



# The Fancy Broccoli Show

Prison Talk & Jazz  
A voice for some of the voiceless

on independent radio  
WVKR 91.3 Poughkeepsie NY

[info@fancybroccoli.org](mailto:info@fancybroccoli.org)  
<http://www.fancybroccoli.org/>

## PANEL DISCUSSION: RESTORING FAIRNESS TO PAROLE

**New York City Bar Association**

**February 15, 2007**

**Russell T. Neufeld,  
Moderator**

Welcome. Thank you for coming out on another lousy, cold night, but it's better than last night. The Council on Criminal Justice and the Committee on Corrections sponsors this discussion on, hopefully on parole reform. The event is, the subcommittee was chaired by Steve Greenwald and Myron Beldock and Burt Wing and Richard Wolff and myself sort of with the subcommittee to put it all together. But the impetus for this evening and the impetus for the Bar Association taking a good, hard look at what's going on with parole came from our President, Barry Kamins, who really has made this one of the things that this association is focusing on and looking at and hopefully along with a whole bunch of other individuals and organizations in the State right now that will help make a difference. What brought us together is that for the last dozen years and for those of you who are either criminal practitioners or work in the criminal justice system, you'll know this from clients and colleagues and friends and family members; people who've been convicted of violent crimes have pretty much stopped being allowed out on parole. The spigot was just turned off, and Myron Beldock was kind enough to give me a bunch of quotes from Governor Pataki from almost every one of the state of the state addresses and other addresses that he gave in the legislative remarks that the Governor makes when legislation passes. And Governor Pataki was very clear from the beginning of his term that he was . . . wanted parole to end, and it was one thing for parole to end as a means of deciding what happened to people after they were released from prison and it was . . . to go to a different system, but what it meant for the people who were inside, and as one of people who talked to Governor Pataki told some of us, the Governor said, I never told the members of the Parole Board, I never told the Commissioners what to do in particular cases, but they could read my body language. And I think it's clear, and we'll hear from speakers later, that they did read his body language, and one of the things you'll be hearing about is just how radical the decline in parole for people convicted of violent offenses has been. Our panel is a wonderful group. We've got diverse perspectives and experiences with parole, and I want to introduce the panel. John Caher is the Albany Bureau Chief of the New York Law Journal. He's written about parole extensively, and the articles which a lot of us read, really are a primer on what's going on

in the parole system. Phil Genty is a Clinical Professor of Law at Columbia Law School, and he teaches the Prisoners in Family Clinic. The Clinic represents clients, particularly women, in their . . . with the challenges to parole denials. He's been involved in advocacy for imprisoned clients for many, many years. Vernon Manley is the former Commissioner for the Parole Board until August of '06, and before that he was an Assistant Commissioner of the New York City Probation Department. Al O'Connor is a staff attorney with the New York State Defenders' Association, and he's been involved in sentencing reform issues for many, many years. Eve Rosahn is a supervising attorney with the Legal Aid Society's Parole Revocation Defense Unit. She's represented parolees in revocation hearings for the past nine years. The Honorable Edward Sheridan was a Judge of the Court of Claims and an acting Supreme Court Justice for both criminal and civil terms. He did handle scores of Article 78s, which are how parole appeals get into the courts once there's a denial of a parole appeal, and many of us remember his decision In the Matter of Danny Chan case, which he decided when he was still on the bench back in '03. William Eric Waters is the Program Director of community-based services for the Osborn Association, and he is on the Executive Board of the Coalition for Parole Restoration. He has written about parole from both a personal and professional perspective. We've got a lot of panelists, and we've got a lot of people who I see in the audience, who know as much about this as half of the people on the panel do. So, what we're going to try to do is to have a lively discussion, we're going to limit the initial presentations by the panelists to ten minutes, and then we'll open it up for discussion with the floor and among the panelists, and I'm going to try to be the heavy-handed chair and keep people to the ten minutes. We're going to do this in alphabetical order. On CNN the other night, Paula Zahn did a very heavy criticism of alphabetical order, but it still seems to be the most objective way I know to go forward, so with that, John Caher.

**John Caher,**  
**Albany Bureau Chief,**  
***New York Law Journal***

Thank you. I was just saying to Barry, looking at the array of knowledge and talent on this panel, I kind of wish I was on the other side reporting about it, rather than on this side. But that said, perhaps maybe I can provide a general overview that maybe will provide that basis for where we go from here. I would like to share with you some words that are not my own, but I think are very revealing. "Noting an inmate's positive institutional adjustment or achievement in the written decision is not tantamount to considering them in a fair, reasoned and individualized manner. Indeed, such cursory treatment turns on its head, the reformatory or rehabilitative principal underlying an indeterminate sentence." "Noting an inmate's positive institutional adjustment or achievement in the written decision is not tantamount to considering them in a fair, reasoned and individualized manner. Indeed, such cursory treatment turns on its head, the reformatory or rehabilitative principal underlying an indeterminate sentence." "Apparently it is a Parole Board's position that it is not responsible for reading and incorporating submissions as part of its

deliberative process.” “The role of the Parole Board is not to resentence Petitioner according to the personal opinions of its members as the appropriate penalty for murder, but to determine whether as of this moment, given all the relevant statutory factors, he should be released.” “Does the Board honestly believe that a 74 year-old man, half blind from cancer, who’s helped countless people, and learned and taught principles of law to many, truly is a continuing threat to society?” “The Board is required to do more than merely mouth the statutory criteria, particularly where as here, each factor recited and brought forth in the parole interview, other than the crime itself, militated in favor of release.” “A Parole Board’s reliance on the severity of the offense to deny parole not only contravenes a discretionary scheme mandated by statute, but also effectively constitutes an unauthorized resentencing of the Defendant.” Those remarks from judges and their parole decisions, to me, seemingly speak volumes about not only the parole situation, but the frustration level of the judges. It’s abundantly clear, to me, both from these and other decisions, as well as private discussions with some judges, that many, many judges are of the opinion that the Parole Board has essentially usurped their sentencing authority. As I guess, you know, the *Law Journal* has followed this issue, closely, for the past year or so, and we’ve written a lot and have tried to stay on top of it, and I’d like to explain briefly how we got on this and why and what we found. As the Albany Bureau Chief, I was seeing decisions week after week, where parole challenges were denied, usually with boilerplate language that a parole determination could be disturbed only upon finding of irrationality bordering on impropriety. I think you are all familiar with those words, probably more familiar than you care to be. Beyond that, I had written about a matter that peaked my interest. It was a case involving an elderly, sick, disbarred 83 year-old lawyer, who had stolen money from his clients and was repeatedly denied parole. There was a unanimously affirmed opinion that said denial of parole in that case was irrational and bordering on impropriety. Very rare for them to say that as you know, and the Parole Board promptly hit him again. Not only did he deuce, but they set the next parole hearing for a date beyond his statutory condition of release date. Having yet noticed another trend as well, but it took a while for me to understand what was going on, I covered a third department, and every week I would see a whole bunch of parole decisions, where challenges were denied, and oftentimes it seemed they were denied on mootness, and it eventually took a while for me to understand what was occurring was that by the time the challenge worked its way to the Appellate Division, the issue was moot because the convict had a parole hearing coming up the next month anyhow, and the Court can’t do anything other than order a rehearing, so he’d never get to the issue. Then came Judge Sheridan decision in Chan v. Travis, which I think was in 2003. In that opinion, Judge Sheridan specifically accused a Parole Board of carrying out Pataki administration policy other than the law, and this is what he said: “This State may be in transition to determinate sentencing and the abolition of traditional parole for all felons, but that may not be imposed by

administrative fiat on this inmate and the class of inmates similarly situated. The Board may not ignore its obligations to this petitioner even if current law and executive policy have taken a different direction.” Judge Sheridan stated a sharp drop in parole release rates under Governor Pataki and found “an undeniable inference that the Board has gotten the message and implementing executive policy.” That was kind of the holy cow moment for me. I had known Judge Sheridan for a long time, and I had observed him as a reporter in court, and I had read his decisions, and I knew from my experience that he was a thoughtful, reasonable, reasoned Judge, not given to kneejerk decisions, and not given to inflammatory language, so when he wrote that, my ears really perked up. Around the same time, we had the *Kathy Boudin* matter which I imagine many of you, if not all of you, are familiar with. Kathy Boudin was a 1960s radical sentenced to a twenty-to-life term for her role in an armed car hold-up that left two police officers and a security guard dead. After she was paroled at her board, the Governor very harshly criticized the determination, and within a very short period, the Parole Chairman was reassigned, so with all of the above, it didn’t take Sherlock Holmes to figure out that an adventure was afoot, so my colleague in Manhattan, Mark Fass, and I started looking into it. And with some help from Al O’Connor and less willing help from the Division of Parole, we looked into the statistics to see if the statistics bore out what we were hearing and seeing anecdotally, and boy, did they ever. We found that the release rate for A1s dropped from 23 to 3 percent. And the result was a series of package of articles that ran, I believe, last January and continued throughout the year. Throughout the year, this is what in journalism we call a story with legs, it just keeps going. It seems like every month, if not more often, there’s another issue, another case, another topic on this to pursue, and we try to keep on top of that, with your help, and please continue to help us. In February we published an article on two people, who had been granted parole, one of whom was just about to walk out the door when the Parole Board suddenly changed its mind and rescinded parole based on what they called new evidence. The new evidence was that the victims and/or prosecutor objected to parole. In one of those cases the Parole Board had voted to release this particular inmate, a gentleman named Gregory Frederick, who I hope is here tonight. He is here tonight, as a parolee not an escapee. Okay. [The Parole Board that released him] was the same one that released Kathy Boudin. After Mr. Frederick was granted release, the Parole Commissioner named Robert Denison, apparently sought out the victims and asked for their opinion. Based on their opinion a new Parole Board which happened to include Mr. Denison rescinded Mr. Frederick’s release. In March, we reported on a case where the Parole Board denied parole and that a hearing the Chairman described the convict as a model prisoner who poses no threat to society, but openly questions how much punishment is appropriate. The judges kind of think that’s their role. And there have been many others since then. The most recent developments, I think, are two: the Second Department recently decided the question, at least for that department, of whether a parole

challenge can be initiated in the venue where the crime occurred. There has been some dispute over that, and they decided that it could not. And the Third Department recently held that the Parole Board must take into consideration the sentencing minutes in the sentencing recommendations of the Judge. So I think that's where we are now. There is, I think as you know a class action pending, and hopefully moving along, and now I will leave it to the real experts to tell you what's really going on.

**Moderator:** Professor Genty.

**Professor Genty  
Director,  
Prisoner and Families  
Clinic,  
Columbia University  
School of Law**

Whenever I'm called Professor, I'm reminded of Gilligan's Island, if you are old enough to remember that. In the clinical program that I teach, we work with individual clients, and we see the human cost of what John's described in terms of the despair and the cynicism that comes from denials repeatedly after 15, 20, 25 years of perfect record, but I want to try to focus a little bit this evening on how we got there, and to do that, actually I have to tell a story that begins about thirty years ago, because the current structure was really set up in 1977 when the Division of Parole was separated from the Department of Correctional Services. And at that time the Division of Parole was responsible for setting minimum sentences for most categories of serious felonies, and what's interesting about that is that there were guidelines that were to be developed to guide that decision making, and Governor Carey in his approval message, and the things I'm going to be referring to are in a packet of materials that I left, and I don't know if there are enough copies, but I'll, but you can take a look at them. This bill would require the Board of Parole to adopt written guidelines for the exercise of their discretion in making important decisions affecting not only inmates of correctional institutions, but the community at large. These guidelines would structure the Board's discretion in fixing minimum periods of imprisonment and making parole release decisions. These guidelines would permit a reasonable expectation of parole when a minimum sentence fixed in the courts with the guidelines has been served, provided the inmate fulfills the requirements of the statute. So the system as developed in 1977 was that the Board would, when the prisoner first came to the facility, set a minimum sentence and once that minimum sentence was set the expectation in most cases, was, according to Governor Carey's message, that the person would be released on parole. And the guidelines that were set up then are essentially what you see in the regulations now, in Section 8001.3 for those of you who like to keep score, but it's basically a grid that has on one side the seriousness of the crime and on the other side the criminal history. The next step in the story actually happens in 1980, because in 1980, the responsibility for setting the minimum sentence was removed from the Board of Parole and placed back with the sentencing courts. And what's interesting about that is that if you look at the reason for that change it's expressed in the legislative memorandum, at that time Senator Mega, who said a review of these criteria for setting the minimum sentence reveals that there's nothing on which the Board's decision can be

based which was not before the court at the time sentence was imposed. And most of these factors consist of matters the court is better able to ascertain and evaluate, for example, seriousness of the offense, mitigating and aggravating factors, etc. So that the transfer of responsibility to the sentencing court was accompanied by an express legislative finding that it didn't make sense for the Board to be doing this, that it duplicated effort, and that the Board was not as well equipped as the courts to handle this. The question then that was kind of left lingering, I think in 1980, was what about these guidelines, these parole release guidelines that focus on the seriousness of the crime and the criminal history. What do we do with them? Are they still being used? And the clear answer to that came in 1985 when the guidelines were revised somewhat, and when the Board of Parole discussed the purpose of the guidelines, and the executive law, the governing statute made clear that the guidelines were still going to be used, and that they would apply to all individuals who, when they appeared for parole release. The manual, the implementation manual for these guidelines on page 8, again, there are copies available, said that the purpose of the guidelines is for the Board to demonstrate itself as a consistent body of decision makers upon which the State, the inmate and the correctional system can depend. So the guidelines were designed to ensure consistency and predictability in parole decisions. Those were the goals. How are they achieved, how were they achieved by these guidelines? The problem is that these guidelines, 1985 guidelines, are essentially the same now as they were then, and they focus on these two criteria, seriousness of the offense and criminal history, the very factors that the legislature determined the Board shouldn't be applying. And it's a little bit unclear, I think, how exactly these guidelines get applied, but it is clear that they get applied in some way. What - the other thing that's interesting about this story, to my mind, is that the regulations on the books today, in another section, 8002.3, continue to carry forward a distinction between cases in which the guidelines have already been applied and cases when they haven't been applied, and it's the distinction that parallels Governor Carey's approach in 1977. What it says is that in cases where the guidelines have not been applied and that is cases where a prisoner has not yet gone to the Parole Board, the guidelines will be applied. So that would be the first time that somebody goes to the Parole Board. The interesting part is what happens after that because the other section of the regulations says that in situations where guidelines have previously been applied there in effect is a presumption of parole release. It says, "In the latter, in this case, release shall be granted unless one or more factors relating to institutional record and release plans are unsatisfactory." So it seems as if there is this presumption similar to what Governor Carey was talking about, which is that after you kind of get over the guideline hurdle, whatever it is, you are entitled to release, unless your institutional record and release plans warrant otherwise. The confusing part I think is not just that the guidelines have these two criteria, and only these two criteria, but the guidelines themselves don't apply to the most serious kinds of violent felonies. For cases involving death, for example,

the guidelines are unspecified so it is not clear what it means to apply the guideline. The rationale for excluding those cases from the guidelines was and is that according to the regulations this is a limited number of cases and there is great variation among the cases. While that might have been true in 1977, today, it is hardly true today when almost 20% of the prison population is serving time for murder, attempted murder or manslaughter in the first degree, so this is a huge part of the population. So I think that at the very least it is time to take another look at the guidelines and think about developing guidelines that focus not on the past crime and criminal history but on the present and the future - the institutional record and release plans. I think that what we have right now is a system that because of the way it gets applied and the way the seriousness of the crime and the criminal history keep coming back again and again for essentially the sole reason for the parole decision, we have a system that operates completely contrary to the purposes for which it was assigned. The Board is continuing to duplicate the function of the sentencing Court something that it is ill equipped to do and something a governor, that the legislature recognized as long ago as 27 years that it should not be doing - and I think that we are assaulting decision making by the Parole Board, fails to achieve the goal that the division of parole articulated *itself* in 1985 that is of demonstrating consistency and predictability upon which the state and incarcerated individuals and the correctional system can depend. So I think that one could sit down and take a look at just this issue, that is the guidelines for parole decision making, come up with a rational set of guidelines that would create this kind of predictability and this kind of consistency and deal with some of the human aspects of the cases with which I think many people in the room are all too familiar.

**Vernon Manley,  
Former Member,  
New York State Board of  
Parole**

I was asked to talk about my experiences on the Parole Board, but I thought it was important that the audience understand the parole process, because this is something that people always ask me about all the time and they don't really understand what the Parole Board does. And so I am going to just quickly walk you through that before I get to my comments. The Parole Board takes Monday to travel wherever they are going to go all over the State, and they arrive in the evening, and they prepare to arrive at the institution in the morning at 8:00. **Between 8:00 and 8:30, Parole Board reviews cases in hopes to get between two or three cases reviewed, written decisions, holds, if that is the case, and then the hearings begin at 8:30 in the morning. Usually there are between 60 and 100 cases, there could be some less, there could be more, but that is about the average range.** When we walk in in the morning, the senior parole commissioner usually asks: "Are there any media cases here today?" And then our parole staff, which is in each of the prisons facilities, will tag those media cases or pull them out for us, so you should know that. But this is the important part that I want to emphasize. The primary commissioner, usually the senior commissioner, starts the interview, the inmate comes in, and the interview starts. **One other commissioner – it**

could be two or three – are half listening to what is going on, because they are focusing on the next case. So there they are looking at a case, they are trying to find the information. There is an inmate status report which summarizes everything, but you have to verify that in a folder. So this is going on, you kind of lend an ear and you are really giving only half an ear, or eighth of an ear, so to speak. I think that it is a process that is not in the favor of the inmate. The average interview is about seven minutes. If you have been in for 15 - 25 years, maybe 10 - 20 minutes. You know, we talked about, we have spoken about statutory criteria. Yes, we cover, the hearing covers the instant offense, the criminal history, the education programs completion, disciplinary records, community ties, reentry plans, drug treatment, residence, family, friends and shelter, significant others that they have, or they have children, whether the children are in the household or not. But it . . . rarely are there discussions about what goes on after the interview occurs. The perception is that there is a discussion that goes on afterwards. Well, that rarely happens, except when maybe the commissioner says, you know what, I wrote a hold on this person, but he did such a fantastic job, I want to let him out. The other commissioner thinks they are going to be held, so he gives a reason, and there is a discussion, so they can agree or not agree. If it is two people and they don't agree, then it is split and is held over to the next Board. If it is three people, then obviously the majority wins and the person is either held or the person is released. And that is a quick summary of the process. Just that while the interview is going on between one of the commissioners and the inmate, not only are we looking at the case for our next interview, because there is fifty we might have twenty in your folder, twenty five, you are also looking at cases CRCs, which are conditional release cases – people that have a definite sentence, people who are maxing out and all you are getting is parole conditions. So, we have to look through all of this and do this while an interview is going on, so keep that in mind. I was appointed to the Parole Board in 1999. In August of '99, I was sent to Central Office in Albany and sat down and received, had to fill out all these administrative papers, had a confluence of different departments coming before me, talking about parole does this, parole does that. The general counsel comes in and says you know the executive law under which the Parole Board operates 259 is this and here is a case. And here is where you find all the information, how nice it is here, the criminal history is here, letters from family is here, the law, the judges, etc. And your training is actually going to be one week - two weeks in which you observe Boards. All right, it's good. Next day I am on a three panel Board and I am sitting there as an observer. I watch five or six cases and all of a sudden I am handed a case and told to do the interview. And I am sitting there, what are you joking? I am in shock. I felt it was inappropriate. I am not prepared. I did not have enough training and a case is handed to me. I think it was wrong. And I asked the other commissioners about this and I found that it was sort of a right of passage. They all went through this and it was something that they did, but if you think about it, here this person's life is on the line and you are going to

make a decision, and I certainly did not find all the parts, all the information I needed to know in order to make an informed decision. I am not going to tell you what happened there. But I can tell you that it takes six to eight months to really understand the folder, to find information, to really in order to make an informed decision, and it is a harrowing process, and it is a hurried process that does not have to be. Commissioners should be able to take a lot more time, especially when people's lives are at stake, certainly with the violent felony convictions because they have been in for a long time.

Let me talk to you briefly about the most disturbing things that I have experienced in the Parole Board. My very first day on the job, I am on a panel and I am one of three commissioners, this is all by seniority so there are three of us. And the number two commissioner is over there yelling at the inmate, calling him scum, and then talks about how could you do such a violent crime. And I am looking, oh, he must have cut somebody's head off. So I am looking at the inmate status report and saying I must have the wrong one, 'cause I see burglary here. And then he says, you committed a burglary one and I am saying, oh my God, what did I get myself into? That kind of inappropriate, insensitive statements happened often my first year. It began to change as I think new people came in, and those of us who did not think that was the right thing would do exactly the opposite and treat people like gentlemen and gentle women. Over time it changed radically in that respect. Of course, it would have been better if they had gotten treated that way and gotten released, certainly in the felony murder cases and A1 felonies. But so I say that to say the parole criteria is important. And here are some of the comments that I heard, while being on the Parole Board. And these comments were directed at me and others. "Hurry up. You are not going to let this guy out anyway. It is a sex offense. It is manslaughter. Or murder." "If I let this guy out, my name will be all over the Post, and why should I pay for this when I am not the criminal?" Panel members have questioned the length of my interviews many times. Commissioners have slid pieces of papers regarding the length of the interview saying you've got five minutes, six minutes or something like that. [Five minutes, Vernon. Laughing. [Aside] Like this.] Let me quickly end this.

But your sentencing minutes are important, and it was brought up important before, and they are really important, because I can speak of a particular case in which a young man, 17 years old, second time before the Parole Board, I think he has done, like, 27 years now. And the Board has done the interview and he says, "Commissioners, I did not do it. Even the judge said I did not do it." "Well, wait a minute, did you say that during the sentencing?" "Yes." We didn't have sentencing minutes. I said, "Well listen, let's hold the case, let's hold jurisdiction of the case." And we let the guy go out, obviously. "Would it make a difference to you if the judge says, Yes, that he didn't do it?" Well one of the commissioners said, "Yes." The other commissioner reply, he says, "Yes." So we are meeting as an entire 18 body on Monday; this is a

Wednesday. We met, got the sentencing minutes and the judge says, “I know you didn’t do it. Your brother did. And he just got convicted of murder in Texas.” And went on and on and on. So we let the guy out. We did not have the minutes; he was going to be held by the Board. So they are important and we should talk about that hopefully later.

One other problem quickly is that I saw that they were treating juveniles just like they were treating adults, the Board was. I remember handing out articles to all the commissioners that the New York Times had put out and said that, you know, the neurons in the brain of a juvenile are not connected. They are not connected in the area of the brain that deals with consequences, and so therefore they are incapable, based upon our CT scans, incapable of coming through, of making decisions, or understanding the consequences of what they do. And so do you hold them to the same standard then? And I would broach that very often I had a juvenile before me up for murder, and the commissioner the most frequent question the answer was “Did you know it was right from wrong.” Anyway, I will leave it at that.

**Alfred A. O’Connor  
Staff Attorney,  
New York State  
Defenders Association**

Hi. I am Al O’Connor with the New York State Defenders Association. The Defenders Association does a lot of things. And one of the things that we don’t do very well is respond to the thousands of requests from inmates for help with their parole cases. And I got to tell you that these are the most difficult letters that I get in my job, and it often it sort of presents a crisis of conscience with me that I just want to sort of share one story with you. Vernon Manley mentioned juveniles being treated the same as adults. Well, recently I got a letter from a middle aged man who told the story of how he was convicted of felony murder in 1981 at the age of 15. He is now 42 years old, has been in prison for 27 years and has been denied parole 13 times. And he asked me in a letter he said I had a relationship with him over the past few years and he said, we spoke on the phone. He said, Mr. O’Connor, you know, I really don’t want to go to my next parole hearing. I don’t think I can take it anymore. What is your advice? And my advice to him was, I couldn’t really. . . I knew what I needed to say as a lawyer and that was that you should go you should just suck it up and go to that hearing. But then I started to sort of question why I was saying that. Was I really just being an apologist for the system. He knew better than anybody what was going to happen at that hearing and in fact he was hit again at his most recent hearing. And I sort of questioned whether I should have advised him to go in there and suffer that indignity again, to put up with the abuse that we heard about and that sometimes happens at these hearings. And it is just very uncomfortable. And I think that sometimes we are just apologizing. The system is completely broken, when we have release rates that have dropped from 25% twelve years ago to 3% it means that people are not doing their job. It means that things are broken and they need to get fixed. And I think it is terrific that we are all so. . . so many people here tonight to talk about that and to sort of keep this in the public discussion. That is how things are going to change, is that we are going to make them

change. I just want to explain. I am sort of a pessimist on this whole thing. I have just been dealing with it too long. But I think that there are some concrete things that can be done. One reason that things are so broken is that we have a completely broken criminal justice system and a completely broken sentencing structure. We have had a penal law and a sentencing law in effect for about forty years and what has happened over those forty years - every few years we sort of change things in one area, change it here every couple of years and so we have this patchwork sentencing law where if you steal a bike from inside a garage it is burglary in the second degree and you get a determinate sentence no parole. You steal the same bike when it is outside the garage, you have a parole eligible sentence. If you commit rape in the first degree, rape in the second degree, you do get parole, or at least theoretically you are eligible for parole. And most absurdly if you are a repeat drunk driver, you are eligible for parole, but if you possess drugs, you are not eligible for parole. We have a crazy patchwork sentencing structure and there is no unifying rationale for any of these laws. And so it is any sort of wonder that we have confused Parole Board member. We have people confused about how much time people should do. And when you couple with that I think the primary reason is that Governor Pataki appointed people and set the tone over the past twelve years about what the Parole Board should do. But I don't want to lay it completely at that, I think that that is a mistake to think that things are just now going to change if we get a few Board members. We are just completely schizophrenic in how we deal with crime and criminal justice in New York. So there are a few things we can do. If you are lucky enough to have a maximum sentence there are some ways that we can change the laws, just tinker with them to cut down on these parole calendars. This is just a disgrace that someone is listening and I understand that this is what you are telling us to listen with half a year when someone has been in prison for 25 years and has been living for every day for that moment when they would get up in front of the Parole Board to have someone flipping through a file for the next case that is up in front of them. Well, how do we change that. Instead of hearing 30, 35 cases a day. Let's hear ten. And the way we can do that is get all these cases that don't involve homicide that don't involve life sentences off the Parole Board calendar. We can do that with a system called presumptive release. It is in the law right now. Let's just change it. Let's modify it so that we can get some of these cases off. Let's get people out on work release again. This is only Governor Pataki's Executive Order that he issued one of the first days of his administration that keeps people committed of homicide off work release. How can you prove that you will live and remain at liberty without violating the law where you have to go check back into a prison and show that you can be trusted step by step over the course of a few years. That can be done with the stroke of a pen this week or next week. There are some other things we can do for easing up on technically violent offenses. Offenses that are violent in name only. Ease up on some of the unnecessary restrictions on that area. Overall though the real problem is going to be how about all the folks that have been in prison. We are not going to get rid of life sentences for murder for arson in the first

degree for kidnapping for a lot of sex offenses now that are carrying life sentences for first time offenses. And so parole is going to be with us for a long time and I think that we can get to the point where we can expect results from the Parole Board when we recognize that no one is doing their job at 3% or 10% or 15% that this is a system failure if we are not getting more and more people out and back into the community.

**Eve Rosahn  
Supervising Attorney,  
Legal Aid Society,  
Parole Revocation  
Defense Unit**

My name is Eve Rosahn. I work with the Parole Revocation Defense Unit of the Legal Aid Society of New York. We represent those individuals who have made it through everything that people have described and have had the bad luck or misfortune to run afoul of their supervising parole officer. So this is kind of a presentation on out of the fire into the frying pan. In late 2004 we became by contract with New York City the primary providers of representation to parolees in New York City accused of violating their parole. Since then we have done something over 20,000 parole revocation hearings. So, although I can't provide you with a lot of statistics I think I have, we have a pretty fair sense of what that process looks like in the New York City area and some of the things that can be done to address it. I think that what we see throughout, and I work for Legal Aid so I am going to be a little philosophical so bear with me. The two what I see what we see as the two goals of parole which is one, to protect the public safety, certainly, but another to give people a hand in the transition from prison, often long time in prison to being productive law abiding members of the community. And it looks very often like those two goals are seen as in contradiction with one another. Or at least the goal of public safety has more and more and currently been given disproportionate weight over the goal of helping people get set up with productive lives in the community. Our clients fall into a few groups. There is one group of people however small who are people are just, they are not guilty of the parole violations with which they are charged. And our job is to do the best we can to keep them out of prison. The greatest number of our clients are struggling with incredibly tenacious drug habits. Some who have been under parole supervision for 5, 6, 7, 10 years without a relapse we get them when they do relapse. Some who never made it from the bus from prison to their first visit to the parole office. We have many, many clients who are suffering from severe mental illness. Mental illness that may or may not have been noticed during years upstate in prison, many of whom are released without any kind of discharge planning other than to go to an appointment that their parole officer may set up for them days or weeks into the future, or perhaps never. Released without medication. Released to the New York City shelter system. And sure enough they become our clients in very large numbers. And then there are some proportion of people who violate their parole because they are convicted of new serious crimes and go back on new sentences of incarceration. A large part of our job in addition to getting those warrants lifted and those people able to go home is to divert or advocate for the diversion of people away from prison into various forms of alternatives to incarceration. Into drug treatment, into treatment for mental illness, back into the community, back to their families. In the past two years we have

placed literally hundreds of people into treatment and we count that probably those, probably as our greatest victories. Even though we count that as among our victories, it also highlights one of the areas in which we think the system needs reform. These are people who did not need to have their parole violated. They did not need to spend a month or two in jail waiting for this program to be ordered for them. Supervising parole officers in the field have the ability and the authority, if not the encouragement, to place people directly into treatment, not to send them again through the revocation process where we see people losing their housing, losing their job, sometimes losing their children, because they are stuck at Rikers Island for some period of time waiting for the administrative law judge employed by the division of parole with the help of our attorneys to put that person into a program where they could have been months before. Part of the reason that we see that doesn't happen is exactly what people have been saying about the process of parole release. I thought that line about I don't want to see my name in the NEW YORK Post was limited to the revocation process. I am glad to hear that it is throughout because we hear that from supervisory parole officers. We hear it from the parole revocation specialists who are the prosecutors. We even hear it from the judges although they try not to say it on the record. Why should I take a risk for this person because if this person fails I will be blamed and this culture of blame which is maybe...[end of tape] whether a parolee a parole violator in our case a parole eligible inmate in the case of people who are granting parole release whether that person is likely to live a law abiding life. Well there are no guarantees in that prediction. You are going to be taking a risk and can we shift it so that the balance is in favor of that person being given a chance to live a good life in the community rather than the safety or the apparent safety of incarcerating someone. I say apparent safety because most of these folks get out. They'll get out sooner or they'll get out later. They will get out better prepared or they will get out worse prepared. It might be more sensible to take that risk in the immediate to give them what they need rather than to see that down the road. In addition to changing that culture, some very concrete things. Create a discharge planning system particularly for mentally ill parolees. We don't see it. We see people having a terrible time making that initial adjustment. Do not parole people to the New York City shelter system expecting them to maintain their sobriety when we all have heard stories or many of us have heard stories about the level of drug use the level of violence the level of predatory behavior in the shelter system. Lastly, Governor Spitzer to whom we were looking with anticipation to see what his views were going to be on parole made a proposal in his budget proposal to start to amend the laws of New York State in a couple of ways. One of them was rather than holding parole violators in local jails because now they are entitled to local hearings transfer accused parole violators back upstate to state prisons while awaiting their revocation hearings. Secondly, hold those revocation hearings over video conferencing. This I need hardly tell you certainly any of you who have tried to build a relationship with a client, for us clients who say I don't want you, I want a real lawyer. This does not happen when

your client is 300 miles away sitting with a video technician. You don't get to look them in the eye, you don't get to shake their hands, our social workers don't get to see the signs and symptoms of mental illness, which is usually how we identify our tremendous proportion of mentally ill clients, because it is not in their paperwork, it is not in their parole papers, it is because we are talking to them and we understand that something is going on. How do you place a client in a program when the program is in Brooklyn we can hardly get programs to call Rikers Island to do intake? How do you place a client when that client is in Watertown? These are people who, despite the fact that they are convicted felons, already and have a lesser span of legal rights they are presumed innocent of the charges against them just like anyone who walks into a court of law. They have a right to counsel, they have a right to a relationship with their counsel, they have a right to present evidence to mitigate their sentences, to show their innocence. How does a judge relate to a parolee who is sitting in some prison at the other end of a video camera? How does the judge assess the sincerity of that person's desire to address their addiction, address their problems? I think that they don't. I think that Mr. O'Connor told me that the total savings of this proposal will be for the State of New York - money that does not have to be paid to the localities to house parole violators - will be \$7 million. I think the destruction that can go on, the re-incarceration or people who do not need to be re-incarcerated will probably come out to be a good deal more than \$7 million. We would be glad to do a lot of bake sales and raise something close to that to see that our clients get quality representation and a chance at a fair and reasonable disposition when they are violated, not some 1984 by-camera hearing. So I urge you to sort of stay alert to that proposal and we are hoping that someone will see that it really does not gain very much and certainly in human terms can lose a lot.

**Honorable  
Edward A. Sheridan,  
Former Acting  
New York State  
Supreme Court Justice**

Thank you, Russell, and good evening everyone. Before I started serving in Article 78 Term in Albany County Supreme Court, I had served for a number of years as a trial judge in Criminal Term. Indeed, I started here in Manhattan, where I served for three years in the Supreme Court at Centre Street, and over those years I probably imposed hundreds of indeterminate sentences. And when I was imposing an indeterminate sentence and trying to arrive at an appropriate minimum and maximum term to fit the facts and circumstances of that case, I was guided by the [sic] my view of the indeterminate sentencing process: that presumptively there would be release at attainment of the minimum term of that sentence, assuming institutional adjustments and appropriate rehabilitative effort on the part of the inmate. This was consistent with what I had always thought was the philosophy underlying an indeterminate sentencing structure to offer that incentive to the inmate to make appropriate adjustment and rehabilitative effort. This assumed, of course, that the Parole Board would not be exercising some leveling function, that is adjusting disparities in sentences between jurisdictions, which I believed would be an appropriate role for the Parole Board to perform, but there was no indication at that time that the Parole Board was exercising that kind of discretion in its release decisions. After my service in Criminal Term of Supreme Court, I did begin work in Civil Term also and began adjudicating these parole cases in Supreme Court of Albany County. It was clear to me from the outset that something was changing at the Parole Board. Parole release declined dramatically for violent felons. This coincided, you will recall, with executive drumbeat to end parole for all violent felons and to make even more harsh our already rather stringent sentencing laws. It also coincided, you may recall, with an attack on the Court of Appeals' search and seizure jurisprudence. While the governor repeatedly called during these years for the elimination of parole, the legislature did not act immediately. But it was apparent to me and observers, and I believe generally to the criminal defense bar, that the Parole Board was responding; responding by administrative fiat without the benefit of legislative authorization to curtail parole for eligible inmates serving indeterminate sentences for most violent felonies. As a trial judge, it had become clear to me that my sentence didn't mean what I said. An indeterminate sentence of five to fifteen became a determinate sentence of ten years. An indeterminate sentence of six to eighteen became a determinate sentence of twelve years, which was not what I had in mind when I was imposing that sentence and spending a lot of time trying to come up with the appropriate sentence to fit the facts and circumstances of that defendant in that case. It was also very clear to me once I started serving in Article 78 Term that the courts, the Special Terms and yes, even the Appellate Divisions had left the field so to speak, effectively abdicating judicial oversight of parole release. Parole release – Parole Board release decisions emphasizing the seriousness of the offense were routinely given deference by the courts. Rare was the decision that would overturn a denial, Matter of King being a notable exception that I am sure most of you or many of you are familiar with. Rare was that decision that would reverse or overturn a denial, using the rubrics that parole release is quasi judicial almost, as I am sure you are familiar with, and unreviewable, save for irrationality bordering on impropriety – a standard of judicial review so absurdly low that I finally became embarrassed to cite it in a decision. And then came the Dennie Chan case into Albany Supreme Court in August of 2002. Just briefly by way of background, Dennie Chan had been convicted

Some of our speakers have addressed some changes in parole, which they have advocated. I look forward to hearing more about them. I would say from the judicial perspective a change I would like to see is a reaffirmation, well, first from the executive perspective, a reaffirmation by the executive that parole constitutes “a vital element in the indeterminate sentencing process.” That is from the Laws of 1977, Chapter 904. And that parole release be considered in accordance with legislatively prescribed guidelines, including the strong rehabilitative component which underlies the indeterminate sentencing scheme. And second, a reassertion of judicial oversight at Special Term and the Appellate Divisions recognizing that a failure by the Board to exercise discretion within statutory guidelines is an abuse of discretion and error of law. Thank you.

**William Eric Waters**  
**Program Coordinator,**  
**The Osbourne**  
**Association**

Good evening. I have a suggestion though in terms of when you have panels like this you can do it in reverse alphabetical order. Then I would be first. But the thing about your last name being “W” even as the Parole Board will hear cases in alphabetical order, initials and reappearances and I am one of the only people on this particular panel who has the dubious distinction of having went to far too many Parole Boards, but before I get to that I want to talk a little bit about how I first came to gain a little knowledge and understanding about the Parole Board. This is 1985 I was working as a jail-house lawyer Eastern New York Correctional Facility, pretty damned good jail-house lawyer. I was basically doing post-conviction motions, federal *habeas corpus* and what have you. Parole wasn’t on my radar. One day a gentleman came to the law library. I will call him J.C. and he just sat down in front of my desk and he was rocking and he threw his parole decision on my desk. So I picked it up, read it, looked at him. He’s rocking. I said something is wrong with this. So we sent for the parole transcripts, got the parole transcripts about maybe six weeks later. So I read the parole transcripts and this J.C. had attacked somebody on a city street cause voices had told him that this person was the anti-Christ and that he was Jesus Christ and that he had to kill him. Parole Board denied him and held him for the maximum twenty four months. Now I actually agreed with the Parole Board decision not to let him go but in the decision it said that there was no indication that you had addressed your mental health issues and therefore they denied him for that reason and he had been sentenced to fifteen years to life. He obviously had mental health issues from the very beginning. If the court system did not address that, *who* was the Parole Board fifteen years later to say, “Hey, you are someone who has not addressed your mental health issues.” I did everything legally possible to attempt to help this person gain some type of relief and I am now inclined to maybe look him up later tonight. And I think he might still be in prison and this was in 1985 when I first worked on this particular case. And it was clear that he had some serious mental health issues and when he went to the Parole Board one of the commissioners said, “Do you still hear the voices.” He said, “Yes.” “Well what do the voices tell you.” “You know, get up, get out the bed, you know take out the trash,

clean the cell.” “Are the voices friendly?” “You know, they are just voices.” You know how you read something and you read between the lines and I felt like they had been toying with him. He had serious mental health issues and it was not being addressed seriously. At least I did not think so. You know, not being there to hear him, but reading the parole transcripts it just came through that they were making really light of this. And unfortunately you know how the process plays out. It was two years later and he was back before me rocking and he threw the parole decision in front of me again and you know we just went through the cycle of filing an administrative appeal, filing the Article 78 appeal, waiting, you don’t get a decision in 24 months and he is back before you again. So, I am, I was sitting there and I was just thinking about him. You know, I had no intentions of telling that story but I am going to look him up later tonight to see if he is still in the prison system and I think he just might be, because nobody wants to be on the front page of The Post for having somebody released somebody like this gentleman who needs some mental health issues. So having said that, I knew right then and there that something was fundamentally wrong with the parole system. I had nine years in on the 20 to life sentence. It was 11 years in the future. You know I am this great jail-house lawyer, I am going to get a reversal. I am not going to the Parole Board anyway so parole is not on my radar, I am not even thinking about the Parole Board, I am not going to Parole Board. So during the course of doing time we would hear stories about parole commissioners and we said well eleven years from now that person won’t be on the panel. That person will be gone. I should mention her by name, but eleven years later I go to my first Parole Board and lo and behold who is the parole commissioner? This dreaded person we had talked about eleven years prior to that. And I just thought this was the worst case scenario. I was sentenced to 20 years to life as a non-killing accomplice in the felony murder. And I had two co-defendants. One was adjudicated a juvenile offender who, he was actually the actual killer but he was given eighteen months. This was prior to the juvenile defender law of 1978. This is 1976. So he was given 18 months. And he did 18 months and went home, ended up back in prison and so I had another co-defendant, he also was sentenced to 20 years to life. And when he had been sentenced two months prior to me and when I was sentenced the judge said, well I gave your co-defendant 20 years, I will give you 20 years, too. Cause all things being equal, you are equally guilty. So shortly after I went to that first Parole Board, I was denied by that dreaded parole officer that I thought I would not see, but she was still there like she waited for me (laughter) to come before her and I was denied for the maximum 24 months and shortly after that I learned that my codefendant who also had 20 years to life but who was at a different prison was released. So I said something is wrong with this picture. And you never really know, uh, Vernon and I we had a conversation about a month ago and, well, he said some really insightful things about the Parole Board process. So just in the comments of something I had said, he said maybe you didn’t say the right things. And maybe I didn’t. Later I think I might have said the right things, but I don’t even know if there is a connection to having said the right thing

when the Parole Board finally decided to release me. So anyway I learned that my codefendant had been released. And really truly everything was equally the same, you know, we are equally guilty, we are equally culpable. The judge said you both should do 20 years to life. I wrote the judge, of course, telling him that I thought 20 years was a lot of time for a 16 year old and she said but you will still be a young man, and you probably will only do 20 years if you do the right thing because there was this presumption that, you know, you can't what happened and the underlying philosophy of indeterminate sentence is rehabilitation. That is like the big thing about indeterminate sentence and it is the underlying philosophy that goes with, I mean you can't talk about indeterminate sentence without talking about rehabilitation. That is really in the hands of the person sentenced to either get out at the very minimum or closer to the max, if there is a max. And if you have a life sentence, you know, you could be in prison for life. So, I ultimately got the parole transcripts of my co-defendant and he just got commissioners who were inclined to let him go. They thought that 20 years was enough. 20 years wasn't enough for me. So I went to a second Parole Board hearing. And prior to that, I got to back up a little. I had in, two years prior to my first Parole Board defense I went to an executive clemency Parole Board hearing. You know and many people just don't get executive clemency. It is considered an extraordinary form of relief. And that dreaded parole commissioner at my first hearing said, hey, why did you apply for executive clemency. Honestly, I didn't want to do all of this time. I did not want to tell her that. But, why did you apply for executive clemency? Well, I thought I deserved it. Well why did they deny you. Well, hey, they give everybody the same form letter. Executive clemency is an extraordinary form of relief and you know the governor does not want to intervene in your case at this time. She said, right, there is no extraordinary factor in your case. Ok. So anyway I was denied parole. And being a good jail-house lawyer (aside: you gave me 2 minutes already, I am only halfway through the story). But, the parole commissioner had said well why did you go to trial? Because I thought I would win. I didn't tell her that, right? Why did you go to trial? Because I just thought that something was fundamentally wrong with the felony murder rule. But really I just did not understand the philosophy of the felony murder rule. And in the decision to deny me parole, one of the reasons was you went to trial. So I just focused on that. I was denied parole in part because I executed my constitutional right to go to trial. It made it up to the third department. The third department said normally when a Parole Board goes outside of the statutory factors it calls for a reversal and a new hearing. Good, right? However, the Parole Board did, come on, it says it right in the decision. We deny you parole because you went to trial. So anyway I went to a second Parole Board hearing and it was four minutes and I didn't even engage these commissioners because they looked at me and said you know we are not going to let you go. So why am I here why should we even have a conversation. So the third hearing (I am almost finished) (laughter) I am W I am a re-appearance I am the last person in the room, three commissioners, two minutes into the hearing, parole commissioner puts on her coat, hurry

up, I guess was the message that others got, and I said, this is my time now because we are not going anywhere. So in the final analysis I said, look, if this is just about punishment and how much time you want me to do, you guys know who I am in terms of I litigate until the cows come home. Go off the record, tell me what you want, give me a number. I might not like it but I will know I can deal with it and I would have absolutely no problems with that. So I tried to get some type of commitment from them - they would not give me a commitment, they say, you know, we might think 30 years is enough, but you will go to another parole panel and they might say oh, that is not enough. So we can not guarantee you any set amount of time. And it says and the only thing that we can guarantee you is that you said you were given short shrift at some of your other Parole Board hearings. We guarantee you that we will really look at everything this time. Are you okay with that? Hell no, but that is as good as it gets. So I am okay with that. They decided to let me go. And I have been out seven years and I can not tell you why they decided to let me go because none of the reasons that they had previously denied me changed the nature of the crime. It didn't change. They added on two years. I was the same person two years older. They added on another two years. It was four years later. I was the same person, just four years older, the crime had not changed. And they had just finally made a decision, maybe they thought that enough was enough. Thank you.

**Moderator:**

Because of the time limits, Eric Waters did not get to talk about the work he does with Osbourne and the work he does and a lot of other people here do with people who are still inside is work that on the one hand has resulted in really significant numbers of people being changed people. People who went in really messed up and who really are different people now. They are rehabilitated. They really have understandings and insights and abilities that they did not have when they went in and the tragedy is that they are not getting out. And hopefully what we can address ourselves to now a little bit is what do we do about this, how do we change this, how do we try to move some of the things forward that people talked about. The floor is open. Yes.

**Question:**

**[Inaudible; about whether each parole file contains sentencing minutes.]**

**Moderator:**

Want to address that?

**Mr. Manley:**

I think that there was a law that there should be, but as far as I know, I left the Board in August of last year, and at that time there were not, there were not sentencing minutes in every case. It was random whether we got them, and they were not there in the vast majority of the cases. And

**Question:**

**[Inaudible]**

**Panel Member:**

No. That is the problem. With no one in charge, they could be housed with

corrections, they could be housed with some parts of parole, and nobody seems to be in charge of this. So that is something that we definitely have to look at and there are people looking at that.

One of the other things that is related to that is, as Mr. Manley told you. The commissioners are not looking at the files until that morning, until that very day, minutes before they see the prisoner, so there is not the advanced sort of work that should go in to looking at these things so that someone could say well, gee, where is the minutes, let's get the minutes. That whole thing isn't happening.

**Panel Member:**

Can I add something to that? Is this on? (Microphone) The third department recently said that when the sentencing minutes are available to the Parole Board, the Parole Board must consider them. It does not address what happens when they are not available and it is not said that the Parole Board must go out and find them. So there is somewhat of a lingering question of what happens if they are not available. And they really have not addressed that. But if they are there, they must be taken into consideration according to their department.

**Mr. Manley:**

I could also tell you that, I have brought the stuff before the Parole Board and all the commissioners and we had talked about nothing was firm about trying to make sure that the parole sentencing minutes are in these folders. I don't where that has gone. I left before it could happen.

**Question:**

**[Inaudible; to Mr. Manley re training of members of Parole Board]**

**Mr. Manley:**

No. None. I mean they give you something but it is not extensive. Well as I said before in my opening statement that they give you the, they show you the file, they tell you about the law that the Parole Board operates under and that is essentially it. They talk about where you can find things in the folder. They give you a book, a handbook of New York State law and they say go out and, uh, do your duty, do your stuff.

**Question:**

**[Inaudible comment]**

Applause.

**Question:**

**[Inaudible; Gregory Frederick asking whether the Parole Board members ever discussed the issues of classism and racism.]**

**Mr. Manley:**

You mean in at all Parole Board members? It happened occasionally at dinner. It happened, we would have bishops come to see the Parole Board. We have had other groups come before the Parole Board and they would bring it up, bring up the class or the racism or the, it came out in various ways. But the problem I often find is that where very often people came before the Parole Board organizations that would bring these things out there was no discussion about it afterwards and that is what you know really

needed to change because you know, I think you are right. It is part of a larger problem.

**Question:**

Classism and racism **[is a problem of America]**. That is not what we are here for today. **[Inaudible]** what we should be focusing on and I am very, very impressed that we have got an audience this size, **[some people]** actually wearing ties. Where I came from nobody wore ties. We got guys getting old and dying in there. That they have got college degrees, many, many, many like the ones you talked about. I don't even want to tell you how upsetting it is to see what is going on. I think what we should be focusing on and I hope somebody here tonight, and can I have a [mike], that somehow we have to move [bigwigs] - that is what we have got to focus on - **[inaudible]** - problems of America - **[inaudible]** - tempted - **[inaudible]** - you guys **[inaudible]** down the aisle - applause. **[inaudible]**

**Question:**

I would like to first off agree with **[inaudible]** that essentially **[inaudible]** getting people who are bound by these **[inaudible]** the deputy said something that I know personally all too well and that it additionally because of the unique circumstances that we are dealing with today I know a good many persons right now who have 30 years and over 30 years on death row, 20 to life, 15 to life, and 25 to life so I would like to say **[inaudible]** there are real people with real families like **[inaudible]** these are people who have done very positive things. I would like to say something too. I have similar experience with lawyers I was here with the Parole Board and what I feel **[inaudible]** I noticed that I had gotten too many degrees and a lot of **[athletic]** and a stack of good things and the argument that I got back from the Attorney General was essentially that **[and then had]** the case law to support it in court **[I wish I could cite it]** I don't have it with me that I it had been so well written that this bodes for more principles. That the system was working so well that I should stay and do some more time and I think that this logically to stay in the darkness and not have light shown on the **[inaudible]** then we are all failing, everybody is failing, we are not getting where we want to be and I just want people to realize that you have to **[inaudible]** and I want to do one thing and I wanted to do it for a very long time this **[shakes the hand of Justice Sheridan]**. Applause

**Moderator:**

Yes in the back

**Question:**

**[inaudible]** I am a parole officer **[inaudible]** the abolishment of the **[inaudible]** government **[inaudible]** I worked in the division for youths **[inaudible]** 13-14 year olds **[inaudible]** and many of them **[inaudible]** and I asked them **[inaudible]** well I have nothing else to do **[inaudible]** I mean really they are drug dealers **[inaudible]** unbelievable drugs **[inaudible]** opportunities **[inaudible]** applause

**Moderator:**

Yes in the front row

**Question:**

[inaudible] I just wanted to add my contribution. My name is Jeffrey [inaudible] and as a lot of people may know or may recognize I just came home after doing approximately 16 years for murder and rape, which I was cleared of [inaudible]. They found out I was innocent. They apologized to me in the courtroom. The reason why I am bringing this up today in this setting about parole is because I too was victimized by the parole. I served my sentence minimum. I mentioned all of my accomplishments. I obtained an associates degree. I obtained another year of schooling after that before then Governor Pataki decided to cut the college programs. I had 5 or 6 different trades. The Parole Board told me despite my educational accomplishments, despite my good institutional record, despite the letters from my family, despite a letter from a prison employee recommending that I be released, that I had been convicted of a brutal crime and therefore they were not going to release me. The experience that I had is not atypical in terms of qualified [inaudible] for parole being denied [inaudible] predetermined ahead of time. There are so many other statements on the record from Parole Boards and people that where connected with the [inaudible] about the Parole Board has gotten the message. That violent offenders cannot and will not be paroled. That is counterproductive. [inaudible] some of these people are very qualified [inaudible] they've done their time, they've done their best to turn their life around, and they deserve a second chance. [inaudible] reforms that are needed in order to close the cracks up involving other innocent people that have fallen [inaudible] the system. One of the things that I noticed is that there has to be something done in terms of parole. I think that they need to speak more loudly [inaudible] my name, my time, my efforts, if I could have some people behind me that know how to work [inaudible]. I would be more than happy to go wherever and speak and lend the moral support that what happened to me [inaudible]. I think we have a unique opportunity here because of the fact that we have a new Governor, we have a new Attorney General, and [inaudible]. But I do think that we need to strike while the iron is hot, we don't need to get comfortable before [inaudible] applause

**Moderator:**

In the back row

**Question:**

My question is for [inaudible] follow comment [inaudible] and one of the things [inaudible] sentencing knowing that [inaudible] policies in that society [inaudible] how would [inaudible] I am very curious [inaudible]

**Mr. O'Connor:**

Well yeah I would like to hear everyone's thoughts on that, but you know I think it is an excellent idea to have the reentry piece happen at the front end. Have the lawyers and the court, the judges be involved in the process of talking about before someone goes in. What's going to happen? How are we going to structure a system that is going to allow them to get out? And I know that has been given a lot of [inaudible]. The problem that I see is that we are moving increasingly in the direction of determinate sentencing and it makes all of this stuff irrelevant. Right, because every year we hear these

proposals it was a drumbeat in the Pataki administration to do away with parole entirely and replace it was the determinate system and last year in 2005 we went in the direction of determinate sentencing for the biggest group of people that are in prison in this state and that is drug offenders. So now they go in and they have a set release date. Give or take a few months. They do 6/7ths of that sentence and they get out. Now we still need to talk about reentry, but it is really not in the context of parole. The real trick here is that increasingly I think we are going to be dealing with parole that I think is going to be a system of the worst of the worst or at least how that is conceived. We are going to be dealing with sex offenders who are increasingly going to be given life sentences. Sentences like 10 years to life where there is going to be an opportunity to appear before a Parole Board. And the climate right now is just disastrous for anyone convicted of a sex offense so I think we need to do a lot of education in terms of educating the public about sex offenders and allaying some of the hysteria that has been going on with that. The other bigger challenge is going to be dealing with the more serious homicide and murder cases both for people that have been in under the old laws and people that are going to be coming in and that's really what we are talking about now is creating a system where reestablishing Pell grants is one way to do that, but that's just a start. I think that everyone should have the right, not just to have a right to a lawyer sit next to you at a parole hearing. I think the lawyers that are involved in the case, or the agency that represented people, should be involved in parole planning. I've noticed that there are a lot of great private lawyers out there who do parole advocacy work and they get results and that's because people are worthy of being released, but sometimes they can't articulate it. They can't package it. They don't have the resources and the support outside to sort of really make the case in front of the Parole Board. And I would like to see, and it really wouldn't take must, because there are lawyers connected with these people who care of having the right to have parole advocacy as part of the criminal process.

**Moderator:** Anyone else want to address that? Miss Gains

**Question:** [inaudible] in terms of new opportunities [inaudible] longer term reforms I don't think [inaudible] I would just like to point out that there will probably be something like 7 seats that will be coming up in the next year or so on the New York State Board of Parole. There is at this time as far as I know not one person who is registered in New York City that is serving on the Board.

Thanks

And so just from the short term strategic perspective we would really like an opinion about [inaudible] human being from the City of New York who are prepared to spend Monday's traveling to facilities and sit through 3 days of obviously mind numbing hearings, but who actually understand that people change and particularly in the case of people serving fairly long

sentences can make the distinction about people who have changed, educated or rehabilitated themselves or whatever that language is to be able to make healthy decisions, and it would be a huge missed opportunity because there is all this conversation [inaudible] extra dime on the Governor's budget [inaudible] so that's a longer term strategy changing [inaudible] parole [inaudible] for longer term people [inaudible] but right now there are 7 seats becoming available within the next year [inaudible] new Chairman of the New York State Board of Parole [inaudible] Alexander [inaudible] specialist who could be educated about transformation and change. I have no reason to believe not [inaudible] no formal training this community of people needs to be providing this training and also providing names and strategies for them [inaudible] applause

**Panel member:**

I just should say that I don't think its crazy over the next period of time. Maybe I'm not as cynical as Al [O'Connor], but to think that we could get changes in the regs and changes in administrative procedures where people really are evaluated based on how they've done inside and how they have changed and its not crazy to think that we could get some changes in things that happen inside prisons to prepare people to get out. And those are the kinds of things that if all the people that are here tonight focus on a little bit and a lot of the people here are already working on and continue to work together on. It is not crazy to think that we could make some of those changes happen. I want to take one more question. Vernon you want to say something.

**Mr. Manley:**

I just wanted to say quickly that there is no reason why the process has to remain the way it has for years and years and years. The Parole Board increasingly has less work to do because [inaudible] releases, corrections in making decisions on most of the drug cases, in terms of who gets released, if they have violence in their background they come before the Parole Board, but we used to come home on Thursday and our desks would be filled like that, we could be doing that Thursday and Friday. Right now you go, the hearings are Tuesday, Wednesday, maybe you finish by Wednesday afternoon right that's ridiculous so you get to the office you have no work to do maybe you have a couple of delinquency cases. So the cases can be longer, you can have a half a day, a day which you really go through all the materials. For every case you don't have to do that a simple drug case one-time offender, not a big folder that's no big deal, but for the long-termers it really demands that you give them the kind of time that it requires and that they submit materials and we read them. Just don't have the time.

**Moderator:**

Last question right over there.

**Question:**

[inaudible] Parole Board Commissioners that they go see [inaudible] like she said [inaudible] not everybody doing what they want to do, when they want to do it, who do they report to, who is accountable for what the Parole Board does [inaudible] you just do what you want to do, and we all know it, we sit here and talk about it but when is it going to stop? Who takes

responsibility? Applause

I take that as responsible question

**Question:**

I really want to ask a question and discuss conditions [inaudible] the issue is very significant for all those lingering older people in prison. Something should be done. [inaudible] they should process [inaudible] a whole group of people have been turned down 2, 3, 4, 5, 15 times whatever they are so many years in prison should not have to wait for 4 years for the next applause [inaudible] they should be passed through on a special basis because in recognition of the fact that the last administration has corrupted the process and has done away with the individual determinations [inaudible] required by the statutes in favor of rubberstamping the denial based on the nature of the crime. So I would like our bar association and general [inaudible] to do something that should be done for these people who will die many times [inaudible] 5 or 6 years before they get justice from our court system. Because our court system doesn't have the power that it should [inaudible] applause

**Moderator:**

On that note thank you all very much for coming. Stay Warm!

**Question:**

Excuse me. I would like [inaudible] to answer her question. No one answered her question. I am waiting for the answer. Who is responsible?

**Mr. O'Connor?:**

I actually wanted to answer it. I think the answer is that ultimately courts are supposed to hold executive agencies like the Division of the Board of Parole accountable and unfortunately the courts have abdicated that responsibility. Some of the little victories that you heard about here where people have gone into court. Justice Sheridan's case. What we didn't hear in that case is that Justice Sheridan wasn't allowed to let that fellow out even though he found that he was not given a fair hearing. And what happened was the case mooted out meaning that it became irrelevant because he was eventually released by another hearing. The courts are not doing their job and they are relying on laws that seem to allow them to just skirt the issue and let the Board do whatever it will and the problem is that these folks that are affected by this people who are in prison don't have lawyers so they are beating their heads against the wall and that is what needs to change. If the courts are ever going to be able to do anything about this, there are going to have to be lawyers helping people and that has not been happening at all since the beginning.

**Question**

[Inaudible] There is ad hoc group at John Jay that a number of us have been working with for a while on this issue and people who were interested in putting their names on a contact list over by the door there is a contact list you can sign up and when future things are happening we will let you know. Thanks. Good Night!