

It is Important to Understand Structural Barriers in Parole Advocacy

Most advocates who have taken up the mantle to dismantle mass incarceration in the United States, especially those who focus on the issue of parole, are acutely aware of the political underpinnings which guide and gird current policies and practices. But as we engage in our work we also need to be aware of the extent to which “structure” will present barriers to ushering in change. By structure I mean how we now will find ourselves confronting “systems” in place which are not *conscious* decision-making processes working against positive change, but yet present formidable obstacles to the voice of reason. I present the following information and exhibits (excerpts from my December 4, 2013 Testimony before State Legislative Committee) to highlight this point:

TIME CONSTRAINT BARRIERS

Hearings. During the expansion of the New York State prison system over the past thirty years there was no corresponding expansion of the Parole Review system to handle the influx of cases for people that became parole eligible. Contrariwise, the number of people handling parole hearings and appeals was downsized. While the statute governing the number of people to be assigned as Parole Commissioners remains at 19, for a few years now, as a cost-saving measure, the Governor has appointed only 14 people to handle the total case load. One example of an overworked parole board can be seen in in the volume of cases it reviews monthly for release consideration (attached as exhibit). This chart demonstrates that even if the Board of Parole wasn’t responding in a political manner and wanted to afford full and fair consideration to each parole applicant, that wish may not be possible.

Appeals. According to the regulations governing parole appeals, the administrative appeals are to be conducted by three (3) board commissioners *sitting in conference*, and *none of them should be of the original panel* which considered and denied release. In 1995 a person who had been denied parole and submitted an administration appeal noted that the administrative appeal denial form has been signed by all three reviewing commissioners on different dates. Upon commencing his judicial challenge the Appellate Division Third Department agreed that the appeal hearing was in violation of lawful procedure and found that three commissioners must meet “collectively” to render a proper decision. See, *Harris v. N.Y.S. Division of Parole*, 628 N.Y.S.2d 416, 211 A.D.2d 205 (1995).

Recognizing that even if it wanted to, it does not have the capacity to follow proper procedure due to time constraints, what the Board did, almost immediately after the decision, was to excise or block-out the section of the administrative appeal form which indicated the date each respective commissioner affixed his or her signature to the notice. Some years later the appeals unit completely revised the form so that no date of signature need be reflected.

Subsequent to adopting this tactic, on two separate occasions I submitted Freedom of Information Requests to the Parole Appeals Unit for the following information: (1) the dates each respective commissioner signed the administrative appeal denying my appeal; and (2) the date the document (decision) was actually *executed*.

On each of the two occasions the response I received to the FOIL requests were: "...there is no document or other information on file indicating the actual date each of the members of the Board signed...". I found it somewhat unsettling that they could claim they had no official execution date of what should be an official document and could flagrantly engage in contempt of a court order.

CONVICTION OF VIOLENT OFFENSE BARRIER

The Parole Board operates on the counterintuitive understanding that the people convicted on violent offenses are of the highest risk for release. While the Division of Parole has adopted an official evidence-based assessment instrument called **COMPAS**. They are refusing to utilize this instrument in the release decision-making process. The basic reason is the instrument would require them to seriously consider releasing those who score the lowest risk with the instrument—those convicted of violent offenses and who have served considerable time behind bars. Thus, the parole hearings and appeals are no more than rubber-stamp denials of applications without aforethought or careful consideration.

On another occasion of my receiving an administrative appeal denial, I noticed that one of the signatures on the notice had been scratched over and another signature substituted. Upon another FOIL inquiry, I eventually discovered that the original signature was that of the commissioner who had denied my release at the parole hearing, and this meant that he had signed the appeal denial without looking at the heading of the form he signed—since his own name was listed above on the document as the person who had conducted the original parole hearing. Though he *signed it*, he simply did not have the time to *read* the document.

My main point in all of this is that, rather than much of the broken system being due to open and overt animus, it is not difficult to see that it is systemized due to a system where the time allotted for conducting business simply is inadequate.

* * * * *

After his tenure on the Board ended in 2007, former Parole Commissioner Vernon Manley appeared at a New York City Bar Association seminar focusing on the status of parole in New York State where he made the following statements:

“I was asked to talk about my experiences on the Parole Board, but 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...

“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 they are looking at a case, they are trying to find the information...I think that it is a process that is not in favor of the inmate...

“The average interview is about seven minutes. If you have been in for 15-25 years, maybe 10-20 minutes...rarely are there discussions about 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...

“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...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 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.”

(“Restoring Fairness to Parole” Transcripts of proceedings held at the **New York City Bar Association**, Feb. 15, 2007).

NEW YORK STATE BOARD OF PAROLE OCTOBER 2013 PAROLE HEARINGS

(TOTAL HEARINGS HELD = 1,133)

TOTAL HEARINGS HELD IN OCTOBER 2013	TOTAL NUMBER OF PAROLE COMMISSIONERS AVAILABLE TO CONDUCT PAROLE HEARINGS	NUMBER OF DAYS PAROLE BOARD CONDUCTED HEARINGS IN OCTOBER	MAXIMUM POSSIBLE AMOUNT OF PAROLE PANELS	ESTIMATED AMOUNT OF HOURS WORKED PER DAY BY BOARD COMMISSIONERS	ESTIMATED AMOUNT OF MINUTES WORKED PER DAY BY BOARD	AVERAGE NUMBER OF HEARINGS HELD PER DAY	AVERAGE TIME THAT CAN BE ACCORDED TO EACH HEARING
1,133	14	10	7	8 hours	480	113	4.2 mins. *

KEY:

$8 \times 10 = 80$ (ESTIMATED HOURS OF BOARD HEARINGS IN OCTOBER 2013)

$60 \times 80 = 4,800$ (ESTIMATED MINUTES OF BOARD HEARINGS IN OCTOBER 2013)

$4,800 / 1,133 = 4.2$ (ESTIMATED MINUTES OF EACH BOARD HEARING)*

*/ It is possible time allotted for Board hearings may be increased depending on the amount of Board Panels conducting hearings.

Mujahid Farid - #79A0362
Franklin Correctional Facility
62 Bare Hill Road - P.O. Box 10
Malone, New York 12953

February 3, 2005

Robert Dennison, Chairman
State of New York Executive Department
Division of Parole Appeals Unit
97 Central Avenue
Albany, New York 12206

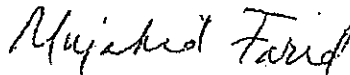
Freedom of Information Law Request
Re: Administrative Appeal #05-101-03-B

Dear Mr. Dennison:

This letter is my official request pursuant to New York State's freedom of information law for clarification regarding the above referenced Administrative Appeal Decision Notice. The information I am seeking is the date that the respective Commissioners rendered the final determination in this matter. I note that the only date indicated on the form (1/23/04) is the date that the final determination and related documents are being mailed to appellant. Please send me clarification of the day when the final determination was rendered by the Appeals Unit commissioners.

Thank you for your attention to this matter and I look forward to your response.

Sincerely,



Mujahid Farid

MF/

cc: file

Parole Appeal Decision Notice

Inmate Name: F. S. MASHIG Facility: Eastern
NYSID #: 128405 H Appeal Control #: 5-64-93
Dept. DIN #: 75 A 0362

Appearances (on Papers):
Appellant, pro se:
William E. Altschuler, for the Division

Board Members(2) who participated in the decision from which this appeal was taken: Burke, Biddle

Pleadings considered:
Appellant's submittal received 3/5/93 - Statement of Appeals Unit
Findings of 10/17/93

Documents relied upon:
Presentence Investigation Report;
1/93 Initial Appearance Parole Summary Report;
4/93 Interview Transcript(s) and Decision Notice(s)

Issues: See pleadings.

Findings (if at variance with those contained in the Statement of Appeals Unit Findings):

Determination: The decision from which this appeal was taken is hereby:

Affirmed Modified Reversed Dismissed - Moot

Board Members Rendering Appellate Decision:

Commissioner: [Signature]

Date: 10/15/93

Commissioner: [Signature]

Date: 10/15/93

Commissioner: [Signature]

Date: 10/18/93

Date Decision Notice Mailed to Inmate and Counsel (if appropriate): 10/19/93

Distribution: White-Appeals Unit; Green-Inmate; Yellow-Inst. Parole; Pink-Central File; Gold-Attorney

THIS SECTION WAS REMOVED AFTER HARRIS DECISION

Parole Appeal Decision Notice

Inmate Name: Farid, Mujahid Facility: Attica
NYSID #: 1189458 H Appeal Control #: 5-167-95
Dept. DIN #: 79 A 0362

20/1/96

Appearances (on Papers):
Melvin T. Higgins, counsel for appellant;
The Appeals Unit, for the Division

Board Member(s) who participated in the decision from which this appeal was taken: BONZALEZ, McSHERRY

Pleadings considered:
Appellant's submittals received 9/11/95 and 10/16/95; Statement of Appeals Unit Findings of 1/9/96

Documents relied upon:
Pre-Sentence Investigation Report;
5/93 Initial Appearance Parole Summary Report;
5/95 Reappearance Parole Summary Report;
Related Interview Transcript(s) and Decision Notice(s)

Issues: See pleadings.

Findings (if at variance with those contained in the Statement of Appeals Unit Findings):

Determination: The decision from which this appeal was taken is hereby:

Affirmed Modified Reversed Dismissed - Moot

NOTE: It is not necessary for each Parole Board panel member to ask questions in order to be a participant

Board Members Rendering Appellate Decision:

Commissioner: _____
Commissioner: *William R. Kelly*
Commissioner: *Marion J. Beckman*

in the interview process & decision.
MISSING SECTION

ate Decision Notice Mailed to Inmate and Counsel (if appropriate): 1-25-96 av

istribution: White-Appeals Unit; Green-Inmate; Yellow-Inst. Parole; Pink-Central File; Gold-Attorney



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PAROLE
97 CENTRAL AVENUE
ALBANY, NEW YORK 12206

ROBERT DENNISON
CHAIRMAN

ANTHONY G. ELLIS, II
EXECUTIVE DIRECTOR

March 11, 2005

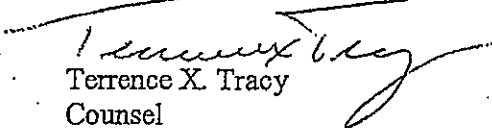
Mr. Mujahid Farid
79-A-0362
Franklin Correctional Facility
62 Bare Hill Road
P.O. Box 10
Malone, N.Y. 12953

Dear Mr. Farid:

In response to your letter of February 3, 2005 to Chairman Robert Dennison, please be advised that there is no document or other information indicating the actual date each of the members of the Board of Parole signed the *Administrative Appeal Decision Notice* dated January 23, 2004 for your administrative appeal #05-101-03-B.

Thank you for your attention in this matter.

Very truly yours,


Terrence X. Tracy
Counsel

cc: Central File (w/encls.)

Received
3/17/05

Mujahid Farid
#79A0362
Franklin Correctional Facility
62 Bare Hill Road - P.O. Box 10
Malone, New York 12953

November 1, 2008

State of New York Executive Department
Division of Parole Appeals Unit
97 Central Avenue
Albany, New York 12206

Re: Freedom of Information Law Request
Administrative Appeal #: 06-103-07

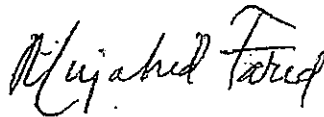
Dear Sir or Madam:

This letter is my official request pursuant to New York State's Freedom of Information Law for information and clarification regarding the following:

1. The names of the three Commissioners who signed the "Administrative Appeal Decision Notice," numbered as referenced above, and which was mailed to me on 10/6/08;
2. the actual date that the decision noted above was rendered; and
3. The actual date that each respective Commissioner whose name is affixed to the notice signed the document.

Thank you for your attention to this matter and I look forward to your response

Sincerely,



Mujahid Farid

cc: file



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PAROLE
97 CENTRAL AVENUE
ALBANY, NY 12206

DAVID A. PATERSON
GOVERNOR

GEORGE B. ALEXANDER
CHAIRMAN

November 10, 2008

Mujahid Farid
79-A-0362 / 1189458-H
Franklin Correctional Facility
62 Bare Hill Road - PO Box 10
Elmira, New York 12953

Re: FOIL Request - Administrative Appeal

Dear Mr. Farid:

This is in response to your letter dated November 1, 2008, and received by Counsel's Office on November 7, 2008, wherein you request the names of the Commissioners who signed your Administrative Appeal Decision Notice. Please be advised that the notice was signed by Thomas P. Grant, Vanessa A. Clarke, and Christina Hernandez. As to the portion of your request inquiring the "actual date" the decision was rendered and the date each commissioner signed the notice, please be advised that the Division does not maintain that information in the format as requested. Accordingly, there is no information that can be furnished in response to that portion of your request.

You have the right to administratively appeal this decision. Within thirty days of receipt of this letter the appeal, if pursued, should be submitted to Terrence X. Tracy, Chief Counsel, Division of Parole, 97 Central Avenue, Albany, New York 12206.

Hopefully this information will assist you in this matter.

Sincerely,

Patrick Lawlor
Administrative Assistant Trainee

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

TO: Larry McQuinn, Facility Parole Officer
FROM: Mujahid Farid, DOCS# 79A0362/NYSID# 1189458H B1-19
DATE: August 9, 2004
RE: FOI Request/Administrative Appeal Signatories

Farid

On the Administrative Appeal Decision Notice (see attached copy) which I received as a result of my appeal of the April 30, 2003 Parole Board decision, I cannot discern the names of any of the Commissioners who signed the final determination. I would appreciate it very much if you would send me a response with the typed or written names of the three Commissioners whose signatures appear on this document.

Thank you very much for your attention to this matter.

MF/

Enclosure (1)

xc: file

EX. C

STATE OF NEW YORK - EXECUTIVE DEPARTMENT - BOARD OF PAROLE

Administrative Appeal Decision Notice

Inmate Name: Farid, Mujahid

Facility: Franklin Correctional Facility

NYSID No.: 1189458H

Appeal Control #: 05-101-03-B

Dept. DIN# 79A0362

Appearances:

For the Division, the Appeals Unit

For Appellant: Mujahid Farid, 79A0362
c/o Franklin Correctional Facility
P.O. Box 10, Bare Hill Road
Malone, New York 12953

Board Member(s) who participated in appealed from decision: Gailor, Johnson, Smith

Decision appealed from: 4/2003-Denial of discretionary release, with imposition of 24 month hold

Pleadings considered:

Brief submitted by pro se appellant received on August 12, 2003
Statement of the Appeals Unit's Findings and Recommendation

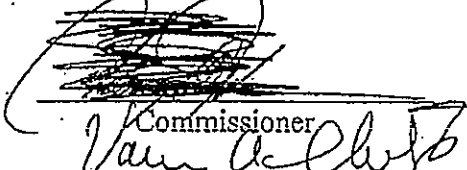
Documents relied upon:

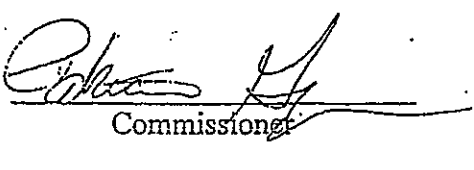
Pre-Sentence Investigation Report, Inmate Status Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026).

Final Determination: The undersigned have determined that the decision from which this appeal was taken be and the same is hereby

Affirmed Reversed Modified (explain)


Commissioner


Commissioner


Commissioner

If the Final Determination is at variance with findings and recommendation of Appeals Unit, the written reasons for such determination shall be annexed hereto.

This Final Determination, the related Statement of the Appeals Unit's Findings and separate findings of the Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 1/23/04 LB

Distribution: Appeals Unit - Inmate - Inmate's Counsel - Inst. Parole File - Central File