

Fordham Law School

FLASH: The Fordham Law Archive of Scholarship and History

Parole Preparation

Parole Information Project

2018-8

New York State Parole Board: Failures in Staffing and Performance

Parole Preparation Project

Release Aging People in Prison Campaign

Follow this and additional works at: <https://ir.lawnet.fordham.edu/pp>

New York State Parole Board: Failures IN Staffing AND Performance

A Report BY THE Parole Preparation Project
AND The Release Aging People in Prison Campaign

AUGUST 2018



New York State Parole Board: Failures IN Staffing AND Performance

A Report BY THE Parole Preparation Project
AND The Release Aging People in Prison Campaign

Contents

Executive Summary	2
About the Authors	3
Introduction and a Brief History of Parole	4
Milestones in the Movement for Parole Justice: September 2016 to Present	6
Scope of Report	7
An Understaffed Parole Board and the Need for New Commissioners	8
Dismissing Commissioners for Cause	12
Dismissing Commissioner W. William Smith	12
Dismissing Commissioner Marc Coppola	23
Summary of Needed Changes	30

“ All people have in them
a dream of becoming free again.”

-D.B. / 40 YEARS OLD / 21 YEARS IN PRISON

LETTER RECEIVED DECEMBER 28, 2017

Executive Summary

There are nearly 22,000 people serving indeterminate sentences in New York State prisons. Every year, 12,000 of these individuals appear before the Board of Parole in an attempt to secure their freedom. Due to the Board's punitive policies and practices, and their susceptibility to political influence, the large majority of parole-eligible people are denied release.

However, thanks to the tireless work of advocates and formerly incarcerated leaders, preliminary statistical evidence shows a marginal improvement in release rates since September 2017, when new parole regulations were implemented and new Commissioners joined the Board.

While we are encouraged by these developments and what they may bring, the Board of Parole is now facing staffing issues of catastrophic proportions, and continues to engage in unlawful, unethical and harmful behavior, despite repeated admonishments by the New York State judiciary and legislature.

Although the Executive Law that governs parole permits 19 Commissioners to serve on the Board, as of May 2018, only 12 Commissioners were seated. Such severe understaffing has led to myriad procedural problems, over-worked Commissioners, higher caseloads, shorter parole interviews, and less time for individualized evaluations of parole applicant files. These realities have led to devastating consequences for people in prison and their loved ones.

Understaffing has also led to a significant increase in two-person parole panels, a practice that in August 2017 Parole Board Chairperson Stanford relayed would no longer be used. Additionally, parole interviews are being postponed for no discernible or statutorily authorized reason.

Compounding these issues of understaffing, two long-serving Commissioners, W. William Smith and Marc Coppola who frequently engage in racist, unlawful and repugnant behavior, remain on the Board. The Governor can and should dismiss these Commissioners immediately and replace them with qualified candidates who better reflect the identities and experiences of people in prison.

Commissioner Smith, in violation of the Executive Law, almost unilaterally denies parole to people convicted of violent crimes despite their demonstrated rehabilitation and low risk to public safety. Additionally, people in prison have reported numerous instances where Commissioner Smith lost his temper, slammed his hands down on the table or mocked the interviewee. Commissioner Smith also has deep political ties to the New York State Senate. He has donated nearly \$20,000 to the very Senators responsible for confirming his appointments to the Board.

Commissioner Coppola's record is equally abhorrent. During interviews, Commissioner Coppola is often unprepared and absent, asking questions that have already been answered or referencing facts from case files of other parole applicants. He also fails to consider the achievements of applicants, their advancing age, or their youth at the time of conviction, all factors required by the law.

We are calling on Governor Cuomo to dismiss Commissioners Smith and Coppola, end two-person panels and needless postponements, and fill the vacancies on the Board with candidates from a broad range of professional backgrounds who believe strongly in the principles of rehabilitation, mercy, and redemption. The lives of thousands of incarcerated people depend on it.

About the Authors

The Release Aging People in Prison Campaign

The Release Aging People in Prison Campaign (RAPP) works to end mass incarceration and promote racial justice through the release of older and aging people in prison. RAPP mobilizes and educates currently and formerly incarcerated people, their families, and other concerned community members on the crisis of older people in prison, including and especially those convicted of violent crimes. RAPP promotes the use of key release mechanisms such as parole, compassionate release, and clemency, and aims to establish parole policies that are transparent, all-inclusive, and fair, with decisions based on a person's risk to public safety and their personal growth while in prison.

Contact RAPP: c/o Correctional Association of NY, 22 Cortlandt St., 33rd Fl., New York, NY 10007; (646) 793-9082 Ext. 1014; nyrappcampaign@gmail.com.

The Parole Preparation Project

The Parole Preparation Project collaborates with and advocates for people serving life sentences in New York State prisons. We train volunteers to work alongside parole-eligible people—many of whom have spent decades in prison and have been repeatedly denied release—as they prepare to apply for parole. In addition to securing the release of parole-eligible people, the Project cultivates transformative and long-lasting relationships between those who are incarcerated and community volunteers; supports currently and formerly incarcerated leaders by amplifying their visions; and works in collaboration with our partners to build the nationwide movement for prison and parole justice. The Project believe that all people, regardless of the harm they have caused, have inherent value, and that everyone is capable of transformation and worthy of compassion, support, and an opportunity to return to their families.

Contact the Parole Preparation Project: c/o The Law Office of Michelle L. Lewin, 168 Canal Street, 6th Floor, New York, NY 10013, 347-620-5906, mlewin@paroleprepny.org.

Acknowledgements

The authors wish to thank the hundreds of currently and formerly incarcerated people who shared their transcripts, case files, personal stories and profound insights, whether through letters or by phone. Thank you all so much for trusting us with your truth, and for sharing so generously. This report is also largely informed by the expertise, wisdom and guidance of formerly incarcerated leaders Kathy Boudin, Anthony Dixon, Mujahid Farid, Jose Saldana and Laura Whitehorn. We are also grateful for the tremendous support from our team of volunteer researchers, including Eva Boodman, Susie Charlop, Maxine Getz, Jermaine Gladden, Valerie Haynes, Rocky Lotito, Daniel Rouss, Michael Mangieri, Maureen Silverman, and Aretta White. A special thank you to Melissa Tanis, Nadav Gazit, and Joshua Kwassman for their research and design work.

Introduction AND A Brief History of Parole

“...I have an unfortunately extensive experience with the NYS Parole Boards—12 hearings, altogether. Four postponements, two de novo hearings, and eight straight board hearings. It’s difficult for me to describe what that form of torture is like. It was basically a human power-ball game, where one’s freedom depends on whether their numbers come up on that one bi-annual drawing.”

**-D.B. / 40 YEARS OLD / 21 YEARS IN PRISON
LETTER RECEIVED DECEMBER 28, 2017**

There are nearly 22,000 people serving indeterminate sentences in New York State prisons.¹ Every year, thousands of these individuals appear before the Board of Parole in an attempt to secure their release. Due to historic policies, practices, and political dynamics, the majority of these individuals are denied parole and must wait up to two years before their next Board interview. The reality in New York State is that discretionary release is exceptionally difficult to obtain, and parole decisions are often arbitrary, highly subjective, and unlawful.

Current parole practices have an especially harsh and dramatic impact on people serving indeterminate life sentences, as parole is generally the only way to obtain release for this population. Nearly 9,300 people (representing almost 18% of the prison population) are currently serving a sentence with a maximum of life in New York State.² The Board’s high rates of parole denial leave this group subject to indefinite confinement. Because of these repeated denials, many people have lost hope of ever obtaining freedom. Many believe they will die in prison, and in reality, some will. Since Governor Cuomo took office in 2011, 961 people have died in prison. In 2018 alone, 54 people have died, nearly one-third of whom were serving life sentences and eligible for parole.

“Shawangunk is known as a ‘terminal facility. It is our constant reality that men are sent here to die, not to be rehabilitated and not to be released. For many of us looking from the inside out, more men have died at this facility within the past 5 years than those who have been granted parole...”

**-A.M. / 51 YEARS OLD / 25 YEARS IN PRISON / ELIGIBLE FOR PAROLE IN 2025
LETTER RECEIVED JULY 2017**

Most people serving life sentences and appearing before the Board have accepted responsibility for their crimes, completed required and voluntary programming, undergone deep personal transformations, obtained low risk scores on an evidence-based risk assessment, and developed strong release plans. However, for decades, the Board cited the nature of the crime and the facts of the underlying case as the primary reason for denial. Even now, after revisions to the parole regulations, the Board frequently disregards the many accomplishments of the applicant and their often categorically low risk for recidivism, and denies a person’s freedom based on a single, unchanging moment that occurred decades ago.

¹ Parole Board and Presumptive Release Dispositions: Calendar Year 2015, New York State Department of Corrections and Community Supervision, http://www.doocs.ny.gov/Research/Reports/2016/Parole_Board_Dispositions_2015.pdf.

² Ashley Nellis, “Still Life: America’s Increasing Use of Life and Long-Term Sentences,” The Sentencing Project, 3 May 2017, <http://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>.



At the next scheduled appearance I will be almost 76 years of age. After almost 42 years in prison I am of the opinion that I would be lost outside with all of the things that have progressed in that time...I am not bitter nor do I hate anyone. I am resigned to ending my life in prison. I am guilty of my reprehensible criminal action and am receiving my just punishment and there I must stand."

-K.P. / 75 YEARS OLD / 41 YEARS IN PRISON / 9 PAROLE DENIALS / LETTER RECEIVED MARCH 14, 2018

Many applicants appear before the Board numerous times, often on nine or ten occasions, before they are granted release. This forces people to languish in prison for many years longer than their minimum sentence and fosters a culture of hopelessness in New York State Correctional Facilities. Although the Board does not legally have the power to impose new sentences, it effectively serves as a re-sentencing body, doling out longer punishments than the courts and legislature perhaps ever intended, and doing so in a manner largely hidden from the view of the criminal legal system that originally arrested, convicted, and sentenced the applicant.

The Board's practices exemplify nationwide criminal justice policies that are rooted in retribution and racism and result in extreme punishment. As with the criminal legal system at large, people of color, and more specifically Black men, are profoundly and disproportionately impacted by parole injustice. 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 thousands in their 60s, 70s, 80s, and even 90s. Largely as a result, the population of older people in New York State prisons continues to rise, having more than doubled between 2000 and 2016, and now constituting 20% of the state's prison population.³



Each hearing is based on nature of crime and past criminal record. Rarely is there inquiry of my accomplishments, education, vocational trades, rehabilitation while incarcerated...They say I am a risk to the community yet my risk assessment report of the past two parole hearings (2015, 2017) clearly shows that I am low risk."

-D.R. / 60 YEARS OLD / 29 YEARS IN PRISON / 6 PAROLE DENIALS / LETTER RECEIVED JANUARY 19, 2018

Despite the fact that criminal conduct decreases substantially with age and infirmity, and the re-incarceration rates for those convicted of the most serious crimes are significantly lower than for those convicted of crimes carrying shorter sentences, parole release rates remain low for aging and older people in prison. The prolonged incarceration of elderly and often infirm people offers no benefit to public safety, but fractures families and communities. For all parole-eligible people and older people especially, the Board's practices and focus on the nature of the crime thwart the very purpose of parole: to release people who have served their minimum sentences, demonstrate a readiness for release, and pose little to no risk of recidivism.

³ "The High Costs of Low Risk: The Crisis of America's Aging Prison Population," The Osborne Association, May 2018, <http://www.osborneny.org/resources/the-high-costs-of-low-risk/hclr/>.

For decades, community organizations and currently and formerly incarcerated people have advocated for the release of elders in prison, fairer Parole Board practices, reform of the Executive Law that governs parole, the dismissal of long-serving Parole Commissioners who unilaterally deny release, and the hiring of new Commissioners whose practice and professional experience are rooted in a belief in rehabilitation. These efforts have recently borne fruit, as Governor Cuomo and the legislature have begun to acknowledge the issues faced by those serving long sentences.

Milestones IN THE Movement FOR Parole Justice: September 2016 TO Present

After decades of work by advocates and formerly incarcerated leaders, the movement for parole justice has seen incremental changes in parole policy, practice, and culture. In late September 2016, the Board of Parole released proposed changes to the regulations that govern their practices. Advocates from the Release Aging People in Prison Campaign, the Parole Preparation Project, the Correctional Association, and many others solicited public comments from advocacy organizations, community members and over 250 people in prison. By November 2016, more than 350 comments were submitted, surpassing past public comment periods. In September 2017, the Board published their revised guidelines. While the regulations do not encompass all of the changes advocates envisioned, they require the Board to be more detailed, thorough, and fair in their decisions.

In June 2017, through hundreds of legislative meetings, rallies, press conferences, and presentations before the Board of Parole, advocates also led a successful campaign to change the composition of the Parole Board. Governor Cuomo did not reappoint three of the five Parole Commissioners whose terms expired in 2017, two of whom were Governor Pataki appointees and notorious for violating the law and disregarding the humanity of people in prison.⁴ Two additional Commissioners left the Board by the end of 2017, another resigned in 2018, and a fourth died in May 2018. Governor Cuomo also appointed six new Parole Commissioners in June 2017, many of whom more closely reflect the identities and experiences of people in prison, and come from a broader range of professional backgrounds.⁵

Since the establishment of new regulations that evince a more forward-looking approach to parole and the addition of new Commissioners, there have been modest increases in the release rates for people serving long sentences and older people in prison. After an informal study, the authors of this report found that the Parole Board's release rates have increased overall from 24% to 37% since September 2017. They have also increased for people serving life sentences from 27% to 37%

4 Victoria Law "Lawmakers Fail to Fix New York's Broken, Stingy Parole System," The Village Voice 5 July 2018, <https://www.villagevoice.com/2017/07/05/lawmakers-fail-to-fix-new-yorks-broken-stingy-parole-system/>.

5 Victoria Law "Lawmakers Fail to Fix New York's Broken, Stingy Parole System," The Village Voice 5 July 2018, <https://www.villagevoice.com/2017/07/05/lawmakers-fail-to-fix-new-yorks-broken-stingy-parole-system/>.

and increased for older people (aged 50 or older) from 24% to 40%.⁶ Some people in prison have also reported that their interviews are longer and focus more on their accomplishments than their crime of conviction.

While we are encouraged by these developments and see real momentum in the movement for parole justice, thousands of people remain locked up and away from their families, despite the fact that they pose a minimal risk to public safety and are ready to return home. Governor Cuomo, the legislature, and Parole Board must act now to prevent further suffering and needless death behind bars.

Scope of Report

In addition to the change in the composition of the Parole Board and the revision of the regulations, there has been a radical shift in the New York State judiciary's treatment of Board decisions. Judges across the state have chastised Commissioners for holding unlawful interviews and failing to consider essential factors from the Executive Law in their decisions. Courts have even held the Board in contempt for repeatedly defying judicial orders.⁷

However, details of emerging legal issues, recent developments in parole-related case law, and class action litigation are beyond the scope of the report. This report also does not include a review of current pending parole-related legislation or recent initiatives put forward in the annual budget proposal.

The focus of this report is on the staffing and performance of the Parole Board, including its inability to properly perform while significantly understaffed; the continued failure of several Commissioners to abide by the law; and the lack of transparency that shrouds the entire parole process.

As of May 2018, the Board of Parole had only 12 seated Commissioners.⁸ Several Commissioners who are notorious for denying parole-eligible people release and have deep ties to law enforcement and electoral politics remain on the Board, despite cries from advocates for their dismissal.⁹ While an unofficial tally shows that release rates have increased, the Board of Parole and the executive branch have yet to release any formal evaluation or report on these numbers. Advocates still do not know for certain how many people have been granted parole since the new Commissioners were appointed, and what, if any, changes have been made to bring long-serving Commissioners in line with new policies.

⁶ The authors of this report compared the release rates provided from September 2016 to January 2017 to the same period in 2017 and 2018. This data was calculated using a computer program that scrapes data from the New York State Parole Board Interview Calendar. Available at: <http://www.doccs.ny.gov/calendar.html>. These statistics have not been verified by the Department of Corrections and Community Supervision (DOCCS).

⁷ "After Being Denied Parole 10 Times, Elderly Prisoner Allegedly Commits Suicide at Fishkill Prison," Democracy Now!, 10 August 2016, https://www.democracynow.org/2016/8/10/after_being_denied_parole_10_times.

⁸ Current NYS Parole Board Commissioner Roster, New York State Department of Corrections and Community Supervision, May 2018, <http://www.doccs.ny.gov/PB-Commissioners.pdf>.

⁹ Michael Winerip, Michael Schwirtz and Robert Gebeloff, "For Black Facing Parole in New York State, Signs of a Broken System," The New York Times, 4 December 2016. <https://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html>.

As a result, the decisions of the Board of Parole, which impact the lives of thousands of people every year, are still conducted largely in secret. Through stories and anecdotes from people in prison, as well as material drawn from parole records, including interview transcripts and decisions, this report sheds light on the current failures of the parole release system, while outlining the most pressing demands of the parole justice community.

An Understaffed Parole Board AND THE Need FOR New Commissioners

In New York State, the Board of Parole sees an average of 12,000 cases each year. As of May 21, 2018, the Board of Parole had 12 seated Commissioners, despite the fact that the law permits 19. In the last year and a half alone, the Board has lost six Commissioners, some to retirement, others to expirations of their terms, and one to death. Anecdotal accounts have raised concerns that only 11 Commissioners are currently considered “active,” although those accounts have not been verified by the Governor’s Office or the Board.

Twelve Commissioners cannot adequately review 12,000 cases in 12 months. Naturally, with fewer Commissioners, individual caseloads increase and interviews become shorter to compensate. There is less time for deliberations and review of case files, and less capacity for individualized evaluations of parole applicants. Spreading thin an already-overtaxed Board undoubtedly has dire consequences for incarcerated people, their families, and even the Commissioners themselves.

As recently as May 2018, the Parole Board was scheduled to interview more than 70 people at Fishkill Correctional Facility in one week. Parole applicant E.C., who is serving a life sentence and has been in prison for nearly three decades, did not see the Board until 6:30 pm on the day of his scheduled appearance. He recalled that the Commissioners rushed to get through his interview and seemed impatient, ultimately ending the conversation after just a few minutes. The Board informed him several days later that he was denied parole. Such experiences are routine, as are last minute postponements for no discernible, let alone statutorily authorized, reason.

“

One would think that, after twenty-five years, and five previous boards, at least one other Commissioner, besides [the lead Commissioner], would have at least one question to ask. But all either of them had to say was something to the effect of, ‘This has been a very thorough interview. I have listened closely and have no further questions.’ It’s sad.”

**—J.G. / 47 YEARS OLD / 24 YEARS IN PRISON / 6 PAROLE DENIALS
LETTER RECEIVED FEBRUARY 15, 2018**

Two-Person Panels

In August 2017, at the Parole Board's monthly administrative meeting, Chairperson Tina Stanford announced that the Board would no longer conduct two-person parole interview panels, and all rotations would have three Commissioners. Yet, nearly a year later, two-person panels are commonplace.¹⁰

Two-Commissioner interviews are problematic for several reasons. On average, each panel of Commissioners hears approximately 60–80 cases per week. With three Commissioners on a panel, each Commissioner is responsible for 20–25 cases, reviewing those case files in greater detail than their colleagues and leading the questioning during the parole interview itself. When two Commissioners split the work that is traditionally assigned to three, their caseloads double and the time spent reviewing each file and making informed and thoughtful decisions is compromised. Many people in prison report that even with three-person panels, non-lead Commissioners are often

reviewing the files of other applicants during the interviews to make up for time. With two-person panels, the same is undoubtedly true, if not more exaggerated.



It shall be noted that Commissioners do review other files while conducting hearings. While one commissioner has the individual file in front of them, the other Commissioner is reviewing others and not participating or listening or involved."

**—D.B. / 53 YEARS OLD / 34 YEARS IN PRISON / 6 PAROLE DENIALS
LETTER RECEIVED DECEMBER 2017**

Additionally, if two Commissioners cannot reach a consensus regarding the release determination—which is frequent given the lack of consistent decision-making standards and variations in the Commissioners' own expertise and perspectives—the appearance is null and the applicant must be scheduled for a new interview. These subsequent interviews only compound the workload of Parole Commissioners and place an unfair burden on parole applicants.



There was no structure or uniformity: one Board would tell me to do this and that before my next hearing. I'd do twice this, and three times that, but the next board would be completely different, composed of different Commissioners holding completely different opinions."

**—R.P. / 58 YEARS OLD / 37 YEARS IN PRISON / 12 PAROLE DENIALS
LETTER RECEIVED JANUARY 16, 2018**

¹⁰ There are currently no published statistics on the number of two-person panels. However, anecdotal evidence shared by people in prison suggests they are happening frequently in prisons across the state.

In the case of J.V., two-person panels extended his parole process for nearly three months, ultimately resulting in a denial. J.V. has been incarcerated for over 30 years for a homicide he committed in 1983. J.V. was scheduled to appear before the Parole Board in February 2018. During his interview, he had only two Commissioners on his panel—Commissioners Crangle and Drake. They discussed J.V.'s crime, his traumatic past and history of alcoholism. J.V.'s sexuality was also a focus of the interview (he identifies as a gay man). Commissioner Crangle asked J.V. if he felt “that [being gay] was the reason for all of that rage you had?” and unnecessarily and inappropriately questioned J.V. about his “homosexual tendencies,” and their impact on J.V.'s state of mind at the time of crime.

Even after this probing discussion, Crangle voted to deny parole. However, Commissioner Drake voted for release. Since the panel was unable to reach consensus, J.V. was scheduled for a second interview.

In March 2018, J.V. again went before two Commissioners. Commissioner Drake was once again on the panel, along with Commissioner Coppola. After a second interview and another extensive conversation about J.V.'s crime, childhood trauma and experience in prison, Coppola denied release and J.V. received another split decision. His interview was again rescheduled. In April 2018, J.V. finally appeared before a three-person panel composed of Commissioners W. Smith, Cruse and Shapiro. After giving what felt like everything he had at his first two interviews, he felt numb, closed-off and defeated. The interview transcript reflects this shift, and is a dramatic departure from the open and emotional tone of the first two interviews.

A week after his third interview, J.V. received notice that he was denied parole. The decision stated that “We note your demeanor during the interview showed agitation with the parole process...You need to develop further insight for your criminal conduct...” While Commissioners Smith and Cruse voted to deny release, Commissioner Shapiro dissented and voted in favor of parole. J.V. won't appear again before the Board until February 2019. J.V. is 57 years old, has severe arthritis and advanced glaucoma, and has been denied by the Board 12 times.

Postponements

While J.V.'s interviews were postponed due to lack of consensus, other interviews have been postponed for months with little or no explanation.¹¹ In March 2018, more than half of the scheduled appearances at Sing Sing Correctional Facility were postponed due to an incoming snow storm.

The Parole Preparation Project received multiple calls from people at Sing Sing after the storm asking if we had information about the Parole Board schedule. They relayed they had not received notice of their next appearance date, and heard rumors that they wouldn't see the Board until May, nearly two months after their scheduled appearances. Weeks went by without any news. While most applicants did eventually see the Board in early April, many were only notified the night before their interviews. At least one person was forced to wait until May, almost two months after their original appearance date. When seeking information from prison staff, one applicant was told by his Offender Rehabilitation Coordinator (ORC), “You'll get your turn. I'm not sure why you're so excited to go anyway.”

¹¹ Although there are no published statistics on the number of involuntary postponements, anecdotes shared by people in prison suggest that the numbers have increased dramatically as the number of Commissioners has decreased.

Around the same time, applicant D.M.'s interview was also postponed. D.M. has been incarcerated since 1994 and is currently at Taconic Correctional Facility serving a 25-life sentence. She was scheduled to appear before the Board in March 2018. In a letter dated March 18, 2018, she shares her story. At 4:30am on March 6th, a day before the same snowstorm, D.M. was awakened and told to get on line for buses to Bedford Hills, where that month's interviews would be held.¹² She arrived at Bedford at 10:00am, two hours after the interviews were scheduled to begin. Shortly after, D.M. was told the Commissioners were taking a lunch break. Around noon, the Senior Offender Rehabilitation Coordinator (SORC) announced that anyone remaining would not see the Board until next month. D.M. received a notice in the mail two weeks later that stated "Reasons for Denial: Postpone one month due to inclement weather." As D.M. recalls in a recent letter, "Nice sunny day on 3.6.18—a day I've been waiting for 24 years."

L.B., another parole-eligible applicant serving a life sentence, was denied release at his Limited Credit Time Allowance (LCTA) interview in September 2017. He appealed that decision. Then, in early February 2018, his regularly scheduled first appearance was postponed without explanation. In the interim, he was granted a de novo interview on the basis of a successful appeal. At the de novo, a two-person panel could not reach consensus and the interview was again postponed. By early March, L.B. was owed two appearances—his initial appearance and then the second interview following the split decision from the de novo. Although he eventually had another interview, it wasn't until April 16, 2018 that L.B., who was 17 when he was arrested, received a decision that he was going home after 27 years in prison.

Most recently, M.S., a parole applicant serving a life sentence at Otisville, had a similar postponement. In March 2018, M.S. won an administrative appeal from a September 2017 parole denial because the Board failed to adequately explain why they deviated from his low COMPAS score. In late May 2018, the new interview was scheduled and then postponed, and as of the writing of this report, a new date has yet to be set. M.S. has been told he will see the Board again sometime this summer, more than 10 months after the Board's own Commissioners determined that his original interview in September was unlawful.

Failing to provide incarcerated people with definitive dates for their appearances, postponing those dates without promptly following up with revised information, and subjecting them to multiple interviews within a matter of weeks is inhumane. Parole appearances are inherently difficult—people are asked to talk about what is likely the most painful and traumatic day of their lives. Many people also share their experiences of childhood trauma, addiction, abuse, and other deeply personal stories. Narrating these experiences again and again before several panels of different strangers in a genuine and heartfelt way is an impossible task. The Board is setting people up to fail and creating conditions that justify denying release.

Cycles of postponements and split panels also generate resentment, hopelessness, and a distrust in the process. They send a message to incarcerated people that their freedom does not matter and that their liberty is bound up in inscrutable administrative decisions that are shrouded in secrecy.

¹² Note that Bedford Hills and Taconic Correctional Facilities are located on the same street, only a few feet from each other.

Dismissing Commissioners FOR Cause

According to Executive Law §259-b(6), the Governor has the power to remove any member of the Parole Board for cause. We submit that Governor Cuomo should remove Commissioners Smith and Coppola immediately. Not only have they repeatedly violated the law and the regulations they are bound by, but they have engaged in racist, discriminatory, and inhumane conduct that has had long-lasting and even fatal consequences for people in prison and their loved ones. The following sections contain excerpts from parole interviews and other public records that exemplify and shed light on their abhorrent behavior.

DISMISSING Commissioner W. William Smith

“

If new Commissioners are under the tutelage of W. William Smith, then I'm afraid they might become contaminated. Like a fish that only sees the bait, if the six new appointees are teamed-up and trained by poison commissioners, they too will be hooked. I am baffled [by his] reappointment! Six more [years] will give him a total of 27 [years] [as] a Commissioner!

-K.B. / 66 YEARS OLD / 36 YEARS IN PRISON / 10 PAROLE DENIALS

Commissioner W. William Smith is the longest serving Commissioner on the New York State Parole Board. Appointed by Governor George Pataki in 1996, and re-appointed by Governor Andrew Cuomo in 2017, Smith's practices have long reflected a Pataki administration whose self-proclaimed goal was to “[make] sure...that people convicted of violent crimes serve the longest possible sentences.”¹³

While changes to the Parole Board's Commissioners and regulations have resulted in modernized parole practices and decisions that are based more on a person's rehabilitation and current risk to public safety, Smith's re-appointment prevents the Board from moving past its legacy of a “tough on crime” approach.

Smith repeatedly denies parole to people convicted of violent crimes despite their demonstrated rehabilitation and low risk to public safety, and has yet to be held accountable for his illegal, unprofessional, and racially biased conduct. Such conduct was clear to many of the New York State Senators tasked with confirming Smith's reappointment in late June 2017. Senators on the Crime Victims, Crime and Correction Committee (CVCC) expressed public outrage in opposition to Smith's

¹³ Nazgol Ghandnoosh, “Delaying a Second Chance: The Declining Prospects for Parole on Life Sentences,” The Sentencing Project. 31 January 2017, <https://www.sentencingproject.org/publications/delaying-second-chance-declining-prospects-parole-life-sentences/>

reappointment and a total of 21 Senators voted against his nomination on the Senate floor, citing, among other things, his illegal participation in the parole denial of John MacKenzie.¹⁴

Smith also contributes tens of thousands of dollars in the political campaigns of Senator and Chair of the Senate CVCC Patrick Gullivan, and Senator Michael Ranzenhofer.¹⁵ Each Senator supported Smith in the contentious reappointment process. Smith's deep political ties suggest that his service is based not on merit and performance, but rather on mere nepotism and political favors.

The following accounts are taken directly from parole interview transcripts, recent correspondence with currently incarcerated people who appeared in front of Commissioner Smith, and other publicly available sources. All of the information makes plain that Governor Cuomo should immediately dismiss Commissioner Smith from the Parole Board before his term expires in June 2023.

Commissioner Smith: Unprofessional, Condescending, and Humiliating Conduct



I recall William Smith as [my] lead interviewer. He began the interview with the impression through tone of voice and facial expressions, that regardless to my eligibility, the interview was a waste of time."

**-T.D. / 41 YEARS OLD / 18 YEARS IN PRISON / 4 PAROLE DENIALS
LETTER RECEIVED APRIL 2018**

The following anecdote, taken from a November 2010 parole interview, is common for Mr. Smith:

SMITH: The person that cut you [in prison] was a snitch?

PAROLE APPLICANT: Yes.

SMITH: And was he a snitch?

PAROLE APPLICANT: Sir, with all due respect, that was in the past.

SMITH: Due respect to who? My question is, was he a snitch?

PAROLE APPLICANT: That's something that happened in the past...I made a bad decision in regards to people being snitches and not being snitches...

SMITH: Quit dancing around. I'm asking you a question, and you do a lot of dancing around when you try to answer a question that's direct, you did that before and you're doing it now. You're the one that said you had gone around telling other inmates that this person was a snitch.

¹⁴ New York State Senate Session, June 19, 2017, <https://www.nysenate.gov/calendar/sessions/june-19-2017/session-6-19-17>.

¹⁵ New York State Board of Elections Campaign Finance Disclosure Database, www.elections.ny.gov.

PAROLE APPLICANT: Right.

SMITH: And I'm asking you a simple question, was he a snitch?

PAROLE APPLICANT: I'm not going to say he was a snitch because that's something that – I regret, that's a moment that I'm trying to erase from my life.

This applicant was first incarcerated for a violent crime at 16 years old, after a childhood of serious physical and emotional abuse by his father. Furthermore, the tragic incident that Smith and the applicant are referring to—an in-prison homicide in which the applicant killed another incarcerated person in self-defense—happened nearly a decade and a half before this parole hearing, when the applicant was in his early twenties.

Berating applicants into verbal submission is not only unprofessional and condescending, but an ineffective practice. It undermines the Board's ability to assess an individual's readiness for release and current risk to public safety. The dialogue ends:

SMITH: Was he indeed a snitch?

PAROLE APPLICANT: Sir, with all due respect, me calling somebody a snitch in the past has ended up causing somebody's death.

SMITH: Okay. You had a long pause, you're stumbling over your answer...I've heard all I need to hear.

Another parole hearing transcript from August 2015 documents more of Smith's humiliating conduct:

SMITH: How did you choose the place you had burglarized in the instant offense?

PAROLE APPLICANT: It was random.

SMITH: It's not a home of a drug dealer that you told us about before?

PAROLE APPLICANT: It was.

SMITH: Come on. When you shrug your shoulder the verbal message I got was, 'oh, I just got caught telling a different story.' Now you tell me what actually I should take from your mannerism?

PAROLE APPLICANT: When we went there it used to be a drug dealer's.

SMITH: So stop right there. Why did you just tell me it was random? Why did you tell me that?

PAROLE APPLICANT: Because every time I try telling the truth of what really happened, it's like nobody wants to understand it.

SMITH: Do you know who Pinocchio is?

PAROLE APPLICANT: Yes.

SMITH: Well, it doesn't help to have differing accounts.

Instead of trying to better understand the exchange, Smith insults him and compares him to a cartoon character. Smith is similarly aggressive in another interview from May 2016 over video conference:

PAROLE APPLICANT: I don't mean to be belligerent or argumentative with you, but I can't change the pain and grief and suffering that family's caused, I can't change what I did 40 years ago.

SMITH: First of all, I haven't made my decision. Number one, first of all, it's a combined decision. I am asking questions, which is fine; if you don't want to answer, that's fine. This is what's called a New York State Board of Parole Commissioners Worksheet (Indicating). It says "Conditions of Release, Reasons for Denial."...Tell me what's written on that sheet, sir.

PAROLE APPLICANT: I understand.

SMITH: Tell me, I am wondering. Since you've said I've made a decision, I would like to know what's on the bottom of the sheet. Can you see what's written below those notes that I have? What's written there, sir? Sir?

PAROLE APPLICANT: I can't see, sir.

SMITH: We will have staff hand it to you and you can tell me what I have written in my decision. Is there anything written below there?

PAROLE APPLICANT: No, sir.

SMITH: No.

Commissioner Smith: Emphasis on the Nature of the Original Offense

Smith frequently and unilaterally denies parole to individuals who have exceptional disciplinary records and extensive accomplishments in prison. One person convicted of murder at age 20, was recently denied by Commissioner Smith, despite receiving two college degrees, including a master's degree, and maintaining a near-perfect prison record. He had only one disciplinary ticket in 30 years when he appeared in front of Commissioner Smith. Commissioner Smith's written decision states:

[The applicant's] incredible prison record of good conduct, program achievements and other accomplishments....[and] many letters of support from family, staff support grounds and the community [are noted].

However, the exclusive reason given for the person's denial was his crime of conviction and read, "[t]he magnitude of th[e] violent act....makes release at this time unwarranted." Not only does such a decision clearly state that personal transformation is irrelevant to Smith, but its foundation is unlawful.

In a similar instance, D.P., a 15 year-old juvenile offender, was denied parole nine times and has spent nearly 40 years in prison. D.P. had no previous criminal charges or convictions and only acquired one disciplinary ticket in all his years inside. At the time of his July 2008 interview with Smith, he was only a few credits away from completing a Bachelor's degree, had been happily married for two decades, and kept strong ties with his parents and children. Smith based the decision entirely on "the violent and deviant nature of [the] instant offenses" and merely copied the statutory language: "release would so deprecate the seriousness of [the] offense, as to undermine respect for the law." Again, this practice places no value on rehabilitation and is unlawful.

Neither his new colleagues nor the Board's recently revised regulations have forced Smith to shift his focus from the nature of the crime to a person's rehabilitative efforts and current risk to public safety. Just months after Smith's 2017 re-appointment, in August 2017, he interviewed a 50 year-old applicant who had been in prison more than 20 years on a second degree murder conviction. The applicant's record and conduct in prison presented clear evidence of her rehabilitation, which included earning a Bachelor's Degree and working with new mothers and children in the prison's parenting program. She maintained an exemplary disciplinary record and had a low COMPAS score.

Smith, once again, quoted from the statute and concluded that "release would so deprecate the seriousness of [the] offense as to undermine respect for the law." While simply considering the "required statutory factors, including risk to the community, rehabilitation efforts, and needs for successful community reintegration," Smith exclusively listed the nature of the crime and the person's "[failure] to go immediately to the authorities for help" as his reason for denial. To Smith, it was irrelevant that she turned herself in the day after participating in the crime.

As the Governor and legislature continue to onboard new Commissioners and fill the Board to capacity, the Board's culture and practice will never truly evolve to advance safety and justice if Commissioner Smith remains. His continued emphasis on the nature of the crime in the face of clear and demonstrated rehabilitation and low risk to public safety keeps a punitive era of parole alive and as devastating as ever.

Commissioner Smith: Outbursts on the Record

In addition to the concrete evidence documented in transcripts and parole decisions, there is also less tangible material, such as body language, tone, and attitude that show Commissioner Smith's disdain for people in prison and his unwillingness to consider anything other than the nature of a person's crime.

People in prison who have appeared before Commissioner Smith reported as recently as April 2018 that he has had outbursts during their parole interviews. We have heard stories of him slamming his hands down on the table, shuffling through a parole packet “like a deck of cards,” shrugging sarcastically, groaning when applicants are speaking, making hand gestures that imply “hurry up,” making cryptic eye contact with other Commissioners, leaning back in his chair with his hands behind his head as if relaxing, belching loudly, and other dismissive and provocative conduct. Others have reported that Commissioner Smith has abruptly turned off the video conferencing system in the middle of an interview without warning, only to come back and act as though nothing had happened. Three people have claimed that parts of their interview, especially moments where Commissioner Smith was inappropriate or unprofessional, were mysteriously absent from the final transcript.

While such behavior is difficult to capture in the written record, anecdotal evidence suggests that Commissioner Smith’s unseemly and unacceptable conduct is widespread.

Commissioner Smith: Political Ties



With his political clout I believe any demands made to remove [W. William Smith], prior to the completion of his term, will fall on deaf ears. That doesn’t negate the fact that we need to continue fighting until he is dismissed.”

**—K.B. / 66 YEARS OLD / 36 YEARS IN PRISON / 10 PAROLE DENIALS
LETTER RECEIVED JULY 2017**

Smith is the only remaining Pataki-era appointee on the Parole Board and his continued employment can be explained by his deep political ties and repeated campaign contributions to powerful legislators. According to public records, since 2000, Smith donated more than \$20,000 to local, state, and national political campaigns.

To this day, Smith gives generously to the very State Senators with the authority to re-appoint him. Since 2010, Smith has donated \$16,997 to Senator Patrick Gallivan’s election campaigns.¹⁶ Senator Gallivan was Smith’s former colleague on the Parole Board and, as the current Chair of the Crime Victims, Crime, and Correction Committee in the Senate, has the most power outside of the Governor in the appointment and reappointment process of parole Commissioners. Between 2017 and 2018 alone, Smith has donated \$1,500 to Senator Gallivan.¹⁷

While Commissioner Smith’s financial contributions secure him a seat on the Board, Senator Gallivan also has clear expectations of Board appointees. In recent years, Senator Gallivan has publicly and adamantly opposed the parole release of Judith Clark, Herman Bell, and others who were involved in crimes in which police officers were killed. He is explicit in his demands: anyone involved in a police-related homicide should die in prison, regardless of their accomplishments and

¹⁶ New York State Board of Elections Campaign Finance Disclosure Database, www.elections.ny.gov.

¹⁷ New York State Board of Elections Campaign Finance Disclosure Database.

personal transformation. Of the Board's recent decision to release 70-year-old Herman Bell who spent 45 years in prisons for killing a police officer in 1971, Senator Gallivan said, "Such decisions are indefensible and an affront to law-abiding citizens."¹⁸ A blanket and de facto policy of denying release based solely on the nature of a person's crime is not only counter to the purpose of parole, but is wholly unlawful.

In March 2017, Senator Gallivan also held a series of press conferences urging Parole Board members to deny Judith Clark parole.¹⁹ He went so far as to advertise the opposition campaign on his official Senate homepage, linking to a petition and a site where users could submit form letters to the Board.²⁰

Accepting campaign contributions in exchange for political appointments, and then attempting to influence the decisions of those appointees who serve on an independent administrative agency is the definition of corruption.

Additionally, Commissioner Smith donated \$2,295 to Senator Michael Ranzenhofer, who adamantly defended Smith on the Senate floor in June 2017 when he faced public opposition during the vote and debate over his reappointment.²¹ In the less than one year since Smith's last re-appointment, he has already contributed \$750 to Ranzenhofer.²²

Smith's continued campaign contributions to the very people who re-appoint him and defend his history of atrocious conduct undermine the legitimacy of parole. The Governor and legislature should value the lives of incarcerated New Yorkers and their families more than they do Smith's financial contributions.

Commissioner Smith: Racial and Geographic Bias

Whereas most of the Parole Board's newest Commissioners better reflect the racial and geographic makeup of people in prison and the communities they come from, Commissioner Smith embodies an old era of a Board dominated by white men from rural and suburban New York. In some instances, the racism and white supremacist values held by Commissioners is plainly evident in parole transcripts or decisions. However, racism often takes insidious forms, whether through subtle cues, body language, tone, or implicit micro-aggressions. People in prison have accused Commissioner Smith for decades of bigoted and supremacist behavior, which while obscured by the written record, is evident when reviewing the Parole Board's release rates by race.

18 Patrick Gallivan, Senate Passes Bills to Fix NY's Broken Parole System, 4 May 2018, www.nysenate.gov/newsroom/press-releases/patrick-m-gallivan/senate-passes-bills-fix-nys-broken-parole-system.

19 Patrick Gallivan, Senator Gallivan Presents Petition Calling on NYS Board of Parole to Deny Release of Judith Clark, 29 March 2018, <https://www.nysenate.gov/newsroom/press-releases/patrick-m-gallivan/senator-gallivan-presents-petition-calling-nys-board>

20 In June 2018, the first link on Senator Gallivan's homepage reads "No Parole for Anthony Bottom." Anthony Bottom, known as Jalil Muntaqim, has served over 45 years on a 25 to life sentence for killing a police officer in 1971. He was 19 years old at the time of the crime. <https://www.nysenate.gov/senators/patrick-m-gallivan>

21 New York State Board of Elections Campaign Finance Disclosure Database.

22 New York State Board of Elections Campaign Finance Disclosure Database.

In December 2016, the New York Times found that Commissioner Smith and his former colleagues on the Board released white people at a rate of 25 percent and Black people at a rate of only 15 percent.²³ Although Governor Cuomo ordered an investigation of racial bias in the New York State prison system, no public records have disclosed the results of that investigation or even indicate that it ever took place. Additionally, a recent analysis of the Parole Board's release rates by the authors of this report indicate that the Board's racism persists. While the Board's overall release rates have increased, so too has their racial bias.

An analysis that compares release rates in September through January of 2017 to the same period in 2018 after the newly appointed Commissioners were active and the new regulations were enacted, shows significant increases to the Board's overall release rates. It also demonstrates an increase in racial disparity. Whereas the Board released 27% of all white parole applicants and 22% of all Black applicants in the aforementioned 2016-2017 time period, they released 43% of white applicants and 35% of Black applicants during the 2017-2018 period.²⁴ While release rates by Commissioner are not available, Smith's continued presence on the Board can be assumed to contribute to the persistence of racial bias in release rates.

In one case highlighted by the Times, Smith interviewed Matthew Conley, a 27-year-old white college graduate from Eagle Bay, in the Adirondacks. As the Times reported, "Smith spent time reminiscing with Mr. Conley about summers spent white-water rafting in the Adirondacks."

Mr. Conley was released. In the hundreds of transcripts included in our own qualitative review, the large majority of which came from parole applicants of color from New York City, Smith at no point reminisced about any summertime pleasures or otherwise empathized with the experiences of applicants of color.

Commissioner Smith: Illegal Conduct and a Needless Death Behind Bars



The only reason ever given to my father [for denial] was the nature of his crime. So [Commissioner Smith] doesn't believe in rehabilitation. Or [he didn't] believe in it in [my father's] case."

— DANIELLE FERRANTE, DAUGHTER OF JOHN MACKENZIE

Smith's unjust conduct is exemplified in his repeated parole denials of John MacKenzie. At age 29, Mr. MacKenzie was convicted of murdering a police officer. After entering the state prison system in 1976 with a sentence of 25-years to life, he engaged in a truly exceptional process of self-transformation. By the time he appeared in front of Smith in 2006 for his fourth parole appearance,

²³ Michael Winerip, et al., "For Black Facing Parole in New York State, Signs of a Broken System."

²⁴ Michael Winerip, et al., "For Black Facing Parole in New York State, Signs of a Broken System."

Mr. MacKenzie was 60 years old, and had already spent 30 years in prison. He had earned three college degrees, and participated in, created, and facilitated a myriad of in-prison programs.²⁵ When interviewing Mr. MacKenzie in 2006, Smith noted this impressive prison record:

SMITH: Now you maintain a good disciplinary record. You haven't had any misbehavior reports in over 26 years. You should be commended for that. That takes some effort. We'll consider that as well.

As he often does, Smith assured Mr. MacKenzie during the interview that the Board "look[s] at all factors, not just including the instant offense." He later added, as the hearing was ending, "[There are] lots of factors. We'll give you a fair shake." The "fair shake" was as follows:

"This panel concluded that your release to supervision at this time would deprecate the serious nature of your instant offense and undermine respect for the law...[O]f significant concern is the extreme violence you display during your instance offense...Your pattern of theft related crime over a number of years has not deterred you despite a prior youthful offender adjudication and additional misdemeanor convictions...This panel concludes your release would represent a serious risk to public safety and therefore is inappropriate at this time...While your positive education and therapeutic programs as well as positive behavior are noted, your brutal and senseless shooting of a police officer indicates little regard for the value of life."

Tragically for Mr. MacKenzie and his loved ones, he and Smith would meet again almost a decade later. In 2014, after nearly 40 years in prison, 35 years without a disciplinary infraction and even more programmatic accomplishments, Smith again denied Mr. MacKenzie release. This time, the denial came after a long battle in court.

In 2014, Mr. MacKenzie was denied parole at a regular re-appearance. In December 2015, the New York State Supreme Court granted him a new or "de novo" appearance, after finding that the original 2014 decision was unlawful. Commissioner Smith was the lead Commissioner in the de novo appearance, and unsurprisingly denied Mr. MacKenzie release again.

In May 2016, Honorable Judge Maria Rosa noted that Smith's 2015 denial was "virtually the same as the 2014 decision," and contained "the same infirmities...which th[e] court determined was not in conformance with the Executive Law..."²⁶ In the decision, Commissioner Smith and his two colleagues justified the denial by exclusively citing the nature of the original offense, and wrote that Mr. MacKenzie's release "would so deprecate the serious nature of the offense as to undermine respect for the law."

In her decision, not only did Judge Rosa vacate Mr. MacKenzie's 2014 and 2015 denials, but she also

²⁵ Jesse Wegman, "False Hope and a Needless Death Behind Bars," The New York Times, 6 September 2016, <https://www.nytimes.com/2016/09/06/opinion/false-hope-and-a-needless-death-behind-bars.html>.

²⁶ Jesse Wegman, "False Hope and a Needless Death Behind Bars," The New York Times, 6 September 2016, <https://www.nytimes.com/2016/09/06/opinion/false-hope-and-a-needless-death-behind-bars.html>.

held the Board in contempt of court for holding another unlawful interview. As part of the contempt order Judge Rosa mandated that “none of the members of either the 2014 or 2015 parole boards that denied parole [to Mr. MacKenzie] shall participate in the de novo hearing.”

On July 26, 2016, Commissioner Smith, ignoring the Judge’s instructions, was again one of three Commissioners who interviewed Mr. MacKenzie at what would be his last Board.

In the interview, Mr. MacKenzie acknowledged that Smith was ordered to not participate in the de novo hearing:

MR. MACKENZIE: ...[The court] said that I was supposed to get a de novo hearing in front of different panel members. I found out that you were here and I said maybe I changed his mind. Maybe he read something in my favor and it changed his mind. I didn’t say anything when I came in here because I was hoping that’s what happened.

SMITH: ...In 20 years, I just kind of go wherever they send me and have never had anywhere that I’ve gone that I’ve asked to go to...We’re going to give you a fair shot at it. Thank you.

In a 2-1 decision, Smith again denied release and wrote:

...This panel remains concerned about your violent conduct in the instant offense... reflecting a callous indifference to human life...You have demonstrated a willingness to place your own self-interest above those of society...

Ten days after the decision was rendered, Mr. MacKenzie, then 70 years old, was found dead after hanging himself in his cell. He is survived by his two daughters and grandchildren. In the days following Mr. MacKenzie’s death, one of his daughters publicly stated, “While [my dad] took responsibility for his actions, the parole board has completely ignored theirs.” Just weeks after his death, former Parole Commissioner Christina Hernandez, who dissented in the Mr. MacKenzie decision and voted in favor of release, resigned from the Parole Board.

More than a year and a half after illegally sitting on the panel that denied John parole, Smith has not faced any consequences and was instead rewarded with re-appointment to the Parole Board. Mr. MacKenzie’s family’s tax dollars should not pay the salary of the person whose illegal and unjust conduct led to their loved one’s death.

Smith’s utter disregard for the State Supreme Court’s contempt order remains in and of itself grounds for his immediate removal from the Board. While some of the Parole Board’s more recent changes inspire new hopefulness for people in New York State prisons, Mr. MacKenzie’s case and Smith’s continued presence on the Board serve as a painful reminder that Commissioners can and do act with relative impunity and are unencumbered in their ability to make life and death decisions.

Commissioner Smith: Political Opposition to Smith's Re-Appointment



If we look at Mr. Smith's record on the Parole Board, serving longer than any other commissioner, I think it is clear that, sadly and unfortunately, he does not believe in rehabilitation."

**-NEW YORK STATE SENATOR, GUSTAVO RIVERA, NYS SENATE FLOOR,
JUNE 19, 2017**

Commissioner Smith's conduct on the Parole Board was recently brought into public light during the June 2017 reappointment process. Whereas Smith's June 2013 reappointment received unanimous support from all 63 New York State Senators, his June 2017 reappointment faced great opposition.²⁷ Nearly every Democrat in the Senate Committees on Crime Victims, Crime, and Correction and Finance voted against his reappointment last year. When the reappointment nomination was before the entire Senate, 21 Senators voted against Smith.

Many Senators responded publicly to Smith's unjust record of repeatedly denying parole to people like John MacKenzie. While voting against Smith's reappointment, Senator Gustavo Rivera invoked Mr. MacKenzie's name and said, "If we look at Mr. Smith's record on the Parole Board, serving longer than any other Commissioner, I think it is clear that, sadly and unfortunately, he does not believe in rehabilitation. His conduct [is] unprofessional and humiliating to individuals who have acknowledged their crime."²⁸

Senator Rivera is correct; Smith does not believe in rehabilitation. He does not believe that all people have in them a capacity to change nor does he believe that all people, regardless of their crimes, should one day have a meaningful opportunity to return to their families and communities.

²⁷ New York State Senate Crime Victims Crime and Correction Meeting, 19 June 2013, <https://www.nysenate.gov/calendar/meetings/crime-victims-crime-and-correction/june-19-2013/crime-victims-crime-and-correction>.

²⁸ New York State Senate Crime Victims Crime and Correction Meeting, 19 June 2013.

DISMISSING Commissioner Marc Coppola



Commissioner Marc A. Coppola is ill fit to perform job duties and he is a waste to the system."

**-D.B. / 53 YEARS OLD / 35 YEARS IN PRISON / 5 PAROLE DENIALS
LETTER RECEIVED APRIL 2018**

Commissioner Marc Coppola was appointed on June 20, 2012 by Governor Andrew Cuomo and is serving his second term as a Parole Board Commissioner. He should be dismissed immediately because his behavior during parole interviews is inappropriate, unprofessional, and indicates a level of unpreparedness that cannot be explained by a lack of sufficient staffing.

Like some of his other colleagues, Coppola frequently denies people parole based on the nature of a person's crime despite their rehabilitation and current low level of risk to public safety. Coppola also renders decisions with little to no regard for peoples' old age today or youth at the time of conviction, despite statutory, regulatory, and Constitutional requirements that he do so.

Coppola's ties to politics and the elected officials tasked with confirming his appointment indicate that political favors, not fair performance, elevated him to the level of a multi-term Commissioner. Not only should Coppola's record of wrongdoing make this term his last, but it should be used as justification for Governor Cuomo to immediately dismiss him.

Commissioner Coppola: Unprofessional, Condescending, and Humiliating Conduct

Coppola's unprofessional conduct ranges from insensitive to inhumane. In January 2016, Coppola spoke with a parole applicant with serious health difficulties:

COPPOLA: Now, did anyone ever offer you the Shock program?

PAROLE APPLICANT: Yeah, they denied me because I got a lot of medical problems.

COPPOLA: That's right. Wait a minute. I read in there, did you have one of your fingers amputated?

PAROLE APPLICANT: Yeah, my thumb.

COPPOLA: All right. I saw that because the Judge recommended or said that you could do Shock which would have gotten you home sooner. But you can't be doing drugs, you

[serious medical condition redacted].

PAROLE APPLICANT: I know.

COPPOLA: You're already a physical mess here, sir. What do you want, to kill yourself?

Coppola shows no semblance of empathy or sensitivity to the applicant's health, calls him a "mess," and asks whether he wants to kill himself. The interview continues when the applicant responds to Coppola's question:

PAROLE APPLICANT: No. I just -- I went through a hard life and it's time for me to change.

COPPOLA: Okay.

Parole Applicant: I've lost my mom. I lost my Pastor. I lost a lot of family and I need change.

COPPOLA: So who do you have out there?

Parole Applicant: I got my daughter and my stepfather and my sister and my brother and my dad.

COPPOLA: Well, your daughter can't take care of you, we need somebody --

PAROLE APPLICANT: No, I know that.

COPPOLA: We need somebody that's willing to help you but they're probably getting a little, you know, fed up with you.

Coppola belittles the person's attempt at identifying other supportive family members and assumes the person's challenges have left them unwilling to support him. In an exchange with another parole applicant in January 2017, Coppola again showed a lack of empathy:

COPPOLA: Look it, we have records, so we are not idiots on this side.

PAROLE APPLICANT: I don't think that... [The] only thing I can do now to make it up to [the victims] is to do as good as I can and be a positive influence. And there's so many guys I've lost. A friend of mine, John McKenzie, I lost him because he killed himself because he kept on getting [denied parole]. And a young kid named Brian, he's 27, the kid died a week ago of an OD. I try the best I can every day to make up for it. I can't take it back. I got a son who was five years old. My wife is very sick. If you can consider giving me a shot, I will never let anyone down again, especially [the victims]. If I saw them I would tell them, I really would. I am so embarrassed for what I did.

COPPOLA: All right. Pull yourself together. You don't want to go back out there like that.

The applicant is pleading for his freedom, sharing stories of dead or dying friends, and Coppola effectively responds by saying “suck it up.” He asks no further questions and then renders a denial based exclusively on the nature of the applicant’s crime and “official community opposition,” both of which the New York State judiciary have held as unlawful justifications.

In a different exchange with a parole applicant in a December 2016, Coppola’s lays on more insults:

COPPOLA: Can you accept if you wound up spending the rest of your life in prison or do you think that would be unfair?

PAROLE APPLICANT: To me, it’s not a level of punishment to me. If I could die in prison, if I could give my life that [the victim] could have back her life, if I could do twenty times the amount of that I’ve been in. What annoys me so much is again the finality of what I did. My daughter can never have her mother again. That [the victim’s] brother and sister and loved ones can’t have her presence any longer.

COPPOLA: I know. That’s what I’m saying. Do you understand that gravity?

That Coppola asks a 63 year-old parole applicant who has already served 27 years in prison if he understands the “gravity” of his crime, circumstances, life sentence, and the prospect of dying in prison, shows his deep lack of understanding for the experiences and lives of incarcerated people. Throughout the entirety of the interview, the applicant expressed deep remorse, responsibility, guilt, shame, and insight for killing his wife. He had no prior criminal convictions, scored low-risk on the COMPAS risk assessment instrument, and did everything in his power to rehabilitate himself and benefit others, including by being President of his facility’s Inmate Liaison Committee.

Commissioner Coppola: Unprepared & Confused

Independent of the Parole Board’s issues with understaffing, Commissioner Coppola has a difficult time diligently performing his duties. In a December 2016 Parole Board business meeting, Coppola confessed to Board Chairperson Tina Stanford that during one particular day of interviews he and his colleagues “were a mess.”²⁹ He continued, “We didn’t even know who was in the chair. [We were] basically flying blind the whole day.” This level of confusion and unpreparedness is unacceptable in any profession, let alone one that is tasked with determining peoples’ freedom.

Coppola’s frequent confusion is reflected in several parole interviews, including the following from January 2016:

COPPOLA: We have your sentencing minutes before the Honorable Brend – or the Honorable Richard Northup was the sentencing Judge, right?

PAROLE APPLICANT: He’s the DA.

²⁹ “NYS Board of Parole Meeting December 2016,” YouTube, uploaded by NYS Public Safety, 30 December 2016, https://www.youtube.com/watch?v=VpGTss1Y_rk.

COPPOLA: No, the sentencing - the Judge who sentenced you?

PAROLE APPLICANT: Judge Becker.

COPPOLA: Hang on.

PAROLE APPLICANT: He retired.

COPPOLA: I may have said the wrong one. You're right. Okay. I've never seen sentencing minutes like this. It was way up top here. Yes, Judge Becker, you're right.

In a similar exchange with a different applicant in March 2018, Coppola is again confused about the sentencing judge:

COPPOLA: You were sentenced by the Honorable Sol Greenberg; is that right?

PAROLE APPLICANT: No, it was Judge John Clyne.

COPPOLA: I'm sorry, I'm wrong. Sol Greenberg was the DA.

PAROLE APPLICANT: Yes, sir.

COPPOLA: I read it wrong. You were sentenced by Judge Clyne, C-L-Y-N-E; right?

PAROLE APPLICANT: Yes, sir.

In a third instance from April 2015, Coppola doesn't even know which Commissioners he is conducting the hearing with:

COPPOLA: We've discussed a lot. We have your packet. You have a lot of certificates. You've been programming well and that's to your credit. I read your personal statement as well. Let me ask Commissioners Ludlow and Smith if they have any questions.

COMMISSIONER LUDLOW: Commissioner Smith is not in.

COPPOLA: I'm sorry. Commissioner Ludlow.

It is unacceptable that Coppola cannot accurately discuss the details of a person's case. Repeatedly fumbling facts and failing to properly identify the other Commissioners in the room fosters in applicants anxiety, distrust, hopelessness, and feelings that the outcomes of interviews are pre-determined.

In other interviews when he is not the lead Commissioner, Coppola still fails to pay full attention. In June 2014, one particular applicant tells the panel about his relationship with his wife, that she lives in Buffalo, and that she would move to where the applicant hopes to be paroled. The applicant also discusses how he and his wife met. Coppola eventually chimes:

COPPOLA: Sir, why is your wife in Buffalo, now?

PAROLE APPLICANT: She lives in Buffalo. She is looking for a job in Middletown. She's not moving until she gets a job.

COPPOLA: Is she from Buffalo?

PAROLE APPLICANT: Yes, she was born and raised in Buffalo.

COPPOLA: I must have missed this. How did you meet her? She was your Counselor?

PAROLE APPLICANT: No. She was a secretary in [a state government agency].

COPPOLA: Where does she live now?

PAROLE APPLICANT: In Buffalo.

Applicants are entitled to mere minutes for their interviews. Setting aside the injustice of such unreasonable time constraints for interviews, Commissioners should take pains to concentrate and be fully present. Commissioners also should not spend precious time with questions that have already been answered or information that has already surfaced.

Commissioner Coppola: Emphasis On The Nature Of The Original Offense

Despite changes in the law and the Parole Board's regulations, Commissioner Coppola, like Commissioner Smith, continues to rely heavily on the nature of a person's crime as his primary reason for denying release. After the Board's new regulations were first proposed in August 2016, Coppola spoke openly about his concerns that changes in the regulations would force him to abandon this practice. During the Parole Board's August 2016 monthly business meeting, Coppola raised his concerns and resistance:

COPPOLA: [The proposed regulations say that] the Board shall be guided by risk and needs principles? The word shall is like, as strong as it gets. (Emphasis added.)

CHAIRPERSON TINA STANFORD: That's how the law reads.

COPPOLA: The word 'shall' was in the law before? (Emphasis added.)

CHAIRPERSON TINA STANFORD: Yes.³⁰

³⁰ "NYS Parole Board Meeting August 2016," YouTube, uploaded by NYS Public Safety, 22 August 2016, <https://www.youtube.com/watch?v=EyZ4g9cBDH0>

Coppola not only does not know the Executive laws he is bound by, but is resistant to having risk and needs principles guide his decisions. A review of several transcripts from both before and after the implementation of the Board's new regulations demonstrate Coppola's unwillingness to consider anything other than the nature of the crime.

In June 2014, Coppola interviewed a 51 year-old applicant who had been incarcerated for more than 30 years for a murder and sodomy that occurred when he was 15 years old. Despite his demonstrated low risk to public safety, clear evidence of rehabilitation that included Bachelor's and Associate's degrees, and strong ties to the outside world, Commissioner Coppola and his colleagues exclusively denied parole based on the nature of the crime. They gave no other reason for denial other than the following:

"Despite your positive efforts while incarcerated, your release would greatly undermine respect for the law, and would so deprecate the serious nature of your crimes, and would trivialize the tragic loss of your young victim's life, which you caused as a result of your heinous, unprovoked, and violent crime."

While Coppola denies parole to many low risk people who have engaged in meaningful transformation and were juveniles at the time of their crimes, so too does he deny release to ill and elderly parole applicants. Coppola led a medical parole interview in May 2014 in which he and his colleagues interviewed an 83 year-old man with serious medical difficulties and clear signs of dementia.

COPPOLA: ...You appeared before the Honorable Thomas Leono; do you recall that, sir?

PAROLE APPLICANT: No, I don't really.

COPPOLA: ...[The law requires us to review] your risk assessment, which you helped fill out with the counselor. That was where she asked you a lot of questions and she filled in the circles for your answers; do you recall that?

PAROLE APPLICANT: Not really.

COPPOLA: A little bit more than a month ago but we have that on file and we will consider that as well, okay?

PAROLE APPLICANT: Uh-huh.

In total, this applicant responded more than 20 times with answers that indicated memory loss and confusion. Despite his old age, serious medical conditions, and demonstrated low risk to public safety, Coppola denied him medical parole.

A March 2018 interview confirms that Coppola's decision-making process remains the same. After receiving a one-month postponement due to a lack of Commissioner consensus on a two-person parole panel, a 57 year-old parole applicant who had been incarcerated for 34 years after being convicted of second degree murder appeared in front of Coppola and Commissioner Tycee

Drake. Commissioner Drake had previously voted to release the individual. Over the course of the interview Coppola acknowledged the applicant’s rehabilitation and low risk. He stated, “I know from reading your record and your program accomplishments that you’re program satisfied. You have done everything. Your disciplinary record has been clear for quite some time.” Later in the interview Coppola continues: “Your risk assessment I’m sure you’re very familiar with, right?...You are low [risk] and unlikely [to reoffend] across the board.”

Despite acknowledging the person’s minimal risk to public safety, accomplishments, and transformation, Coppola voted to deny release while Commissioner Drake again voted in favor. Due to their split decision, the parole applicant received another postponement and appeared for his third interview in three months in April 2018, when he was ultimately denied. The applicant’s next appearance will be his 14th hearing. He has served an additional 20 years in prison beyond his minimum sentence of 15 years.

Commissioner Coppola: Political Ties

Coppola’s career in local and state politics have served as stepping stones to his tenure on the Parole Board. Beginning as a Councilmember in the City of Buffalo, Coppola was eventually elected as the New York State Senator for District 60, where he served for less than a year. He unsuccessfully ran for the 60th and 61st Senate Districts in 2006 and 2010 respectively. Since his last attempt at seeking public office, and while serving as an administrative assistant to the Parole Board, Coppola has generously donated to New York State elected officials.

Like other members of the Parole Board, Coppola has close personal and professional connections to Republican State Senator Patrick Gallivan. Since 2014, despite being a lifelong Democrat and elected official, Coppola has given \$1,049 to the re-election campaigns of Senator Gallivan who chairs the Crime Victims, Crime and Correction, which is tasked with confirming the Governor’s Parole Board appointments and reappointments.³¹ The donations to Senator Gallivan represent Coppola’s only contributions to a Republican candidate.

Coppola also worked directly with Senator Gallivan in the Erie County Sheriff’s Department. After Senator Gallivan was elected Sheriff of Erie County, Coppola worked as his Deputy Sheriff. At Coppola’s initial confirmation hearing before the Senate Crime Committee in 2012, members of the Committee joked about Senator Gallivan and Coppola’s close working relationship. Former State

Senator Michael Nozzolio asked Coppola, “Was [Gallivan] a good boss?” Coppola replied, “Yes, he was.”³²

Coppola’s relationship with Senator Gallivan is improper, suggests insidious corruption and cronyism, and justifies his immediate dismissal. The great responsibility Commissioners carry—determining the freedom of thousands of New Yorkers—should be taken on by the most qualified

31 New York State Board of Elections Campaign Finance Disclosure Database, www.elections.ny.gov.

32 New York State Senate Crime Victims, Crime and Correction Meeting, 20 June 2012, <https://www.nysenate.gov/calendar/meetings/crime-victims-crime-and-correction/june-20-2012/crime-victims-crime-and-correction>.

and professional New Yorkers, not those with the deepest pockets and political connections.

Commissioner Coppola is neither qualified nor conscientious enough to serve as a Parole Board Commissioner. While the damage inflicted on countless people in prison, their families, and communities can never be undone, further harm can and should be prevented by his immediate removal from the Board.

Summary of Needed Changes



At this point I am 60 years old, and I believe that parole will never let me free. I have no desire to commit any crime at all. I just want freedom. There is nothing left for me to do at all. Please help."

**- R.M. / 60 YEARS OLD / 27 YEARS IN PRISON / 2 PAROLE DENIALS
LETTER RECEIVED JANUARY 1, 2018**

As the number of available parole Commissioners has decreased, countless parole-eligible people have been subjected to unlimited postponements, nullified interviews, and an opaque and painful process.

These practices must end. The Board cannot continue to deny people's freedom while projecting an air of functionality. It is non-functional. Three-person panels must be the norm, postponements must be rare, and the Board must recognize the inherent difficulty of the parole process for incarcerated people.

Additionally, Commissioner Smith and Coppola should be dismissed immediately, not only for their unlawful conduct, but for their fundamental belief that people in prison are incapable of change and are not worthy of compassion or respect.

Further, 12 Commissioners is not enough to meet the basic requirements that the Board must follow. Twelve Commissioners cannot do the work of 19, much less do it ethically, thoughtfully, and with due consideration for the serious consequences of their decisions.

The Governor must appoint new Commissioners immediately, regardless of the political climate, or any concerns about whether those candidates will ultimately be confirmed. The Governor must make it known that he values the lives and prioritizes the rights of incarcerated people.

Further, the Governor's appointments cannot be in name only. He and his staff must take seriously any recommendations from advocates as to candidates for the Commissioner role. Appointees must be from a broad range of professional backgrounds, including social workers, nurses, people of faith, and others who believe strongly in the principles of rehabilitation, mercy, and redemption.

Lastly, the Governor, in coordination with the Department of Corrections must regularly release data on Commissioner performance, including Commissioner-specific release rates, the frequency of deviations from the COMPAS risk-assessment instrument, outcomes of administrative appeals and Article 78 petitions, and other parole-related statistics. Signing into law recent legislation (S.8647/A.2471) passed in June 2018 that would establish annual reporting on the Parole Board's release rates and parole applicant demographics would be a small first step.

Governor Cuomo, the legislature, and Parole Board must do more. The lives of thousands of people are at stake and the citizens of New York are depending on it.