can tell you, from my perspective, and my Co-Chair's perspective, that is not accurate at all.

New York State lawmakers, I think it was in 2005, or perhaps it was a little bit earlier, they have made the murder of a police officer punishable by life in prison; Democrats and Republicans.

That is the state of the current law.

The changes that were made to the parole regulations were in response to New York State statute and to the Supreme Court.

And I'm not going to read it, but it will be available in the ultimate record, but that is something that the chairwoman of the board clearly

articulates.

The chairwoman of the board, in her written testimony, also clearly articulates all of the factors that must be considered.

She articulates the fact that the courts have, essentially, placed it on the board to determine the weight, and the standards are the standards.

And when I speak from that, when I speak in talking about the standards, and I talk in certain cases, where I think members of the parole board failed the citizens that they serve, the citizens they serve, sir, are just like me.

Yes, I have a district, but every citizen in the state is a constituent.

And I recognize, when I make my decisions, I affect people and families.

And my decisions aren't always right, but I recognize the constituency is across the state, and I care about people.

You may not know that my uncle was murdered.

You may not know that my uncle, lived on the east side of Buffalo in a very poor area, was stabbed 27 times.

You may not know much about my personal

family, that I'm not going to go into.

I understand that you made some very, one in particular, a very inaccurate comment, about my time on the parole board.

You don't know what my release rate was.

You don't know the people that I released.

But I can tell you that the statement that you made about that is absolutely wrong.

And, while I don't even think it's merited, but out of respect, like you being at this hearing today, if you would like to sit down and go over that, and I can show you what is accurate, I'm happy to do that.

I had wanted to take the time to go into the report, and ask about the objectivity of it, ask about how many cases were looked at, ask about how much information was obtained by the parole board.

But because of how you characterize it, I -- I -- it appears that there's no need to do that today.

But we do appreciate the time that you guys took to be here, and your patience.

Thank you very much.

Public Employees Federation, represented by Antonio Perez, Division 236 council leader, and

Gina Lopez, Division 236 assistant council leader.

Give us just a moment.

(Pause in the proceeding.)

(The proceeding resumed.)

SENATOR GALLIVAN: Did you -- have you submitted something written yet?

VICTOR ANTONIO PEREZ: I wrote something, but it had so many grammatical errors, I was ashamed to submit it. So, I'll just read it off. It's very short.

SENATOR GALLIVAN: That's okay.

All right. So, we're just going to wait one moment.

Okay.

Thank you both for being here, and your patience.

GINA LOPEZ: Thank you.

SENATOR GALLIVAN: It doesn't matter to me who starts -- oh, maybe you're starting by rank.

VICTOR ANTONIO PEREZ: My name is Victor Antonio Perez. I am a senior parole officer. I live in The Bronx. I work out of Westchester.

I have been with the former division of parole, and now the department of corrections and community supervision, for a total of 26 years.

Ten of those years were inside doing parole boards.

I was one of those original facility parole officers that has since been eliminated.

And I now am the council leader of Division 236, representing all of the parole officers of the state of New York, as well as the president of the Fraternal Order of Police, Lodge 27, representing all of the parole officers of the state of New York.

SENATOR AKSHAR: Thank you.

GINA LOPEZ: Hello. I'm Gina Lopez.

I am actually a parole officer in the Rochester metro office. I've been a parole officer for 12 years, and I recently was made the assistant council leader of Division 236.

SENATOR GALLIVAN: Okay. Thank you.

VICTOR ANTONIO PEREZ: Good afternoon, Senator Gallivan and Senator Akshar.

Did I pronounce that right, sir?

SENATOR AKSHAR: It's fine.

VICTOR ANTONIO PEREZ: Thank you for the opportunity to speak before you on this matter of restoring voting rights to those on parole in the state of New York.

First and foremost, I want to make it very

clear that the parole officers of the state of New York do not oppose the rights -- the restoration of rights to parolees to vote.

We do have a problem, however, the way it is being rolled out -- or, the way it was rolled out.

After all, we are tasked to make sure, or to assist, in the reintegration of parolees back into society. And I think voting is certainly one of those things that can and should happen.

After reviewing Executive Order 181, and how it was to be implemented, the executive order states: Individuals being released from incarceration on to parole supervision, and individuals who are currently under parole supervision, will be given consideration for a conditional pardon that will restore voting rights without undue delay.

"Consideration" is not blanket pardons.

And though I'm told that it wasn't a blanket pardon, I didn't find anybody in any office that did not get one.

There was, as of September 18, 2018, 30,676 parolees have been conditionally pardoned.

Of that group, already, 646 have been revoked through the parole revocation process.

Now, how is that impact the parole officers?

Let me share with you what the parole officers that were tasked to do.

On these 30,000-plus conditional pardons were to be given and distributed out to by, approximately, 900 -- actually, the number is 922 parole officers, we were told to get these pardons out in the hands of parolees. Drop everything that we were doing.

The parole officers were told to cancel delinquency operations. That means do not, or at least cancel, or postpone, executing warrants of absconders from parole.

Being the good soldiers that we are, we did exactly that, and we dropped everything that we were doing to find parolees all over the place, not only in our counties, but those who have been transferred to other counties.

And I've heard stories about parole officers being told to go to Rikers Island, because, at that time, it wasn't clear on whether these parolees were going to get their rights restored or not.

So you have parole officers going to Rikers Island simply to deliver the executive pardons.

Now, we have parole officers -- because of the COMPAS system that's been well talked about today, there are parole office -- parolees that don't report to parole for four months. And visits are not requested for -- or, mandated for four months.

And that's how the ratio of parolees to parole officers are established; and, therefore, their time.

So, all of these parolees had to be found, whether they be home. Some of them do not have curfews, and so it was just hit or miss, some two or three times. Some at their jobs.

And -- which required just an awful lot of additional work.

And, to my knowledge, none of these parole officers were compensated any more than their regular salaries for doing such a task.

Now, as to the Level 3 sex offenders, those with SARA conditions, parole officers all reported -- the parole officers that I spoke to, I spoke to about seven parole officers from four different offices around the state, and they all had one thing in common: there was mass confusion.

At the beginning, when the pardons were

given, there wasn't real correct -- any direction on how to approach the sex offenders going into schools where voting polls were taking place.

But that was addressed probably a few weeks after that.

And parolees were given letters and conditions, basically stating, that if they wanted to vote, and the voting place was in the school, they must seek approval of the superintendent.

Some of the officers weren't aware of who was actually going to make this request.

Some officers thought that the parolees were supposed to do it.

Parole officers were told to send this request -- some parole officers were told to send those requests to SOMO, which is our central office, and that they would send the request.

One officer reports that they sent four requests to SOMO, and -- but only one response was given.

And they were a little fearful because, parolees who actually wanted to vote, which were very few, by the way, but those who wanted to vote, three out of those four were not able to vote because of the no-request.

One officer reports that there were several requests, didn't give the number, but none of them were responded to by central office.

And I assume that that means the superintendent didn't respond to them, but there was no communication as to why, where. And the parolee was left with the inability to vote anyway.

One officer was very disturbed to see a parolee under Article 10 of the mental-health law, who had raped multiple minors, to receive the right to vote.

That particular parolee was not interested in voting anyway, luckily, so we didn't have to worry about him going into a school.

The general consensus of the parole officers that had to execute the Governor's pardons were that, initially, the orders were unclear, that it was a process that was rushed and not very well thought out.

The feedback was that, for the most part, very few parolees were even interested in voting.

The sex-offender parolees were very reluctant to make their presence known in schools. They spent most of their time in prison hiding the fact that they're sex offenders. And, in public, they try to

do the same.

Those few that were, did express some interest in voting, wanted to do it in an absentee-ballot situation. And there was not enough information given to anybody on how to go through that process.

I don't even know how to do it myself.

One sex offender did vote in New York City.

And the one that did get permission, another who wanted to vote, was actually on parole.

And one of those persons that probably we would have no problem with was on parole for 18 months, was doing well, worked two jobs, was actually working with the Fortune Society. But he never got permission from the superintendent, and so, therefore, he could not vote.

The consensus was simple.

If a massive undertaking like this was going to take place, you would think that somebody would reach out to us, and at least talk to us and see what the hurdles were going to be.

And we would have easily just told them, this is what you're going to run into, and how to go about, maybe, just jump over some of those hurdles.

The other thing is that, and I speak for all

officers that I spoke to, and I think I speak for all officers in the state of New York, that a blanket -- although the administration said it's not a blanket pardon -- I haven't seen anything to refute that -- that the process should be individualized. There should be some kind of evaluation.

Just as there's merit parole, the restoration of any other right, the restoration of the right to hold office or the restoration of a right to carry a gun, or whatever, that has a process. It's called a "certificate of relief from disabilities."

If they want to shorten that process to make it to vote, that's fine, but make it a process based on evaluation and based on merit.

Somebody has to earn their rights back, not just given to them, because I have a problem facing two parolees.

One is doing excellent, he has two jobs, he's supporting his kids. He is rehabilitated. He saw the light, and he's living the life.

And the other side, he's not living the life. He's turning dirty, hasn't found a job, or, for whatever reason, you know, he's got -- what we would call "pre-delinquent."

And those two people have the same right to vote? That's not fair.

Not fair.

Let them earn it.

SENATOR AKSHAR: Thank you.

SENATOR GALLIVAN: Miss Lopez.

GINA LOPEZ: In my office there are two big things that they saw.

One was, like he said, the immediacy to have this be put into place, with the parolees being able to be given their pardons.

I'll use me as an example.

I have a mixed caseload.

On my mixed caseload I cover over 84 people that I have to do visits on, make sure they're going to programs.

And, there was just this intense immediacy that this had to be completed immediately.

We had to give the numbers every week of when we were getting it done, who we got done, and the list was on and on about making sure that you went for extra home visits, if you had to go to their employment, if you had to go anywhere to catch them to give them to this pardon.

And many of them make office reports, when

they could have came and gotten it from us by just coming into the office.

One of the things that was very difficult in my office was, the sex offenders, I have sex offenders that -- supervised sex offenders.

In the executive order it totally talks about making sure that schools are aware that you are going to be coming to the school to vote; however, in my area, many of those voting sites are in recreation centers, where it's not legally obligated for you to let them know that they're coming.

But, morally, the parole officers felt that they should make someone aware that someone was going to be coming to a recreational center in that area to be able to vote. And that was the big consensus in my office in regards to that.

SENATOR GALLIVAN: Thank you.

Do you have any questions?

SENATOR AKSHAR: Go ahead. No, I'm good.

SENATOR GALLIVAN: I had a number of questions, but, specifically, about the things that you spoke to. And I think you've answered pretty much everything, but, I guess I have one or two more.

Was there any -- so within department of

corrections and community supervision, when, in a general sense, would it be -- is it fair to say, when something comes out, that there is -- I don't know if it's called the general policy, or a regulation, I'm not sure what you might call it internally --

VICTOR ANTONIO PEREZ: Directive.

GINA LOPEZ: Directive.

SENATOR GALLIVAN: -- a directive comes out, did any directives come out --

VICTOR ANTONIO PEREZ: Yes.

SENATOR GALLIVAN: -- regarding this topic?

VICTOR ANTONIO PEREZ: Yes, they did.

SENATOR GALLIVAN: And did they -- did the directives have to do with some of, Mr. Perez, what you testified to?

VICTOR ANTONIO PEREZ: Yes, yes.

SENATOR GALLIVAN: About how were you to handle it, and all that?

Can you tell us what directives -- if you have them, what directives came out and when?

VICTOR ANTONIO PEREZ: I do not have that directive.

We were given directives.

The directives were, pretty much, that

everybody who got a pardon was supposed to be hand-delivered that pardon.

And there was -- in the directive, I don't believe it had a timetable, but we were told by administration, at first, they wanted everything done in two weeks, and then maybe four weeks, and then that was extended. And so we were able to get them all.

SENATOR GALLIVAN: Regarding -- and either, if you have knowledge, regarding the issue related to sex offenders, and the additional special conditions to getting permission, and so on, that I now know does exist, do you recall when that directive came out?

VICTOR ANTONIO PEREZ: Yeah, I believe -- I'm not sure if that was a directive or an e-mail or some kind of communication from the office.

That came out.

The problem was, and it said, and I'm just saying this secondhand, because I didn't see it myself, from the officers, that the central office, SOMO, the sexual -- Sex Offender Management Office in Albany, was supposed to be notified if, in fact, a parole -- a sex-offender parolee that was a SARA case, and was restricted from being in a school,

within 1,000 feet of the school, that they were supposed to be notified.

My understanding that -- was that, that someone was to notify the superintendent or the administrator of that school. And, somehow, that information would come back to the parole officer, and then to the parolee.

The trouble is that, of the seven sex-offender officers that I spoke to directly within the last couple of days, only two knew that. The other five had no idea.

And that could have been because that none of their particular sex offenders, you know, expressed a willingness or, you know, a desire to vote.

SENATOR GALLIVAN: Were there -- the Governor's executive order was dated April 18th?

VICTOR ANTONIO PEREZ: That's correct.

SENATOR GALLIVAN: I don't know the exact date that he announced it, but it was dated April 18th?

VICTOR ANTONIO PEREZ: Yeah, I saw that date.

SENATOR GALLIVAN: Was there any directives or instructions prior to April 18th?

VICTOR ANTONIO PEREZ: No, not that I'm aware of.

I think that was, May, I believe was when we were notified that there were -- the executive orders were starting to be distributed.

SENATOR GALLIVAN: Okay. I do want to note that Commissioner Annucci's written testimony does talk about the actual procedure -- or, the process now for sex offenders.

And then there's a reference both from the commissioner and from the Governor's counsel, that the process -- the process for everybody is now listed on the Governor's website.

VICTOR ANTONIO PEREZ: Yeah, and let me be the first to -- the department of correction and community supervision are great at directives. They write everything down.

The distribution of those directives, and the communications of those directives, don't always get to the person they need to get to.

And in this case, I think that was the case.

It was because it was a little bit of a rush -- or, no, it was a lot of a rush.

And the -- our directives were: Do it, do it now. Drop everything that you're doing. This is our number-one priority.

So that, I think, was part of the problem,

with the communication. The communication was moving so fast that not all of it came down on a timely basis.

SENATOR GALLIVAN: So other than what you've already testified to, regarding process, we can't go backwards, any recommendations, going forward?

VICTOR ANTONIO PEREZ: Yeah.

Some recommendations are:

I don't -- again, you know, the pardons that are given, those pardons that are revoked because of parole violations or new crimes, I would like to see those pardons be scrutinized a little bit more.

And like the executive order says, that they -- and I'll quote: That individuals who are currently under parole supervision will be consideration, not guarantee.

And so those who do violate the process may be considered, but not given because of their behavior.

I do believe that those are things that need to be earned.

And somebody could do very, very well in prison.

You know, and like the testimony that -- like Mr. Lynch had said, and other people, when they

come out, that's the real test. That is the real test.

And voting is a right, I understand that, but voting is a right that's been taken away because somebody behaved, you know, criminally. And it has to be restored in a fair -- in a fair manner.

I do most parolees will do -- and will do that.

But for those who don't, I don't think they should have that right.

SENATOR AKSHAR: (Indiscernible).

SENATOR GALLIVAN: Oh, I'm sorry.

Let me just note, you jogged something in my mind regarding -- regarding the conditional pardon that then is revoked.

We are getting a monthly report of that. We are -- that is, we are being made aware of that.

And I think, I'm not positive, that might be available publicly on the DOCS website.

But at the very least, I know that we are getting a -- we are getting a -- I don't know exactly how it happens, but we do get the monthly report.

VICTOR ANTONIO PEREZ: Good.

SENATOR GALLIVAN: Sorry.

SENATOR AKSHAR: So your testimony today is that, those who sought the right to vote should have went through the current process of obtaining a certificate of relief from disabilities?

VICTOR ANTONIO PEREZ: Either that -- that process is already in place.

SENATOR AKSHAR: Oh, I understand.

VICTOR ANTONIO PEREZ: Right.

And if that process is to be changed or altered in any way, and I don't oppose a more expedious (sic) (ph.), because that's a long process. For somebody, it takes months and months and months for a certificate of relief to -- because an investigation has to happen, prolonged investigation on a parolee, et cetera.

But there's some kind of evaluation done.

We do merit paroles all the time.

Somebody, for non-violent felony offense, has completed one year of successful parole, they're working, they've abided by their conditions of parole; they're not using any illegal substances; they've completed their programs; you know, they report; they're home, you know, when they're supposed of be; those people get off parole, because they earned it.

And then, they should.

A similar process could happen, you know, maybe after three months after somebody is on parole.

90 days is a good, you know, milestone for somebody to -- for a parole officer to evaluate whether a parolee is adjusting well to his supervision.

And, let me just say, parole officers do a wonderful job, a marvelous job.

And, yes, I'm a little biased because I represent all the parole officers. But, nobody knows how well-adjusted a parolee is more than a parole officer; his or her parole officer.

And I think that is where it starts: Let them make an evaluation.

SENATOR AKSHAR: Great. Thank you.

SENATOR GALLIVAN: Well, thank you both for being here, and for your service, and those of the people that you represent.

I know, from our committee work, and from our budget-related work, I know how difficult a job you have.

And I appreciate the fact that you're out there, plugging away every day, and for your

patience today as well.

Thank you.

VICTOR ANTONIO PEREZ: If I may acknowledge one thing, today is the first day of Breast Cancer Awareness Month.

And having lost my sister just 90 days ago to breast cancer, I just wanted to throw that out there.

And anything anybody could do to get those people who need mammograms or breast-cancer exams, to avoid that, I want to put it out there.

SENATOR GALLIVAN: Sorry for your loss.

Thanks for bringing it up.

My wife and mother are survivors, so we're very active in trying to help get the word out.

VICTOR ANTONIO PEREZ: Thank you.

SENATOR GALLIVAN: But it's wonderful you brought it up.

Thank you.

VICTOR ANTONIO PEREZ: Thank you.

GINA LOPEZ: Thank you.

SENATOR GALLIVAN: Our next panel, from the New York State Board of Elections, Todd Valentine;

Rensselaer County Board of Elections, Jason Schofield, commissioner;

And the Dutchess County Board of Elections, Erik Haight, commissioner.

Just a moment, please.

TODD VALENTINE: Yes.

(Pause in the proceeding.)

(The hearing resumed.)

SENATOR GALLIVAN: Well, thank you for being here.

Could you each introduce yourself, and your titles?

JASON SCOFIELD: Jason Schofield, Rensselaer County Commissioner of Elections.

TODD VALENTINE: Todd Valentine, co-executive director, New York State Board of Elections.

ERIK HAIGHT: And, Erik Haight, Dutchess County Board of Elections.

SENATOR GALLIVAN: Well, thank you all for being here.

We have some written testimony from Director Valentine.

And, we're hoping that you can paraphrase it, or go through it if you wish, and then we can ask questions.

Or, each of you can just comment about your concerns.

So, obviously, your purpose here today, we're now in our second topic area, and that's the Governor's executive order.

And our real interest is, the implications for the various boards of election across the state, polling places, et cetera.

And so we'll let Mr. Valentine go first.

TODD VALENTINE: Yeah, as you indicated, I had submitted written testimony to you, and I'll just highlight a couple of points.

There's really two points we want to make, which is what was already -- as was just previously discussed by the parole officers.

First of all, the Executive Order 181, it was not well thought out through.

And the second thing, is that we're starting to see a lot of pushback from the schools, and that's going have large election implications.

I mean, there were problems from the outset.

As you noted previously, the executive order was issued on April 18th, but it wasn't clearly until a month later, in May, that we actually had some direction from the Governor's Office, through a phone call, that they would be announcing the release of the pardons in the upcoming weeks.

And on that call they relayed that they would have a plan, where the county boards could look up the information as to whether a parolee had been granted the pardon or not.

But there were still a lot of questions that we had.

And, specifically, they mentioned about the issue with regard to sex offenders that have limitations on schools that might be poll sites.

They indicated that, at that time, there would be no granting or change from the conditions that had already been indicated on the paroles.

As was seen later on, the permission process that was already existed in statute was then augmented or changed, with limitations on the time frame, that were not as part of the statute as we're concerned.

But none of that information was relayed to either state board of elections, or for us to filter down from the county board of elections.

And the revocations of the pardons continue to be an issue.

As we've noted, that we asked for who would be granted these paroles, and we did ask what conditions might be, or what review was undertaken.

They indicated, nothing -- no formal review, no standards, (indiscernible) pardons.

But then when the revocations began, we asked the same question: What is the basis for the revocations, and what is going to be the process in revoking these?

Because without this not having been a thought-out process, that, as for many voting rights, those are discussions that take place publicly.

Those are the discussions that take place during a statutory debate, during legislative debate; those ideas are floated and discussed, quite often, for lengthy periods of time as we know.

But this was -- arisen, and then by fiat, was issued out to the counties, and through us to the county boards.

And this is the same thing with the revocations; we've been getting the information, and we've been passing that along to the county boards so they can -- if they have those that are identified in there.

But, again, there's no process for revoking a pardon once it's been issued.

And, until this time period, it was extremely

rare to ever see a pardon issued for a vote -- for voting. And, quite honestly, in my 20 years' experience, I had never heard of it.

So -- and, then, to have it all done, thousands issued in fell swoop, while that's within the law, it was also a drastic change in the process.

So we were able to put together a procedure, that we could then try to advise the county boards as best we can. And we're still getting questions to this day.

But that's now where we're starting to see the pushback from the schools that, you know, in this state, you know, one of the things that you don't think about is, you know, the poll sites that we have, statewide, just under 20 percent of the -- our polling places are schools statewide.

SENATOR GALLIVAN: I'm sorry, how many?

TODD VALENTINE: 27 percent of our polling places, statewide, are schools. And that number increases dramatically as you go -- the further south you go.

You know, Nassau County is 49 percent.

Suffolk County is 53 percent.

You know, the New York City numbers are quite

high as well. 70 percent for Queens. 69 percent for Staten Island. 65 percent for The Bronx. And 46 percent for Brooklyn.

Manhattan is a little lower at 37 percent, but they have a lot more buildings to deal with.

But that's why, one of the things I was asking to have, you know, at least two county boards here with me, were Dutchess and Rensselaer, was that they are seeing that experience firsthand; that when they go to put these poll sites into place, you know, that's over 1400 poll sites that we're now getting questions about.

And, quite honestly, from an elections' perspective, we're just not prepared for that change.

And while the statute can force a public building to be used as a poll site, without the assistance or the help from those buildings, they can make it very difficult to be a poll site.

You know, one thing that we wanted to touch on, that we had -- that wasn't raised earlier, is that, you know, New York State is not a permanent voting-bar statement.

Our -- we're not -- other states do permanently bar those that are convicted from --

felons from registering to vote.

We are not one of those states, we have never been one of those states.

You are allowed to register to vote once you've completed your sentence. That's the operation of the statute.

And parole is a part of your sentence. And once you have completed that, you're eligible to register to vote, so we've never done that.

But what this does is change that dynamic of that process, that I don't believe was ever anticipated for in the statute. And it certainly wasn't publicly debated.

And, quite honestly, the timing, we talked about April for the parole board.

What you need understand is where we were at in April.

In April, that was when candidates were filing to get on the congressional ballot, so we're in the middle of the election cycle.

May, we're a month out from the June Primary.

I mean, that's right around the voter-registration deadline for the June Primary, when directions come out.

And as the parole officer union

representatives testified earlier, that's when they were given the directions to immediately release these.

Whether that's coincidence or not, I don't know, but that's a fact.

You know, the timing of that is tied with events that occurred throughout the year, tied to the election.

And, you know, whether we like it or not, that's the way it is.

But, you know, certainly, the confusion is there. It's still there today. It's an issue we're dealing with.

And, now, I don't know if Erik -- Commissioner Haight wants to go first and talk a little bit about his experience, and then Commissioner Schofield can go after that?

JASON SCOFIELD: Alphabetical.

TODD VALENTINE: All right.

ERIK HAIGHT: Thank you, Senators.

You know, I believe Dutchess County is a microcosm of New York.

Depending on who you ask, we're either upstate or downstate. It depends on which way is north or south.

But, we have 2 cities and 20 towns. Some areas are very rural, some areas are suburban, and some areas very urban.

So of our 105 poll sites, 22 of them are in schools. And some of those places we just simply don't have alternatives.

But, where we do have alternatives, those alternatives are usually churches with day-care centers.

So, as far as dealing with the confusion of the executive order, we have a March 1st deadline of setting poll sites, well before the executive order was established.

In addition to the confusion about how this was rolled out, we don't know really how to deal with the revocations.

As was mentioned, there have been 646. A handful of those have been in my county.

So we have to go through our database and find those revocations, and cancel those folks' registrations.

The parolees themselves are confused.

They come in on election day to speak with the duty judge if their name is not in the poll book.

And, the duty judges themselves are confused about whether to give a court order for the person that day.

So I think some direction should be offered to the office of court administration for the duty judges that are working on election day.

As an association, the Elections Commissioners Association of New York, well before the executive order was issued, we've been requesting that schools make it a non-student day, a superintendents' day for hearings, so that the general population isn't intermingling with the student population on election day, because, very often, schools are simply just a necessity because there's no other public buildings available.

In addition, the schools, for their own elections, utilize our lists -- our voter lists.

So, not only for elections that we administer, elections that the school clerks administer will have a similar sense of confusion as to who's available to vote, and who isn't.

So just in my county alone, based on the State's website, there's 691 school districts outside of New York City, 2 of which in Dutchess County are 10th and 27th, as far as Wappinger and

Arlington school districts as the largest districts outside of New York City.

They make up almost all of our schools that we utilize as websites -- as we utilize as poll sites.

And as Mr. Valentine mentioned, we get significant pushback from our poll-side partners.

And there's always a rub between their civic duty as not-for-profit entities, and their duty to keep their students safe.

So that's a conflict that was made even worse by the rollout of this executive order.

I think we all knew that, in 2018, there would be a gubernatorial election. And it would be -- it would have been helpful had this been rolled out in 2017, versus 2018.

So, in short, as election commissioners and administers of the election, it's our job to simply administer the elections.

While we may have our own opinions on whether this should have been done or not, the fact is, we're doing our best to comply with the law and administer the elections the best we can.

And that's true for every county in the state.

JASON SCOFIELD: Thank you.

Rensselaer County is having the same issues as Dutchess.

We have 2 cities and 14 towns.

Some of our schools in the more rural part is really the only place that we could have the election.

Town Hall just isn't big enough for the entire town to come in and vote.

One of our school districts in one of the rural areas does not want us anymore. We've had to use our own highway money to upgrade the firehouse and ambulance to be used as a polling place.

Erik mentioned about making it a non-student day for schools.

You can't do that every time there's a Primary Election or a Special Election.

I served 15 years on the (indiscernible) school board. The last thing parents want is a day off for their students when they have to work.

Also, where do students go on those days?

Well, they go to the Boys and Girls Club, or other community -- local town community areas, which also use polling places now.

So -- or the libraries, and things like that.

Housing areas and -- housing projects, we have our polling places there in some of them. Again, it's just a huge area where someone could just walk in. You wouldn't know if he lives there, or if he's a voter, or what his situation is.

So we are experiencing a lot of negative feedback from people who do not want us, and we're running out of barriers to go to, because we have to meet the rigorous handicapped and disabled demands of our -- for our -- the disabled community to have the rights to vote too.

So, it's been interesting process, and we are continuing to work to try and deal with these issues.

SENATOR GALLIVAN: All right. Thanks.

So the process, Governor announces it in April. They reach out in May. A lot of confusion, things that you had to deal with on the fly.

If we presume that the executive order continues, many of those things -- it's a problem for the first year.

Fair to say?

I'm just taking this from your testimony.

But, going forward, if the executive order continues, or if the law was to change, the issue

that you see is the availability of polling sites, the school districts, is that something that would continue to raise issues --

TODD VALENTINE: Well, that's --

SENATOR GALLIVAN: -- concerns from school boards -- concerns from schools --

TODD VALENTINE: Yes --

SENATOR GALLIVAN: -- (indiscernible)?

TODD VALENTINE: -- well, schools.

And as Commissioner Schofield pointed out, I mean, it's not the only site where -- and as the parole officers previously testified, that there are other spots that are not covered by the permission process that sex offenders have, where the parolees are now going.

And they're -- so it encompasses not just school districts, but there are other sites where children do congregate in the afternoons and in evenings that are also poll sites, and other parts of the building where the voting is not occurring.

So that's going to continue to be a problem.

You know, but, looking forward, or, perhaps lookings backwards, you know, there are other, you know, other -- there may be other alternatives that we need to consider.

You know, one of the options, obviously, that's not available is absentee balloting.

The Constitution requires you to be out of the state. And that would take a change in the Constitution.

And parolees, generally, are restricted to the county where they are, so they can't leave to become absent to go vote.

So, you know, some other type of special ballot might need be addressed, because even as the parole officers indicated, a number of the sex offenders may not want to go to the schools, because they're trying to avoid them anyway for their own privacy sakes. They don't want to seek the permission process.

So, something needs to be thought about, well, "what are the alternatives?" because nobody wants to deny somebody who's earned the right to vote, the ability to do that vote.

But when you put in obstacles or barriers that make it difficult, and the sex offenders are an example, they have to go through a permission process, while maybe they've earned it, but they're afraid to use it.

SENATOR GALLIVAN: So we get -- we -- the

process is the process, confusing, whatever it may be.

Primary Day, were there any problem areas that you were aware of at any of the sites, or, any problems that crept up with this specific issue at any polling site, if you're aware of it?

JASON SCOFIELD: In our county, none that I'm aware of with the parolees voting in the Primary.

There was issues with, school coming back, schools saying, you know, why is the Primary on Thursday?

We scheduled our welcome back for parents and families to meet their teachers, things like that.

But we did not have any parole issues, no.

TODD VALENTINE: And we don't keep -- and we don't keep a record -- we don't know who the -- quite honestly, the county boards don't know who the parolees are. All they know them as "registered voters."

So they -- you know, and if they are a registered voter, they come in, they're not going identify themselves as a parolee, or, they're not going to identify themselves of having gotten permission to be in a school where they otherwise wouldn't normally have been.

So they're not -- the county boards are not going to notice that.

SENATOR GALLIVAN: Would the state board be aware of that?

TODD VALENTINE: The state board is not aware of that either.

SENATOR GALLIVAN: So it would just be -- so now, then, once they get the pardon, the parole officer notifies them that they have that conditional pardon for that purpose, they make application according to existing law?

TODD VALENTINE: Right. The --

SENATOR GALLIVAN: And it's just the same process?

TODD VALENTINE: -- right.

It's the school -- that's an existing process that's been in law for a number of years now.

SENATOR GALLIVAN: Same as everybody?

TODD VALENTINE: And used to this amount, but -- I'm sorry, what?

SENATOR GALLIVAN: Same as anybody who registers to vote?

TODD VALENTINE: Yeah, they're treated as any other registered voter. And you would -- and there's no mark in the poll book. You don't know

who they are. You don't know -- there's nothing of that.

But, the concern has been raised.

And I know that there have been other -- you know, police officers that have raised it.

You know, as we've heard earlier today, you know, they're worried about the security.

And I know, in Nassau County, they had a discussion with the Nassau Police Department about what schools were used, and where they were -- where -- where possibly these parolees may go.

They don't have answers for that.

So even if they wanted to provide security where there might be an issue, they have no idea where they are.

Now, I'm not advocating that they be identified for them. That's not fair.

But on the other hand, there still needs to be some balance, or at least a public discussion, as to when a voting right is now being restored to somebody, you know: Is this the appropriate time? Should there be a small waiting period?

You know, the parole officers' union recommended, perhaps, a 90-day waiting period.

I don't know.

We don't deal with the --

SENATOR GALLIVAN: But that would be separate from --

TODD VALENTINE: -- but that would be separate and apart from us.

SENATOR GALLIVAN: -- what the board of election's responsibility is; right?

TODD VALENTINE: That's not our obligation.

All we know is, they're coming, and we need to register the voters. And that's what they're prepared to do, and that's what they have been done.

Whether they voted or not, we don't have that record.

Presumably, some did, some didn't.

SENATOR GALLIVAN: Because you -- that would be because you don't know --

TODD VALENTINE: We don't know.

SENATOR GALLIVAN: -- who makes up this population?

TODD VALENTINE: Right.

SENATOR GALLIVAN: I only have one other area for question.

You mentioned the revocations.

Are you notified -- are the various boards -- who's notified if there are revocations?

Does it go to the State first, and then farmed out? Or is it -- does it go directly to the county boards?

TODD VALENTINE: That comes to the state board. Then we provide that to the county boards.

And about once a month we'll get a list of the next round of revocations. And then we send that to all of the county boards.

While it -- it indicates a county -- what we believe to be the county of residents. And, presumably, the parolee has not moved. But that provides some information for the county boards to then look up to see, if they had been registered to vote, that they then need to turn around, as Commissioner Haight said, to cancel them, or, they really don't need to do anything, because if they didn't come in to register to vote, the revocation, you know, it doesn't mean anything. They're still under a felony conviction.

So, when they do come in to register at some point in the future, they'll see that under the current system for looking parolees up.

SENATOR GALLIVAN: Okay. Thank you.

SENATOR AKSHAR: So you don't know how many of the actual 30,000 people who got pardons voted?

TODD VALENTINE: We do not.

SENATOR AKSHAR: You have no idea?

You just know number of people who have been revoked?

TODD VALENTINE: Correct.

SENATOR AKSHAR: Right?

But when is the poll book authored?

I should know this, I apologize.

TODD VALENTINE: Well, the poll book is when you go to sign in. And all that indicates is --

SENATOR AKSHAR: No, when does it -- I'm sorry. I should have articulated better.

When is that book prepared to send to the polling locations?

TODD VALENTINE: Well, that will vary, but it's usually about two weeks ahead of the elections, depending on the size of the election.

SENATOR AKSHAR: Erik, you make a good point.

We've known for a very long time there was going to be a gubernatorial race.

Right?

One would think that we could have figured this out, you know, rather than -- you know, much earlier, rather than just a few months before the election took place.

Smells of political posturing to me, but that's just me.

That's all I have, Chairman. Thank you.

SENATOR GALLIVAN: Thank you again.

We appreciate your patience and your willingness to be here today.

JASON SCOFIELD: Thank you, Senators.

TODD VALENTINE: Thank you.

JASON SCOFIELD: Thank you.

SENATOR AKSHAR: Thank you, guys.

SENATOR GALLIVAN: Our next panel will be from the New York State Council of School Superintendents, Robert Lowrey, deputy director;

And from the New York State School Boards Association, Julie Marlette, director of government relations.

Oh, that was quick.

We need just a moment.

(Pause in the proceeding.)

(The hearing resumed.)

SENATOR GALLIVAN: Alphabetical? Right to left? Your choice.

Thank you for being here.

Can you, though, just before you testify, and we do have your written testimony, feel free to

paraphrase if you'd like. But the entire written testimony will be entered into the record.

But could you just, you know, tell us your names.

We can see them, we know that, but, a little bit about the organizations you represent and who your membership is.

ROBERT LOWREY: I'm Robert Lowrey, deputy director of the New York State Council of School Superintendents.

We have, probably, represent 99 percent of the superintendents across the state: BOCES superintendents. Regular school-district superintendents. Most of the big five cities. Some specialized school districts. We also represent many assistant superintendents.

A few years ago we asked superintendents across the state to tell us, via email, what they most wanted the public to know about their work as superintendents.

We got a lot of eloquent responses about the rewards and challenges of being a superintendent, but one was especially poignant.

A superintendent wrote, "Every morning I wake up thinking, can we keep everyone safe today?"

It was actually Mary Beth Fiori, one of Senator O'Mara's superintendents.

And every superintendent feels an obligation to every family to leave nothing undone that could assure the safety of their children while at school.

And that sense of obligation extends to protecting other adults as well.

And that sense has been heightened in the aftermath of the Parkland tragedy, and other tragedies.

In the months since, superintendents boards and their partners in law enforcement have been reexamining their practices, and their buildings, and trying to reassure families that no deficiency is being overlooked and no reasonable improvement will be dismissed.

We've done a survey, and we find that districts have been responding.

89 percent say they have done at least one thing to improve safety since Parkland.

97 percent said they had done things previously.

We also found that 82 percent of superintendents said that responding to these community concerns about safety is a significant

problem.

I think there are two things going on there.

One is, just ability to pay for the improvements, and that's common in rural districts.

And also just, in some cases, it's -- it may be that the district leaders feel we've done everything we reasonably can to improve safety, but they still feel they need to show the community that they're doing something more.

All this provides some context for understanding how we as a superintendents organization have to think about the issue of parolees voting in schools.

In the runup to the Primary Election, there were many media reports about the prospect of paroled sex offenders voting in schools.

You've heard a bit about how the process is supposed to work.

The way we understand it is:

First the parole officer grants his or her permission.

The parolee is required to disclose the route that he or she would take to reach the school, and it is instructed to leave the school promptly.

If the parole officer approves that, then the

department of correctional services sends a letter to the superintendent for a final decision on whether the parolee should be allowed to vote in the school building.

In the days and weeks leading up to the Primary Election, not a single superintendent contacted us about this issue, either to advise us of a request or to seek our guidance.

We contacted the department of corrections two days before the Primary, and learned that there had been no more than 10 parolees who had made requests to their parole officers, and, at that point, only one of which had been approved.

In the weeks since, we've informally polled groups of superintendents.

We haven't found any who actually received a request, nor were they aware of any colleagues who had done so.

It's possible that there will be more of these requests with the General Election.

Having said all of this, the process that -- that's prescribed in law really puts superintendents in an awful position.

I've explained the great sense of obligation that each superintendent feels for assuring the

safety of all children, and how that's been amplified since Parkland and other tragedies.

So put yourself in the position of a superintendent.

Whatever assurances may have been given, whatever your personal beliefs, how would you explain to your board and your community that you had given explicit permission to a convicted sex offender to enter school grounds?

We haven't found any superintendent who said they would be willing to do that.

So we would hope that paroled sex offenders seeking to exercise the right to vote would be encouraged, directed, or even required to vote by absentee ballot, and we understand that's actually common practice now.

There's some other points we'd make about voting and safety of school children.

We do support Senator Phillips' bill to give schools the authority to decline to serve as polling places.

We've really seen in the last year or more, even before Parkland, a greater sense of anxiety among parents about -- about election days.

Also, we, on the other hand, strongly oppose

legislation to require school districts to not conduct classes on election day.

Not all schools are used as polling places, and there are large areas where not a single school building is used as a polling place.

It doesn't make sense to require all of them to close.

Also, in some years, for example, when Labor Day falls on September 7th, it would be difficult for districts to fit in the 180 days of required-instruction session days in order to receive full State aide.

And in some areas, that challenge has been heightened as they've grown more diverse.

We have districts that are now recognizing the Muslim holiday of Eid, and the Hindu holiday of Diwali. Those districts have a special challenge of trying to fit in all of the required instructional days.

Joseph Erardi was superintendent of the Newtown public schools when 20 children and 6 employees were murdered at that district Sandy Hook Elementary School in 2012.

He spoke at our fall conference last week, and he told our members, "Every school leader needs

to own school safety, not to delegate it."

Given that school superintendents are accountable for keeping all school children safe, it's not reasonable to expect that they could explicitly grant permission to paroled sex offenders to vote on school grounds.

Generally, they will not be in any position to assess the risk that any one individual might impose.

And because superintendents are accountable, together with their boards, they should be allowed discretion to determine whether schools should be closed on a voting day, and whether voting on school grounds on any day can accommodated without risk to school children.

Thank you for the opportunity to testify.

JULIE MARLETTE: Thank you.

Now my light's not coming on.

Is that better?

SENATOR GALLIVAN: Yes.

JULIE MARLETTE: Good afternoon.

And I just want to echo my colleague's thanks for having us here today.

I really welcome the opportunity to speak to you briefly.

I'm not going to read my written comments. I'll trust that you'll look at them later. And, certainly, you know how to reach me if you need to follow up.

But thought it might be a more useful use of our time together today to maybe just address some of the things I have heard in my time here this afternoon, and then leave an opportunity for you to ask any questions that you might have.

I would start by thanking, not just the two of you and your colleagues who had to depart already, but, really, offer our heartfelt thanks to Senator Phillips.

Senator Phillips, joined by Assemblyman Russo, has introduced legislation, as Bob indicated, that would allow school districts the opportunity to decline their designation as a polling place.

While I know that may seem an extreme measure, it's something that's a significant priority for school districts around the state.

My organization represents about 90 percent of all of the school districts in the state of New York.

And this is actually one of our official

priorities that was actually voted on by our delegates at our delegate meeting annually in 2014, and we've been seeking legislative support for it ever since.

I may have a slightly different perspective than some of the people you've heard from today who have focused on, perhaps, concerns caused by the recent executive pardons.

From the perspective of my members, this is a situation that has always existed.

This is just a situation that got more attention as a result of the executive pardons.

And so I actually welcome the opportunity to have it now on more people's radar, and, perhaps, engage more people in the conversation about what we can do to keep our students safe.

I know it was referenced by the people speaking directly before me, the same issue Bob raised, about closing on election days as an alternative option to allowing districts to not be used as polling places.

I want to echo Bob's opposition to that proposal.

We understand that it can be complicated to find a new location, and that it's not maybe the

easiest solution.

But, ultimately, for all of the reasons he raised, as well as, quite frankly, the increasing number of extreme weather days we face, it's harder and harder to find 180 days in the allowable time frame that you need to conduct session to maintain your State aid.

In addition, I would offer this as an alternate perspective:

The job of the board of education, in partnership with our the superintendents and business administrators, is not to run elections.

It's to run schools, and provide a safe and secure learning environment.

I think that's what we should just be allowed to focus on.

Let the board of elections be in charge of elections, but, perhaps, not ask us to balance our calendars and our children's both safety and educational experience against the access provided by our school buildings.

A final thought that I would just share is, I know that I don't have tell either one of you, or any of your colleagues, the -- both steps that have already been taken, nor the steps that I'm sure

you'd like them to be able to take, to make school buildings more secure.

Your Conference put forth a more than comprehensive package of school-safety measures this year, that you passed, that dealt in many ways with the hardening of school buildings, with the increasing of school security.

Though those weren't enacted into laws, many of those were wonderful ideas that I think many districts would like to take advantage of with or without State aid.

It seems there to be a bit of cognitive dissonance to suggest that on two or three, or sometimes four or five or six days a year, depending on how many Special Elections, Primary days, Special district elections, and other reasons you might be designated as a polling place, that you would, essentially, be asked to suspend those safety measures to let people into your building in a somewhat unfettered manner.

And that's true, unfortunately, whether they're out on parole, whether they've been a convicted sex offender, or whether they've not, things can happen.

We've had reports from districts who have had

incidents that required a lockdown on an election day.

People who are there to vote or who work as poll workers do not know what the lockdown procedures are for a school.

It just doesn't make sense, as we move forward and look at the safety measures that are needed, to continue to insert external people into the building when children are there.

And we can't afford to close every time those external people need to be there.

And I close by just wanting to applaud the woman from the Sexual Assault Coalition who raised, I think, a really important point that I will reiterate, though it's not in my testimony.

For every perpetrator out there that's on a list that you can give to a superintendent, there's a survivor that never reported, and her perpetrator's not on any list, and those people are in our buildings too.

SENATOR GALLIVAN: Excellent point. Thank you.

So the larger issue is, I think you put it well, you're in the education business, not the election business.

So the larger issue is, the school safety as it relates to elections in general, any election.

JULIE MARLETTE: Correct.

SENATOR GALLIVAN: An imposition on the calendar, and I guess, really, an intrusion into your existing procedures.

Commissioner Annucci's written testimony, you had -- Bob, you had given some statistics that you were aware of, one out of ten.

Commissioner -- these are probably updated numbers for you, but, Commissioner Annucci's written testimony said that 2 out of 11 was the number of, you know, the registered sex offenders that applied, and ultimately were granted permission.

I don't know if they voted, or didn't.

Are either of you aware of any school districts that made special provisions?

I know of one school district out on Long Island that canceled afternoon activities.

Are you aware of anything else like that across the state?

ROBERT LOWREY: The only one that I'm aware of is, well, the town on Long Island.

SENATOR GALLIVAN: I didn't even know the name of it.

That was it?

ROBERT LOWREY: Yes.

SENATOR GALLIVAN: Okay.

All right. Thank you.

Senator?

SENATOR AKSHAR: Any complaint -- you had mentioned, Bob, that you didn't hear from any of the superintendents directly about issues that arose.

Did either of you, or anybody that you represent, hear from the community, and the community complaining about, you know, the new process?

ROBERT LOWREY: Not really.

Again, we saw that, you know, in Levittown, apparently, members of the community, parents, were sufficiently concerned, and, you know, expressed that concern, that the district decided to cancel evening activities in the school.

But that's the only thing that I am aware of.

SENATOR AKSHAR: Thank you.

JULIE MARLETTE: I'm not aware of anything in addition to that, except the more broader question of, do we make the decision to close or not?

SENATOR AKSHAR: Okay.

I'm good.

SENATOR GALLIVAN: Thank you for your testimony and your patience.

SENATOR AKSHAR: Thank you so much.

SENATOR GALLIVAN: From the Osborne Association, Elizabeth Gaynes, president and CEO.

You really need to be thanked for your patience.

ELIZABETH GAYNES: I was actually going to ask you, how you had sit here for five hours, and haven't (speaker whispering/inaudible)...

[Laughter.]

SENATOR GALLIVAN: I'm getting close right now.

That's not part of the record.

ELIZABETH GAYNES: I should have brought energy bars.

SENATOR GALLIVAN: Funny that you should say that. I was just given one.

But I'm good for right now.

So, thank you -- all joking aside, thank you for your patience.

We've got you placed here because I -- from an earlier conversation, I had presumed, and that you would want to talk about -- provide testimony

for both topical areas.

So, this is truly a last but not least.

And from my time on the parole board, and in my current position, I'm aware -- certainly aware of the work the Osborne Association does.

And I know you do good work in the community against incredible odds, and so I just want to acknowledge that, and thank you for that.

ELIZABETH GAYNES: Well, I won't say a lot about the election because I think you just heard a lot.

I don't think people should ever have their voting rights taken away.

Many states, and most countries, don't.

And to me, it's the obligation of the citizen to vote.

And I'm more concerned, frankly, with how few people on parole registered and voted than about anything else in that process.

But I also realize, when I try to go pick up my 8-year-old granddaughter at her school, I need to produce ID, do all of those kinds of things.

And so, to me, I agree with the idea of having anybody walking in there.

So -- but I would like to see us -- and by

the way, the people that were given permission to vote were told to vote between 7 and 9 p.m. There are generally not students there at that time.

So I -- I think, going forward, does not have to continue to be an issue.

I'm obviously more concerned about the other points.

And, so, not burdening you with what I have in my testimony, because I am sure you'll be up all night reading it.

So I want to focus on a couple of things.

One, particularly things that were said that I think are not accurate.

Certainly now, I know Mr. Ferguson hasn't been there for a while. He seemed concerned that the COMPAS was controlling.

And I also have problems with algorithmic risk scores. But the reality is, that the parole board, as far as I can tell, would be releasing many more people if they were taking it into account.

Virtually, all of the old -- we have a program called "Elder Reentry Initiative" for older adults in the prison system, and many of them are there for years and years. That's how they got to be old in the system, serving life sentences on

serious cases.

And, most all of them have very low risk scores on COMPAS, and most of them are not being released.

So, the notion that it's controlling anything, or that it's that much work for the deciders to have to explain why they departed from it, I have probably read a thousand decisions and a thousand transcripts over the course of the last few years.

It is gratifying that, more recently, parole commissioners have been actually giving people an opportunity to speak about what they've accomplished, to really think -- talk about their -- what it meant for them to take responsibility and express their remorse, and their efforts at doing that.

In the past, generally, and particularly Commissioner Ferguson, started with the crime, and spoke about, and gave very little room to speak about anything else.

It is a departure with the new regulations, that people are being asked about what they've accomplished in prison.

I saw somewhere that -- where parole

commissioners actually asked people, you know, Tell me what you're proud of.

It is a way of, one, putting people at ease so that they can share, which is really important, because this video-conferencing business as a way of doing parole hearings, which I guess they don't have much choice with not a fully staffed board, it's terrible.

As I said in my -- my granddaughter thinks I'm a monster on FaceTime.

So, I can sort of imagine what this is like.

And then remember, that most of these older folks in prison who are now in front of this screen, you know, they went to prison before they wore these things. They don't get the technology. They're terrified by it.

We had a guy who was denied parole because he seemed aggressive in the hearing, over the board, was because they had pushed him -- he was, typically, was in a bed. And they had put him in this chair, that had him sort of forward. And how he looked to the parole commissioners was, like, this (motioning).

Plus, he had like a Tourettes, and he kept going like this (pounding on table).

And there was nothing in the record that explained that his health was such, that, of course, he looked like a -- it was terrifying.

In that particular case, and I really credit this -- the counsel to the parole board, we've been able to point out that when people with disabilities are being -- going before the board, that they're entitled to a reasonable accommodation, which sometimes includes having a social worker putting them on the calendar earlier in the morning, giving them some extra time.

But, mostly, the board actually isn't even aware of the fact that this person is in -- has a cognitive impairment, or some of those other things.

We're focused on this because we're working mostly with the older adults.

And it's sort of in the file there, somewhere, but it's not noted --

And I know, Senator Gallivan, you can remember this.

-- it's, like, there's a million pieces of paper there, and it doesn't exactly come to the top.

SENATOR GALLIVAN: Not quite a million, but a lot.

ELIZABETH GAYNES: There's a lot, there's a

lot.

And, certainly, for the ones we're talking about, the older adults who have been in for 25, 30 years, and, look, you're not -- nobody is in for 30 years for singing too loud in church. These are tough cases.

And I appreciate this notion about, you know, what the victims are given as an opportunity.

But, first of all, should be talking to the DAs, because they are -- they're making agreements on pleas, which allow people to go to the board, but they do not explain to victims.

They say: Oh, I got you a life sentence. I got you 25 years.

And they are actually not explaining that, What I really did was, I got this guy, who's going to be able to go -- legally, is entitled to be considered for release. And if he meets the standards, will be released after five or twelve, or whatever that number is.

And then victims are numbed and surprised and angry, because this seems to be news to them, that now they think the person is being released early.

Person's not being released early. That was the sentence.

And if the board is doing its job, and considers whether the person has met those requirements, that's the sentence.

A lot of what I heard today makes it seem like the parole board is allowed to resentence people.

It is not.

There's a reason why the regulations say what they are.

And by the way, I do not think that to -- Mr. Ferguson is correct that the information is not available.

We get this information routinely about releases, and things like that. And I'm sure you could too.

It's also not true that the victims and the DAs and the judges are not notified.

They actually are.

My goddaughter works for the Manhattan DA's Office, and she seems to spend her life being assigned to write letters every time somebody from that office is up for parole. And they are given an opportunity to weigh in, she said, sometimes in cases that happened before she was born.

And I have a colleague who was chief

assistant in that office for many years. And I said, Leroy, before you write these letters, opposing parole for people that you have had no contact with for 20 years, don't you think you should find out what they've done in that time? Because it seems that you always send the same letter, opposing parole.

And he said, No, Liz. We send -- we have two letters: One to oppose, and one to strongly oppose.

And so you can imagine that sometimes the parole board isn't taking it as seriously as it might because they're getting boilerplate letters, opposing parole in, virtually, every case.

The judge is also entitled. But, of course, for some of these cases, where you're talking about 20 years, those judges may no longer be sitting.

Not only are the victims being notified prior to a parole, we recently had a participant in one of our programs, a man I have known personally for 15 years, because he worked for Osborne in Sing Sing. And we worked with his son, who we now have proudly in college.

This man did everything one could expect anybody to do. Major transformation of his life.

Went to the parole board. He was granted

parole. And then it turns out that the letter to the victim in that case hadn't arrived.

So the victim then said "no."

And the -- his parole was rescinded.

The victim was given an opportunity to then make a statement.

And I am sad to say that, subsequently, his parole was denied for two more years, obviously, based solely on this one new factor, which was the victim, who was -- would have been notified. But, because it was 20 years ago, or 25 years ago, it did not -- it took a while for it to get routed.

The thing that I -- that disturbs me, though, about the victim component of it is, we're using them.

Victims -- you know, we did not wait until Osama bin Laden was caught before we did everything for those people victimized on 9/11. We did, and should have, provided them with counseling, with medical care, with financial support.

What we do now for most victims, is we offer them jail for the person who did it.

And if that's all we're going to tell them is, our response to their pain, is we're going to put this guy in prison, and then leave them to

believe that that's how that -- that that's their healing process, well, no wonder people are angry, 20 years later.

When I hear -- it makes me so sad to hear a widow saying, 20 years later, Every day I have to relive this.

I'm not saying pain goes away.

I -- you know, all of us have -- many of us have experienced loss.

But I keep wanting to know, and I want to ask Patrick Lynch:

What are you doing for these folks?

Like, from day one, what are you doing, other than parading them back, and making a big (indiscernible) over this.

And particularly what concerns me on that particular testimony, about wanting fairness, if Mr. Lynch wants fairness, he cannot say that no one convicted of killing an officer should ever be released.

Fairness would require considering release.

There's nothing fair about saying, automatically must be denied.

That's not a hearing. That's a resentencing.

And I -- and you know that of those older

folks, people who have done long time, we know that the recidivism rate is close to zero.

And so it's not about public safety.

And I don't know if you remember this, because you were there when I went, it was a couple of people who were on life parole, and a couple of former parole commissioners. And we met with the board.

And you were there.

And the former commissioners were saying, this -- there's no threat to pub -- the issue we raised with you, actually, was whether people on life parole could get off parole.

Which you, I think, were supportive of.

And have -- and -- and -- and I know your record, and you've been supportive of a lot of people. Jerome Wright, and other folks, that have been, you know, pardoned.

So I'm not conflating things here.

But at that moment, when we said, and the commissioners said, this is -- you know, there's no public-safety challenge here, Mr. Ortloff said, This isn't about public safety. It's about punishment.

And that's the remaining concern that I have

about much of what I heard today, which is, it was not about following the law.

It was about a resentencing.

A rule of law -- believe me, I never thought I'd spend my life defending FBI agents and parole commissioners.

But, in this -- there's one decision that has triggered this entire kerfuffle. One person.

And then going after the two commissioners who voted to release him, putting targets on their back, ending up with them having death threats.

Mr. Ferguson made a very good point about wanting parole commissioners who had a certain kind of background.

The guy on the parole board who denies parole to everybody, Marc Coppola, is a real-estate agent with no background in criminal justice.

The two people who voted to release Mr. Bell, one of them was assistant commissioner at the department of corrections, and a crime survivor; and the other one was a parole officer, and not an easy parole officer.

I know this, because he supervised -- when he was -- when (indiscernible) was a parole officer, he supervised some of the staff at Osborne, because we

like to hire people who've done these long sentences, because they're credible messengers, they're role models in the community. They've learned, they've developed, they've grown.

So, I mean, you could not have had two commissioners who were better prepared to actually judge the case in front of them.

And you may notice that they didn't exactly come to a decision the day of the hearing.

They must have -- I mean, I don't know, but -- and I had never met Mr. Bell, and wasn't involved in that case, other than writing our standard "reasonable assurance" letter.

But, I'll bet you there were eight boxes of files that they went through.

And the courage that it must take, knowing that, I mean, Mr. Ferguson said it, and it was obvious with Mr. Lynch, those unions put huge pressure on parole board members. They are terrified to make those decisions.

So, to me, "rule of law" means that we should be -- when people who have been vetted, and confirmed by you, and investigated up the wazoo before they get to serve on the parole board, make that decision, I believe that they deserve, by the

Senate and the Legislature and the Governor, should have supported them, saying:

They were the ones who were looking at all that information.

They're the ones that read the victim impact statements. They read the sentencing minutes. They read everything.

Like, I don't know what I would have done had I been a parole commissioner, or what others would have done.

If anybody says that they for sure know that, automatically, based on that, without reading all the information, without interviewing Mr. Bell, what they would have voted, that's not fairness.

That's prejudging something.

And part of what we heard today was, that's not what we're supposed to be doing.

We're supposed to be giving people a fair -- not a resentencing. Following the regulations, as they exist, and making those considerations.

So, somebody thought the police should have an impact based on arrests that they made 20 years ago?

I know you were a sheriff.

I know, I used to work in Buffalo for a

brilliant lawyer, Judge Vinny Doyle. And I know his sons, and they were sheriffs.

I don't think any of them would have said, gee, I want to be deciding, after a DA, a defense lawyer, and a judge make a deal in a case, or, there's a trial and then there's a sentence.

Particularly, there are people that are sentenced to less than 25 to life.

19 to life.

There's a guy that came to work -- has worked for us, we worked inside.

Because he was a -- the victim was an off-duty police officer, Samuel Hamilton was a lookout, the judge gave him 19 to life at age 19, because he said, I believe this guy is redeemable.

And then the police unions came, and he was -- went 19, 21, 23.

He was 50 years old by the time he was released, even though the judge had indicated, I think this is a redeemable person.

But according to the fairness, that the union said, one, they should be able to put pressure on board members, and, two, he should have never been released.

Since he's been released, he works for

(indiscernible) defenders. He gets up in the morning, he's serving people.

People are redeemable.

And I know that you know that, Senator Gallivan.

I don't know you so well.

I assume you are good people.

We know that people can change.

SENATOR GALLIVAN: He is.

ELIZABETH GAYNES: And, so, one is, I think you should put pressure on the DAs to stop misusing victims and misinforming them about the future.

I think we need to offer victims a lot more than incarceration.

I've got data in my testimony, victims actually want more. They do want restorative practices. They want to see rehabilitation.

We have a program with guys who -- just homicide cases, called "Coming to Terms," where they begin to talk about their lives, and the crime that they committed.

And we bring in someone who's a survivor, whose sister was murdered by a serial killer.

But they start by talking about their own lives.

You know, the first time we did this class with 12 men, first one said -- and we asked about their early lives, the first one had seen his mother murdered in front of him when he was 3 years old.

Do you know what services and support he got?

Nothing.

He went into foster care. He was abused by a foster parent.

And then, yes, down the road, he committed a homicide, and he was sentenced for it.

But we can't just think of the victim of the crime he committed. He was also a victim.

Every single one of the men in that class had been exposed to serious violence; had either witnessed it, had a family member murdered, in their early lives.

And if we don't push this support for victims earlier on, well, this is what we know: Hurt people. Hurt people.

We know this is gonna happen.

So, I really appreciate all of the work that you guys do, going forward, to make this a fairer process.

But please don't roll back all the reforms and the efforts that are being made by the board now

because of one case that people disagree with.

Thank you.

SENATOR AKSHAR: Thank you.

SENATOR GALLIVAN: Thank you.

I would -- I would agree that one case started a tremendous amount of focus on the parole board.

I'd suggest, though, and I want to ask you about this, that while some of -- some of their decisions -- well, all of the decisions, they have to make subjective decisions based on where they came from, according to the law.

And from my experience -- and from where I sit now, and from my experience, no question, they're difficult, especially in the tougher cases, the violent-crime cases.

But, nonetheless, I've always thought, when I was there, and now, and my advice to the commissioners as we interview them, when they come through the Committee is: Follow the law. Forget whatever bias you might have about, this, or that, or the other, and follow the law.

And, clearly, people are going to disagree in some cases.

In some cases, I don't think they did, and

that's where I'm coming from on this.

And my effort is for them to follow the law.

You talked about something, I forget exactly how you said it, but, if somebody holds somebody 100 percent of the time, they're the same as somebody you're releasing somebody 100 percent of the time.

They're not doing their job.

And part of it, I think, is part of -- I mean, part of where we go from here is, some things I think the best pursuit is in changing the law.

And so, the "deprecate the seriousness" that's translated into the community standard, some people think it should exist, some people think it shouldn't exist.

But, anyway, I'm kind of moving off of where I started.

But the concern -- when I made the comment that, shedding a light on them, I think, is a good thing, what I think has been consistent, from whether it's law enforcement, whether it's very conservative people, whether it's very liberal people, whether it's inmate advocates, or whatever it might be, and you just briefly mentioned it at

the beginning of your written testimony, is the transparency.

And we've got something there that the collective "we" are raising questions, despite the differences of opinion.

And I know in your recommendations, the digitizing some things, making more information available to the public, making more information available to people, probably answers a lot of questions.

The release rates, I think -- I don't know if this is what you meant when you talked about Commissioner Ferguson, about -- the not getting the information about the releases.

He might have said it in a couple of areas, but the one that I took, and my experience was always the same, I would have liked to have, as a commissioner, information on what happened to the person that was held or released.

ELIZABETH GAYNES: Yes.

SENATOR GALLIVAN: And it would -- and it's available, you can chase it down, they have all the data. But it never comes together on one report, so you can't even FOIL it, because it's not kept in the report.

ELIZABETH GAYNES: I totally agree.

SENATOR GALLIVAN: But that's something that could help to guide the commissioners as -- so my -- I guess my point being, and then I want to come back to transparency, and give you a chance to comment, is, there are a lot of concerns that people have, regardless of where they come from, about the parole board.

And I think, for all of us, they started the transparency part before we even disagree.

But I guess the transparency is, to what extent?

So, from your perspective, I mean, do you have any thoughts about, I mean, that transparency part of it? And what recommendations you can make --

ELIZABETH GAYNES: Well, certainly, I --

SENATOR GALLIVAN: -- (indiscernible) out there?

ELIZABETH GAYNES: -- certainly, I would love to see commissioners get feedback, because I think people would release, frankly, more people if they saw how well people that they took -- I mean, because I know, it concerns them.

I know that there are people that always want

to hold -- they may not turn down parole for everyone, but certain categories. Like, you know, they're never going release a drunk driver, or they're never going release certain cases.

I don't know that there are any who release everyone.

And if you had a full parole board, and you had three people making these decisions, then even if you had someone who was, in your view, too far one way or the other, there would be two other people.

So, having three makes sense.

Having it be in person, makes sense, so that you really get more of a feel for the person, and not a 20-minute video.

And then not being able to really look at the records because of the way they are.

But, when you go to transparency versus this idea that a victim should be able to appeal a decision, our legal system is, The People of the State of New York versus "Patrick Gallivan."

Never going to happen.

But, the point is, we don't -- victims are represented by the State; and in this case, by the parole board.

We don't have a system of frontier justice, of people being able to control that process.

And that's a good thing.

And as I said, we should give victims a platform, we should give them support.

But saying that they could control the outcome, particularly the non-victim representatives, to say -- that makes no sense.

But in terms of the information being available, I'm not sure exactly which information.

I understand, for instance, we --

SENATOR GALLIVAN: That's why I asked.

ELIZABETH GAYNES: -- we -- well, one thing is, we think that the victims should be given much more information about what the person did while incarcerated.

Because, one of the things that I know from talking to the victims' people, is they very often ask, Well, what did this person do?

Like, does he -- there's an Apology Bank.

Do you know that?

SENATOR GALLIVAN: No.

ELIZABETH GAYNES: So it's illegal for an incarcerated person to contact the victim directly, no matter how much they want to apologize, no matter

how much they've come to understand the impact of what they did.

But they can write an apology letter that goes to a website that DOCS has, called the "Apology Bank."

And so if a victim wants to see if someone has posted something there, they can, they have a way of doing that.

And it's a safe way for them to be able to get that, because, like in the programs we do, most of the -- most of the people we worked with, by the time they go through this process of actually beginning to understand the harm that they've caused, because, when you have really hurt somebody, you don't really want to face it.

And people in prison don't -- nobody ever asks you when you're in, by the way, why are you here?

There's no work directly on coming to terms with the crimes that they've committed.

And nobody feels good about harming another person.

So part of this process we go through is for them to actually get to this place. Like, oh, my God, how do I make amends? How do I apologize?

Whether it results in their release or not is not necessarily the point.

So I do think that, very often, victims want to know, and should be able to know, as should the DAs writing the letters as well:

Did this guy go to the yard every day, and do nothing, and, basically, not participate?

Or, did this guy, like, go from having a fifth-grade education when he came to prison, and then he went and got his GED, and then he went to college. And now he's part of this youth program, where people come in, and being able to talk to young people about, why?

I mean, you'll notice corrections people are not lined up here saying, don't release these folks.

The only reason corrections people don't want lifers out is because they're depending on them to run all the programs in the prisons, because they have so transformed their lives that they are leaders inside.

That's why you'll see, if they would allow corrections people to write letters in support of people coming on parole, you would see a lot of them.

I was just -- did a tour of Sing Sing the

other day, and correction officer was pointing to some guys who had been there for 20 years.

He said, what is he doing here?

These guys have a master's degrees.

So the -- so it's right to give victims that information.

They would want to know:

Did this guy just do nothing, and get in trouble the whole time, and doesn't give a rat's ass, frankly, about what he did to me?

Or, has he been doing all this work trying to atone for that?

So I think that's one part of transparency.

I also think that the people in -- the people coming up for parole would benefit from knowing a little bit more about what's in their files, because they can't -- you know, they -- the -- they -- you don't get -- they don't get -- they don't share with them their presentence reports from years ago.

So they may not necessarily know, unless their defense lawyers --

And defense lawyers are as bad as prosecutors, in terms of telling people what the impact of sentencing is.

-- they may not know how to contradict

something that's in the record that might be incorrect.

So they don't even necess -- they don't necessarily know what the parole board is looking at.

There may be other kinds of information like that.

So I think that if there's transparency, it would be good at many levels.

I think the parole commissioners clearly should be able to see things. Victims probably should be able to see more.

And, definitely, the outcomes.

I know, you know -- a couple of times, I know Mr. Ferguson said there's no training. But we've actually -- several organizations I know have gone to meetings of the parole board and brought lots of information.

We did things about geriatrics, because I know they're seeing older people, medical.

A lot of people have provided that.

And in every one of those meetings, the chair would read a letter that she would have gotten from somebody who was released on parole, saying all the things that they had done since they were released.

And I think she did that as just a proxy for being able to give people some encouragement for the fact that, very often, when you finally release somebody, they're -- they really have turned their lives around.

So, I don't know what other information you seek.

But as long as we haven't -- please put money in the budget to digitize those records.

It's insane.

Do you know that these poor commissioners have to go to Buffalo, even to just do a video conference if they live in New York City, because there's only one copy of the paper?

(Speaker continues in a whisper) Like, that's crazy. That's crazy.

SENATOR GALLIVAN: Well, I think they do that for more than just that reason.

But nonetheless --

ELIZABETH GAYNES: Oh, because they just love being together?

SENATOR GALLIVAN: No, I think it has to do with the randomness of assignments.

ELIZABETH GAYNES: No, that's true.

SENATOR GALLIVAN: And, you know, who is

being interviewed, and where, and ensuring some type of rotation so it's not regular.

ELIZABETH GAYNES: No, no. I don't mean just go to the closest place.

What I mean is, if we had electronic records, then three people could be in three different places.

SENATOR GALLIVAN: Exactly.

No, no, your point is extremely well taken.

But I don't think that's the only reason that they go.

But we would have the enhanced technology.

And the other thing I would say about the budget, excellent point, budget process does start with the Executive.

And to date, or at least in my time in the Senate in this Committee, we haven't seen any initial -- the Governor's presentation of the budget, anything like that included in there.

It can start with us.

ELIZABETH GAYNES: So if we put forward a proposal, a bill that says, that the -- there should be full funding to fully staff 19 parole board members, and, by the way, could you digitize the records? we could get some support from the

Legislature, added.

SENATOR GALLIVAN: Well, let's just go one at a time.

ELIZABETH GAYNES: I'll ask the Governor first.

SENATOR GALLIVAN: That would be good.

But as far as the 12 out of -- 12 sitting out of 19, we haven't had a nomination from the Executive's Office since June of 2017.

ELIZABETH GAYNES: I'll get to work on that.

SENATOR GALLIVAN: So, I mean --

ELIZABETH GAYNES: Yes.

SENATOR GALLIVAN: -- now -- I guess --

ELIZABETH GAYNES: I wasn't blaming you for not putting the names forward.

I was just saying, as I think it's -- it would make a big difference to have a fully staffed.

SENATOR GALLIVAN: I'm not throwing it -- I'm not --

ELIZABETH GAYNES: And I agree. And --

SENATOR GALLIVAN: -- I'm not just completely shirking our responsibility.

ELIZABETH GAYNES: -- the Governor should be putting names forward.

SENATOR GALLIVAN: Both of us can do it, but

the budget process starts with him.

Both of us can attempt to do it, as you know, so I didn't want to completely -- when it comes to the budget, to say it's all him.

ELIZABETH GAYNES: Well, I will talk to them.

But, you know, I'm still going to come back to you about opening an office in Western New York, and asking the Senate and the Assembly to help if the Governor doesn't.

SENATOR GALLIVAN: We can meet separately about that. I have had that conversation, though.

Not with you, but with the people out there.

ELIZABETH GAYNES: Okay.

SENATOR GALLIVAN: Senator?

All right. Thank you very much for your patience, and your time again.

ELIZABETH GAYNES: Oh, thank you.

SENATOR GALLIVAN: And the work that you do.

ELIZABETH GAYNES: Thanks.

SENATOR GALLIVAN: I guess it wasn't so bad after all.

We will conclude our hearing at this point.

Remember, this is the first -- for everybody who's here, the first of two.

The rules do require, this was streamed

online, I neglected to say it.

Tomorrow, because of the actual location, and the technological incapabilities, it will not be streamed online. But it will be made available within 24 hours of tomorrow's hearing.

(Pause in the proceeding.)

(The hearing continued.)

SENATOR GALLIVAN: And it looks like we may stand corrected on that. That may be streamed online.

In any event, both hearings will be on the Senate website.

And then, ultimately, all the written testimony, the ultimate information that we get from the Executive Branch and the different departments, what we have to date, and, what we continue to get regarding information, will all be included in the official record and the ultimate report.

Thanks, everybody.

(Whereupon, at approximately 5:10 p.m., the public hearing concluded, and adjourned.)

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