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New York's Broken Parole Process: We Can Learn From Louisiana

Fundamental changes to the process by which New York parole applications are decided are desperately needed, and protestations that they cannot be made are wrong.

By **Richard Rothman** | May 13, 2019



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During the past few years, I have assisted a number of women who sought parole after spending decades in New York prisons for committing crimes resulting from their having been victims of horrific domestic violence—and I've been appalled by our dysfunctional parole process. Recently, I attended a parole hearing for a client in Louisiana and saw firsthand that New York can learn from what some here would consider to be a “backwater” state. Fundamental changes to the process by which New York parole applications are decided are desperately needed, and protestations that they cannot be made are wrong.

For incarcerated people who finally have the opportunity to seek parole after being locked up for decades, the determinations made by the Governor-appointed Parole Board are a matter of life and virtual death. To increase the chances of gaining her freedom, an incarcerated person applying for parole has the opportunity to provide the Parole Board with a packet of materials demonstrating that she is worthy of being released.

Having submitted such a “parole packet,” the applicant then has a hearing before three Parole Commissioners who interview the applicant and decide her fate. The interview is conducted by video, with the incarcerated applicant in her prison and the three Commissioners in some remote location.

So, here's how the process seems to work in New York:

- Parole Commissioners often hear 10-20 applications on a given day.
- Parole Commissioners assigned to a case generally don't receive a parole packet until the morning of a parole hearing or, at best, the afternoon or evening before. Accordingly, they usually don't have a meaningful chance to review the information that should be of vital

importance to an application before they interview the applicant. For example, a packet often contains an applicant's personal statement expressing remorse and taking responsibility for her crime; records of the applicant's educational accomplishments and rehabilitative programs completed while incarcerated; and letters of support from those who know her well, including prison officials or religious figures. It may also contain reports of forensic psychologists and other experts—particularly important for those who were traumatized victims of gender violence suffering from PTSD when they committed their crimes (in many cases against their abusers). And, if an applicant is fortunate enough to have counsel (which the state does not provide), the parole packet will typically include counsel's memorandum or letter to the Parole Board synthesizing the evidence and explaining why the client poses no risk to society and deserves to be released.

- At the parole hearing, which often takes less than 20 minutes, one Commissioner takes the lead in the questioning, while the other two ask few, if any, questions.
- An applicant is not entitled to have an attorney present during the hearing either with her in the prison or at the remote location with the Commissioners. Moreover, except in unusual cases, nobody else is present at the hearing to speak on her behalf or provide moral support as she faces what can be aggressive questioning. Indeed, for the traumatized victims of gender violence, the interviews themselves can be re-traumatizing.

Now, here's what I witnessed at the parole hearing in Louisiana, a state whose penal system otherwise leaves much to be desired:

- As attorneys for the applicant (in this case a male), we learned which three Commissioners would be sitting on our client's panel a few months in advance of the hearing.
- We were able—and required—to submit our parole packet electronically, and did so weeks in advance of our client's hearing so the assigned panel would have time to read it.
- Our client was entitled to have his counsel, family and other supporters present at the hearing—all of whom played important roles. The Warden of the prison was also in attendance at the hearing.
- The hearing began with the Commissioners questioning our client, during which counsel were not permitted to object or interrupt. It was immediately apparent that the Commissioners had read our entire parole packet, which included three expert reports, numerous letters of support, and spanned hundreds of pages.
- After the Commissioners completed their questioning, the Warden was asked for, and provided, his views about our client, and three people who knew our client well spoke briefly about the support they would provide for him—including housing and employment—if he were released.
- The District Attorney, speaking on behalf of the victim's family, spoke next, in opposition to our client's release, after which the applicant's counsel (our local co-counsel) was given the opportunity to speak.
- The Commissioners then voted and decided to grant our client's application. In articulating the reasons for their unanimous decision, they again demonstrated that they had carefully reviewed our client's parole packet, citing to important evidence it contained.

My experience in Louisiana confirmed that New York's process for making these life-critical decisions is patently defective, and that there is no excuse for failing to fix it. Here's what needs to be done:

- Assignments for which Commissioners will hear a parole application should be made at least one month in advance of a scheduled hearing.
- Parole packets should be submitted to the Board electronically and distributed to those Commissioners assigned to decide an application; and those Commissioners should be responsible for reviewing the packet in advance of the hearing.
- An applicant should be permitted to have counsel present, and counsel should be permitted to make brief remarks after the questioning of the applicant is completed.

To those who would claim that it's not possible to convert to a system in which parole packets are submitted electronically and reviewed by parole commissioners in advance of hearings, or that it's impracticable to have attorneys present during parole hearings, the short answer is: See Louisiana.

There are other serious problems with New York's parole system that have been chronicled elsewhere and also require prompt action—not least of which is the full staffing of the Parole Board. (Seven of the 19 Board positions currently remain vacant, placing an undue burden on the sitting Commissioners which, in turn, prejudices parole applicants.) But the bottom line is that the problems discussed here—and the fixes to them—are obvious, and there is no excuse for the continuing failure to make them. Incarcerated people who have waited decades—and too often many years too long—for a chance to seek parole and regain their freedom are entitled

to a full and fair opportunity to do so. They are being deprived of that right as matters currently stand in New York. The Governor and our state legislators should fix the system at once.

Richard Rothman *is co-chair of the Incarcerated Gender Violence Survivors Initiative and senior counsel of Weil, Gotshal & Manges. The views expressed in this article are his own.*

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