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### Collaborating Across the Walls: a Community Approach To Parole Justice

Michelle Lewin

Nora Caroll

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## COLLABORATING ACROSS THE WALLS: A COMMUNITY APPROACH TO PAROLE JUSTICE

*Michelle Lewin and Nora Carroll*†

“In developing a close friendship with a [parole] applicant incarcerated for more than 25 years, I have felt my heart expand, my notions of empathy stretched, and my understanding of the idea of fairness completely shift.”

—Aseem Mehta

Parole Preparation Project volunteer

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† Michelle Lewin is a recent graduate of CUNY School of Law and a newly admitted attorney in New York State. Born and raised in Atlanta, Michelle has been active in prison abolition and racial justice work since 2005. Prior to law school, she worked for the Fortune Society in their Alternatives to Incarceration program, and during her first year of law school, she co-founded the Parole Preparation Project of the National Lawyers Guild. She is now the first and only full-time staff person of the Project, training hundreds of volunteers and working alongside people serving life sentences in New York State prisons in their struggle for parole release. Michelle believes strongly in movements for collective liberation that prioritize collaboration and grassroots leadership.

Nora Carroll is a public defender, National Lawyers Guild member and co-founder of the Parole Preparation Project. Nora is a 2009 graduate of Northeastern University School of Law in Boston and she worked for over three years defending accused parole violators at the Rikers Island jail complex as part of The Legal Aid Society's Parole Revocation Defense Unit. Since then she has been working at Legal Aid's trial office in Brooklyn. Nora participated in the convening of the Mass Incarceration Committee of the National Lawyers Guild following the 2012 NLG Convention in Philadelphia, and worked on the pilot project that became the Parole Preparation Project in 2013-2014.

The authors wish to acknowledge the following people for their input and deeply-valued feedback on this article: Andrea Yacka-Bible, Mujahid Farid, Laura Whitehorn, David Putland, Chas Ransom, members of the Otisville Correctional Facility Lifers and Longtermers Organization, Alan Rosenthal, and Scott Paltrowitz. We also wish to thank the New York City Chapter of the National Lawyers Guild for their on-going institutional support; the North Star Fund and Sparkplug Foundation for funding our work; all of our Parole Preparation Project volunteers because, without them, this work would not exist; the Law Office of Rankin & Taylor for their support and resources; Andrea Yacka-Bible for her endless contributions and expertise; Liz Gewirtz, who reads and responds fully to every single letter requesting assistance that we receive; the Otisville Lifers and Longtermers Organization for their inspiration, urging, and leadership; our Advisory Board for their guidance and mentorship, including Joe Robinson, Sheila Rule, Anthony Dixon, and Ish Igartua; Kathy Boudin for sharing her wisdom; Mark Shervington for being our daily source of feedback and humor; Parole Justice New York and Challenging Incarceration for being the home of our organizing; the Release Aging People in Prison Campaign (RAPP), for their partnership and leadership; and, lastly, to all of the Parole Preparation Project applicants

“I was able to let down my guard and become vulnerable to them, and they [weren’t] judging me. It was at a human level.”

—Anthony Dixon

former parole applicant

released after working with Parole Preparation Project volunteers

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#### INTRODUCTION

Eddie Lopez<sup>1</sup> was born in Colón, Panama in 1960. At age 15, he immigrated to New York City. After leaving behind the majority of his family, friends, and community, Eddie sought acceptance and support from other young people in his neighborhood. He turned to drugs and gambling for comfort, and to help him cope with his own desperation. Part of gaining the approval of his peers meant carrying a gun and participating in robberies to support their habits.

In 1979, Eddie accompanied his friends on a late-night robbery of a local corner store. As they approached the front of the store and demanded money, the store owner fired shots into the

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and their families, for opening their hearts to us and working alongside us. We’re so grateful.

<sup>1</sup> Name and identifying details have been changed.

aisles. Eddie and his friends fired back and then ran out. A man in the back of the store was killed in the crossfire. Eddie didn't know he had died until Eddie was arrested weeks later.

Later that month, Eddie again entered a local store with his friends, in hopes of getting money from the register. As Eddie was approaching the counter, a young girl in the back of the store began to cry. Eddie remembers a loud noise and the girl suddenly going quiet. He found out in the car afterwards that his co-defendant had shot and killed her.

For his participation in two robberies in which two people were killed, Eddie was convicted of murder and sentenced to 25 years to life in prison. Although he did not fire the bullets that ultimately killed either victim, in New York State, people who participate in crimes in which a person is killed are sentenced as if they were the principal actor.<sup>2</sup>

Since his incarceration, Eddie has completed a multitude of programs, both therapeutic and vocational. He proudly serves as a facilitator for the Alternatives to Violence Project, which teaches techniques for problem-solving and conflict resolution. Eddie is a member of and a contributor to the Lifers and Longtermers Organization at the prison where he resides, and has been part of several Inmate Liaison Committees. He has also found community in his church, where he is a leader in the congregation.

One of Eddie's greatest passions and skills is crochet. He is an exceptional craftsman, making blankets and stuffed animals that he often donates to local charities. He also teaches a weekly crochet course to over 20 incarcerated men, a local favorite at the prison. Eddie is a trained electrician and has qualifications in legal research. Employers in New York City, recognizing his skills and capabilities, have written several letters of reasonable assurance offering Eddie employment upon his release.

Eddie also has the support of many members of the prison staff, some of whom submitted letters to the Board of Parole on his behalf. Eddie has extensive support from his family, including his sisters and brothers, as well as his daughter and niece, who visit Eddie whenever they are able. Eddie carries around a picture of his only grandchild in his back pocket, and shows it to everyone he meets.

Undoubtedly, Eddie has undergone a profound personal transformation during his time in prison. He is highly critical of his

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<sup>2</sup> N.Y. PENAL LAW § 125.25(3) (McKinney 2006).

younger self, a person capable of robbing stores at gunpoint. His participation in the Lifers Organization has allowed him to access his own authentic feelings of remorse and responsibility, and to generate his own moral compass. While Eddie lives with the reality of his participation in these crimes every day, he seeks redemption through mentoring and supporting others in prison in their own processes of self-discovery, whether through his role as a teacher, facilitator, mentor or friend.

In 2005, at age 45, Eddie first became eligible for parole. By that time, he had already attained significant work experience and was deeply invested in living a more peaceful and gracious life. However, despite these accomplishments, the New York State Board of Parole (“the Board”), an administrative body of the Department of Corrections and Community Supervision (“DOCCS”), denied Eddie release, citing the nature of his crimes as the reason for their denial. Eddie has since appeared before the Board eight times and has been denied parole each time on the same grounds, despite the fact that Eddie will be deported immediately to Panama should he be released. Eddie is now 56 years old and has spent 37 years—far more than half of his life—in prison. Eddie’s co-defendants were released in 2002 and 2012.

Eddie’s story is unique, but his experience with the Board is not. In January 2016, there were nearly 22,000 people serving indeterminate sentences in New York State prisons,<sup>3</sup> and every year, thousands of these individuals appear before the Board in an attempt to secure their release. Due to policies and complex political factors that result in exceptionally low release rates,<sup>4</sup> the vast major-

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<sup>3</sup> KIM DWORAKOWSKI, N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, UNDER CUSTODY REPORT: PROFILE OF UNDER CUSTODY POPULATION AS OF JANUARY 1, 2016 23 (2016), [http://www.doccs.ny.gov/Research/Reports/2016/UnderCustody\\_Report\\_2016.pdf](http://www.doccs.ny.gov/Research/Reports/2016/UnderCustody_Report_2016.pdf) [<https://perma.cc/4W9Q-4Y3H>]. An indeterminate sentence is a prison term imposed by a sentencing court that does not specify the exact number of years an individual will be incarcerated. *See* N.Y. PENAL LAW § 70.00 (McKinney 2009). Such sentences vary widely, and can range from a sentence of one to three years of incarceration to a sentence of 25 years to life, depending on the crime. PENAL LAW § 70.00(2), (3). For those serving indeterminate sentences, once they have reached their minimum number of years of imprisonment, they become eligible for parole. PENAL LAW § 70.40(1)(a)(i). A person serving an indeterminate sentence that does not have “life” listed as the maximum will be released after serving the maximum number of years in their sentence, if they are not granted parole. *See* PENAL LAW § 70.00(2).

<sup>4</sup> The Board’s overall release rate for 2015 for all those serving indeterminate sentences was 23%. N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, PAROLE BOARD AND PRESUMPTIVE RELEASE DISPOSITIONS: CALENDAR YEAR 2015 (PRELIMINARY DATA) 1 (2016), [http://www.doccs.ny.gov/Research/Reports/2016/Parole\\_Board\\_Dispositions\\_2015.pdf](http://www.doccs.ny.gov/Research/Reports/2016/Parole_Board_Dispositions_2015.pdf) [<https://perma.cc/QJ7K-Z7GW>]. Compared to the past several de-

ity of those individuals will be denied parole and must wait up to two years before their next Board interview.<sup>5</sup> The reality in New York State is that discretionary release<sup>6</sup> is exceptionally difficult to obtain, and parole decisions are often arbitrary,<sup>7</sup> highly subjective, and frequently unlawful.<sup>8</sup>

Current parole policy has an especially harsh and dramatic impact on people serving indeterminate life sentences,<sup>9</sup> as parole is generally the only way to obtain release for this population.<sup>10</sup>

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ades, the overall release rate is actually relatively high. The Correctional Association of New York reported that in 2011 the release rate for individuals appearing before the Board for the first time was 15.3%, and the rate of release for people making reappearances was only 17.2%. Scott Paltrowitz, Assoc. Dir., Prison Visiting Project of the Corr. Ass'n of N.Y., Testimony Before the N.Y. State Assembly Corrections Committee 3 (Dec. 4, 2013), <http://www.correctionalassociation.org/wp-content/uploads/2013/12/CA-Parole-Testimony-12-4-13-Hearing-FINAL.pdf> [<https://perma.cc/5DFX-KQ2E>].

<sup>5</sup> N.Y. EXEC. LAW § 259-i(2)(a) (McKinney 2016). Technically, the Board may hold an individual for any length of time *up to* 24 months. On rare occasions Parole Preparation Project applicants are given 12- or 18-month holds, but two years is most typical.

<sup>6</sup> The Board may grant discretionary release “after considering if there is a reasonable probability that, if [a parole applicant] is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.” *Id.* § 259-i(2)(c)(A).

<sup>7</sup> Numerous court decisions have taken the Board of Parole to task for unlawful parole denials. *See, e.g., In re Rossakis v. N.Y. State Bd. of Parole*, 146 A.D.3d 22, 27 (1st Dep’t 2016); *In re Hawthorne v. Stanford*, 135 A.D.3d 1036, 1041-42 (3d Dep’t 2016) (affirming that the Board acted irrationally and reversing other components of the decision); *In re Ciaprazi v. Evans*, No. 0910/2016, 2016 WL 4016495, at \*3-4 (N.Y. Sup. Ct. July 26, 2016); *Platten v. N.Y. State Bd. of Parole*, 47 Misc. 3d 1059, 1064 (N.Y. Sup. Ct. 2015); *In re Rabenbauer v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 46 Misc. 3d 603, 611-12 (2014); *In re Bruetsch v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, No. 0230-14, 2014 WL 1910238, at \*3 (N.Y. Sup. Ct. May 11, 2014); *In re McBride v. Evans*, No. 4483/2013, 2014 WL 815247, at \*3 (N.Y. Sup. Ct. Jan. 13, 2014); *In re Thwaites v. N.Y. State Bd. of Parole*, 34 Misc. 3d 694, 697-98 (N.Y. Sup. Ct. 2011).

<sup>8</sup> Editorial, *New York’s Broken Parole System*, N.Y. TIMES (Feb. 16, 2014), <https://www.nytimes.com/2014/02/17/opinion/new-yorks-broken-parole-system.html> [<https://perma.cc/WTF4-7ZC3>] (“[T]he parole board rarely seem [sic] to consider [the statutory] factors in any meaningful way, denying parole even to low-risk inmates with exemplary records in prison.”).

<sup>9</sup> A life sentence in New York State is an indeterminate sentence in which there is a minimum term of years (15 or 25 years are relatively common) and a maximum term of “life.” After an individual has served the minimum term, they become eligible for parole release. However, since there is technically no “maximum” period at which the person would be automatically released without Parole Board action, each person serving a life sentence must be approved for release by the Board of Parole in order to return to the community. *See* N.Y. PENAL LAW § 70.00(2) (McKinney 2009).

<sup>10</sup> Technically, there are other means by which people serving life sentences can obtain release, such as on appeal, through a motion to vacate judgment, *see* N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2016), or by executive clemency, *see* N.Y. EXEC. LAW § 15 (McKinney 1971), although these are exceedingly rare.

Nearly 9,300 people (representing almost 18% of the prison population)<sup>11</sup> are currently serving a sentence with a maximum of life in New York State. The Board's high rates of parole denial leave this group subject to potentially indefinite confinement.<sup>12</sup> 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.<sup>13</sup>

Like Eddie, many 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, when the Board denies release, its written decision almost always cites the nature of the crime and the facts of the underlying case as the primary reason for denial. The Board largely disregards the many accomplishments of the applicant and their often categorically low risk for recidivism,<sup>14</sup> and in most cases bases the per-

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<sup>11</sup> There were 9,262 people serving life with the possibility of parole as of Jan. 1, 2016. DWORAKOWSKI, *supra* note 3, at 15. New York has the country's second largest population of parole-eligible people serving life sentences. NAZGOL GHANDNOOSH, THE SENTENCING PROJECT, DELAYING A SECOND CHANCE: THE DECLINING PROSPECTS FOR PAROLE ON LIFE SENTENCES 24 (2017), <http://www.sentencingproject.org/wp-content/uploads/2017/01/Delaying-a-Second-Chance.pdf> [<https://perma.cc/99BE-2T6V>].

<sup>12</sup> One individual who currently serves an advisor to the Project was held for 33 years on a sentence of 15 years to life, or more than double his minimum term. Such stories are not uncommon.

<sup>13</sup> According to the most recent *Inmate Mortality Report* published by DOCCS, between 2009 and 2012 a total of 501 people died while incarcerated—of these, 81% died of natural causes (the average age of people who died of natural causes was 57 years old) and 11% committed suicide (the average age of this group was 40 years old). KIM DWORAKOWSKI & DAN BERNSTEIN, N.Y. STATE CORR. & CMTY. SUPERVISION, INMATE MORTALITY REPORT: 2009-2012 2-3 (2013), [http://www.doccs.ny.gov/Research/Reports/2013/Inmate\\_Mortality\\_Report\\_2009-2012.pdf](http://www.doccs.ny.gov/Research/Reports/2013/Inmate_Mortality_Report_2009-2012.pdf) [<https://perma.cc/3VZE-UZYQ>].

<sup>14</sup> According to DOCCS's own statistics, people age 50 and over have low rates of recidivism, and those age 65 and over have exceedingly low rates of returning to prison for new crimes, 6.6% and 3.8% respectively for releases between 1985 and 2011. See KIMBERLY KEYSER, N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, 2011 INMATE RELEASES: THREE YEAR POST-RELEASE FOLLOW-UP 16 (2015) [http://www.doccs.ny.gov/Research/Reports/2016/2011\\_releases\\_3yr\\_out.pdf](http://www.doccs.ny.gov/Research/Reports/2016/2011_releases_3yr_out.pdf) [<https://perma.cc/RVR5-K9MM>]. In New York State in 2010, 0.4% of people convicted of murder came back to prison because of a new offense (as opposed to a technical parole violation). RYANG HUI KIM, N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, 2010 INMATE RELEASES: THREE YEAR POST RELEASE FOLLOW-UP 10 (2014), [http://www.doccs.ny.gov/Research/Reports/2014/2010\\_releases\\_3yr\\_out.pdf](http://www.doccs.ny.gov/Research/Reports/2014/2010_releases_3yr_out.pdf) [<https://perma.cc/XJN5-K4KX>].

son's freedom on a single, unchanging moment that occurred decades ago.

As a result, many applicants appear before the Board numerous times, often on nine or ten occasions, before they are granted release,<sup>15</sup> forcing them to languish in prison for many years longer than their minimum sentence. 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 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 policy.<sup>16</sup> Women, immigrants, people with disabilities and mental illness, queer, transgender, and gender non-conforming people, Muslims, and people who practice religions other than Christianity also face unique difficulties with the Board.<sup>17</sup>

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<sup>15</sup> One Project applicant has been in prison for over 43 years and has been before the Board 12 times, despite his impeccable disciplinary record, two graduate degrees, and repeated acceptance of responsibility for his crime.

<sup>16</sup> As a December 2016 New York Times investigation showed, the prison and parole systems in New York State are demonstrably racially discriminatory. Michael Schwirtz et al., *The Scourge of Racial Bias in New York State's Prisons*, N.Y. TIMES (Dec. 3, 2016), <http://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-in-mates-racial-bias.html> [<https://perma.cc/BAT8-WUGA>]; Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <http://www.nytimes.com/2016/12/04/nyregion/new-york-prisons-inmates-parole-race.html> [<https://perma.cc/GM9M-8A8C>]. Women are the fastest growing group in prisons. "Between 1980 and 2014, the number of incarcerated women increased by more than 700% . . ." THE SENTENCING PROJECT, FACT SHEET: INCARCERATED WOMEN AND GIRLS 1 (2015), <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf> [<https://perma.cc/58PQ-H7DQ>]. The authors are not intentionally ignoring this phenomenon or excluding Black women; the fact is that, in New York State, Black men make up the vast majority of the prison population. See DWORAKOWSKI, *supra* note 3, at ii (reporting that, as of January 1, 2016, 95.3% of people in custody are male, while 4.7% of people in custody are female; 48.5% of the overall population in DOCCS custody is African American).

<sup>17</sup> While this information comes from anecdotal experience of people in prison and those who have come home, recent research and reporting has been done on these issues. See, e.g., Winerip et al., *supra* note 16; see also JASON LYDON ET AL., BLACK & PINK, COMING OUT OF CONCRETE CLOSETS: A REPORT ON BLACK & PINK'S NATIONAL LGBTQ PRISONER SURVEY 27 (ver. 2 2015), <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets-Black-and-Pink-October-21-2015.pdf> [<https://perma.cc/2CPC-MJMZ>] (finding that 41% of respondents "felt discriminated against by the parole board").



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.<sup>18</sup> In 2006, to cope with its rapidly aging population, Fishkill Correctional Facility opened a 30-bed unit for the cognitively impaired to house people diagnosed with dementia, often related to Alzheimer's disease or AIDS.<sup>19</sup> Prison personnel have reported that many people on the unit do not even remember their own crimes.<sup>20</sup>

Even for this demographic, the release rate remains intractably low despite the statistical fact that criminal conduct decreases substantially with age and infirmity,<sup>21</sup> and that the re-incarceration rates for those convicted of the most serious crimes are substantially lower than for those convicted of crimes carrying shorter sentences.<sup>22</sup> The prolonged incarceration of this aging and often infirm population means that many communities are deprived of their elders while the state continues to confine people who pose

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<sup>18</sup> The Project works with close to ten people who are over the age of 60 and has corresponded with many others in that age range. Rates of release for people over 60 are lower than the overall average rates of release for both people appearing for the first time before the Board and people reappearing. See Prison Action Network, *March 2017, BUILDING BRIDGES* (Mar. 6, 2017), <http://prisonaction.blogspot.com/2017/03/march-2017.html> [<https://perma.cc/EW3D-VTD4>]. This is true despite the fact that, according to DOCCS's own statistics, people age 50 and over have low rates of recidivism, and those age 65 and over have exceedingly low rates of returning to prison for new crimes—DOCCS reports that out of all people released between 1985 and 2011, 3.8% of people over age 65 returned to DOCCS custody for a new crime. KEYSER, *supra* note 14, at 16. The prison population of people aged 50 and over also increased by 46% from 2007 to 2016, even as the New York State prison population decreased by 17.3% over the same period. OFFICE OF THE N.Y. STATE COMPTROLLER, *NEW YORK STATE'S AGING PRISON POPULATION 1* (2017), <https://www.osc.state.ny.us/reports/aging-inmates.pdf> [<https://perma.cc/2ZJA-C83R>].

<sup>19</sup> Maura Ewing, *When Prisons Need to Be More Like Nursing Homes*, MARSHALL PROJECT (Aug. 27, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/08/27/when-prisons-need-to-be-more-like-nursing-homes> [<https://perma.cc/E2QA-5FTD>]; Michael Hill, *New York Prison Creates Dementia Unit*, WASH. POST (May 29, 2007, 11:57 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/29/AR2007052900208.html> [<https://perma.cc/DM65-LQBH>].

<sup>20</sup> Hill, *supra* note 19.

<sup>21</sup> See AM. CIVIL LIBERTIES UNION, *AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY* 21 (2012), [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf) [<https://perma.cc/SF9F-GHFF>]; see also Samuel K. Roberts & Lisa K. Sangoi, *Reducing Incarceration and Endless Punishment, and Moving Toward Release and Successful Reentry*, in *AGING IN PRISON: REDUCING ELDER INCARCERATION AND PROMOTING PUBLIC SAFETY XI* (Samuel K. Roberts ed., 2015), [http://centerforjustice.columbia.edu/files/2015/10/AgingInPrison\\_FINAL\\_web.pdf](http://centerforjustice.columbia.edu/files/2015/10/AgingInPrison_FINAL_web.pdf) [<https://perma.cc/G7HY-AVY6>] (discussing the inverse relationship between age and crime).

<sup>22</sup> KIM, *supra* note 14, at 9-10.

little, if any, risk to public safety at great expense.<sup>23</sup> Further, the Board's practices and its almost-exclusive focus on the nature of the crime thwarts 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.<sup>24</sup>

Despite these realities, much of the attention in the realm of criminal legal system reform has focused on policing, disparities in sentencing, and re-entry; parole is very rarely addressed or discussed as a significant contributing factor in the rise of mass incarceration. Part of the reason for this exclusion is the persistent and deep reluctance to address the needs of and advocate for individuals serving long sentences and those convicted of violent crimes. Often only people convicted of drug offenses and non-violent crimes are politically palatable enough to capture the attention of the media, policymakers, and even those offering direct assistance to people in prison.

However, deep systemic change—of the sort that many now believe is necessary to dramatically reduce the prison population—will require not only a reimagining of how violent crime is defined,<sup>25</sup> but recognition that people serving time for violent crimes

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<sup>23</sup> See Roberts & Sangoi, *supra* note 21, at XIV-XV (“Taking into account the increase in medical conditions experienced by people as they age and the need for longer and more frequent hospitalizations; the correctional environment itself which is not designed to house and care for aging populations (and thus exacerbates the effects of aging); and transport off site to receive medical care, [William] Bunting [an economist with the American Civil Liberties Union] arrives at the conservative nationwide estimate of \$16 billion per year to incarcerate elderly prisoners.”).

<sup>24</sup> See N.Y. EXEC. LAW § 259-i(2)(c)(A).

<sup>25</sup> Scholars, policymakers, activists, and the media have recently begun to explore the question of violence and its definitions. Some authors have suggested that the majority of criminal statutes mischaracterize certain behavior as “violent” for the purposes of prosecution. Others have argued that rigid distinctions between so-called “victims” and “offenders” are false, as both often come from the same communities, and even the same families. See, e.g., JUSTICE POLICY INST., *DEFINING VIOLENCE: REDUCING INCARCERATION BY RETHINKING AMERICA’S APPROACH TO VIOLENCE* 3-5 (2016), [http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_definingviolence\\_final\\_report.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_definingviolence_final_report.pdf) [<https://perma.cc/M4UW-98XX>]; Keith Humphreys, Opinion, *What We Get Wrong About Mass Imprisonment in America*, WASH. POST: WONKBLOG (Feb. 8, 2017) <https://www.washingtonpost.com/news/wonk/wp/2017/02/08/what-we-get-wrong-about-mass-imprisonment-in-america/> [<https://perma.cc/CPX9-6HBW>]; Bill Keller, *Is Prison the Answer to Violence?*, MARSHALL PROJECT (Feb. 16, 2017, 5:00 AM), <https://www.themarshallproject.org/2017/02/16/is-prison-the-answer-to-violence> [<https://perma.cc/V7LC-QKSR>]; Leon Neyfakh, *OK, So Who Gets to Go Free?*, SLATE (Mar. 4, 2015, 3:47 PM), [http://www.slate.com/articles/news\\_and\\_politics/crime/2015/03/prison\\_reform\\_releasing\\_only\\_nonviolent\\_offenders\\_won\\_t\\_get\\_you\\_very\\_far.html](http://www.slate.com/articles/news_and_politics/crime/2015/03/prison_reform_releasing_only_nonviolent_offenders_won_t_get_you_very_far.html) [<https://perma.cc/8L5D-LLXV>]; David Scharfenberg, *Why We Should Free Violent Criminals*, BOS. GLOBE: IDEAS (Feb. 5, 2017), <https://www.bostonglobe.com/ideas/2017/02/05/why-should-free-violent-criminals/HK8zo5OMtsMjhh>

are capable of transformation and are worthy of compassion, support, advocacy, and a meaningful opportunity to return to their families and communities.<sup>26</sup> Such recognition is also required if we wish to heal our communities from the deep and long-term effects of crime, violence, and incarceration.

For decades, community organizations and many formerly incarcerated people have worked tirelessly to advocate for the decarceration of elders, fairer Parole Board practices, and legislative reform of the Executive Law that governs parole. Recently, those efforts have borne fruit, as the media and policymakers have begun to acknowledge the issues faced by people serving long sentences and call for the reform of parole policy and procedures.

In 2013, as part of these statewide grassroots efforts, members of the New York City Chapter of the National Lawyers Guild formed the Parole Preparation Project (“the Project” or “PPP”). The Project trains community volunteers to work alongside and assist parole-eligible people in New York State as they prepare for their upcoming interviews with the Board of Parole.

By altering the relationship traditionally present between at-

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QuXySuDM/story.html [https://perma.cc/Q6X2-PREW]. Additionally, the annual Beyond the Bars conference, held in March 2017, explicitly focused on transcending the punishment paradigm and challenging our assumptions about violence. *Beyond the Bars: Transcending the Punishment Paradigm*, CTR. FOR JUST. COLUM. U., <http://centerforjustice.columbia.edu/education/beyondthebarsconference/beyond-bars-2017/> [https://perma.cc/KD4H-UU99]; see also *Panel: The Myth of the Dangerous Panel, The Riverside Church*, CTR. FOR JUST. COLUM. U., <http://centerforjustice.columbia.edu/event/panel-the-myth-of-the-dangerous-panel-the-riverside-church/> [https://perma.cc/5AAN-ZS9Z].

<sup>26</sup> See Gilad Edelman, *The Real Answer to Mass Incarceration*, NEW YORKER (July 17, 2015), <http://www.newyorker.com/news/news-desk/the-real-answer-to-mass-incarceration> [https://perma.cc/Q8BM-U8PF] (“[E]mphasizing the division between harmless, nonviolent drug offenders and violent criminals who ‘need’ to be imprisoned risks demonizing the latter group and making more fundamental change even more difficult in the future.”); see also Dana Goldstein, *How to Cut the Prison Population by 50 Percent*, MARSHALL PROJECT (Mar. 4, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/03/04/how-to-cut-the-prison-population-by-50-percent> [https://perma.cc/MBE5-AB23] (“Glenn Martin, founder of Just Leadership USA, believes the public will only embrace the [campaign to reduce the prison population by 50%] if [incarcerated people] and their families are humanized.”). In New York State, people in prison convicted of violent crimes make up 64% of the prison population. DWORAKOWSKI, *supra* note 3, at 16. Nationally, recidivism rates are lowest for people convicted of violent crime. MATTHEW R. DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, SPECIAL REPORT: RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005-2010 8 (2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf> [https://perma.cc/VL9A-LPAJ]. As cited above, in New York State in 2010, only 0.4% of people convicted of murder came back to prison because of a new offense (as opposed to a technical parole violation). KIM, *supra* note 14, at 10.

torneys and clients, and by educating and training volunteers and parole-eligible applicants in parole-related issues, the Project strives to: secure the release of parole-eligible people; bring the next generation of young attorneys and other community members into the movement to abolish prisons and dramatically reframe crime and punishment in our society; cultivate transformative relationships of solidarity between people who are incarcerated and volunteer supporters outside prison; provide support to the currently and formerly incarcerated leaders of the prison and parole reform movements; and educate and increase public awareness of the problems of punitive parole policies and support parole reform advocates working for systemic and legislative change.

#### SUMMARY AND OVERVIEW

Much of the analysis in this article will focus on a critique of the New York State Board of Parole based upon current policies and practices, grounded in the experiences of people who have direct experience with parole. Even taking the Board of Parole on its own terms—as a body designed to ensure public safety and administer justice—there are deep flaws. These problems include: (1) a system built on racist, retributive, and vengeful principles, (2) politically motivated practices and appointments, (3) procedurally and substantively unfavorable laws and policies, (4) lack of access to meaningful judicial review, and (5) lack of oversight.

This article begins with an introduction to the bureaucratic banality that confronts individuals seeking release on parole in New York State. It explores how a host of political, procedural, and substantive legal obstacles enable the Board to deny thousands of parole-ready people their freedom. The section also includes a brief overview of the past decade of parole reform advocacy and litigation strategies that advocates and incarcerated litigants have employed in attempts to shift current parole practices.

Next, we discuss the history of the Parole Preparation Project, describe our approach and how it differs from traditional legal work, and analyze our role within the broader movement for parole reform.

The remainder of the article is comprised of transcripts of interviews conducted with participants in the Parole Preparation Project, including former volunteers and applicants. We include these transcripts because we wish to center and amplify the voices of those who are formerly incarcerated. It is their stories, experiences,

and expertise that drive our work and confirm for us the resiliency of the human spirit. We also wish to provide deeper insight into the impact the Project has on its volunteers.

The article concludes with hopes for the Project's future, as well as for the futures of people serving life sentences in New York State and others facing judgment in the U.S. criminal legal system.

#### A NOTE ON LANGUAGE

This article will use certain language with intention. Individuals behind bars will be referred to as "people," such as "incarcerated people," "people inside," or "people behind bars," not "inmates," "prisoners," or "offenders." The purpose of using such terminology is to recognize and reaffirm the humanity of those who are incarcerated.<sup>27</sup>

"Applicant" or "parole applicant" will also be used to describe people in prison seeking parole release and working with the Project. "Applicant" is deliberately chosen because it is distinct from the term "client," as no attorney-client relationship is established between applicants and Parole Preparation Project volunteers. Additionally, people serving indeterminate sentences must physically apply for parole release. "Volunteer" is the term used for non-incarcerated Project participants. "Interview" will be used to describe the process by which the Board of Parole interviews parole-eligible applicants. "Hearing" is a commonly-used misnomer for this interaction, as a Board appearance is in no way an adversarial proceeding before a neutral magistrate. There is no attorney to represent the applicant and no witnesses are called; the term interview is more accurate.<sup>28</sup> Lastly, the term "criminal legal system" will be used to refer to what is often denominated the criminal "justice" system, in order to highlight the lack of justice therein.

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<sup>27</sup> *The Language Letter Campaign: An Open Letter to Our Friends on the Question of Language*, CTR. FOR NULEADERSHIP ON URB. SOLUTIONS, <http://centerfornuleadership.org/current-projects/the-language-letter-campaign/> [<https://perma.cc/JE5L-VUPZ>] ("It follows then, that calling me inmate, convict, prisoner, felon, or offender indicates a lack of understanding of who I am, but more importantly what I can be.").

<sup>28</sup> DOCCS itself most commonly uses the term "interview." See generally *New York State Parole Handbook: Questions and Answers Concerning Parole Release and Supervision*, N.Y. ST. DEP'T CORRECTIONS & COMMUNITY SUPERVISION [hereinafter *Parole Handbook*], [http://www.doccs.ny.gov/Parole\\_Handbook.html](http://www.doccs.ny.gov/Parole_Handbook.html) [<https://perma.cc/V2GM-B4S9>]; *Board of Parole*, N.Y. ST. DEP'T CORRECTIONS & COMMUNITY SUPERVISION, <http://www.doccs.ny.gov/ParoleBoard.html> [<https://perma.cc/LUT9-GXKV>].

## I. POLITICS AND PAROLE BOARDS

Parole is a system of discretionary release for people serving indeterminate sentences. An indeterminate sentence is a prison term imposed by a sentencing court that does not specify the exact number of years an individual will be incarcerated.<sup>29</sup> For those serving indeterminate sentences, once they have reached their minimum number of years of imprisonment, they become eligible for parole.<sup>30</sup> The Board of Parole is tasked with determining who may be released on parole and the conditions of their supervision.<sup>31</sup>

Commissioners are appointed by the Governor and confirmed by the New York State Senate for six-year terms.<sup>32</sup> Although the Executive Law that governs the composition of the Parole Board states that up to 19 Commissioners may serve on the Board of Parole, there are currently only 12 seated Commissioners.<sup>33</sup> Purportedly due to budgetary concerns, the Governor has elected to leave seven seats unfilled.<sup>34</sup> Historically, governors often award Parole Board seats to campaign contributors or political allies and candi-

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<sup>29</sup> See N.Y. PENAL LAW § 70.00 (McKinney 2009).

<sup>30</sup> N.Y. PENAL LAW § 70.40(1)(a)(iii) (McKinney 2011).

<sup>31</sup> N.Y. EXEC. LAW § 259-i(2)(a) (McKinney 2016).

<sup>32</sup> *Board of Parole*, *supra* note 28.

<sup>33</sup> N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, DIRECTIVE 8600, BOARD OF PAROLE 1 (2015), <http://www.doocs.ny.gov/pdf/Board-of-Parole-Directive.pdf> [<https://perma.cc/KQ7G-QRB3>]; *Parole Board Members*, N.Y. ST. DEP'T CORRECTIONS & COMMUNITY SUPERVISION, <http://www.doocs.ny.gov/ParoleBoardMembers.html> [<https://perma.cc/U78U-LT6T>] (listing the 12 current Commissioners).

<sup>34</sup> See James M. Odato, *Pataki Appointees Dominate State Parole Board with 5 Vacancies*, TIMES UNION (Sept. 17, 2012, 10:38 AM), <http://www.timesunion.com/local/article/Pataki-appointees-dominate-state-parole-board-3870152.php> [<https://perma.cc/K5YM-253A>]. Additionally, two Commissioners, both known by applicants and advocates for having slightly higher release rates and greater compassion for incarcerated people than their colleagues, have recently left the Board. See Russ Buettner, *Brooke Astor's Son Is Paroled*, N.Y. TIMES (Aug. 22, 2013), <http://www.nytimes.com/2013/08/23/nyregion/brooke-astors-son-to-be-paroled.html> [<https://perma.cc/S72W-ENLH>]. Christina Hernandez is now the Director of Re-Entry Services for DOCCS. See *DOCCS Celebrates National Hispanic Heritage Month*, N.Y. ST. DEP'T CORRECTIONS & COMMUNITY SUPERVISION: DOCCS NEWS (Oct. 14, 2016), [http://www.doocs.ny.gov/DoocsNews/2016/Hispanic\\_Heritage\\_Month\\_16.pdf](http://www.doocs.ny.gov/DoocsNews/2016/Hispanic_Heritage_Month_16.pdf) [<https://perma.cc/8Y75-HR5A>]. The Project learned that Gail Hallerdin died unexpectedly in December 2016. The Governor has said in recent meetings that he intends to fill all 19 seats; however, no formal process has been initiated for confirmation of new Commissioners (although several individuals have been interviewed for the position). *Understanding Judy Clark: Fmr Chair of the NYS Parole Board*, NYACK NEWS & VIEWS (Mar. 5, 2017), <http://www.nyacknewsandviews.com/2017/03/judy-clark-dennison-parole/> [<https://perma.cc/2VTD-S23F>] (“There are six vacancies on the parole board. They are supposedly going to fill them in the spring.”).

dates with deep ties to the law enforcement community.<sup>35</sup> As the selections are negotiated long before the confirmation process, prospective Commissioners spend little time discussing their qualifications during Senate confirmation hearings.<sup>36</sup> However, Commissioners who deviate from a culture and status quo of denying parole to the majority of applicants risk losing their reappointments.<sup>37</sup>

After serving a term of six years,<sup>38</sup> Commissioner reappointments are nearly guaranteed for those who act consistently with the policies and principles set forth by the presiding gubernatorial administration.<sup>39</sup> Four of the 12 Commissioners currently serving on the Board, Walter William Smith, James Ferguson, Kevin Ludlow, and Lisa Elovich, were appointed more than 10 years ago by former Governor George E. Pataki.<sup>40</sup> They remain on the Board de-

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<sup>35</sup> “If there is one factor that drives the selection of commissioners, it is politics. Spots on the board are prime patronage gifts. Many board members have given generously to campaigns.” Winerip et al., *supra* note 16. “These hearings sometimes sound like reunions of upstate law enforcement veterans. At the 2012 hearing, State Senator Patrick M. Gallivan, then a Republican member of the corrections committee and a former sheriff of Erie County, backed the appointment of Marc Coppola, his former deputy sheriff.” *Id.*

<sup>36</sup> *Id.* (“Selections are typically worked out ahead of time, and at the confirmation hearings nominees usually spend only a few minutes describing their credentials before being approved.”).

<sup>37</sup> Beth Schwartzapfel, *A Parole Hearing in New York, With a Governor’s Blessing This Time*, MARSHALL PROJECT (Jan. 5, 2017, 10:01 PM), <https://www.themarshallproject.org/2017/01/05/a-parole-hearing-in-new-york-with-a-governor-s-blessing-this-time> [<https://perma.cc/U6TX-5BNB>]. Barbara Treen, who served for 12 years as a New York State Parole Board member, is quoted as writing, “It’s always safer to deny than to parole; it takes no courage and is the safest route to job security . . . .” *Id.* Vernon Manley, a former Commissioner who granted release to an individual in a high profile case, remembered saying to his colleague, “if we release her, it’s highly likely we might not get reappointed. . . .” *Id.* Manley was not reappointed to the board following this decision. *Id.*

<sup>38</sup> N.Y. EXEC. LAW § 259-b(1) (McKinney 2013).

<sup>39</sup> Schwartzapfel, *supra* note 37 (“[S]everal former board members say that those on the board are always acutely aware of what the governor would want when they make decisions in high-profile cases. That’s because they were appointed to their six-year terms by the governor himself.”); *see also* John Sullivan, *In New York and Nation, Chances for Early Parole Shrink*, N.Y. TIMES (Apr. 23, 2000), <http://www.nytimes.com/2000/04/23/nyregion/in-new-york-and-nation-chances-for-early-parole-shrink.html> [<https://perma.cc/RHR8-GK8V>] (“Gov. George E. Pataki, a Republican, has said he would like to join other states in doing away with early parole for all felons. And while his legislation to do so has been blocked in the Democratic-controlled Assembly, Mr. Pataki has used his appointment powers to put people on the State Parole Board who believe in greater scrutiny of felony offenders . . . . Since 1995, . . . the governor has named 15 of the board’s 16 members. ‘Those are people that share that philosophy,’ said Katherine N. Lapp, the governor’s chief adviser on criminal justice.”).

<sup>40</sup> The DOCCS website lists which Commissioners were appointed by whom. *Parole Board Members*, *supra* note 33. Tom Grant, a former Parole Commissioner, has sug-

spite the fact that they continue to embody a Pataki-era approach of reflexively denying release on the basis of the nature of the crime, particularly for those convicted of the most serious crimes.<sup>41</sup>

Whether they are campaign contributors or not, the majority of Commissioners are former prosecutors, parole officers, law enforcement agents, victims' advocates, and those involved in correctional or community supervision work.<sup>42</sup> Given the structure and theoretical perspectives of the organizations from which the majority of Commissioners come, their approach towards parole is more likely to be retributive and punitive. Further, their ties to law enforcement and district attorney's offices make them highly susceptible to influence by organizations such as the Patrolmen's Benevolent Association ("PBA"), the union that represents police officers in New York City, and that encourages the public to submit opposition letters each time someone convicted of a police-related crime comes before the Board.<sup>43</sup>

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gested that instituting a one-term limit would relieve Commissioners of their political obligations to suppress release rates and increase the autonomy of sympathetic candidates. John Caher, *Q&A: Tom Grant*, N.Y. L.J. (Sept. 21, 2012) ("There should be a one-term limitation for parole board commissioners. The commissioner would, on the day of confirmation, know exactly when his term would end. This would reduce, if not eliminate, any perceived 'outside influences' on the parole decision making process.").

<sup>41</sup> See Sullivan, *supra* note 39. The Pataki years are remembered as a time of such extraordinarily low release rates that a federal class action was unsuccessfully brought claiming the state had a de facto policy of denying parole to people convicted of violent crimes. *Graziano v. Pataki*, No. 06 Cv. 480 (CLB), 2007 WL 4302483, at \*2-4 (S.D.N.Y. Dec. 5, 2007); see also Edward R. Hammock & James F. Seelandt, *New York's Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Boards' Discretion*, 13 ST. JOHN'S J. LEGAL COMMENT. 527, 563 (1999).

<sup>42</sup> *Release of Aging People in Prison Campaign (RAPP)*, QUEENSCHURCHES.ORG, <http://www.queenschurches.org/Advocacy/Issues/CANY-RAPP.htm> [<https://perma.cc/XM8E-JZ6D>] (follow "Parole Commissioners Bios" hyperlink); Prison Action Network, *March 2016*, BUILDING BRIDGES (Mar. 5, 2016), [http://prisonaction.blogspot.com/2016\\_03\\_01\\_archive.html](http://prisonaction.blogspot.com/2016_03_01_archive.html) [<https://perma.cc/F9AY-KTR6>]; Prison Action Network, *April 2012*, BUILDING BRIDGES (Apr. 15, 2012), <http://prisonaction.blogspot.com/2012/04/april-2012.html> [<https://perma.cc/Z8K5-BDUX>]. See, e.g., John Caher, *Advocates Recite Shortcomings of N.Y. Parole Review Process*, N.Y. L.J. (Dec. 5, 2013) (noting that Tina M. Stanford, Chairwoman of the Board of Parole, "previously ran the state Office of Victim Services"); Robert Gebeloff et al., *A Parole Decision in Minutes*, N.Y. TIMES (Dec. 4, 2016), <https://www.nytimes.com/interactive/2016/12/04/nyregion/new-york-parole-decision-in-minutes.html> [<https://perma.cc/EPG2-2NPM>].

<sup>43</sup> See Robert J. Boyle et al., *Opinion, Parole Board Drags its Feet on COMPAS*, N.Y. L.J. (Jan. 21, 2016) ("To enforce their hold on any Board of Parole decisions, the PBA has a link on their website. With one mouse-click, form letters are sent to the board opposing the release-ever-of anyone so convicted, no matter how old or sick, how insightful and changed, and no matter the likelihood that they will ever commit another crime."). Senator Patrick Gallivan, the Chair of the Committee on Crime Victims, Crime & Correction of the New York State Senate, posted a link to a petition



Aside from making release decisions involving high-profile cases,<sup>44</sup> Commissioners perform their work mostly in secret, outside the public view. Their internal policies and procedures are generally unknown and inaccessible to advocates, applicants, and other invested parties.<sup>45</sup> If a Commissioner does come into public light, it is often when an individual who was granted release commits a crime or otherwise receives media attention.<sup>46</sup> Such media

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opposing the parole release of Judith Clark on his official Senate homepage. *Members*, N.Y. ST. SENATE: CRIME VICTIMS, CRIME & CORRECTION STANDING COMMITTEE, <https://www.nysenate.gov/committees/crime-victims-crime-and-correction> [https://perma.cc/726Q-QZK4]; *Sign the Petition Calling for No Parole for Judith Clark*, N.Y. ST. SENATE: N.Y. ST. SENATOR PATRICK M. GALLIVAN, <https://www.nysenate.gov/newsroom/in-the-news/patrick-m-gallivan/sign-petition-calling-no-parole-judith-clark> [https://perma.cc/WCH3-RYKV]. Judith Clark was convicted of 75 years to life for her role in the 1981 Brinks Robbery. Eli Rosenberg, *Cuomo Commutes Sentence of Judith Clark, Driver in Deadly Brink's Robbery*, N.Y. TIMES (Dec. 30, 2016), <https://www.nytimes.com/2016/12/30/nyregion/cuomo-commutes-sentence-of-judith-clark-driver-in-deadly-brinks-robbery.html> [https://perma.cc/E748-T8NY]. In 2016 Governor Cuomo commuted her sentence, making her immediately eligible for parole. *Id.* In April 2017, the Board once again denied parole. Marc Santora, *Judith Clark, Getaway Driver in Deadly Brink's Heist, is Denied Parole*, N.Y. TIMES (Apr. 21, 2017), <https://www.nytimes.com/2017/04/21/nyregion/judith-clark-brinks-robbery-parole.html> [https://perma.cc/N2CQ-SNT8] (“While parole board hearings are not public and transcripts are not yet available, a summary explaining their decision was released late Friday. It focused on the unique nature of her case and the message her release would send to law enforcement. ‘We do find that your release at this time is incompatible with the welfare of society as expressed by relevant officials and thousands of its members,’ the board wrote.”).

<sup>44</sup> See, e.g., Pete Donohue, *New York Woman Imprisoned for Shooting Husband Two Decades Ago Loses Parole Bid*, N.Y. DAILY NEWS (Aug. 14, 2013, 2:30 AM), <http://www.nydailynews.com/new-york/nyc-woman-shot-husband-loses-parole-bid-article-1.1426123> [https://perma.cc/A75Y-UXSC]; Larry McShane, *Convict in 1991 Manhattan Cop Killing Denied Parole for Fifth Time*, N.Y. DAILY NEWS (Jan. 12, 2017, 11:08 AM), <http://www.nydailynews.com/new-york/nyc-crime/convict-1991-killing-denied-parole-time-article-1.2944601> [https://perma.cc/G28H-JHFP]; James Ridgeway & Katie Rose Quandt, *Adam Hall Tried to Kill Himself in Prison. And Got Six More Years.*, VILLAGE VOICE (Apr. 5, 2017, 7:45 AM), <http://www.villagevoice.com/news/adam-hall-tried-to-kill-himself-in-prison-that-got-him-six-more-years-9852972> [https://perma.cc/3XS6-86YZ]; Denis Slattery, *Parole Denied for Upstate Killer Likened to ‘Fatal Attraction’ Character During Murder Trial of Lover’s Wife*, N.Y. DAILY NEWS (Jan. 17, 2017, 10:22 PM), <http://www.nydailynews.com/news/crime/parole-denied-n-y-killer-likened-fatal-attraction-role-article-1.2948957> [https://perma.cc/5LAF-L92Q]; Press Release, N.Y. State Senator Patrick M. Gallivan, *Senator Gallivan Presents Petition Calling on NYS Board of Parole to Deny Release of Judith Clark* (Mar. 29, 2017), <https://www.nysenate.gov/newsroom/press-releases/patrick-m-gallivan/senator-gallivan-presents-petition-calling-nys-board> [https://perma.cc/X9UA-ZCHU].

<sup>45</sup> See Winerip, *supra* note 16. While the Board has made recent attempts to increase transparency, particularly by publishing videos of their meetings online, the inner workings of their agency remain in relative obscurity. See, e.g., *Parole Board Business Meeting Videos*, N.Y. ST. DEP’T CORRECTIONS & COMMUNITY SUPERVISION, <http://www.doccs.ny.gov/parole-board-videos.html> [https://perma.cc/JE22-4GAR].

<sup>46</sup> See, e.g., Editorial, *Kathy Boudin’s Time*, NATION (Aug. 28, 2003), <https://www>

cases create a phenomenon where Commissioners are incentivized to deny release but rarely to grant parole—this attitude has been openly discussed by former Commissioners.<sup>47</sup> Unfortunately, a lawful, rational, fair decision to release someone rarely, if ever, makes the news.

The identities and experiences of Parole Board Commissioners also do not reflect the demographics of the individuals who appear before them. Although the population of New York State prisons is approximately 75% people of color,<sup>48</sup> the Board of Parole is composed almost entirely of white people.<sup>49</sup> Further, while over 75% of people in prison come from the five boroughs of New York City and the surrounding suburbs, as well as other urban areas, most of the Commissioners are from upstate.<sup>50</sup>

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.thenation.com/article/kathy-boudins-time/ [https://perma.cc/CAN9-GEFL]; Brian Bernbaum, *'60s Radical Boudin Goes Free*, CBS NEWS (Sept. 17, 2003, 3:53 PM), <http://www.cbsnews.com/news/60s-radical-boudin-goes-free/> [https://perma.cc/4ULD-LA48]. After granting release to Kathy Boudin, who was convicted of 25 years to life for her role in the 1981 Brinks Robbery, thus garnering media attention, two commissioners were fired by Governor Pataki. Schwartzapfel, *supra* note 37.

<sup>47</sup> Josh Swartz, *Nature of the Crime*, YOUTUBE (Apr. 20, 2015), <https://www.youtube.com/watch?v=hWdfyTiORjQ> [https://perma.cc/WKH3-SKN7] (featuring former Parole Board Commissioner Ed Hammock); Hammock & Seelandt, *supra* note 41, at 545; John Caher, *Inmates Find Unlikely Advocate in Former Parole Board Chair*, N.Y. L.J. (Sept. 16, 2013); *see also* Bill Hughes, *Even Model NYS Inmates Face Steep Barriers to Parole*, CITY LIMITS (Sept. 17, 2014), <http://citylimits.org/2014/09/17/even-model-nys-inmates-face-steep-barriers-to-parole/> [https://perma.cc/96DG-6SMJ] (quoting Robert Dennison, former Parole Board Chairman and Commissioner, as saying, “[e]very board member knows, if you let someone out and it’s going to draw media attention, you’re not going to be re-appointed”).

<sup>48</sup> Peter Wagner & Joshua Aiken, *Racial and Ethnic Disparities in Prisons and Jails in New York*, PRISON POL’Y INITIATIVE (Dec. 2016), [https://www.prisonpolicy.org/graphs/disparities2010/NY\\_racial\\_disparities\\_2010.html](https://www.prisonpolicy.org/graphs/disparities2010/NY_racial_disparities_2010.html) [https://perma.cc/N96K-QCQ9]; *see also* DWORAKOWSKI, *supra* note 3, at 5.

<sup>49</sup> Winerip et al., *supra* note 16 (“Board members are mainly from upstate [and] earn more than \$100,000 annually . . . . Most are white; there is currently only one black man, and there are no Latino men.”). Tina M. Stanford, the current Chairwoman of the Board, is also a Black woman. *Biography of Tina M. Stanford, Esq.*, N.Y. ST. DEP’T CORRECTIONS & COMMUNITY SUPERVISION, <http://www.doccs.ny.gov/Chairwomanbio.html> [https://perma.cc/B38G-SHKP].

<sup>50</sup> Winerip et al., *supra* note 16. Over 50% of people in prison come from New York City and its suburbs. DWORAKOWSKI, *supra* note 3, at 6. Another 25-30% of people in prison come from other upstate urban areas such as Buffalo, Albany, and Rochester. *Id.* Notably, one study conducted found that in 2003, “it cost \$1.1 billion . . . to incarcerate more than 13,200 residents” of the five boroughs, with residents from the Bronx incarcerated at a cost of approximately \$228 million. SPATIAL INFO. DESIGN LAB, *THE PATTERN* 37 (2008), [http://www.spatialinformationdesignlab.org/sites/default/files/publication\\_pdfs/ThePattern.pdf](http://www.spatialinformationdesignlab.org/sites/default/files/publication_pdfs/ThePattern.pdf) [https://perma.cc/7H36-DZA9]; *see also* Michael Schwirtz et al., *Governor Cuomo Orders Investigation of Racial Bias in N.Y. State Prisons*, N.Y. TIMES (Dec. 5, 2016), <https://www.nytimes.com/2016/12/05/nyregion/>

## II. PROCEDURAL BARRIERS TO FAIRNESS

Myriad legal problems, both procedural and substantive, frustrate the administration of justice in the context of the parole release interview. To determine which parole-eligible people are community-ready, the Board of Parole conducts interviews with every eligible applicant. Almost all interviews are conducted by videoconference, utilizing technology that is often unfamiliar to applicants, some of whom have been in prison since the 1980s.<sup>51</sup> Commissioners conduct dozens of interviews in one day, each lasting only a few minutes.<sup>52</sup> Some advocates have calculated that the average interview time may be as low as four minutes.<sup>53</sup> There is also no right to counsel at parole interviews, nor is counsel permitted in the room during the proceeding.<sup>54</sup> The only individuals present are Parole Board Commissioners (two or three depending on the schedule and rotation of the Board), at least one Offender Rehabilitation Counselor (a member of DOCCS staff, whose role is simply to provide information to the Board and who does not advocate for the applicant), an interpreter (if needed), a stenographer, and the applicant.<sup>55</sup> Not only does this leave applicants without guidance as they field difficult and detailed questions, but without counsel, applicants who are unfamiliar with the judicial process may unintentionally waive issues that could be raised on appeal by not raising them during the actual interview.

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governor-cuomo-orders-investigation-of-racial-bias-in-ny-state-prisons.html [https://perma.cc/4FS7-H6C9].

<sup>51</sup> Gebeloff, *supra* note 42.

<sup>52</sup> *Id.*; Winerip et al., *supra* note 16 (“[Applicants] typically get less than 10 minutes to plead their cases before they are sent back to their cells.”).

<sup>53</sup> Mujahid Farid, Dir., Release Aging People in Prison (RAPP), Testimony Submitted to the N.Y. State Assembly Standing Committee on Correction (Nov. 29, 2013), <http://www.correctionalassociation.org/wp-content/uploads/2013/12/RAPP-AssemblyTestimonyFinal.pdf> [https://perma.cc/2ESA-RAG7] (noting in Exhibit A that given the 1,333 hearings conducted in October 2013, the total number of commissioners, and the total hours worked in a day, the average hearing was 4.2 minutes).

<sup>54</sup> *Parole Handbook*, *supra* note 28, at sec. 2.6. However, some states do allow counsel to be present during the parole interview. While counsel may not be appointed if applicants are unable to afford such representation, their presence is recommended by experts. GHANDNOOSH, *supra* note 11, at 35-36. Undoubtedly, the presence of counsel would have an impact on parole proceedings.

<sup>55</sup> *Parole Handbook*, *supra* note 28, at sec. 2.5-2.6 (“Discretionary interviews are conducted by a panel of two or three members of the Parole Board; Facility Division staff and a hearing reporter will also be present. The hearing reporter will record what is said during the interview. . . . Counsel may not be present during discretionary release interviews.”). Project Coordinators have heard of one instance where an advocate for an applicant with severe cognitive disabilities was permitted in the room. *See also* COLUMBIA HUMAN RIGHTS LAW REVIEW, A JAILHOUSE LAWYER’S MANUAL 875 (9th ed. 2011).

Although at least two, and often three, Commissioners are present for the interview, one Commissioner takes the lead in questioning the applicant. Many applicants report that the other Commissioners are often reviewing the file of the next person scheduled to appear, and rarely ask additional questions.<sup>56</sup> This practice has led many incarcerated people and their advocates to conclude that decisions are predetermined.<sup>57</sup>

Commissioners may also expect parole applicants to expertly convey feelings of remorse. For some applicants, the last time they discussed their crime was with their defense attorney during the original trial or plea negotiation process, at a time when the accused was ostensibly presumed innocent and had a right to remain silent, and when the prosecution carried the burden to prove facts to support a conviction. There it was not in the person's legal interest to extensively discuss the incident, let alone how they may have felt about the crime. After conviction, people may spend decades without ever discussing their crime again. Then, when they become eligible for parole, they are suddenly asked to talk in detail about the incident, often in a way that differs significantly from how they talked about the case while awaiting trial or sentencing.

Additionally, due to past trauma, histories of addiction, mental health conditions, race and class dynamics, and the ways in which those who are socialized as men are discouraged from expressing their feelings, many people involved in the criminal legal system may, at the time of the parole interview, already struggle to access their own emotions.<sup>58</sup> Further, in the closed, regimented prison environment, there are very few, if any, opportunities to explore feelings in a structured and safe therapeutic setting—individual mental health counseling is scarce, and often only available to those with severe mental illness.<sup>59</sup> Many applicants also fear that information they do share in a therapeutic environment will some-

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<sup>56</sup> Winerip et al., *supra* note 16.

<sup>57</sup> See *Duffy v. Evans*, No. 11 Civ. 7605, 2013 WL 3491119, at \*2 (S.D.N.Y. July 12, 2013) (describing a pre-printed form titled “New York State—Board of Parole—Commissioner’s Worksheet,” the handwritten portions of which were “nearly identical” to the text of the Worksheet). There is evidence that the Worksheet is sometimes partially or completely pre-typed. See Winerip et al., *supra* note 16 (“There are commissioners who come prepared with four or five decisions that they modify slightly to fit particular cases . . .”).

<sup>58</sup> See generally Mika'il DeVeaux, *The Trauma of the Incarceration Experience*, 48 HARV. C.R.-C.L. L. REV. 257 (2013).

<sup>59</sup> See Dustin DeMoss, *The Nightmare of Prison for Individuals with Mental Illness*, HUFFINGTON POST: THE BLOG (Mar. 25, 2015, 6:21 PM), [http://www.huffingtonpost.com/dustin-demoss/prison-mental-illness\\_b\\_6867988.html](http://www.huffingtonpost.com/dustin-demoss/prison-mental-illness_b_6867988.html) [<https://perma.cc/NZR3-5PUZ>].

how be used against them in future proceedings<sup>60</sup> or Parole Board interviews. While many people in prison turn to each other for care and support, those relationships may not be sufficient preparation for the parole interview.

Ultimately, experiences in the criminal legal system, especially during the initial trial or plea negotiation phase, often leave applicants with unprocessed emotions regarding their crimes that are difficult to re-examine in the harsh setting of prison. Further, extensive research shows that experiences of trauma and other socialized realities can lead to difficulty in identifying, expressing, and organizing emotions.<sup>61</sup> The Board's expectation that people convey deep and well-articulated feelings of remorse is an unrealistic and harmful one.

### III. HIGHLY DISCRETIONARY LEGAL FRAMEWORK

In addition to significant procedural barriers, a loose and deferential legal framework creates little accountability for the Board. The legal standard governing parole release—and the way courts throughout the state have interpreted it—is highly discretionary.<sup>62</sup> In reaching a determination on whether someone should be released, the Board is tasked with applying the following standard:

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 [applicant] is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.<sup>63</sup>

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<sup>60</sup> Many people fear that material they share in a therapeutic setting could be used against them in a future civil commitment proceeding outlined in Article 10 of the Mental Hygiene Law. *See, e.g.*, N.Y. MENTAL HYG. LAW, § 10.17 (McKinney 2007). Civil commitment is a legal process by which people convicted of certain sex-based crimes may be subject to involuntary commitment after completing their sentence in prison.

<sup>61</sup> SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., (SMA) 14-4816, DEP'T OF HEALTH & HUMAN SERVS., TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES: TREATMENT IMPROVEMENT PROTOCOL 59-64 (2014), [https://www.ncbi.nlm.nih.gov/books/NBK207201/pdf/Bookshelf\\_NBK207201.pdf](https://www.ncbi.nlm.nih.gov/books/NBK207201/pdf/Bookshelf_NBK207201.pdf) [<https://perma.cc/E7Q6-PPP3>].

<sup>62</sup> New York's law of parole release has been subjected to review and critique elsewhere in this journal. Amy Robinson-Oost, Note, *Evaluation As the Proper Function of the Parole Board: An Analysis of New York State's Proposed Safe Parole Act*, 16 CUNY L. REV. 129, 146-49 (2012) (arguing that the current laws are too vague and unwieldy to produce fair decisions and therefore permit the Board to continue giving outsize weight to the crime of conviction).

<sup>63</sup> N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2016).

In applying this standard, the Board is required to consider a list of factors, including consideration of the individual's institutional record, release plans, recommendations of the defense attorney, district attorney, and sentencing judge, as well as any victim impact statement.<sup>64</sup> The seriousness of the offense, as well as "risk and needs assessments,"<sup>65</sup> are also factors to be considered.<sup>66</sup>

Even within this framework, courts are permissive, granting the Board wide latitude. Although the Board is required to *consider* every factor, they need not create a record—either in the oral interview or the written decision—that they have done so.<sup>67</sup> In other words, the Board need not discuss every factor in the interview, mention every factor in the written decision, or give every factor equal or assigned weight.<sup>68</sup>

Due to this flexibility in the ways in which the enumerated factors can be weighed, Commissioners focus heavily and often exclusively on the nature of the person's crime.<sup>69</sup> A person's

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<sup>64</sup> These factors are enumerated in N.Y. EXEC. LAW § 259-i (McKinney 2016) and the regulations implementing that statute, codified at N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3 (2014). As discussed below, recent proposed changes to the regulations have been issued by the Board, and following a successful public comment period, advocates and others are awaiting the publication of the finalized version.

<sup>65</sup> § 8002.3(a)(11). The chosen method for the "risk and needs assessment" is an evaluation called Correctional Offender Management Profiling for Alternative Sanction, known as COMPAS, which assigns a risk level to applicants based on a proprietary system, discussed *infra* Part V. N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, DIRECTIVE 8500, COMPAS ASSESSMENTS/CASE PLAN 6 (2015) [hereinafter DIRECTIVE 8500], <http://www.doccs.ny.gov/Directives/8500.pdf> [<https://perma.cc/P5U7-CGQG>].

<sup>66</sup> § 259-i(2)(c)(A); § 8002.3(a)(11).

<sup>67</sup> See *In re LeGeros v. N.Y. State Bd. of Parole*, 139 A.D.3d 1068, 1069 (2d Dep't 2016); *In re Fraser v. Evans*, 109 A.D.3d 913, 914-15 (2d Dep't 2013); *In re Shark v. N.Y. State Div. of Parole Chair*, 110 A.D.3d 1134, 1134-35 (3d Dep't 2013).

<sup>68</sup> *In re Wade v. Stanford*, No. 522949, 2017 WL 1167761, at \*1 (N.Y. App. Div. 3d Dep't Mar. 30, 2017); *In re Mullins v. N.Y. State Bd. of Parole*, 136 A.D.3d 1141, 1142 (3d Dep't 2016); *In re Santos v. Evans*, 81 A.D.3d 1059, 1060 (3d Dep't 2011).

<sup>69</sup> For example, although a risk and needs assessment may objectively score the applicant as low risk for re-arrest, the Board may reject these objective measures and focus solely on the crime. On his COMPAS risk assessment, a Project applicant scored "low risk" in the three main categories of felony violence, re-arrest, and absconding. However, in the subsequent parole decision denying release, the Commissioners wrote that "release at this time would deprecate the seriousness of your violent crimes and undermine respect for the law." Such language, drawn almost entirely from the statute, is commonplace in parole decisions, even for individuals assessed as posing low or no risk to public safety. Robinson-Oost, *supra* note 62, at 129-31; see also Hammock & Seelandt, *supra* note 41, at 535-37; Issa Kohler-Hausmann et al., *Children Sentenced to Life: A Struggle for the NY Board of Parole*, 257 N.Y. L.J. 4 (2017); Scott Paltrowitz, *Parole Review Process Has Serious Shortcomings*, CORRECTIONAL ASS'N N.Y.: NEWS (Dec. 6, 2013), <http://www.correctionalassociationelandtn.org/news/parole-review-process-has-serious-shortcomings> [<https://perma.cc/6YFU-4JAF>]; Paltrowitz,

accomplishments in prison may receive some attention during the parole interview and in the written decision, but the crime of conviction is almost always one of the primary reasons for denial, particularly for people convicted of violent crimes who are serving long sentences.<sup>70</sup> During the interview itself, Commissioners often spend the majority of the time questioning applicants about specific details of the original case. These details are gleaned from documents like the Probation Department's pre-sentence report,<sup>71</sup> which often has prejudicial details that may or may not have been proven at trial or outlined during the plea colloquy. People unwilling to admit to the "facts," as the Board believes them to be true, face the prospect of a parole denial based upon what the Board sees as a lack of remorse or insight.<sup>72</sup>

Once the parole interview is complete, applicants must wait, sometimes for up to two weeks,<sup>73</sup> to receive the written decision of the Board. The decisions the Board issues when they deny parole typically contain boilerplate, conclusory language<sup>74</sup> that tracks the

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*supra* note 4, at 14-15; Michael Wilson, *A Crime's Details Are Rehashed and Parole Is Denied, Again and Again*, N.Y. TIMES (July 3, 2015), <https://www.nytimes.com/2015/07/04/nyregion/a-crime-rehashed-and-parole-denied-again-and-again.html> [https://perma.cc/6G8G-KWK5]; Release Aging People in Prison/RAPP, *New York's Parole System in Need of Repair*, PRISON LEGAL NEWS (Aug. 1, 2016), <https://www.prisonlegalnews.org/news/2016/aug/1/new-yorks-parole-system-need-repair/> [https://perma.cc/MQ9G-QDEB]; "The Nature of the Crime" – A Poor Reason to Keep Elders in Prison, RAPP (May 19, 2015) [hereinafter "The Nature of the Crime"], <http://rappcampaign.com/the-nature-of-the-crime/> [https://perma.cc/XJ5X-DGDL].

<sup>70</sup> See, e.g., Paltrowitz, *supra* note 69; "The Nature of the Crime", *supra* note 69; Hammock & Seelandt, *supra* note 41, at 535-37.

<sup>71</sup> Applicants are entitled to review their own pre-sentence reports. N.Y. CRIM. PROC. LAW § 390.50(2)(a) (McKinney 2010) ("Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination.").

<sup>72</sup> *In re Rossakis v. N.Y. State Bd. of Parole*, 146 A.D.3d 22 (1st Dep't 2016) ("The Board's statement that, '[d]espite your assertions of abuse being rejected by a jury after hearing you testify for eight days, and having no corroboration on record of the abuse, you continue to blame your victim for his death,' disregards petitioner's testimony accepting responsibility and expressing remorse for her actions." (alteration in original)).

<sup>73</sup> "If parole is not granted upon such review, the [applicant] shall be informed in writing within two weeks of such appearance of the factors and reasons for such denial of parole." N.Y. EXEC. LAW § 259-i(2)(a)(i) (McKinney 2016).

<sup>74</sup> Boilerplate language denying release based on the "nature of the crime" is so typical that it became the title of a short film created by parole reform advocates to illustrate many of the problems with the NYS Board of Parole. See Swartz, *supra* note 47; see also Hammock & Seelandt, *supra* note 41, at 535; *In re King v. N.Y. State Div. of Parole*, 190 A.D.2d 423 (1st Dep't 1993), *aff'd*, 83 N.Y.2d 788 (1994); *In re Deperno v. N.Y. State Dep't of Corr. & Cmty. Supervision*, No. 2014-1603, 2015 WL 9063711, at \*5

language of the statute and recites the factors Commissioners are required to consider by law. Many applicants have reported that they have received nearly identical decisions from their own parole appearances that were several years apart. Others have received decisions identical to those of their peers.

Ultimately, written decisions leave applicants with little indication of how to better prepare for their next interview, and often the very thing that the Commissioners are fixated on is the one thing applicants can never change—their crime of conviction.

#### IV. BARRIERS TO FAIRNESS IN THE PAROLE APPEALS PROCESS

The path to mounting a successful legal challenge to a parole denial is daunting. Parole applicants must first file an administrative appeal with the Board's internal appeals unit and exhaust their administrative remedies.<sup>75</sup> At the administrative appeal, there is a right to counsel and individuals who cannot afford an attorney may request assigned counsel.<sup>76</sup> Many applicants in New York State prisons have reported that their lawyers do not visit them or arrange for a confidential legal telephone call and often submit similarly boilerplate appeals. This leads to woefully inadequate representation and poorly preserved records.<sup>77</sup>

Many people in prison turn to experienced jailhouse lawyers<sup>78</sup>

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(N.Y. Sup. Ct. Nov. 30, 2015); *In re Williams v. N.Y. State Parole Bd.*, No. 145418, 2015 WL 5840089, at \*2 (N.Y. Sup. Ct. Sept. 30, 2015) (“Upon review of the May 2014 parole denial determination the Court is struck by the fact that the Parole Board’s conclusions are merely a recitation of portions of the language set forth in Executive Law § 259-i(2)(c)(A).”); *In re Rabenbauer v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 46 Misc. 3d 603, 607 (N.Y. Sup. Ct. 2014); *In re West v. N.Y. State Bd. of Parole*, No. 3069-13, 2013 WL 5657701, at \*2-\*4 (N.Y. Sup. Ct. Sept. 24, 2013); *Coaxum v. N.Y. State Bd. of Parole*, 14 Misc. 3d 661, 668-69 (N.Y. Sup. Ct. 2006).

<sup>75</sup> N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, DIRECTIVE 8360, APPEAL PROCESS – BOARD OF PAROLE DECISIONS AND PAROLE/POST-RELEASE SUPERVISION REVOCATION DECISIONS 1-3 (2015) [hereinafter DIRECTIVE 8360], <http://www.doccs.ny.gov/Directives/8360.pdf> [https://perma.cc/7QQH-TBQ6].

<sup>76</sup> *Id.* at 2.

<sup>77</sup> On appeal, in order to raise issues in an Article 78 petition in front of the judiciary, those issues must also be raised during the initial administrative appeal. *In re Khan v. N.Y. State Dep’t of Health*, 96 N.Y.2d 879, 880 (2001) (“Judicial review of administrative determinations pursuant to article 78 is limited to questions of law. Unpreserved issues are not issues of law. Accordingly, the Appellate Division had no discretionary authority or interest of justice jurisdiction in reviewing the agency’s determination of guilt below.” (citations omitted)).

<sup>78</sup> “Jailhouse lawyer” refers to an incarcerated person who provides assistance with legal filings and acts essentially as a lawyer. Beth Schwartzapfel, *For \$12 of Commissary, He Got 10 Years Off His Sentence.: What it Takes to Be a Jailhouse Lawyer.*, MARSHALL PROJECT (Aug. 13, 2015, 3:40 PM), <https://www.themarshallproject.org/2015/08/13/for-12-of-commissary-he-got-10-years-off-his-sentence> [https://perma.cc/9DML-



for assistance in filing administrative appeals, as they are often-times known for submitting more detailed and skilled briefs than court-appointed counsel. However, utilizing the skills of jailhouse lawyers can have its drawbacks—a lack of formal training often leads the appeals unit to dismiss briefs and the various legal arguments presented.

After an administrative appeal is filed, the Board's appeals unit is tasked with reviewing the appeals of denials made by its own Commissioners, although different Commissioners from those who originally denied release at the interview are required to affirm or deny the appeal.<sup>79</sup> The appeals unit is given four months to grant or deny the appeal.<sup>80</sup> In nearly every case, the appeals unit defers to the recommendations of the original Commissioners, often using poorly-drafted, if heavily-cited, memoranda of law giving reasons why an appeal should be denied.<sup>81</sup>

If the Board declines to reverse the denial, the litigant may then file an Article 78 petition in Supreme Court (the trial-level court in New York State).<sup>82</sup> However, litigants must proceed pro se or hire an attorney, as there is no right to counsel at this stage in the appeals process. The question of where to file the Article 78 petition is also a complicated one. Venue is proper either where the original adverse decision was made or where the offices of the administrative agency are located.<sup>83</sup> Thus, appeals can be filed in the jurisdiction where the prison is located, in the county where the Commissioners made their final determination (which is relevant if the interview was conducted over videoconference), or in Albany.<sup>84</sup> Regardless, although most incarcerated people are from New York City and other urban areas, litigants must present their

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E68H]. “[J]ailhouse lawyers have been at the heart of several key legal victories: the right to an attorney, the right to be protected from abuse by other prisoners and by guards, and the right to free exercise of religion.” *Id.*

<sup>79</sup> DIRECTIVE 8360, *supra* note 75, at 2.

<sup>80</sup> N.Y. COMP. CODES R. & REGS. tit. 9, § 8006.4(d) (1995).

<sup>81</sup> *See* Hammock & Seelandt, *supra* note 41, at 557 (“Reviewing courts rarely second-guess the Appeals Unit of the Division, as long as it renders a finding that the Board reviewed all ‘relevant factors.’”).

<sup>82</sup> N.Y. C.P.L.R. 7804(b) (McKinney 1993).

<sup>83</sup> *Id.*; N.Y. C.P.L.R. 506(b)(1) (McKinney 1992); *see also In re Schwartz v. Dennison*, No. 115789/05, 2006 WL 3932753, at \*2-\*6 (N.Y. Sup. Ct. Apr. 18, 2006) (discussing why venue is also appropriate in the county of conviction).

<sup>84</sup> Some litigants have successfully brought Article 78 suits in New York City jurisdictions on the theory that the original conviction took place there. When this occurs, the burden is on DOCCS to move for a change of venue, which they sometimes do. If not, the suit remains where it was filed. *See, e.g., See, e.g., Coaxum v. N.Y. State Bd. of Parole*, 14 Misc. 3d 661 (Sup. Ct. 2006).

claims to the judiciary of rural and upstate New York. While there are several judges who have expressed great frustration with the arbitrary and subjective practices of the Board, most applicants are contending with a generally conservative and unsympathetic body that gives the Board great leeway.

On appeal, appellants must demonstrate that the Board's denial of parole showed "irrationality bordering on impropriety,"<sup>85</sup> language that is derived from the "arbitrary and capricious" standard, which is used to assess the legality of an administrative agency's action.<sup>86</sup> While the "irrationality bordering on impropriety" standard is now widely quoted and often cited in lower court and appellate rulings, no judge or panel has ever indicated why the Board should be subjected to scrutiny that differs from that applied to other administrative agencies whose actions are subject to Article 78 review, such as the Board of Election or the New York State Bridge Authority.<sup>87</sup> Further, demonstrating that the Board's decision was "irrational[ ] bordering on impropriety," is exceptionally difficult. Even in instances where the court has recognized the extraordinary accomplishments of a petitioner and their apparent suitability for release, the "irrational bordering on impropriety" standard insulates the Board from judicial review.<sup>88</sup>

A successful Article 78 petition also requires precision and excellent timing. When denying parole, the Board most often gives two-year holds,<sup>89</sup> meaning that if an individual is denied release they will not see the Board for another two years. If an individual is able to file their initial administrative appeal and obtain a decision

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<sup>85</sup> *In re Silmon v. Travis*, 95 N.Y.2d 470, 476 (2000); *In re Marino v. Travis*, 289 A.D.2d 493, 493 (2d Dep't 2001).

<sup>86</sup> See generally *In re Russo v. N.Y. State Bd. of Parole*, 50 N.Y.2d 69, 77 (1980) (first promulgating this standard).

<sup>87</sup> This standard appears to originate with the Court of Appeals case *In re Russo v. N.Y. State Bd. of Parole*: "In light of the board's expertise and the fact that responsibility for a difficult and complex function has been committed to it, there would have to be a showing of irrationality bordering on impropriety before intervention would be warranted." *Id.* This language comes from the last full paragraph of the opinion, which focuses on a function that the Board no longer has: the determination of minimum terms of incarceration. Though often cited, the Court of Appeals did not offer any metric for applying this standard, nor does it explain why this standard applies.

<sup>88</sup> See, e.g., *In re Hamilton v. N.Y. State Div. of Parole*, 119 A.D.3d 1268, 1274, 1275 (3d Dep't 2014) ("[T]his Court is persuaded that petitioner's achievements during his incarceration have been extraordinary. . . . Accordingly, inasmuch as the Board has not violated the statutory mandates and its determination does not exhibit irrationality bordering on impropriety under either our precedent or that of the Court of Appeals, its discretion is absolute and beyond review in the courts.") (internal quotations omitted).

<sup>89</sup> Also called "hits."

within a year, and then subsequently file an Article 78 petition, the Attorney General (which defends the Board in these suits) is likely to ask for a filing extension. Then, the courts will often defer writing a decision until the two-year period passes (there is no required timeframe within which a court must rule on a case after it has been fully briefed). If the litigant has already had their subsequent interview with the Board, then the court can deem the suit “moot” because a new hearing—the only remedy the court has at its disposal—has already taken place.<sup>90</sup>

Even if a litigant successfully navigates this difficult appeals process, neither the internal appeals unit nor the courts may grant release as a remedy for a successful appeal.<sup>91</sup> So, a successful Article 78 results only in a new (*de novo*) hearing before a different panel of Commissioners. Many people have experienced the jubilation of a court victory only to be handed another denial and a two-year hit at their *de novo* hearing.

Ultimately, the appeals process is arduous and often deeply unsatisfactory for appellants seeking to challenge their parole denials. Great judicial deference but also insufficient judicial remedies mean that appellants have few, if any, meaningful opportunities for

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<sup>90</sup> As the only remedy permitted in an Article 78 proceeding is the grant of a new hearing, if the Board of Parole interviews a person again before the Article 78 court renders a decision, the matter is considered moot because a new interview was just conducted. *In re Hynes v. Stanford*, 148 A.D.3d 1383, 1383 (3d Dep’t 2017) (“Petitioner commenced this CPLR article 78 proceeding challenging a July 2014 determination of the Board of Parole denying his request for parole release. . . . [P]etitioner reappeared before the Board in January 2017 at which time he was again denied parole release. As such, the appeal is moot and, as the narrow exception to the mootness doctrine is inapplicable, it must be dismissed . . . .”); see also *In re Standley v. N.Y. State Div. of Parole*, 34 A.D.3d 1169, 1170 (3d Dep’t 2006) (noting that “petitioner’s reappearance [before the Board] would normally render this appeal moot,” but for the fact that an exception to the mootness doctrine arose, namely, that “a substantial issue [was] involved which continue[d] to evade review”).

<sup>91</sup> Despite the fact that the only remedy traditionally available on a successful appeal has been a new hearing, several judges have defied this precedent and ordered the Board to release people. Although such decisions are unlikely to hold on appeal, they demonstrate the judiciary’s profound discontent with Parole Board practices. See, e.g., *In re Kellogg v. N.Y. State Bd. of Parole*, No. 160366/2016, 2017 WL 1091762, at \*4 (N.Y. Sup. Ct. Mar. 20, 2017) (where a New York County judge demanded the Board release the petitioner in an Article 78 proceeding); *In re Kellogg v. The N.Y. State Bd. of Parole*, N.Y. L.J. (Apr. 18, 2017). The S.A.F.E. Parole Act, a bill drafted by parole reform advocates that has gained traction in the New York State Assembly, discussed *infra* Part V, includes a provision that would explicitly allow the judiciary to grant release to parole applicants appealing their parole denials. Assemb. 4108, 2013-2014 Leg., Reg. Sess. (N.Y. 2013), <http://legislation.nysenate.gov/pdf/bills/2013/A4108> [<https://perma.cc/26MV-QW38>]; see also S. 1128, 2013-2014 Leg., Reg. Sess. (N.Y. 2013), <http://legislation.nysenate.gov/pdf/bills/2013/S1128> [<https://perma.cc/8DVT-4EVK>].

review and the Board continues to deny release to eligible and community-ready individuals with relative impunity.

## V. PAST AND PRESENT LITIGATION

While the regulations governing the practices of the Board are public, as are portions of their monthly meetings, the inner-workings of the Board, how Commissioners are assigned to specific hearing panels, and the process by which they make their release determinations remain unknown. Although the Board operates in relative obscurity, parole reformers have attempted for many years to bring accountability, transparency, consistency, and objectivity to parole release decision-making.

In 2011, the New York State legislature amended the Executive Law governing parole to require the Board to “establish written procedures . . . . incorporat[ing] risk and needs principles . . . .”<sup>92</sup> Prior to this change, use of evidence-based risk and needs tools was discretionary. The amendment required the Board to adopt and utilize an empirically validated risk assessment and to develop procedures for how to use such a tool.

To fulfill the requirement set out by the legislature, the Board selected an evaluative instrument called Correctional Offender Management Profiling for Alternative Sanction (“COMPAS”) developed by Northpointe Institute for Public Management Inc.<sup>93</sup> The COMPAS software was first introduced as a pilot project by New York State in 2001 for use by the Division of Criminal Justice Services’ Office of Probation and Correctional Alternatives without any rigorous testing, and was later adopted for use by all probation departments in New York State (except New York City) by 2010.<sup>94</sup>

After the 2011 reforms, the COMPAS system was adopted by DOCCS to address the legislative changes.<sup>95</sup> COMPAS is administered by a parole applicant’s Offender Rehabilitation Counselor

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<sup>92</sup> See N.Y. EXEC. LAW § 259-c(4) (McKinney 2011).

<sup>93</sup> SHARON LANSING, N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., NEW YORK STATE COMPAS-PROBATION RISK AND NEED ASSESSMENT STUDY: EXAMINING THE RECIDIVISM SCALE’S EFFECTIVENESS AND PREDICTIVE ACCURACY 1 (2012), [http://www.northpointeinc.com/downloads/research/DCJS\\_OPCA\\_COMPAS\\_Probation\\_Validity.pdf](http://www.northpointeinc.com/downloads/research/DCJS_OPCA_COMPAS_Probation_Validity.pdf) [<https://perma.cc/63BG-G2KA>].

<sup>94</sup> Julia Angwin, et al., *Machine Bias: There’s Software Used Across the Country to Predict Future Criminals. And It’s Biased Against Blacks.*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing> [<https://perma.cc/WN9A-ZA9T>].

<sup>95</sup> John Caher, *Effect of Risk Assessment Rule on Parole Decisions is Unclear*, N.Y. L.J. (Apr. 30, 2012).

“ORC”) <sup>96</sup> and currently consists of 74 questions.<sup>97</sup> Answers are tallied and applicants are given a final score of low, medium, or high, indicating the level of risk they pose to public safety upon release.<sup>98</sup> Many applicants report that the ORCs who administer the evaluations frequently make mistakes and misreport information, especially regarding an applicant’s prior criminal history, disciplinary record, and family support. As ORCs often only give applicants their COMPAS reports days before their Parole Board interviews, there is little time and no viable process for correcting errors.<sup>99</sup> COMPAS has also been found to be racially biased.<sup>100</sup>

Further, as the purpose of incorporating the risk and needs principles was to “measure the rehabilitation of persons appearing before the board [and] the likelihood of success of such persons upon release,”<sup>101</sup> the Board also instituted a new case management procedure. The amended statute requires that:

[T]he department shall develop a transitional accountability plan. Such plan shall be a comprehensive, dynamic and individualized case management plan based on the programming and treatment needs of the [incarcerated person]. The purpose of such plan shall be to promote the rehabilitation of the [incarcerated person] and their successful and productive reentry and reintegration into society upon release.<sup>102</sup>

When the 2011 law was passed requiring the use of the risk assessment and transitional accountability plans, it was hailed as a

<sup>96</sup> DIRECTIVE 8500, *supra* note 65, at 6.

<sup>97</sup> Winerip, *supra* note 16; *see also In re Hawthorne v. Stanford*, 135 A.D.3d 1036, 1037-38 (3d Dep’t 2016) (describing the COMPAS assessment). Although used for different purposes and in a different context, the COMPAS-Probation instrument shares some overlap with the COMPAS-Parole instrument, and thus is provided here as an example. *See LANSING, supra* note 93, at 21; *see also* NORTHPOINTE, PRACTITIONERS GUIDE TO COMPAS 17 (2012), [http://www.northpointeinc.com/files/technical\\_documents/FieldGuide2\\_081412.pdf](http://www.northpointeinc.com/files/technical_documents/FieldGuide2_081412.pdf) [<https://perma.cc/4FXT-6U9M>] (“Although we view risk scales separately from need scales in terms of function and purpose, both the need scales and the risks scales should be relevant for probation, prison, reentry, and parole work.”).

<sup>98</sup> Winerip, *supra* note 16. It is unknown how each question is weighed and factored into the final calculation.

<sup>99</sup> People in prison have reported attempting to fix errors in their COMPAS through a formal grievance process, but often to no avail. *See* N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, DIRECTIVE 4040, INMATE GRIEVANCE PROGRAM (2016), <http://www.doccs.ny.gov/Directives/4040.pdf> [<https://perma.cc/A4XQ-5JX3>].

<sup>100</sup> Angwin et al., *supra* note 94. *See also* Adam Liptak, *Sent to Prison by a Software Program’s Secret Algorithms*, N.Y. TIMES (May 1, 2017), [https://www.nytimes.com/2017/05/01/us/politics/sent-to-prison-by-a-software-programs-secret-algorithms.html?\\_r=0](https://www.nytimes.com/2017/05/01/us/politics/sent-to-prison-by-a-software-programs-secret-algorithms.html?_r=0) [<https://perma.cc/R4FC-QHC9>].

<sup>101</sup> N.Y. EXEC. LAW § 259-c(4) (McKinney 2011).

<sup>102</sup> N.Y. CORRECT. LAW § 71-a (McKinney 2011).

potentially momentous shift towards a new rehabilitative approach and more forward-looking parole release decisions.<sup>103</sup> However, it became clear that no such grand overhaul would be forthcoming.<sup>104</sup> Following the 2011 amendments, the Board did not engage in the formal rule-making procedure outlined by New York State's Administrative Procedure Act<sup>105</sup> to promulgate new regulations, although the Chairwoman of the Board at the time, Andrea Evans, did issue a short memo noting that risk and needs principles were now required to be considered.<sup>106</sup> However, she noted in her memo that "the standard for assessing the appropriateness for release, as well as the statutory criteria you must consider *has not changed* through the aforementioned legislation."<sup>107</sup> People in prison also reported that no transitional accountability plans were generated prior to their parole interviews.

The Board's apparent failure to comply with the legislature's amendments resulted in substantial litigation. People in prison, while challenging their parole denials, argued that the Board had violated N.Y. Exec. Law § 259-c(4) by not engaging in formal rule-making, and therefore, did not hold a lawful parole hearing. In spite of some success in the trial courts, most notably in *Morris v. N.Y. State Dep't of Corr. & Cmty. Supervision*,<sup>108</sup> the Appellate Division, Third Department ultimately sided with the Board that formal rule-making was not required,<sup>109</sup> effectively foreclosing the opportunity for people to win new hearings through this avenue.<sup>110</sup> Other litigants challenged their parole denials based on the lack of

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<sup>103</sup> See, e.g., Philip M. Genty, *Changes to Parole Signal Potentially Sweeping Policy Shift*, 246 N.Y. L.J. 4 (2011).

<sup>104</sup> See Caher, *supra* note 95 (noting that advocates have not seen any changes and quoting a practitioner who stated, "[m]y experience has been it doesn't matter because most of the guys are scoring the lowest risk assessment level and they are still hitting them and saying they are a threat to society").

<sup>105</sup> Such a procedure would require that the Board issue a notice of proposed rulemaking and publication with an opportunity for public comment. N.Y. A.P.A. LAW § 202 (McKinney 2011).

<sup>106</sup> Memorandum from Andrea Evans, Chairwoman, N.Y. State Bd. of Parole, to Members, N.Y. State Bd. of Parole (Oct. 5, 2011), <https://curennewyork.wordpress.com/2012/01/04/andrea-evans-memo-to-parole-board/> [<https://perma.cc/FY3E-37VJ>]. Initially the Board took the position that they were not required to consider the COMPAS score. They were rebuked for taking this position. *In re Garfield v. Evans*, 108 A.D.3d 830, 830-31 (3d Dep't 2013) ("We find no justification for the Board's failure to use the COMPAS instrument . . .").

<sup>107</sup> Evans, *supra* note 106 (emphasis added); see also Caher *supra* note 95.

<sup>108</sup> 40 Misc. 3d 226 (N.Y. Sup. Ct. 2013).

<sup>109</sup> *In re Montane v. Evans*, 116 A.D.3d 197, 202 (3d Dep't 2014).

<sup>110</sup> For a summary of the legal issues involved in the pre-*Montane* litigation challenging the Board's actions following the 2011 legislative amendments to the Executive Law, see Alan Rosenthal & Patricia Warth, *Parole Release Decisions and the Rule of Law*,

transitional accountability plans in their case files, although such challenges were generally unsuccessful.<sup>111</sup>

In response to the wave of litigation, the Board did eventually move to promulgate new regulations, which were proposed in December 2013.<sup>112</sup> In spite of a barrage of comments upon the failure of the proposed new rules to alter the status quo or implement the legislature's 2011 mandate,<sup>113</sup> and a hearing conducted before the New York State Assembly's Standing Committee on Correction for which many advocates submitted forceful testimony for parole reform,<sup>114</sup> the Board ultimately enacted the exact regulations they had proposed, incorporating none of the recommendations of the parole reform community.<sup>115</sup> The new regulations were enacted in 2014, and rather than give any sweeping guidance or revamp the way the Board conducts itself, they did very little, simply adding risk and needs assessments and case plans to the string of factors that the Board must consider.<sup>116</sup>

In response to this failure to incorporate the input of the parole reform community, parole applicants denied release again took to the courts. In 2014, Jorge Linares made his way to the Court of Appeals.<sup>117</sup> Attorneys for Linares argued that he was enti-

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ATTICUS, Summer 2013, at 10, [http://www.nysacdl.org/wp/wp-content/uploads/2010/09/NYSACDL\\_Atticus\\_Summer\\_2013.pdf](http://www.nysacdl.org/wp/wp-content/uploads/2010/09/NYSACDL_Atticus_Summer_2013.pdf) [<https://perma.cc/FTW5-LWR3>].

<sup>111</sup> See, e.g., *Morris*, 40 Misc. 3d 226.

<sup>112</sup> Parole Board Decision-Making, 35 N.Y. State Reg. 51 (proposed Dec. 18, 2013), <https://docs.dos.ny.gov/info/register/2013/dec18/pdf/rulemaking.pdf> [<https://perma.cc/C99E-5X32>].

<sup>113</sup> See, e.g., Jeremy Benjamin, *Newly Proposed Parole Regulations*, N.Y. ST. BAR ASS'N: BLOGS (Oct. 21, 2016, 10:57 PM), <http://communities.nysba.org/blogs/jeremy-benjamin/2016/10/21/newly-proposed-parole-regulations> [<https://perma.cc/8URD-XWV3>]. Some of the principle critiques the parole reform community had of the proposed regulations were that: the Board would be free to disregard the risk and needs assessment if it was only one factor of many; the Board is not required to give individuals any feedback on what they could do to have a better chance of release in the future; and the new regulations give no guidance on *how* risk and needs assessments should be taken into account or used in decision-making. For a summary of the legislative hearing and the advocacy around the proposed regulations, see Prison Action Network, *January 2014*, BUILDING BRIDGES (Jan. 5, 2014), [http://prisonaction.blogspot.com/2014\\_01\\_01\\_archive.html](http://prisonaction.blogspot.com/2014_01_01_archive.html) [<https://perma.cc/W6EQ-R62N>].

<sup>114</sup> See, e.g., Paltrowitz, *supra* note 4; see also STANDING COMM. ON CORR., N.Y. STATE ASSEMBLY, 2013 ANNUAL REPORT 10 (2013), <http://assembly.state.ny.us/comm/Correct/2013Annual/index.pdf> [<https://perma.cc/E7SM-VMQ2>].

<sup>115</sup> These regulations are codified at N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3 (2014).

<sup>116</sup> See Notice of Adoption: Parole Board Decision-Making, 36 N.Y. State Reg. 30, 11 (July 30, 2014), <https://docs.dos.ny.gov/info/register/2014/july30/pdf/rulemaking.pdf> [<https://perma.cc/LA5N-MZJ6>], codified at N.Y. COMP. CODES R. & REGS. tit. 9, § 8002.3(a)(11)-(12) (2014).

<sup>117</sup> As a pro se litigant, Mr. Linares represented himself in his initial Article 78

tled to a new hearing because of the Board's failure to consider a risk and needs assessment and that the Board must give a proper reason if they decline to release someone deemed low risk. The Court of Appeals affirmed the lower court opinion, which ordered a new hearing because of the Board's failure to consider the risk and needs assessment, but did not consider the arguments regarding the validity of the new regulations. Because the regulations were promulgated after Mr. Linares's parole hearing had taken place, the Board had not yet had an opportunity to evaluate the validity and application of the new regulations.<sup>118</sup> Thus, the Court reasoned, Linares was challenging regulations that had never been applied to him.<sup>119</sup> The suit was dismissed essentially on a technicality, in spite of attracting several amicus briefs and presenting significant and viable challenges to the Board's procedures.<sup>120</sup>

Although a few individuals have been able to obtain relief from the courts when appealing a denial of parole, litigation challenging the Board has at times been piecemeal, which is not surprising given that many litigants are incarcerated and are forced to represent themselves on a *pro se* basis. Although legislative changes in 2011 presented some opportunity for a shift in the Board's practices, the Board has largely disregarded the tone and intent of that legislation and found ways to circumvent its mandate.

## VI. HOLDING THE BOARD IN CONTEMPT

Other recent developments give cause to believe that change is afoot. In an attempt to bypass the circular process of parole denials, internal appeals, and Article 78 petitions, creative attorneys and jailhouse lawyers have begun asking courts to hold the Board in contempt of court for denials following *de novo* hearings that stemmed from successful Article 78 petitions.<sup>121</sup> Petitioners argued

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petition and his subsequent appeal to the New York Appellate Division, Third Department. *See In re Linares v. Evans*, 112 A.D.3d 1056 (3d Dep't 2013). However, Mr. Linares obtained counsel when New York's highest court granted leave to appeal. *See In re Linares v. Evans*, 26 N.Y.3d 1012 (2015).

<sup>118</sup> *Linares*, 26 N.Y.3d at 1013-14.

<sup>119</sup> *Id.*

<sup>120</sup> *See* Brief for Columbia Law School Prisoners and Families Clinic as Amicus Curiae, *Linares*, 26 N.Y.3d 1012 (No. 2014-76), 2015 WL 6550689, at \*1 (advocating for "[c]onsistent application of risk and needs assessment tools"); Brief of Criminology Experts as Amici Curiae, *Linares*, 26 N.Y.3d 1012 (No. 2014-76), 2015 WL 6550692, at \*1 (advocating for a decision that "will reinforce the New York Legislature's aim to improve parole decision making by incorporating non-discretionary risk/needs assessment tools").

<sup>121</sup> *Mackenzie v. Stanford*, No. 2789/15, at 1-5 (N.Y. Sup. Ct. May 24, 2016), <https://assets.documentcloud.org/documents/2849697/5-16-Decision-Granting-Contempt->



that when the Board of Parole holds a de novo hearing and issues a boilerplate parole denial similar or equivalent to the one issued after the original hearing that was successfully challenged, the Board is directly disobeying the court's order to hold a lawful hearing.

The most well-known case in this area was that of John MacKenzie, who was convicted of killing a police officer in 1975.<sup>122</sup> In 2016, John was 70 years old, and had spent 41 years in prison on a sentence of 25 years to life. While incarcerated, John accomplished a great deal, earning three college degrees, founding new programs for incarcerated men, and undergoing a profound personal transformation.<sup>123</sup>

Judge Maria Rosa of Dutchess County held the Board of Parole in contempt in 2016, writing that MacKenzie's denial at his de novo hearing was "virtually the same [as the original denial]," which was "entirely unsupported by the factual record."<sup>124</sup> Judge Rosa demanded to know: "if parole isn't granted to this petitioner, when and under what circumstances would it be granted?"<sup>125</sup> She imposed a \$500 fine for every day that the Board failed to conduct a lawful hearing.<sup>126</sup>

In July 2016, the Board of Parole held a hearing and again

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Motion.pdf [<https://perma.cc/TP3X-VTD6>]; see also Alexis Watts & Edward Rhine, *Parole Board Held in Contempt After Failing to Follow State's Parole Release Laws*, ROBINAINST. L. & CRIM. JUST.: NEWS, <https://robinainstitute.umn.edu/news-views/parole-board-held-contempt-after-failing-follow-state%E2%80%99s-parole-release-laws> [<https://perma.cc/Q2C2-DS5F>] (discussing *Mackenzie v. Stanford*).

<sup>122</sup> Victoria Law, *Suicide of 70-Year-Old John Mackenzie After Tenth Parole Denial Illustrates Broken System*, VILLAGE VOICE (Aug. 9, 2016, 9:30 AM), <http://www.villagevoice.com/news/suicide-of-70-year-old-john-mackenzie-after-tenth-parole-denial-illustrates-broken-system-8959954> [<https://perma.cc/PP6D-SVFC>].

<sup>123</sup> *Id.*

<sup>124</sup> *Mackenzie*, No. 2789/15, at 1-2.

<sup>125</sup> *Id.* at 5.

<sup>126</sup> *Id.* In *Cassidy v. N.Y. State Bd. of Parole*, Judge Sciortino similarly held the Board in contempt for a de novo hearing that mimicked, and according to Judge Sciortino, was "even more egregious" than, the first. Ben Bedell, *Parole Board Held in Contempt for Failure to Explain Denial*, N.Y. L.J. (June 1, 2015). However, on appeal, the Second Department Appellate Division reversed Judge Sciortino's decision, holding that the Board had in fact complied with its responsibilities pursuant to the original Supreme Court order, potentially stymieing the success of future contempt motions. *In re Cassidy v. N.Y. State Bd. of Parole*, 140 A.D.3d 953, 954-55 (2d Dep't 2016), *leave to appeal dismissed*, 28 N.Y.3d 1128 (2017), *reargument denied*, No. 2017-252, 2017 WL 1223647 (N.Y. Apr. 4, 2017). As the Court of Appeals denied leave for an additional appeal, the Second Department ruling stands. *In re Cassidy v. N.Y. State Bd. of Parole*, 28 N.Y.3d 1128 (2017), *reargument denied*, No. 2017-252, 2017 WL 1223647 (N.Y. Apr. 4, 2017). However, advocates have argued that the facts in *Cassidy* can and will be easily distinguished from other cases, preserving opportunities for future contempt motions.

denied John release for the tenth time.<sup>127</sup> Days later, John committed suicide in a prison cell in Fishkill Correctional Facility.<sup>128</sup> John was loved and respected by people both inside and outside of prison; his death has become a rallying cry for the reform community.<sup>129</sup>

While many avenues for contempt motions have potentially been closed by a ruling in the Appellate Division, Second Department,<sup>130</sup> the fact that some Judges have been willing to go so far as to hold the Board in contempt is revealing of the extent of the Board's intransigence and unlawful practices.

## VII. PROTECTIONS FOR PEOPLE CONVICTED AS JUVENILES

Other signs of change include a recent line of cases designed to protect people convicted of crimes committed before the age of 18. After reviewing a plethora of scientific evidence, the U.S. Supreme Court concluded that, "children are constitutionally different from adults for purposes of sentencing"<sup>131</sup> because of their diminished culpability and enhanced capacity for rehabilitation.<sup>132</sup> Further, the Constitution demands that juveniles sentenced to life without the possibility of parole before the age of 18 must be afforded a meaningful "opportunity for release . . . to those who demonstrate the truth of *Miller's* central intuition—that children who commit even heinous crimes are capable of change."<sup>133</sup> The Court also made clear that these holdings apply retroactively to the states.<sup>134</sup>

In applying these rulings, the New York Appellate Division, Third Department in *Hawkins v. N.Y. State Dep't of Corr. & Cmty.*

<sup>127</sup> Jesse Wegman, Opinion, *False Hope and a Needless Death Behind Bars*, N.Y. TIMES (Sept. 6, 2016), <https://www.nytimes.com/2016/09/06/opinion/false-hope-and-a-needless-death-behind-bars.html> [<https://perma.cc/N2EB-BPSY>].

<sup>128</sup> Law, *supra* note 122.

<sup>129</sup> See, e.g., *id.*; Editorial, *A Challenge to New York's Broken Parole System*, N.Y. TIMES (June 13, 2016), <https://www.nytimes.com/2016/06/13/opinion/a-challenge-to-new-yorks-broken-parole-board.html> [<https://perma.cc/Z7KF-Q2J3>]; Joseph Goldstein, *Merciless End for a Long Island Cop Killer*, N.Y. TIMES (Oct. 28, 2016), <https://www.nytimes.com/2016/10/30/nyregion/merciless-end-for-a-long-island-cop-killer.html> [<https://perma.cc/464E-BQCB>]; Wegman, *supra* note 127.

<sup>130</sup> See *In re Cassidy v. N.Y. State Bd. of Parole*, 140 A.D.3d 953, 954-55 (2d Dep't 2016), *leave to appeal dismissed*, 28 N.Y.3d 1128 (2017), *reargument denied*, No. 2017-252, 2017 WL 1223647 (N.Y. Apr. 4, 2017).

<sup>131</sup> *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

<sup>132</sup> *Id.*; *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).

<sup>133</sup> *Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

<sup>134</sup> *Id.* at 729.

*Supervision* held in 2016 that these principles pertain just as much to the Board of Parole as to a sentencing court.<sup>135</sup> The Appellate Division explained that a “meaningful opportunity” for release is one in which a person’s youth at the time of the crime, as well as that person’s individual capacity for reform and rehabilitation, are considered as part of the Board’s inquiry.<sup>136</sup>

If the Board follows the mandate of the Third Department and the U.S. Supreme Court as required, and genuinely considers a person’s youthfulness at the time of their crime, hundreds, or perhaps thousands, of people will serve less time in prison for crimes they committed as juveniles.<sup>137</sup> Advocates and attorneys have already begun to mobilize around this issue, identifying and advocating for people in New York State who are serving life sentences for crimes they committed before they were 18.<sup>138</sup>

#### VIII. RECENT CHANGES IN PAROLE BOARD REGULATIONS

Following *Hawkins* and the death of John MacKenzie, the Board once again moved to promulgate new regulations, which were formally proposed in September 2016.<sup>139</sup> They aimed to make more explicit the Board’s mandate to consider risk and needs assessments, and require the Board to consider an individual’s youth at the time of the offense when relevant.<sup>140</sup> In the same spirit, the new proposed regulations also required that in their denials, Commissioners must give “factually individualized” reasons for their conclusions.<sup>141</sup>

However, parole reform advocates and other grassroots lead-

<sup>135</sup> *Hawkins v. N.Y. State Dep’t of Corr. & Cmty. Supervision*, 140 A.D.3d 34, 36 (3d Dep’t 2016).

<sup>136</sup> *Id.* at 37.

<sup>137</sup> See *Graham*, 560 U.S. at 75; *Miller*, 567 U.S. at 497; *Hawkins*, 140 A.D.3d at 36-38.

<sup>138</sup> See Kohler-Hausmann et al., *supra* note 69; *New York’s Parole Problems*, WNYC: BRIAN LEHRER SHOW (Dec. 9, 2016), <http://www.wnyc.org/story/nys-parole-juvenile-offenders/> [<https://perma.cc/H5SD-M5QJ>]; Beth Schwartzapfel, *When Parole Boards Trump the Supreme Court*, MARSHALL PROJECT (May 19, 2016, 7:00 AM), <https://www.themarshallproject.org/2016/05/19/when-parole-boards-trump-the-supreme-court> [<https://perma.cc/HAU5-KB8C>]; Issa Kohler-Hausmann et al., Comment Letter on Proposed Rule Making on Parole Board Decision Making 3-6 (Oct. 29, 2016) [hereinafter Kohler-Hausmann, Comment Letter], [http://rappcampaign.com/wp-content/uploads/Letter-re-Proposed-Parole-Regs\\_IKH\\_10-31\\_2016.pdf](http://rappcampaign.com/wp-content/uploads/Letter-re-Proposed-Parole-Regs_IKH_10-31_2016.pdf) [<https://perma.cc/BUN5-M3MW>].

<sup>139</sup> Proposed Rule Making: Parole Board Decision Making, 38 N.Y. State Reg. 39, 7-8 (Sept. 28, 2016), <https://docs.dos.ny.gov/info/register/2016/sept28/pdf/rulemaking.pdf> [<https://perma.cc/4AYS-TWAS>]; see also Joel Stashenko, *Proposed New Parole Rules Fairer to Inmates, Officials Say*, 256 N.Y. L.J. 1 (2016).

<sup>140</sup> Proposed Rule Making: Parole Board Decision Making, *supra* note 139.

<sup>141</sup> *Id.* at 7.

ers argued that the proposed regulations did not fundamentally change the structure or methods of the Parole Board—while they contained some steps towards positive change, the rules did not explicitly require the Board to assess applicants based on their current risk, rehabilitation, and readiness for release.<sup>142</sup> As such, the regulations could permit a continuation of the Board's current practice: refusing to release people from prison even when they pose no risk of endangering public safety and are undeniably rehabilitated and suitable for parole.<sup>143</sup>

Attorneys also argued that the proposed regulations were unlikely to pass constitutional muster in relation to *Hawkins* and the line of U.S. Supreme Court cases that offer unique protections for people convicted as juveniles.<sup>144</sup> Their poor construction and failure to center the hallmark features of youth in their inquiries, as

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<sup>142</sup> See, e.g., Jeremy A. Benjamin, Chair, Comm. on Civil Rights, N.Y. State Bar Ass'n, Comment Letter on Proposed Rule Making on Parole Board Decision Making 1-2 (Nov. 11, 2016), <http://rappcampaign.com/wp-content/uploads/NYS-Bar-Association-Ctteeon-Civil-Rts.pdf> [<https://perma.cc/K6TR-ZFPT>]; Judith Brink, Dir., Prison Action Network, Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 6, 2016), <http://rappcampaign.com/wp-content/uploads/prisonactionnetworkparolecomments.pdf> [<https://perma.cc/LK82-WYNM>]; Elizabeth Gaynes, President & CEO, The Osborne Ass'n, Comment Letter on Proposed Rule Making on Parole Board Decision Making (Oct. 31, 2016), [http://www.osborneny.org/images/uploads/printMedia/Osborne\\_PublicComment\\_Parole.pdf](http://www.osborneny.org/images/uploads/printMedia/Osborne_PublicComment_Parole.pdf) [<https://perma.cc/GXE4-XS6K>]; Justine M. Luongo, Attorney-in-Charge, Criminal Practice, The Legal Aid Soc'y & Karen L. Murtagh, Exec. Dir., Prisoners' Legal Servs. of N.Y., Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 14, 2016) [hereinafter Luongo & Murtagh, Comment Letter], <http://rappcampaign.com/wp-content/uploads/LegalAidSocietyAndPrisonersRightsProject.pdf> [<https://perma.cc/E4PL-MPEH>]; Lauren Melodia, Gen. Manager, Milk Not Jails, Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 10, 2016), <http://rappcampaign.com/wp-content/uploads/MNJ-Parole-Comments-to-DOCCS-111116.pdf> [<https://perma.cc/PNB3-DAC4>]; Nat'l Lawyers Guild - N.Y.C. Chapter, Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 10, 2016) [hereinafter Nat'l Lawyers Guild - N.Y.C. Chapter, Comment Letter], <http://rappcampaign.com/wp-content/uploads/NLG-NYC-Final-Comments.pdf> [<https://perma.cc/KX2B-TH5B>]; Release Aging People in Prison (RAPP) Campaign, Comment Letter on Proposed Rule Making on Parole Board Decision Making 2 (Oct. 8, 2016), <http://rappcampaign.com/wp-content/uploads/RAPP-PUBLIC-COMMENTSOctober2016-3-4.pdf> [<https://perma.cc/77YP-LL5J>]; Judith M. Whiting, Gen. Counsel, Cmty. Serv. Soc'y, Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 10, 2016), <http://rappcampaign.com/wp-content/uploads/CommunityServiceSocietyparolecomments.pdf> [<https://perma.cc/68FG-6RS4>].

<sup>143</sup> See Release Aging People in Prison (RAPP) Campaign, *supra* note 142.

<sup>144</sup> See, e.g., Kohler-Hausmann, Comment Letter, *supra* note 138; Jack Beck, Dir., Prison Visiting Project, Corr. Ass'n of N.Y., Comment Letter on Proposed Rule Making on Parole Board Decision Making 5-6 (Nov. 10, 2016), <http://rappcampaign.com/wp-content/uploads/CorrectionalAssociationofNY.pdf> [<https://perma.cc/L4FR-4TEN>].

well as a lack of proper procedural protections, made the proposed amendments woefully inadequate. Ultimately, while the proposed regulations included new additions, which, if followed, could impact the parole process for many, they do little to shift the underlying approach to and tone of the process.

In response to the inadequacy of the proposed regulations, advocates organized a statewide campaign to solicit public comments that the Board would then be required to review, as with the promulgation of any new administrative rules.<sup>145</sup> The Board of Parole received over 400 comments from the public and from incarcerated people.<sup>146</sup>

While comments varied widely, many suggested that for those who pose little to no risk to public safety (as determined by both an evidence-based evaluation and a more holistic risk and needs assessment), there should be a codified presumption of release.<sup>147</sup> Thus, for those with low risk scores, parole shall “be granted . . . unless exceptional circumstances exist as to warrant a denial.”<sup>148</sup> Commenters also included demands that the Board inform an applicant, upon denial of parole, of specific steps the applicant can take to improve their chances of release at future appearances. Advocates argued that the list should be exhaustive, preventing the Commissioners from arbitrarily denying release at a future hearing.<sup>149</sup> Following this vibrant period of public comment, advocates and others invested in comprehensive parole reform are eagerly

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<sup>145</sup> Parole Justice New York, *Now is the Time to Demand Parole Reform in New York State*, ACTION NETWORK, <https://actionnetwork.org/letters/now-is-the-time-to-demand-parole-reform-in-new-york-state> [<https://perma.cc/T93U-VCCS>]; *Comment on NYS Parole Board Regulations*, RAPP, <http://rappcampaign.com/public-comments-on-draft-parole-regulations/> [<https://perma.cc/78AZ-A876>].

<sup>146</sup> NYS Public Safety, *NYS Board of Parole Meeting January 2017*, YOUTUBE (Feb. 3, 2017), <https://www.youtube.com/watch?v=QwXLacRmfNE> [<https://perma.cc/4U92-283B>].

<sup>147</sup> See *3 Steps to Parole Justice in New York*, RAPP (Feb. 12, 2016), <http://rappcampaign.com/3-steps-to-parole-justice-in-new-york/> [<https://perma.cc/3CX7-J5ME>] (providing links to comments from various individuals and organizations); see also Kohler-Hausmann, Comment Letter, *supra* note 138.

<sup>148</sup> Nat'l Lawyers Guild – N.Y.C. Chapter, Comment Letter, *supra* note 142; Luongo & Murtagh, Comment Letter, *supra* note 142, at 2.

<sup>149</sup> See, e.g., Luongo & Murtagh, Comment Letter *supra* note 142, at 4; Glenn E. Martin, Founder & President, JustLeadershipUSA, Comment Letter on Proposed Rule Making on Parole Board Decision Making (2016), <http://rappcampaign.com/wp-content/uploads/JLUSA-Parole-Board-Comments-.pdf> [<https://perma.cc/6Z8M-EJLP>]; Nat'l Lawyers Guild – N.Y.C. Chapter, Comment Letter, *supra* note 142; Claudia S. Trupp, Dir., Justice First & Client Re-Entry Projects, Ctr. for Appellate Litig., Comment Letter on Proposed Rule Making on Parole Board Decision Making (Nov. 7, 2016), [http://rappcampaign.com/wp-content/uploads/2016-Commentary-on-Parole-Regulations\\_CAL.pdf](http://rappcampaign.com/wp-content/uploads/2016-Commentary-on-Parole-Regulations_CAL.pdf) [<https://perma.cc/5DHN-7ZVJ>].

awaiting the publication of revised parole regulations.<sup>150</sup>

### IX. LEGISLATIVE INTERVENTION

Similar to the success of the public comment period, legislative advocacy has generated great momentum at the grassroots level and is slowly taking hold with legislators. The Safe and Fair Evaluations (S.A.F.E.) Parole Act,<sup>151</sup> a bill drafted by parole reform advocates and championed as a law that would create a presumption of release and force the Board to grant parole to those who pose little to no viable risk to public safety, has several key sponsors and supporters. It will require, however, extensive public pressure and additional legislative support in order to overcome Republican and conservative opposition in the New York State Senate.<sup>152</sup>

Several legislators, including members of the State Assembly Committee on Correction, newly chaired by Assemblyperson David Weprin, have proposed additional legislation that could also dramatically alter current parole policy. Assemblyperson Perry has introduced Bill 2619-A, which alters the composition of the Board to include members that reflect the composition of the prison population in race, age, and geographic area of residence.<sup>153</sup> Bill 4034, sponsored by Assemblyperson Weprin and fellow Assemblyperson Daniel O'Donnell, removes from the Executive and Correction Laws any language referring to deprecation of the severity of the

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<sup>150</sup> On January 30, 2017, at the monthly Parole Board meeting, counsel to the Board, Kathleen Kiley, announced that counsel's office was still in the process of reviewing the public comments they received, and that they are determining whether another public comment period will be necessary after the revisions are made. NYS Public Safety, *supra* note 146, at 2:45.

<sup>151</sup> The S.A.F.E. Parole Act was originally introduced in 2011 and has been re-introduced every subsequent year. Assemb. 4108, 2013-2014 Leg., Reg. Sess. (N.Y. 2013), <http://legislation.nysenate.gov/pdf/bills/2013/A4108> [<https://perma.cc/26MV-QW38>]; *see also* S. 1128, 2013-2014 Leg., Reg. Sess. (N.Y. 2013), <http://legislation.nysenate.gov/pdf/bills/2013/S1128> [<https://perma.cc/8DVT-4EVK>]; *see also* Robinson-Oost, *supra* note 62, at 137-42 (providing a thorough analysis of the S.A.F.E. Parole Act).

<sup>152</sup> Liberal legislation has proven difficult to pass in the New York State Senate because of the Independent Democratic Conference, which allows the Republican Party to control the Senate despite the Democratic Party's numerical majority. Jesse McKinley, *Breakaway Democrats in New York Add Another to Their Ranks*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/nyregion/independent-democratic-conference-republicans-state-senate.html> [<https://perma.cc/F5MY-TK57>].

<sup>153</sup> Assemb. 2619, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A02619&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A02619&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y) [<https://perma.cc/A75T-YACJ>]; *see also Memorandum in Support of Legislation: A02619*, N.Y. ST. ASSEMBLY, [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A2619&term=2017&Memo=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A2619&term=2017&Memo=Y) [<https://perma.cc/4KTD-GG38>].

crime.<sup>154</sup> Bill 1908 would radically reform the appeals process by guaranteeing more timely appeals, affording attorneys to appellants seeking relief from the courts, and allowing courts to grant release upon a successful appeal.<sup>155</sup>

However, not all pending bills will change parole policy in ways that are advantageous to parole-eligible applicants. Assembly Bill 2350-A and the corresponding Senate Bill 2997-A would increase the maximum time allowed between parole hearings from two years to five.<sup>156</sup> If passed, people in prison will have far fewer opportunities for release, and will continue to languish in prison for years longer than their minimum sentence. Another bill mandates life without parole sentences for people convicted of killing police officers, effectively sentencing them to die in prison.<sup>157</sup> A recently introduced geriatric parole bill, A.2386, grants parole to every person who is 60 years of age and older and who has served at

<sup>154</sup> Assemb. 4034, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A04034&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A04034&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y) [<https://perma.cc/9KRF-VXJZ>]; see also *Memorandum in Support of Legislation: A04030*, N.Y. ST. ASSEMBLY, [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A41034&term=&Memo=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A41034&term=&Memo=Y) [<https://perma.cc/95PW-EQFF>] (proving rationale for the proposed law).

<sup>155</sup> Assemb. 1908, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A01908&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A01908&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y) [<https://perma.cc/GS94-GR3K>]; see also *Memorandum in Support of Legislation: A0198*, N.Y. ST. ASSEMBLY, [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A1908&term=2017&Memo=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A1908&term=2017&Memo=Y) [<https://perma.cc/9MK9-T6PT>] (“This bill aims to speed up the process of parole appeals and provide for needed court oversight of the board’s decisions. It permits [applicants] to bypass the parole appeals unit to appeal directly to the court and allows the court to receive the entire record that had been before the board. It transfers the right to counsel from the administrative appeal to the Article 78 petitioning process. It also permits the court broader remedies upon review, including the right to order an [applicant] to be released from prison. The bill requires the board to make a timely transcript of its hearings and provide an audio recording of the hearing, including any testimony by witnesses other than the [applicant] being considered for parole.”).

<sup>156</sup> Assemb. 2350-A, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/A2350A> [<https://perma.cc/5HSS-AKH9>]; S. 2997-A, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/S2997A> [<https://perma.cc/QSR7-LAPB>]; see also *Memorandum in Support of Legislation: A02350*, N.Y. ST. ASSEMBLY, [http://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=A02350&term=2017&Memo=Y](http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A02350&term=2017&Memo=Y) [<https://perma.cc/NAY4-M4XP>] (“This bill would extend the number of months from twenty-four to sixty as the time within which the parole board must set for reconsideration of a denied application for parole in cases where an [applicant] was sentenced for a violent crime.”).

<sup>157</sup> Assemb. 4989, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/A4989> [<https://perma.cc/A74W-KF3F>] (“Mak[ing] life imprisonment without parole mandatory for defendants convicted of murder in the first degree and [sic] the victim is a police officer.”); S. 3681, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/S3681> [<https://perma.cc/5NFR-M8TP>].

least one-half of their minimum sentence.<sup>158</sup> However, the bill excludes people convicted of murder in the first degree, the population that is most in need of additional release mechanisms and among the least likely to recidivate.<sup>159</sup>

Other bills have yet to be introduced, but hold potential. The Truth in Parole bill was written by incarcerated people in New York State, and its drafters, some of whom were released in 2016, are currently securing sponsors and support for their proposal.<sup>160</sup>

While much of the proposed legislation accurately reflects the demands of parole reform advocates, those who are formerly incarcerated, and parole-eligible people in prison, the current climate in the New York State Senate, in which conservative and Republican legislators carry the majority, means that a change in policy will require significant public pressure and targeted campaigns.

#### X. THE HISTORY OF THE PAROLE PREPARATION PROJECT

After several years of advocating for and supporting various anti-incarceration campaigns, the Mass Incarceration Committee (“MIC”) of the National Lawyers Guild (“NLG”) sought a project in which the legal skills, knowledge, and expertise of the people associated with the NLG could be brought directly to bear on the crisis of mass incarceration. In 2013, Scott Paltrowitz, a longtime MIC member and then-Associate Director of the Prison Visiting Project of the Correctional Association, attended a summit hosted and organized by the Lifers and Longtermers’ Organization at Otisville Correctional Facility. The summit focused specifically on the obstacles faced by people serving life sentences during the parole preparation process and on some of the Board’s unfair and unlawful practices. At the summit, incarcerated advocates called upon their counterparts in the free world to not only push for legislative and judicial reform, but to directly assist parole-eligible people in their struggle for release.<sup>161</sup>

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<sup>158</sup> Assemb. 2386, 2017-2018 Leg., Reg. Sess. (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/A2386> [<https://perma.cc/7CUM-RGC5>].

<sup>159</sup> *Id.* (excluding persons who have “a conviction for murder in the first degree”); KEYSER, *supra* note 14, at 14 (finding that in New York State from 1985-2011, only 0.8% of people convicted of murder came back to prison because of a new offense).

<sup>160</sup> Lewis Webb, *Ending Parole Abuses and Reuniting Families in NY*, INDEGOGO <https://www.indiegogo.com/projects/ending-parole-abuses-and-reuniting-families-in-ny> [<https://perma.cc/3WXE-4D43>]. The Project has worked alongside the drafters of the bill, some of whom are now free, and others who are still incarcerated.

<sup>161</sup> While at the time there were (and currently are) several private practitioners willing to assist people in the parole preparation process and in parole appeals, their fees are often far beyond the reach of those incarcerated. The list of attorneys and



In response to this request, as part of a pilot project, MIC members Nora and Michelle began working with Eddie Lopez,<sup>162</sup> who, as mentioned in the introduction, has been incarcerated for over 37 years. With assistance from attorneys at The Legal Aid Society, the Center for Appellate Litigation, the NLG, and jailhouse lawyers, Nora and Michelle requested records and legal documents, created a parole packet to submit to the Board, and practiced interviewing techniques with Eddie. After Eddie was again denied parole in 2014,<sup>163</sup> the need for intervention became even more urgent and pronounced.

Nora and Michelle began to envision and build a project in which lawyers and non-lawyers could assist and work alongside parole-eligible people serving life sentences across the state. Again in collaboration with The Legal Aid Society and the Center for Appellate Litigation, Nora and Michelle created a training curriculum and a Continuing Legal Education course on the basics of parole preparation work. They generated written materials to support outside advocates as they assist parole applicants in prison preparing for their interviews with the Board. In 2014, Nora, Michelle, and other members of the MIC founded the Parole Preparation Project (“the Project” or “PPP”).<sup>164</sup>

Since 2013, the Project has trained more than 200 volunteers to work alongside over 100 parole applicants and develop solid release plans, create compelling advocacy packets, and practice interviewing skills. Project volunteers have spent countless hours in prison visiting rooms, on the phone, and in written correspondence with parole applicants inside.

Project volunteers include lawyers, law students, social workers, teachers, writers, and many others. PPP volunteers rely on each other, the Coordinators, and parole applicants for skills and knowledge about the law, the criminal legal system, DOCCS, and the

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organizations who assist pro bono in parole matters is also short. Some indigent appellate providers represent clients for parole appeals, but most people are left to their own devices to prepare for the Parole Board interview. While people inside have developed their own innovative ways of assisting each other, they still face the tremendous obstacles described in previous sections.

<sup>162</sup> Names and identifying details have been changed.

<sup>163</sup> Eddie was again denied parole in March 2017. He will not be eligible for parole again until 2018, unless he successfully challenges his parole denial and is awarded a de novo hearing.

<sup>164</sup> Michelle Lewin, *NLG-NYC Mass Incarceration Committee Launches Parole Preparation Project*, GUILD NOTES, Winter 2014, at 10, <https://www.nlg.org/guild-notes/wp-content/uploads/sites/3/2016/11/Guild-Notes-Winter-2014-WEB.pdf> [https://perma.cc/V7L8-3ZLW].

other systems that impact the lives of people in prison. Volunteers attend an initial training where they learn the basic parameters of the Project and hear from former Project applicants who have returned home, as well as formerly incarcerated leaders in the parole justice movement.

After volunteer groups are paired with an applicant, they attend monthly meetings where they receive additional in-depth training and hear from a series of guest speakers. During monthly meetings each volunteer group has an opportunity to check in with the Coordinators and work through difficult and applicant-specific issues that might arise. Volunteers also have access to memoranda, resources, templates, and written guides for each step of the parole preparation process. A local law firm specializing in civil rights law provides legal supervision so that the Project may communicate with applicants through privileged legal mail in order to preserve confidentiality. PPP also conducts legal visits as the authorized representative of that firm.

Thirty-one of the 60 people (over 50%) who have received assistance from the Project and have gone before the Board have been granted release, compared to the average release rate of 26%, based on data collected in 2015.<sup>165</sup> However, the need for assistance far exceeds the Project's capacity. The Project receives hundreds of letters each year from people in prison requesting their services.<sup>166</sup> And beyond those who write to the Project, there are still thousands more people who will appear before the Board without any form of outside assistance.

#### XI. PPP'S PHILOSOPHY AND PRACTICE

The Parole Preparation Project envisions and wishes to build a world without prisons, while simultaneously offering direct, concrete assistance to individual people seeking freedom. However, we do not see these efforts as distinct. We believe that creating spaces in which relationships between people in prison and community

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<sup>165</sup> The Project works only with people serving life sentences. The 26% release rate refers to people convicted of an A-1 violent felony who appeared before the Board in 2015. Prison Action Network, *February 2016*, BUILDING BRIDGES (Feb. 4, 2016), <http://prisonaction.blogspot.com/2016/02/february-2016.html> [<https://perma.cc/R59N-E69J>]. In 2015, the Board's overall release rate for all people serving indeterminate sentences was 23% and only 17% for those reappearing. . N.Y. STATE DEP'T OF CORR. & CMTY. SUPERVISION, *supra* note 4, at 1.

<sup>166</sup> People in prison have tremendous unmet legal needs in many areas of the law, not just parole preparation. For example, many need assistance with disciplinary appeals, medical advocacy, motions for a new trial and other post-conviction work, family law, and civil rights claims, to name just a few.

volunteers can thrive is, in itself, a way to transform the current criminal legal system. People in prison, especially people serving life sentences who have spent decades inside, are both demonized and made invisible by the carceral state—their existence is devalued and forgotten by those beyond their friends and family. By bringing forward the stories and experiences of people in prison and those who have come home, we ensure that their voices are centered and amplified within our movements and broader communities.

This prioritization is also essential because we believe that people with direct contact with prisons and parole are the leaders in the movement to transform those systems. We work for the release of parole-eligible people because, while we wish to reunite people with their families, we also need their leadership and vision to guide our movements.

Within the Parole Preparation Project, we practice these principles by taking direction and leadership from our 12-member Advisory Board. Our Advisory Board is composed almost entirely of people who have spent time in prison and previously appeared before the Parole Board, including former parole applicants released after working with the Project, as well as family members of those inside. The Advisory Board ensures that we are directly accountable to those most impacted by New York State parole policies. We also regularly invite people who are formerly incarcerated to participate in our monthly volunteer meetings, to serve as faculty at our new volunteer trainings, and to review our written guides and training materials.

## XII. THE IMPACT OF THE PROJECT

For volunteers, the relationship they forge with parole applicants is deeply transformative. In more traditional attorney-client relationships, particularly among public interest lawyers representing marginalized people, attorneys often substitute their judgment for the client's, and tend to see their client as less-than-capable of participating in their own legal case or defense.<sup>167</sup> In contrast, from the first training, PPP volunteers are pushed to conceptualize

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<sup>167</sup> Over twenty years after the publication of Gerald P. López's seminal critique of traditional law practice, which he designates "regnant" lawyering, where lawyers incorporate the voices of the clients only when necessary for accomplishing the goals of litigation, this model still predominates the legal field. See generally GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); see also Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449 (2005); David A. Singleton, *To Love or Not to Love: The Possibility, Promise, and*

their relationship with an applicant as one of solidarity and partnership. Volunteers are trained to see applicants as inherent experts in their own lives and in the criminal legal system, and to see their relationships with applicants as rooted in self-determination and love. Thus, applicants are the significant, if not primary, contributors to the parole preparation process, which the volunteers then support.

In contrast to traditional lawyering, volunteers are also encouraged not to focus solely on the end-goal of parole release, but rather to focus on the holistic experience of working in tandem with someone in prison. Attorneys are often fixated on the nature of the representation and the case at hand, and can reject their clients' attempts to share insights, personal experiences or feelings as extraneous. However, as Project volunteers are building the foundation for long-term relationships, story-telling and sharing purely for the sake of human connection is highly valued.

However, this process of building relationships across cultural, racial, religious, generational, and gender differences is also deeply challenging; undoubtedly the racism, white supremacy, classism, ableism, and other systems of oppression that are inherent in all dynamics infuse the relationships established between volunteers and applicants. Many Project volunteers identify as white, college-educated, and queer, and are from states outside of New York. The majority also identify as women. In contrast, parole applicants are mostly aging or elderly Black or Latino men from the five boroughs of New York City.

In recognition of this reality, the Project requires that volunteers interrogate their own power and privilege and develop an anti-racist praxis as they negotiate the relationship with the applicant with whom they work. Through discussions at volunteer meetings, sharing reading materials,<sup>168</sup> and providing intensive

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*Peril of Mutually Transformative Attorney-Client Friendships*, 46 SETON HALL L. REV. 743 (2016).

<sup>168</sup> These reading materials include: ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003); DANIEL HUNTER, *BUILDING A MOVEMENT TO END THE NEW JIM CROW: AN ORGANIZING GUIDE* (2015); VICTORIA LAW, *RESISTANCE BEHIND BARS: THE STRUGGLES OF INCARCERATED WOMEN* (2009); JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2011); BETH E. RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012); *CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX* (Eric A. Stanley & Nat Smith eds., 2d rev. ed. 2015); Phyllis L. Crocker, *Essay, Feminism and Defending Men on Death Row*, 29 ST. MARY'S L.J. 981 (1998); Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL'Y 13 (2011). The Project also draws heavily from the Catalyst Project's resources, *Catalyst Project Workshop Readers*, CATALYST PROJECT: ANTI-

individual consultations with volunteer teams, the Project supports volunteers in enacting solidarity from an anti-oppressive framework. In this light, we see our work as part of the profound struggle for racial justice and the promise of Black Lives Matter that has taken hold across this country and the world.

Beyond interrogating dynamics of power and privilege, volunteers and applicants explore deep philosophical questions about interpersonal violence, harm, and accountability. Our volunteers frequently discover that the reasons why a person committed harm in the way they did and how an applicant came to be in prison is often the tragic result of a lifetime of experiencing systemic and structural violence and personal trauma. Further, the rigid and prevailing distinctions that are often made between those who commit crimes and those who are harmed are suddenly blurred—volunteers come to learn that “victims” and those who harm them are so often from the same communities and even families, and have each occupied both roles in different moments.<sup>169</sup>

Engaging with these realities, and in many cases some of the darkest realms of human experience, PPP volunteers encounter the limitless potential for redemption and transformation. PPP encourages participants to embrace the idea that no one is defined exclusively by the worst thing they have ever done. And every person, regardless of the harm they have caused, is entitled to be treated with dignity and respect, and should have a meaningful and genuine opportunity to return home to their community. Volunteers also witness the profound resiliency of people in prison, and the ways in which people inside maintain a sense of dignity in the face of extreme deprivation. Such exposure undoubtedly shifts one’s perspective on what it means to be free.

Prisons are isolated and remote by design—their inaccessibility allows the state to perpetrate horrific violence against those in-

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RACISM FOR COLLECTIVE LIBERATION, <http://collectiveliberation.org/resources/catalyst-project-workshop-readers/> [<https://perma.cc/NM7Y-CSDH>]; see, e.g., *From a Place of Love: Catalyst Project and the Strategy of Collective Liberation Leadership in White Communities: An Interview with Catalyst Project*, in CHRIS CRASS, *TOWARDS COLLECTIVE LIBERATION: ANTI-RACIST ORGANIZING, FEMINIST PRAXIS, AND MOVEMENT BUILDING STRATEGY* 251, 251-70 (2013); DANNI WEST, *THE CATALYST PROJECT, LEGACIES OF RESISTANCE: WHITE ANTI-RACIST ACTIVISM* (2004), [http://collectiveliberation.org/wp-content/uploads/2013/01/west\\_Legacies\\_of\\_Resistance.pdf](http://collectiveliberation.org/wp-content/uploads/2013/01/west_Legacies_of_Resistance.pdf) [<https://perma.cc/58T6-WFRP>].

<sup>169</sup> Sarah Stillman, *Black Wounds Matter*, *NEW YORKER* (Oct. 15, 2015), <http://www.newyorker.com/news/daily-comment/black-wounds-matter> [<https://perma.cc/4ZPC-2GBQ>]; Carrie Johnson, *Black Men Who Are Crime Victims Have Few Places to Turn*, *NPR: AROUND THE NATION* (Aug. 17, 2015, 5:10 AM), <http://www.npr.org/2015/08/17/432542041/advocates-work-to-help-black-men-who-are-victims-of-violent-crime> [<https://perma.cc/R6R5-CJDR>].

side.<sup>170</sup> By creating avenues for people in the free world to enter prisons, our volunteers also bear witness to the injustices and brutality that take place within them. This exposure and the volunteers' deep relationships with people in prison serve as both a political education and a profound call to action. Many volunteers feel inspired and mobilized to participate in reform and anti-incarceration efforts beyond the Project,<sup>171</sup> thus strengthening the broader movement.

Further, the Project, through our presence in the prisons and the advocacy materials we submit, reminds DOCCS and the Parole Commissioners that there are individuals in the free world who are monitoring and scrutinizing their actions, and are prepared to hold them accountable.

Ultimately, the deep connections that form and flourish be-

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<sup>170</sup> People in prison live under horrific conditions. They are subjected to medical neglect, isolation, torture, and abuse. Many have witnessed and experienced extreme and fatal violence at the hands of Correctional Officers, and some have seen others killed. The death of Samuel Harrell is just one instance of many. Michael Winerip & Michael Schwartz, *Prison Guard 'Beat Up Squad' is Blamed in New York Inmate's Death*, N.Y. TIMES (Aug. 18, 2015), <https://www.nytimes.com/2015/08/19/nyregion/fishkill-prison-inmate-died-after-fight-with-officers-records-show.html> [<https://perma.cc/4QMX-6379>]; see also Michael Winerip & Michael Schwartz, *An Inmate Dies, and No One is Punished*, N.Y. TIMES (Dec. 13, 2015), <https://www.nytimes.com/2015/12/14/nyregion/clinton-correctional-facility-inmate-brutality.html> [<https://perma.cc/W3QX-K79N>]; see generally CORR. ASS'N OF N.Y., VOICES FROM CLINTON: FIRST-HAND ACCOUNTS OF BRUTALITY, TORTURE, AND COVER-UP FROM PEOPLE INCARCERATED AT AN INFAMOUSLY ABUSIVE NEW YORK STATE PRISON (2016), <http://www.correctionalassociation.org/wp-content/uploads/2016/05/Voices-From-Clinton-FINAL-6-2016.pdf> [<https://perma.cc/E6JT-LQBW>]; CORR. ASS'N OF N.Y., 2014 UPDATED CORRECTIONAL ASSOCIATION REPORT ON ATTICA (2014), <http://www.correctionalassociation.org/wp-content/uploads/2014/12/Attica-2014-CA-Updated-Report-Final1.pdf> [<https://perma.cc/L6V2-FEKN>]; *10 Things You Need to Know About Brutality and Abuse at Clinton Correctional Facility*, CORRECTIONAL ASS'N N.Y.: NEWS (Sept. 4, 2015), <http://www.correctionalassociation.org/news/10-things-you-need-to-know-about-brutality-and-abuse-at-clinton-cf> [<https://perma.cc/F6NX-J9U4>].

<sup>171</sup> Volunteers and Coordinators participate in many of the campaigns and project of our partners such as Parole Justice New York, a coalition committed to passing the S.A.F.E. Parole Act and advocating for parole-eligible people in New York. *About Us*, NATION INSIDE: PAROLE JUSTICE N.Y., <https://nationinside.org/campaign/parole-reform-campaign/about/> [<https://perma.cc/KK35-P63T>]. Release Aging People in Prison (RAPP) is a grassroots advocacy group led by people who are aging and formerly incarcerated. *About RAPP*, RAPP, <http://rappcampaign.com/about/> [<https://perma.cc/U8HB-KH4W>]; see also *About Us*, MILK NOT JAILS, <https://milknotjails.wordpress.com/contact-us/> [<https://perma.cc/H7TC-WPV2>]; *About Us*, NATION INSIDE: CHALLENGING INCARCERATION, <https://nationinside.org/campaign/challenging-incarceration/about/> [<https://perma.cc/69FR-VZ2M>]; *Home*, #CLOSERIKERS, <http://www.closerikers.org/> [<https://perma.cc/SU86-Q2MG>]; *About Us*, N.Y.C. JAILS ACTION COALITION, <http://nycjac.org/about-us/> [<https://perma.cc/TJN7-7CFQ>]; *Mission*, N.Y. CAMPAIGN FOR ALTERNATIVES TO ISOLATED CONFINEMENT, <http://nycaic.org/statement-of-principles/> [<https://perma.cc/8G4Q-92KQ>], and many others.

tween volunteers and people in prison, as well as the partnerships built with our community-based allies, are the most meaningful part of our work, and perhaps why the Project has grown so much in the past several years. In the following pages, PPP volunteers and applicants describe their work, their lives, and what being part of the Parole Preparation Project has meant to them.

### XIII. INTERVIEWS WITH PROJECT APPLICANTS AND VOLUNTEERS

*Excerpts of interviews with author Michelle Lewin, Mark Shervington, and Project volunteers Hillary Packer and Emily Sims. Mark served 29 years in New York State prisons after receiving a sentence of 15 years to life.*

**ML:** [Mark], how old were you when you went to prison?

**MS:** I was twenty. Twenty, yeah, just about to turn twenty-one, right before I went to prison. Well I wasn't selling bibles, let's put it like that. I wasn't like public enemy number one or anything like that, but I was selling weed to survive, basically. It was a job . . . . I would say I was a middle management type of person [laughter]. I basically ran the operation. Of course I didn't expect that to last long and I knew I was basically taking a chance, but I thought that because I couldn't get a job . . . I had a high school diploma—a GED . . . . Mind you, this is me after losing my mother, like basically watching her just evaporate. The older I got the less she was there.

. . . .

But yeah, anyway, I met this young woman and things got serious and we started making plans. Then one day she goes shopping . . . on Jamaica Ave., and she goes into [a store] and on her way out, I won't say his name, but someone decided that she looked so nice, he couldn't stop touching her, and he sexually assaulted her right in the store. She came home and she was hysterical and frustrated . . . . So she tells me what happened and I'm practically on autopilot—you know, I had this, like, tunnel vision and I was thinking, "Okay, I need to see this dude, like, as soon as I can." Well, ultimately that ended up in a shooting and I went to prison for that.

The judge gave me 15 years to life and he said, "in the interest of justice," but the Parole Board decided they wanted to inflict some more punishment and they practically doubled that. By the time I came home, I counted, it was 29 years, 3 months, and 14 days, and that was with your help. I was so blessed to meet a team of Harriet Tubmans, you know? . . . You guys are like my underground railroad. Serious business.

**ML:** When you got that sentence of 15 to life, what went through your mind, what were you thinking?

**MS:** Well I knew because of what I had done, that I was going to jail, but it just was—I don't know if surreal is the word—but just hearing him finally say it, my knees kind of buckled a little bit. You know I was like, well now, stand up, champ, you did this, you got to deal with it.

**ML:** Did you go to trial or did you plea?

**MS:** No, I pleaded guilty, ultimately. I was going to go to trial, but I had this lawyer—what was his name? . . . [M]y fiancée was going to testify and she goes to his office for him to interview her and he tells her, “Listen, the jury is going to be 12 middle class white people who don't like n\*\*s to begin with—and you're Puerto Rican so when you take the stand they're gonna really get mad and convict him on spite.” And she was hysterical about that, too. And I was like, “He told you what?” . . . At the same time he told my Aunt Marlon that the only thing the family can do to help me is convince me to cop out, you know, plead guilty and hope I don't get 25 to life . . . .

So I asked the judge to just get rid of him [the lawyer], and he did. He gave me another lawyer, but that was crazy. Like I said, I acknowledge the fact that I committed a crime. I took someone's life. Hearing the judge say that, you know, thinking of what that meant, just in that moment, that was kind of stunning.

**ML:** Did you know other people that had done long sentences upstate?

**MS:** Not at that time, no. I met them when I got there. There were people who had been in prison, like, all of my life and stuff . . . . Leaving Downstate [Correctional Facility] reception and on this bus that took forever going to the first prison where I would actually start doing my time, which was Clinton Correctional Center, way up yonder in Dannemora, New York. And you can see the town is built around the prison so everything in the town is connected to the prison—the people, like, everything. But as the bus is pulling in, you can see the prison right in the middle of the town and you can see into the yard, the prison yard. And the part that you can see, as you get closer it looks like a bunch of rusted and twisted metal. When you get there you see that those are like those half-drums that people use for barbeque pits? They have those out in the yard. But as I'm looking I see all this rusted metal and I'm thinking, “This looks like something from *Escape from New York!* Like, seriously? This is not going to be good.” It was crazy . . . . But sur-



prisingly I didn't have any problem. You knew what you were supposed to do, they knew what they were supposed to do—don't cross the line. Some people did. Some people didn't—you know they were dealt with, right. But I never had a problem. So I just skated on through, you know, really smoothly and went on to the next place.

...

**ML: How did your interest in working in the law library start?**

**MS:** Well, it started when I was on Riker's Island. I remember this old vet came up to me one day and he said, "Excuse me youngblood, I'm not trying to get in your business but, um, what kinda crime you got?" And he just seemed concerned, not like some person trying to run a scam or anything. I just said, "Well I got a homicide." He said, "You need to get your ass in that law library and find out what these people tryna do to you." At first I looked him up and down and was like, "Yeah, ok, thanks." I mean, I can read, my mother was an egghead, you know, she was smart—she taught me how to read and write . . . . But anyway, so I go to the commissary, I get two of those yellow legal pads and a couple of pens and I walk into the law library for the first time. And like, I learned out of necessity, and I mean, it even got to the point where I realized that lawyers don't even speak English, like regular English. Like, I'm in the courtroom one day and my new lawyer, he said something about wave—and I'm saying "Okay we're not at the beach, I don't see no hands in the air, what the hell is this man talking about?" Come to find out he just gave away something of mine! [Laughter]. I didn't realize that there was another waive! You know? So I was like, wait a minute, I really gotta read. So I really started paying attention and learning seriously what this stuff means, how it works. It's like I got on this one-man reverse ingenuity mission, you know, I'm going to crank this thing up, I'm looking up under it, I'm taking every wire, screw, whatever, apart and I'm gonna put it back together so I can understand. I just had to start. I learned out of necessity. It became a skill and after a while, it kind of became an art.

**ML:** I mean, you helped a lot of people inside, especially in those last couple of years.

**MS:** Oh yeah, every time the Board hit me, I would turn around and say, "Ok, you, you, and y'all over there, come on, line up," and just start batting people over the fence. That's what I would do.

...

**ML: When did you start thinking about parole? How far into your**

**time did you start thinking about parole and about going before the Board?**

MS: . . . Getting ready for that, I started to wonder . . . do I have all the facts straight, do they have all my diplomas, can I get some letters? You know, pretty much similar to what you do . . . Here's another thing—when a person is sent to prison, before the judge sentences him, [the judge] reviews what they call a pre-sentence report . . . So we took that format and tried to make something like, where it's not a sentencing situation, but something like that. To package all this and submit it to the Board. And that's what I tried to do, right? I'm thinking, well, maybe because it came from me, they probably thought of it as self-serving, but by then things kind of heated up with the politics of parole. The law hadn't changed but the politics did. Governor Pataki, he practically rolled into office on our backs, talking about violent crime and parolees.

Now realistically, someone like myself who had done all that time and basically—I squared up so much I even took the bop out of my walk. You know what I mean? [Laughter]. We [people serving long sentences] are like the last people to go back to prison for anything, but we became the poster children for his politics. And another thing he did, really slick, was Clinton's 1994 crime bill—they were giving away boatloads of money to any state that would come up with whatever kind of law they could to increase the time served for violent crime. They couldn't go back and change my sentence or anyone else's like me, so what they did was that they started tearing us up at the Parole Board, but disguising it. As if because I committed a crime, I became one.

And I'm like, well, when does this stop then, because what else can I do? You sent me to prison to get corrected. What haven't I done to show you that? Or is it just like, now I'm no longer capable of being a human being? I mean I even donated money to . . . hurricane relief and stuff, we did school giveaways. We did all kinds of stuff. That's me and some guys. No one asked us to do it, we just thought we should.

I'm not the only one. There's a bunch of other people in there that probably just couldn't get a break for some reason.

There's some people in there that are not coming home. I talked to one guy, he used to keep a smile on his face, I mean he was the most gentleman, stand-up dude. So I asked him one day, I said, "Man, when are you going home?" And now he gets all deadpan and serious, and he said, "Man, I got 66 to life." And I was like "Wow." So I said, "How can you be that way?"

and he said, "What the hell else am I going do?" He knows he's going to die in prison but he still does what he does.

ML: **Did you think you would die in prison?**

MS: At one point, yeah. I had two heart attacks right before my last Parole Board [interview]. I didn't know that's what was happening. The first time I thought I pulled a muscle or sprained something. I was like, wait a minute. I would carry a backpack of stuff to and from the law library every day, so I'm thinking it's that. I mean at Otisville it's different. You walk up and downhill and everything is spread out, so its a half a mile to the law library and a half a mile back. So I'm walking a mile every day with a bunch of stuff, so I thought maybe, I don't know what this is. I'd never felt pain like this in my life. And it kind of immobilized me, like I was conscious but . . . .

But now it happens again and so now I'm scared. I didn't go to the doctor the first time, I just toughed it out. Laying in my bunk. And it happened again, and I said "no, no, no, something is wrong," so I go screaming to the clinic . . . .

I found out I had a heart attack when I got home. I go to the Coming Home Program at St. Luke's that they had for people coming home from prison. They offer you all kinds of programs and medical help. As soon as I told the doctor what happened, he said, "You had a heart attack." This is the first person to talk to me in plain English. So now I'm sitting there stunned, thinking, "I could have not been here right now, just for not knowing what was going on," . . . and that was like a real moment of clarity for me. And it made me even more grateful for what you guys have done and invested in me.

ML: **Do you remember the first time that y'all talked?**

MS: I remember that I got a letter from the three GI Janes, and I was like, ok. Did you visit first? Or did we talk on the phone first? I don't remember.

HP: I think we talked on the phone first, and it was always [Emily's] phone.

ES: I think we talked on the phone, and at some point we decided that we were going to come out and visit.

MS: Yeah . . . yeah.

ML: **Were you like, a little suspicious at first, or were you a little weary? I guess you had first talked to Nora.**

MS: You have people, for some reason, they think it's ok to prey on prisoners . . . . So me finding out about the Project, I was a little concerned because I was like, "Are they actually going to

hear me?” I mean regardless of what happened I have no money, so I don’t see how they could . . . and I don’t want to damage any opportunity that I may have so I’m thinking, well, if we are going to do something, we need to be clear about it.

. . .

If you are not willing to listen, it makes communication difficult, and then you will not be able to speak from my actual perspective to the Parole Board to like, help me present myself in a way I should be, or need to be, presented. I didn’t have all the answers. It was kind of weird. There’s like this—not an adage—but there’s always, like, this one guy who could get anybody out of prison except himself. And I didn’t want to be that person but it was looking like I was starting to be that person. And I was like well, everything I did, didn’t work, why now?

**ML: What did you think when you kept getting denied in the beginning, at the first couple of hearings? What was your thought process or what were you thinking about? What did you think was the reason?**

**MS:** Well, up until Pataki and his politics, and Clinton, generally if a judge gave you 5 or whatever years, you did your time and you went home, as long as you didn’t do anything outrageous while you were locked up. But now, here comes the politicians and they change all that so now, that’s not enough. So you must be practically crucified before they let you go, as an old man. That’s another thing, a lot of the guys, a lot of those old timers came in there as young men . . . I was just trying to make it out before Social Security. I didn’t know how much longer I was going to be in there, but I got numb. I think I told you guys about this, I was just kind of numb. Like, I know I was supposed to talk to these people, but I wasn’t expecting anything good. And that could have had something to do—aside from the politics—with my failure prior to meeting the team and the Project, because I would go in expecting that. I would go in and say whatever—I don’t know, it could be that, but it could just be that it seemed perfunctory, like, that law said, “you must do this,” even though they know that they aren’t going to release you.

**ML: Yeah. So what was the first visit like with all of y’all together?**

**MS:** I was curious. I think I asked a lot of questions. I know I asked, “Are you in college?” They looked like children almost. I told them that. I said, “Are they grown-ups?” Because they looked so young.

**ES:** We had to go buy over-sized sweatpants and shirts to wear in because we were all inappropriately dressed, so we all came in,

in like extra-large, brightly-colored sweat pants. So we looked like children.

. . .

MS: But another thing was that I thought, “Ok, they might be teenagers, or very young, so I’m gonna have to school them on what exactly is the nature of this beast that they are dealing with, and I hope that they have the heart to stick with it and see it through, because it was frustrating for me, and they aren’t even locked up. So, it’s probably going to blow their minds dealing with these [Parole Commissioners]” . . . And I told them everything I knew and that I could about myself. And I even got into stuff that I don’t even talk about. That’s how comfortable they made me feel. Like, “Ok, do an open-heart surgery right here. This is me.”

ML: **And then how did things develop? How did you guys start working on prepping for the interview with the Board and putting together the packet? What was the process like?**

. . .

ES: I remember that anticipation in the car ride up . . . It was just a lot of conversation about how do we even meet you and present ourselves and not seem like these crazy outsiders who know nothing about your situation and are about to delve into something really private for you, and not come off as intrusive

. . . .

ML: **Yeah. Why did y’all even get involved in the Project to begin with? What brought you to the work?**

. . .

ES: I believe that the commonality between the three of us and the way that we even knew each other, is a deep belief in reforming the system, and this was a new and different way to do it. I didn’t know anything about parole. And you very rarely think about that when you are talking about criminal justice reform . . . .

HP: . . . the three of us had been at the Fortune Society, working with people, and then I was in [law] school. And it was a way to come back to something that I really cared about, which I felt very removed from and detached from, having no interaction with people on the inside or on their way out, or on their way in. It felt like I was losing something. It was present for me, [I was] still talking about it in [law] school, but there was still something missing if you weren’t in communication with people who were impacted.

ML: . . . **I am always so curious about volunteers and applicants,**

**like, if you see the Project as a part of a movement for reform or even [prison] abolition, or if you see it more as just connecting with people, or advocating for people, or if it's all of those things. Like if you see it as part of something bigger, or not?**

- MS: Before I went back to the Parole Board, I felt like, well, even if this doesn't work, right, I'm confident, you know, I just felt good about this before I even went through . . . I'm saying, I just felt as prepared as I would ever be to deal with something like that. You know, you guys made me. I don't know, I would say I grew a little spine about dealing with these people. You know, I just felt ready. I wasn't even aware there's this mob of people interested in what I now know as a prison abolition movement, but I just knew that I had three people that actually gave a f\*\*\* about me. You know I just felt good about that.
- HP: I think what is so cool about the Project is the time restraint. You're sort of forced to be as open as possible, as quickly as possible, so you can start to work together. And I think the intimacy and the connection that we all made working on this thing is so unique in that way. Ok, we're now a team and now we're all working on this thing together and that feels really small and private and isolated and yet, I think, without knowing it, bigger things are happening. The Parole Board knows that someone's watching . . . There's a spotlight on this issue, on the institution . . . and on the Commissioners, and so I think that's what's so cool. That you're able to have this sort of private dialogue and relationship, that's really personal and really moving.
- MS: Did I tell you? When I went to the Parole Board, they did it by videoconference. And what was her name? Hernandez? Commissioner Hernandez? She held a package up to the screen and said, "Oh yeah, we received your package," I forget her exact words. But she held it up to the screen and was like insistent, . . . "See? Look. See?" Like she was really excited . . . like, "We got it. It's been considered."
- All: Yeah. Yeah.
- MS: I was like, "Man, ok. That's different." But you know I've never seen them get excited. Usually they're like, "Oh, yeah. We got your stuff," "Yea. Ok." And they keep talking.
- ML: You made them pause.
- . . .
- ES: That's also what, I suppose, ends up being disheartening for me, in a way, because I really never felt like we did anything

for you that you hadn't already done for yourself. Those packets, all the communication, everything you and that other lawyer had worked with. You guys had all that stuff . . . . Then it seemed like, for whatever reason, whatever it was, whether it was just that the Parole Board already knew that they were going to do it or because it was the support of the program and they had the packet, or because of you, the way you were when you went in, or a combination. It just happened.

I guess, the disheartening part of it is for me is, if in any way it was because of that packet, it's like, oh, all of a sudden the outside is now, like, looking in, and therefore the last nine, ten times, Mark Shervington didn't really matter to them . . . . You know it took very minimal work compiling this packet that you had already done, put a little stamp on it from us that they finally opened, maybe.

MS: Yeah, but you see, I didn't get like that. You know how we did those mock Parole Boards. You know, we talked about a lot of things in terms of interviewing. Writing something and stapling a bunch of papers together is one thing, but dealing with the actual dynamics of having that exchange—especially like, it's me versus the State—that was different. That's different.

HP: Mark you were such an interesting person to go before the Board because being a lawyer, being a jailhouse lawyer, remember, you had been correcting them a bunch—to your credit—in the previous hearings. Remember you'd be like, "We litigated that! And I won that!"

. . .

MS: [JT], the lawyer that helped me out before I met you guys, he told me once, he said, "Listen, the Parole Board is not the place to seek justice. You are there to convince someone. It's not like you are in the courtroom. You don't have to go in there a flaming sword like you're actually litigating. You're there to convince them you're not going to cause any problems if they do release you." I said, "Ok, I get that." So then, I kind of toned down off of that . . . litigation perspective. I said, "That makes sense." As bad as I wanted to check them or correct them about stuff . . . .

ML: It's funny, everyone in this group talks about the mock interviews. I feel like that's the story that I remember from this team—when Hillary came in and basically grilled you.

All: [Laughter].

MS: Yeah! I froze up. For a moment the next day I was like, "Damn."

ES: She was in character!

MS: Yeah, she was! For real!

All: [Laughter]

MS: For real, for real! Unbelievable. [Laughter] I actually froze up like I was there talking to them 'cause they were saying crazy stuff to me . . . .

ML: **The Commissioners? What kind of stuff?**

. . .

MS: This guy in particular, he had been, up to that point, every kind of cop imaginable. Like, the whole alphabet. And now he's a Parole Commissioner. Asked me some crazy stuff like, we're in the middle talking about, I forget, about my release plans or what I've done in prison, I forget. And he comes out and says, "Were you arrested with the victim's body?" I'm like, "What? Excuse me. What are you talking about?" . . . He waited and then we talk about some more general stuff and then he comes back and says, "Oh, so you would kill a cop wouldn't ya?" "What?" . . . He's coming up with all sorts of imaginary stuff. They not gonna let me go . . . .

You don't know me, but I know, that guy on paper that committed them crimes, that's a fraction of my life experience. That's not me. That hasn't been me, you know, beyond those moments, that hasn't been me at all.

. . .

At Otisville, they always put me last [to see the Board] or something 'cause my last name starts with an "S." I'm usually at the end of the line . . . . So one day, they had me waiting there for so long, it's like nighttime now. I'm the last one they see, but now I can't leave because the prison is doing a count. Prisoners can't walk around when they're doing a count. So I'm stuck there waiting for them to finish the count, . . . but as soon as I leave the parole hearing, all of the Commissioners, all of them, come piling out of the room and walk right by me with their coats on. They walked right out the door. I'm like, "Wow. That was quick." They were just waiting to see me and go.

. . .

ML: **So then you wanted to [leave that prison]?**

MS: I wanted to go anywhere.

HP: Because you thought it would change your parole outcome.

MS: Right.



HP: Not because you were necessarily thinking that that would be a better place to live.

MS: No. Hell no. I'm locked up. None of that's cool . . . . I don't care if it's on the moon, I'm still locked up. Yea, it was the geography and the parole.

. . .

ML: **So what about your last parole hearing? You talked a little bit about Commissioner Hernandez holding up the packet. But what else went down? What else happened?**

MS: It was like we were having a conversation. [Hernandez] did most of the talking. The other two just chimed in like, like they were backup singers or something. [Laughter.]

. . .

I kind of had this feeling like, I got, like, this gang of people that just helped me stand up to this so I really didn't give a shit what they thought I did. I was ready. You know if it ain't gonna happen now, it may not ever, because I don't think I could be more prepared than I am. Like Emily said, it's the same information. The only thing I think I added was the real estate stuff that I had done up to that point. And your letter, right. The crime will never change, right? And other than my age, you know, I didn't see what else would change. When is enough, enough?

Oh! One thing. Guys had been telling me that the Parole Board had gotten a habit of asking what I thought was a trick question at the end of the hearing. They would say, "Do you think you had a fair hearing?" That would blow my mind, too. Like, "What are you asking?" But I'd be thinking, "That's a trick. I'm not gonna answer that. I gotta find some way to dance around it, because if I say yes to something like that, and they smash me, then, there's nothing you can do about that. You just ate that."

. . . But now when I get there, to the end of the hearing, I'm waiting for that. Because, I think I got it figured it out. But instead they were like Heckle and Jeckle, falling all over each other, saying, "Do you think he had a fair hearing? What about you?" Like, the magpies on the cartoon.

And I'm like, "Whoa. I wasn't expecting to watch this stuff." They were stumbling all over themselves congratulating themselves on giving me a fair hearing.

It actually was. It actually was.

HP: Fair?

MS: Yea, it actually was, because we were having a conversation. It wasn't like, "Well, you killed somebody. Ok." You know, like the standard it would normally be if they recited a script. And then, "Ok. And, thank you. We'll get back to you in a couple days." You know. "Next." Almost, like, assembly line fashion in like, six minutes or less. We used to call it "Doug E. Fresh." You know the rapper Doug E. Fresh?

HP: **Yeah, but what's the reference?**

MS: The reference is, like, in one of his songs, his hypeman is saying, "Six minutes Doug E. Six minutes you're on." [Laughter.]

So we would time each other, like, who beats the record. We would sit there and time each other and if you were in there past six minutes, we would be like, "Yo. What happened? What happened?" Because they would boot you out in that time.

And again, I had gotten so numb that, I wouldn't—you get the decision in an envelope and they make you go to the law library and pick it up and, you know, sign for it, like legal mail. And most people, they snatch it and rip it open right away and they're either laughing hysterically or they're cursing. I had gotten to the point where I wouldn't even open it right away. I would just wait and let this adrenaline and nausea and all this stuff [pass] and just calm down a little bit before I open this up. I walked around with it in my pocket for about a week, I think, before I spoke to Emily.

ML: **So you hadn't opened it, and you got on the phone?**

MS: Yeah, and she's like, "What happened? What happened?" And she said, "What do you mean, you don't know?" So I reminded her, I said, "I didn't want to open that right away. I didn't want to get my hopes up and stuff." She's like "Oh, well, when you do—" she seemed kind of disappointed—she said "Well, when you do, you know, let me know."

I thought about it, for a split second second, I was like, "Well, you know what, wait a minute, they just rode with me for like a year or something and they put a lot of effort and time into this." I said, "You know what, let's do this right now," and I opened it up. And the first thing you always see when you get denied is this Notice of Appeal. You don't even have to read the rest. If there's an appeal notice in there, you've been denied, and they're telling you, "Yeah, take it on the hot." You know, "See you next time." So I open it up, and I look, and I don't see no appeal paper. And I was narrating the play-by-play. It's like, "I'm opening and I'm looking, where's that notice, I don't see it . . . they probably tucked it in here somewhere, I'll find it." I open it up and there's no appeal paper.

And I'm like, "What? Nah, this is a trick. Open date. Seriously?" The last thing I remember about that is that everyone just started screaming.

All: [Laughing.]

MS: I'm standing there and now I am numb for a whole different reason. I'm like, in shock. Like, "What? Me? Serious?" I've been walking around free for a week and didn't know it. But, you know, because [of] what I had been through, like I said, I didn't want to get my hopes up. The thing that I would do, you know, at least up to that point, was call home, talk to my aunt. Like, "Listen, are you ready to hear this? I don't even know this, we are hearing this together for the first time." And it was just kind of sad. She went from crying to cursing, and then just disgusted, you know? I remember her telling me once—never did a day of jail in her life—she said, "Do you know why they are doing this? Cause they know your a\*\* ain't going back." I said, "Wow, this is coming from a complete square, a law-abiding person all her life, who had no involvement with criminal justice, but she sees what I am going through, and she sees that." And I'm like, "Wow, is it that obvious?" And I'm like, "I don't even cross the street when I'm not supposed to." Except for when I ran over to hug you guys.

ALL: [Laughter.]

. . .

ML: **Yeah. What did y'all feel? You were on the phone with Mark when you found out.**

ES: Thank you for sharing that. Yeah, I was just excited.

MS: I thought you earned it. You put in a lot of time and effort, the three of you, at least getting me to the door. You know what I mean? I mean, if anyone deserves to hear this, it's you. Whatever it is, you know, and I was nervous too when I was opening that thing. And I was like, "I hope it says what it should say and what it needs to say, finally." You know? I was just surprised as hell, though.

ML: **In retrospect, and even in the future, what is the impact of the Project on each of your lives, if there is one? And what does it mean to you now, after coming home and after having some distance, after almost a year?**

MS: I remember a time when every time something came up, like a milestone, it was my first Christmas or something, and I'm still just grateful that you guys stepped in for me . . .

[Laughter.]

I mean, you helped me have a life to begin with, right? I'm in with both feet. You know, until it stops. And if you guys are doing anything else, I'm in that, too.

HP: I think there's so much that happens . . . . I feel connected to Mark in a way that's just really unique and I feel really grateful for that . . . I feel lucky, but I think, you know, part of it is that now I have the story of Mark and I, and people who really are not thinking at all about prison, or the people who are living inside of prison, are learning about this one incredibly remarkable person who spent far too much time in. I think that's really key . . . . Nobody really talks about parole, specifically, and I feel like, for every volunteer that gets to have this amazing person to work with and learn from, . . . .

. . . .

MS: I'm shouting off the rooftops . . . . "Hey listen, go talk to them as soon as you can."

HP: I'm so grateful we had the outcome that we did. You know, hearing you talk about it again and reflecting on it, I wonder what would have happened. Because I remember when we went in there, this is not really about your question, but I'm just thinking when we went in there, you really had it, you were just legitimately, like, "f\*\*\* these people, one more time, I'm done," and we didn't really even know what you meant by that, but you just were at the point of hopelessness.

MS: Well, I was just thinking, "If this doesn't work now, I'm just not going to go [before the Board]. I'm just gonna be here and keep refusing. Because I'm through with it now." There's no way in the world that this makes sense. I shouldn't be here at this point . . . especially when the team helped me get my act together.

HP: But I wonder if we had been down for another round if you think it would have made a difference or you would just have—

MS: Well, if there had been a denial, I think that regardless of what I might have thought at that moment, you guys would have probably talked me into it.

HP: I was just thinking, we would have talked you into it. That's exactly what I was thinking.

MS: I would have been like, "Yeah! She's right, yeah! Yeah, I ain't afraid, let's go!" You know?

All: [Laughing.]

ML: You would have done it for each other somehow.

HP: Yeah, it's sort of interesting, I never heard you say that before

that you were like, “S\*\*\*, well let me open it [the decision], like, Emily had worked so hard,” you know, it sounds like you opened it because she was disappointed because you hadn’t opened it. And you were like, “This is information we are all waiting for.”

MS: I said, “We had put in enough. We put in a whole lot of,”—but actually nobody did what [the volunteers] did. In seconds I added it all up and said, “No, they deserve to hear this now, too, so let’s get it over with.”

It’s funny because sometimes people will try to guess what their decision is, you know, take the envelope and hold it and see how much it weighs and, like, try to peek through it, and you’re always wrong.

All: [Laughing.]

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*Excerpts of interview with author Michelle Lewin, Anthony Dixon, and volunteers Arielle Adams, Lauren Katzman, and Nikki Herst-Cook. Anthony was arrested when he was 23 years old and served 32 years in New York State prisons. Arielle, Lauren, and Nikki are public defenders with The Legal Aid Society.*

ML: **I wanted to start with you, Anthony. If you could talk just a little bit about your life before you went inside and where you were, and where you were living, and what it was like?**

AD: I came in when I was 22 years old. Prior to that, I lived a lot of my life in crime. At the time of my arrest, prison was the best place for me. Had a rough upbringing. My mother died when I was 18 years old. I got into the streets when I was 5, 7 years old, and started breaking the law. I got into drugs; eventually that led me further into the criminal lifestyle. And I hurt a lot of people in the process; that, I regret to this day—I can never change that. I got to a point where I used to rob people for their drugs and redistribute it on the streets. Then it got to a point where I used to rob robbers. Figure, I let them rob the people, and I rob them. And it got to a point where my conscience wasn’t working. My moral compass wasn’t telling me what was right or wrong. I was determining what was right or wrong. And I was shutting off my conscience. And doing the forbidden. And eventually, I got caught. Somebody died . . . . And that led to me being sentenced to 30 years to life.

ML: **And how were the first few years when you went in? What was in your mind, in those first three or four years?**

AD: Well, when I first got in, it was 1984. Twenty-two years old. I had ruined my life—got 30 years to life. I knew I blew up my

life . . . I didn't think I was gonna make it. Well, a lot of thoughts came through my mind. And I thought about how my mother had died around four years prior to that. How I hurt her most of my life. By breaking her heart, by what I was doing.

And so many people had reached out to me to try to help me. And I still kept my wayward ways. And people used to tell me I'm rebellious. I'd say, "No, I'm determined." And I thought I was the exception to the rule, when they would tell me I did that. And it didn't work. Inside I was saying, "Watch me. I'll do it and it'll work."

So at 22 years old, my first three years in was sort of difficult. It was a transition period . . . I was trying to let off the old man and start a new course. And that course I never knew before. It was something wholly new for me. So when I turned 25, I was like, just keep going forward. By the time I got to 27, I couldn't believe what was happening in me. My conscience was fully there and I wasn't . . . I knew there was a change that was happening to me. I didn't know how much, but I knew it was drastically different. And I laid down one day on my bed and I said to myself, "Man, you really are changing."

So, as I pressed forward my attitude was, I'm gonna make my life count whether I'm in prison or whether I'm outside. That my life was going to count for more than what I made it count for in those 22 or 20 years. That it had to amount to something.

**ML: Did you know other guys doing life [sentences]? Like how many guys would you say that you were with were doing life at the time?**

**AD:** Well, when you got that kind of time, they send you way up-state at first. Your first two to four years you stay up there. And if you're not getting in trouble, they send you down to a [maximum security prison]. Where guys got a lot of time, but they tryin' to cool out as well. So my first two years was in Elmira. Yes, it was a lot of bad stuff, a lot of violence. When you put a lot of people together that got max time, a lot of stuff happens. Things that you would never believe. Stuff you would never even hear about happens in those type of prisons.

**ML: What were some of your proudest moments inside? Like your most fond accomplishments? The things you think back on during your time in?**

**AD:** I developed a Breaking Free From Criminal Thinking Program. That has been running for like, six years now. And so far, everybody that graduated from that program and went home, they

never came back. A zero recidivism rate. So I'm touching a lot of people still to this day. We got close to a hundred people that has completed that program.

Also, I developed a drug program for Green Haven [Correctional Facility]. They use that program curriculum. That was a proud moment for me, the booklet there for the facilitating staff. And also, for the clients there. And they service upward of 200 people a year, in Green Haven, in an anti-drug program.

And also I was very violent, so I created a program in overcoming criminal thinking as an antidote to that. I went that far because I didn't believe a lot of material in DOCCS was helpful. But more could be done.

**ML: When did you starting thinking about the Parole Board? When was that something that was on your mind?**

**AD:** We tend to think, when you got this much time, that when you got 30 years to try to get out of prison . . . eventually, if you keep hitting, you're gonna get through [by means other than parole]. Well, I never broke through, so it became real for me the last, like three or five years. I said, "It's inevitable, I'm not getting out through courts or through appeal." And I [was] going to have to see, as we say, "those people."

And some of 'em [the Parole Board Commissioners] that was only teenagers when you came in, or wasn't born maybe . . . that's how you're thinking. And then you start to think about all the despicable things you did that you're gonna be judged for. And you're thinking that maybe they will view the other stuff that I've done.

And then, as you get close you start to learn that there's nothing that you can do once human life has been taken. It shakes you to the core, the more you think about it. So throughout my whole time in prison, there's times that I thought about people that I've hurt. Not only victims that lost [their] life, but I used to go on a block and sometimes children used to run for fear 'cause what they heard about me. That brought tears to my eyes.

When I first was told that by somebody that came to prison, [he said,] "I used to run off the block when you used to come down." And I didn't know that.

**ML: So when did you start preparing? Do you remember what year your first interview was with the board?**

**AD:** Yeah, 2014.

**ML: And so you had hit 29 or 30 years.**

AD: Yeah. I did my 30th year.

ML: **And what did you do for that first interview?**

AD: Well, I put my foot to the throttle and prepared myself the best I know how. Since 1993, I've been into parole preparation because that was part of my job description, working as a peer counselor at Green Haven Community Preparation Center. So for a few years I learned how to do that. So now my skills had to kick in and the physician had to now heal himself, and apply what I had learned from that time forward.

I had been a chairman of the Lifer's Committee in Green Haven and we used to read the minutes of parole hearings. And now, one of the tasks I used to give individuals was to give them the minutes and tell them to give us a synopsis the next class.

My first hearing, well . . . I was dry-mouthed. Cotton in my mouth. When you had three perfect strangers before you, it is difficult to be candid with the most intimate details of your closet of secrets. And you don't know . . . there's no mutual disclosure. It's just one way.

ML: **This is sort of a question for everybody. What did you think of the Parole Board? What was your understanding of how parole worked, and your take on the Commissioners? And maybe for y'all [the volunteers], before you started working with this Project, what did you think about the Board?**

AD: Well, I believe, and I still do, that the Parole Board is a necessary mechanism in the justice system. It needs to be a filter to find out, "Has a guy changed? Is he a public risk? Is he [at] the same level [as] where he came in?" To protect society.

So I still believe that . . . and that's been my perception. I firmly believe, too, that the right players are not in there. I believe that a lot of subjectivity goes into the Parole Board. Different worldviews are present at that Parole Board. That is not advantageous to the person that is sitting there; that they cannot relate to that person or they already have a pre-disposition. There's a foregone conclusion; their body language shows it. Their questions show it . . .

And then there's a political backlash if they do [release certain people], then they are almost guaranteed not to be reappointed six months later. And you're looking at individuals that have already left one profession . . . probably a D.A. [District Attorney]. Retired money, and now they looking at \$106,000, maybe \$120,000 a year.

So it is a lot at stake and this is the type of stuff that goes on



. . . I don't think our parole system is really working right, is what I'm saying. I think there's other things that need to happen for it to be a fair and balanced system.

ML: **And what about y'all [the volunteers]? What did y'all know or think about the Board before you started?**

AA: I probably went into it with the conceptions that I have about the criminal system in general . . . it's political. Its bent is to not let people out. And perpetuates how the system works when people enter it. But I remember going to the first Parole Preparation Project meeting, and sort of—it sounds silly, to be in shock. I mean, even going into it with such low expectations, and to still learn about release numbers, who is on the Commission, how many times people are hit before they're released . . . my eyes were open to a . . . totally different aspect of the system that's completely forgotten.

NHC: Yeah, I would agree. I think I had no image of it because all of the work we do is on the front end. I had really no idea what happens on the back end. But because just being a public defender, the assumption is the system works to keep people in, so my assumption was that it would be difficult to get out. But I didn't know how difficult, and who the people were, and what the process was like. And I think I was equally surprised by how low the numbers were of how many people were being let out, even though I knew this was a system that was designed and meant to keep people in.

ML: **And so why did y'all want to be part of the Project? What brought y'all to the work? As public defenders you're already so entrenched, right?**

LK: Hearing the description of the Project really enticed me. I guess the idea behind the Project that we really let the applicant lead and that it's just built on mutual respect, and really acknowledging the applicant's experience within the system. I really liked what I had heard about the Project and was intrigued by it. And I think because our jobs can be just so insanely frustrating and depressing, I like to then do other work in the criminal justice system outside of work, to build community around these issues, to come at it from a different angle. I think in some ways, even though the parole system is so terrible, there is something and was something more hopeful in working with Anthony. Obviously seeing you get out is so much more hopeful than a lot of the work that we do as public defenders.

AA: I think the Project sort of creates this feeling of solidarity. This idea of community building. For me personally I'd also never

been to a prison in New York State, and that wasn't what drew me to it, but I also thought a lot about doing the work that we do [as public defenders], and how you can stay so far removed from it.

NHC: This is obviously all work that we are all passionate about and I think sometimes being stuck doing the same work it can feel like we are processing people and not really connecting with any one person at any one time [because we have] so many clients. . . . I feel like I work with so many people in these little snippets and I don't get to know them and where they come from in their lives and where they're going, and when the case is over I don't see them again and that can be really exhausting . . . . And so the idea of meeting one person and getting to know them and their story . . . seemed similar, connected [to], but different than what I do all day.

ML: **What was the first visit like?**

LK: . . . We went into the waiting room and they had us sit at a table and, like, there are all these rules about who can sit where and which way you had to face, and we're waiting and waiting and then . . . what did he say? This man walked up—oh my God—what did he say?

AD: So I [walk up and] yell, "Are y'all looking for Anthony Dixon?"

LK: [Laughter.] We were all like, "Yes, yes." And then didn't you like, walk away and then come back?

ALL: [Laughter.]

AD: Yeah, I looked at them and I said, "Y'all waiting for Anthony Dixon?" They said, "Yes, yes, yes." [Laughter.] I said, "I'll get him here in a moment." I walked away and then I came back.

AD: . . . and then I said, "I'm him." "You are?!" [Laughter.]

LK: That definitely broke the ice. [Laughter.]

ML: **And were you nervous? Like, what were you feeling?**

AD: Uh no, I actually wasn't. I was able to divulge to them, it was like a natural thing; I could talk to them. My feeling was that they were here to help me . . . . And that people coming up this far and they already signed on to this type of work. It wouldn't be good not to just divulge to them and they're lawyers. They're coming here with an empathetic heart. And they need all the facts to try to do you good.

ML: **And what were y'all [the volunteers] feeling? Were you nervous or anxious?**

NHC: Yeah, I mean the whole process is unknown.

- LK: We all were very committed to doing this no matter who we were paired with, but just on a personal level, like you don't know if you're going to get along with the person you're paired with . . . . We might not have liked each other. You might not have liked us. So then to meet him was such a relief because, you know . . . we all laughed . . .
- AA: We all laughed. Right.
- LK: . . . and Anthony is so warm and inviting and it was just really comfortable.
- ML: **. . . And what did y'all talk about on the first visit, like what did you cover?**
- All: [Laughter.] [All at once] Relationships.
- AA: We were in the middle of talking about, like, how we had all met our significant others and then, like, Anthony just joined in the conversation. [Laughter.]
- ML: **And then how did it build from there? How did it progress? Did y'all talk on the phone at all? Did you write letters? How did it grow?**
- AD: Mainly over the phone and continuing visits, coming up to prepare me in the process.
- AA: You sent us a lot of paperwork.
- AD: Right.
- All: [Laughter.]
- AA: Yeah, weekly phone calls and visits, primarily.
- AD: And I worked in the ideal part of the prison where I can do a lot of this stuff that needed to be done. And they had access to stuff that I couldn't do, so they did that.
- ML: **Was there disagreement ever?**
- AD: Sometimes we agreed, sometimes we didn't. We heard it out. And sometimes we changed our views. And it was always the intention to get me home.
- ML: **What did y'all spend the most time working on? Was it interview prep? Was it putting together documents?**
- AA: I mean I would say we spent a lot of time doing interview prep. I mean, [Anthony] did the packet. We collected some letters of support that [Anthony] didn't have yet.
- AD: And they weeded out stuff. They said, this stuff is not as germane to the point as this. This is redundant. And I showed them, well, these are my ideas that I think that should, you know, fall on a page. So, I can get that done this way . . . . It

was an innovative process and it was the first time ever doing anything like this . . . .

What they brought was, they actually turned up the fire on me and said, “You can do better.” And that made me get on [the] ball more because I was like, [on] cruise control, rolling in there. Yeah, I got this down. And there was certain, they like sharpen[ed] me and I begin to now appreciate their naiveté, so to speak. And how they was looking at it, was how [the Board] was looking at it. And I needed those eyes and I needed that voice. And so, they was able to really help me. Had they not been there, I think I wouldn’t have been able to walk in there with the confidence I did and relax.

ML: **Did y’all have any fights? Did you fight about anything?**

AD: Every time. [Laughter.]

AA: We had to push you to . . . have your wife write a letter.

AD: Yes, yes.

LK: That’s true.

. . .

AA: I think we pushed you—I might be wrong about this—but I think we pushed you a little bit to be a little more emotionally vulnerable with your family details. I think that was something you were holding very—which I understand—very close to your chest.

AD: That’s true. They did. And they humanized my delivery—how I went in there. I tell other guys the same stuff: you gotta be heart-to-heart not head-to-head. People understand hearts, not heads all the time. And they helped me get there. And that’s the part that I needed helping, too. The academic stuff I got down pretty good . . . . This is my third board because of my LCTA [Limited Credit Time Allowance hearing], and I felt very confident when I walked in there next to them. It was the fact that I know I had three other people besides my family that was concerned about me coming home. That made me want to represent myself. All that gave me a boost, that they came in there and that they were genuine.

ML: **And what were those moments after the interview like? What were you feeling?**

AD: After the interview I was saying to myself “I think I made it, but I’m not sure.”

. . .

[Commissioner Hernandez] was the best. I knew where she was going based on her questions. The middle one had asked me a

very sensitive question and the last one did not. So I was very concerned because anytime they don't ask you a question, you're in the dark. And then you're not so much in the dark if, in fact, you look at their body language and you realize they're reading the caseload from the guy before, and yet they're going to vote on you. They didn't give undivided attention to you.

. . .

ML: **And what was it like for y'all knowing that he had already gone before the Board, but not knowing the outcome?**

LK: It was really nerve-wracking.

AA: The [day of the hearing] you had called me . . . I'm so, so happy that you did, but in that moment I said, "Trust yourself, you're ready for it, go for it . . ." And we were just sort of waiting.

AD: Yeah. I wanted them to take the ball for me and tell me what to do! I called my wife. And when I did go in there, I was so happy that I got [Commissioner] Hernandez as my lead. That's another issue. We know it's always the nature of the crime, but the Commissioners who are there, even if they do legislate the law about [not relying solely on the] nature of the crime—it's still the Commissioners.

ML: **Even though you felt like you did really well, was there a part of you in the back of your mind that thought "I could really be here forever; I might really never go home"?**

AD: I didn't want to believe that. I wanted to be optimistic. I would have been nerve-wracked if they hit me again. The last time I went, I felt upset with the system. I felt upset because I know I was community-ready . . . They are aware that the more time you do, the less likely you are [to come back]. Those with homicide crimes got the least recidivism. And that men who educate and get education are less likely to recidivate. In other words, I had everything in my favor, statistically. And I developed a program behind there. It wasn't a matter of, could I do enough to bring back the life—I could never do that. But if you're going to deny me, then why even have parole? If the life taken is the issue, why even have it? Cause I could never do anything [to bring back the life taken].

I think their task is a high task, to make a quick assessment of whether this individual (in my case) is still violent. If you look at my disciplinary, that's really the only thing they had that they could engage about. We're under stricter scrutiny than someone out in the streets. There's staff watching over you 24/

7. And they will get you for the strictest laws and the smallest violations, yet I had almost nine years without a ticket. And I had [correctional] officers who vouched for me.

It hurts [to be denied]. Because they are telling you, “You haven’t changed.” Fine me or something else, but not that. That hurt me for those years. I had to push through that. It took months to shake that off. Sometimes you wake up with it. Sometimes you go to bed with it. And you’re laughing with other people throughout the day, trying to get it off your mind, but you can’t. Trying not to let your mind focus on [getting hit by the Board]. It’s like an emotional roller coaster long after you get hit. Also your family—it’s like a post-traumatic ripple effect. Even the fact that we call it a “hit.” That’s a punitive term. It’s not a hold. It’s a “hit.” We’ve been psychologically “hit.” That’s damaging to a person emotionally. It takes away . . . the Board still wants you to have hope. And they are abusing their authority in a system that they led you to believe was right and fair, you find out it’s unjust. It’s so unjust. And so you got to just pull your bootstraps up and find some way to keep having goals—to keep going. And that’s hurtful to someone who goes eight or nine times. Somebody like John MacKenzie, he just got tired of it.

ML: **So what about when you found out you were coming home? What was that like?**

AD: When I found out, I really had to pinch myself. It was incredible. I couldn’t go to sleep. My eyes were closed but I was still up. I’m walking around in an environment that I know I’m leaving, and I have to try and pull myself out of it. But I still have to play the role as if I’m not leaving. And in your mind you’re saying “This is going to be over for real? I’m not going to be doing this next week or next month?” That’s amazing. And I felt like doing hopscotch. Like jumping up and down. And it’s incredible. It’s a breath of fresh air, but you can’t release it in there because there’s guys in there who can’t relate to what you’re going through. So you gotta contain all that! And try to act mundane. And even until the last moment I was like that. And when I got out, I told my wife, “Drive fast!” Just in case some paperwork was wrong. “I gotta get out of here!” They can’t reserve it once I’m out of this territory. They gave me my money and they told me I could go down the street and cash it at the bank and I said, “You crazy—I ain’t staying around here.”

All: [Laughter.]

AD: So that was quite a process. Sometime I still go to bed thinking

about it. I'm just two months out. Everything I'm doing is for the first time. I now know what's it's like to feel tired at the end of the workday. I like going to work and coming home. Going to work and coming home. Going to work and coming home. I like it. I like taking out the garbage at 5:30 in the morning. I do, I'm telling you. It's a good feeling. Responsible things. I know I'm in the city, so I still gotta watch my surroundings. I'm still somewhat naive, even though I used to live the criminal life . . . . So it's been a good experience and a weird experience.

ML: . . . **[W]hat was it like for y'all when you found out he was coming home? How'd you find out?**

AA: Totally surreal . . . You were so ready to come home, like, if you didn't come home . . . then, like, who was coming home? But we also knew the reality of the Parole Board . . . it's still crazy to see you here.

AD: Yeah, they was a godsend to me. I remember you making that statement, "if you're not ready, then nobody's ready," and stuff like that, and that made me feel so good, but I said, "if I don't [get released] they're going to feel so bad," because it felt like a part of me was in prison, and a part of them was in me, and they was going to feel bad. So I took a big sigh after that visit when they said that to me. I think too, that all lawyers that are in the criminal justice system should go through this process at the front end and at the back end. Because we seem to have a good system on getting 'em in, but the exit plan is terrible, all the way through. No good exit plan. I think that more people that are graduating from law school need to be exposed to this.

ML: **What do you think the impact of the Project has been on you? Overall and just since your time coming home?**

AD: First of all, I was unaware that there was this many conscientious lawyers in New York State. I just thought that there was one, or two, or three, an exception. I was unaware still when I got ahold of the invite to be a part of it, and I almost said, "I don't really need them, I don't think I'm going to need them," and I would have missed a[n] opportunity had I not signed up. I wouldn't be here today, I don't think. I definitely wouldn't have went into the Board that well-prepared. And like I said, sometimes knowing it all is fatal and you need somebody outside of you to help you. And my awareness, too, increased when I was able to let down my guard and become vulnerable to them, and they wasn't judging me. It was at a human level. You know, I did some bad things, and they were just taking it

in and saying, “we’re here to help [you] out,” and that made me feel so good. And the emotional relief they felt with me when I made the Board. I told my wife, I felt that somehow we will be forever connected as a result of this. This was a monumental part of my life—I can’t say what kind of words I want to say, but it was a big turn in my life from there to now and they played an important part of it.

**ML: And what about for y’all [the volunteers]? How has it changed you, if it has? What has the impact been?**

**LK:** I mean, it’s been just an amazing experience throughout. I mean, I did not go into it realizing that I was going to make a new friend for life in Anthony . . . . And I remember towards the beginning of the process, the three of us talking about what the hell do we have to offer Anthony? He’s so accomplished. I mean, he had done every program in prison, gotten degrees, started his own programs, helped other guys prep for their hearings and had all the documents he needed, so we were like, there was nothing really left for us to do. But going through the experience and hearing Anthony reflect on it, I see now that just being able to be there for him and support him through it and know that he had people on his side was a tremendous help, and so that was a really amazing, humanizing experience.

**AD:** Yeah, they came up on regular visits when my family came up and they also came up on lawyer visits. And you call them up at nighttime past hours and you talk to them and they talk to you, and you feel like, “wow, these people really care about me.” And after being inside and being treated like an animal for decades and have people in this capacity reach out to you, it makes you feel different, like I got somebody at my side, and it’s not just me and my family . . . .

**NHC:** For me, I was so genuinely surprised in a good way about the connections that we all had to each other. Both with Anthony but also with each other as a group. It was such a great experience for the four of us to do this together, since whenever we were there in person [in the visiting room], we were there until we weren’t allowed to be there anymore. And it just felt like beyond going through your packet, there was so much to talk about that we all connected, which was such the surprise . . . .

**AA:** Yeah, it was strangely transformative . . . . Being here almost a year later, feeling like I look at the world differently . . . . [Anthony] walking out of those gates and thinking that [he] could never walk out of those gates, and knowing who [he was] as a person and thinking about what a tragedy, that the world



could miss out on [him] . . . . I think that that was such a hard part of the Project and very humbling, and something that stays with me, because we know how many of your friends are still on the inside . . . .

- LK: It also feels like, I know I really enjoy being able to talk to Anthony about my work as a public defender. And it feels like I've found, the only word that is coming to mind is comrade, a comrade in the struggle because it was really moving—the three of us went to the rally for John MacKenzie in Harlem when Anthony was still in and that felt really important and special to be able to do that. And now Anthony is doing this amazing work helping formerly incarcerated people find jobs, and just to be able to dialogue about that and share in what you're doing and what we're doing. It just feels like we're growing this community that is really special.
- AD: . . . We need one another for this to work, and we are the answer together, not alone, and it will take all of us working on this to change things the way that we want. And so I do feel that way with them too, and I feel that I'm at a time in life, and [in] a climate to show up on that platform. And I'm so glad that I have other people like you as well.
- ML: **I'm just curious if [the volunteers] think that this work has changed the way you practice law or think about lawyering, or the way you live your day-to-day job or your day-to-day life?**
- AA: I think it's just solidified my own personal need to do work outside [my job]. Like, as Lauren was talking about in the beginning, our work can be very surface level, like we have a lot of clients, people who are in crisis and we don't get to—unfortunately, and sometimes fortunately—we get them in and out of the system, right? The Project [gives me an] understanding of the systems together . . . . That that is truly what I need to do to sustain myself in the practice—talk about the front end and the back end, and think about how they work together.
- LK: It is really refreshing coming from a high-volume practice where there's all this pressure to just keep moving and have shorter interviews and go along to get along—it's so refreshing to be able to work in a space where we're just getting to know you and building a relationship and asking you what we could do for you, and that was a refreshing juxtaposition. And I think it's also probably important for us going forward to think of ways to, ways in which, and times in which, we can ask our clients, "What do you need from me? . . . What do you want me to do?"

- ML: Well, thank you everybody, for being here. We really appreciate it.
- AD: It was a privilege . . . . I wouldn't have missed it for the world. Thank you for allowing me this platform to speak. I hope that it impacts the right people in this law school.

#### CONCLUSION

For decades, the New York State Board of Parole has kept thousands of people serving indeterminate sentences locked up and away from their families, despite applicants' significant accomplishments, profound personal transformations, demonstrated low risk to public safety, and readiness for release. The Board's most common reasoning for these denials—that the nature of a person's crime justifies indefinite incarceration—is deeply flawed and ultimately unlawful. It is an approach rooted in retribution, racism, and a profound disregard for the lives of people in prison.

By highlighting the dignity and humanity of incarcerated people, offering technical assistance to parole applicants in their struggle for release, and galvanizing community volunteers to participate in movements to end incarceration, the Parole Preparation Project seeks to challenge the Board and hold it accountable for its harmful and devastating practices. Further, by creating spaces where deep and meaningful relationships can thrive across prison walls, we seek to heal our communities from the harm caused by mass incarceration, and to replace such practices of punishment and retribution with ones rooted in mercy, compassion, and love. By working with and advocating for people convicted of violent crimes who have served decades in prison, we also challenge normative ideas of violence and encourage the public and policymakers to view violence with nuance and to retreat from inflexible distinctions between those who cause harm and those who are harmed.

Ultimately, it is our hope that the work of the Parole Preparation Project is and will be one small antidote to the profound abuse and dehumanization entrenched in the criminal legal system and the parole process in New York State—and that our fight to set people free is a direct affront to the legacy of slavery and incarceration of Black people and people of color that has defined this country from its inception.