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TRAUMATIZED TO DEATH: THE CUMULATIVE EFFECTS OF SERIAL PAROLE DENIALS

Richard Rivera†

Content Warning: Discussion of suicide.

If you are thinking about suicide, please call the National Suicide Prevention Lifeline at 800-273-TALK (8255).

INTRODUCTION

On August 3, 2016, after forty years of continuous incarceration, seventy-year-old John MacKenzie was locked in his cell for the night and killed himself.¹ He was not discovered until the next morning. A month earlier, John had made his tenth and final appearance before the New York State Board of Parole and was denied release to parole for the tenth consecutive time.² Rumors about why John decided to end his life abound among prisoners, especially among those who knew him. “He was killed by the CO’s,” many claimed, subscribing to ready-made narratives about correction officers fed, in large part, by their own fears and apprehensions about all things prison. “He made a pact with himself not to do a day over forty years,” the long-termers³ asserted,⁴ zeroing in on the existential crisis that might drive a man like John to suicide. Whatever speculations surround John’s death, his repeated encounters with the Board of Parole certainly factored into his decision to end it. In a final letter to his daughter, John put it this way: “They’re hell-bent on keeping me in prison,” and “I don’t believe I’ll last much longer.”⁵

† Richard Rivera had been incarcerated for 38 years and was a friend and associate of John MacKenzie, first meeting him in 1986 when they were both housed at Green Haven Correctional Facility and following John’s history with the Board of Parole.

¹ Jesse Wegman, *False Hope and a Needless Death Behind Bars*, N.Y. TIMES (Sept. 6, 2016), <https://perma.cc/45ZD-JMTU>.

² *Id.*

³ “Long-termers” is a phrase commonly used by people in prison to describe people serving long prison sentences, including indeterminate life sentences. Some New York State prisons have organizations led by incarcerated people known as “Lifers and Long Termers Organization.”

⁴ Based on the author’s firsthand knowledge and conversations with people while incarcerated.

⁵ Wegman, *supra* note 1.

In this article, I follow the trajectory of John MacKenzie's experiences with the New York State Board of Parole. Drawing on parallels from my own experiences with the Parole Board and interviews with similarly situated individuals, I describe the deleterious effects that serial parole denials have on the emotional and psychological well-being of the individual. I argue that each parole hearing is an exceptional episode in the life of the prisoner, invested with intense feelings of hope and optimism. In addition, I argue that each parole denial has the effect of invalidating the individual's sense of self, negating any personal growth and maturity, undermining the efficacy of rehabilitative programs, and ignoring any feelings of remorse and acts of contrition. Each parole denial has the effect of trauma, the cumulative effects of which result in a condition I call "parole-denial fatigue," disrupting the individual's self-conception and culminating in a state of existential despair. In conclusion, I recommend the implementation of practices that would lessen the traumatic impact of repetitive parole denials on the individual's mental stability and call for parole reforms that would: (1) disallow the use of vague statutory language as the basis for parole denials and (2) require that parole decisions contain clear explanatory language that inform the applicant of the reasons for denial and offer guidance on what she or he can do to improve his or her chances for parole at a future parole hearing.

This article is not intended to defend, mitigate, or apologize for the crimes committed by these people, including those committed by the author. We stand convicted of despicable crimes, including murder, and are deserving of the punishments imposed. No, guilt is not at question here. Rather, the focus is on parole practices that extend sentences—sometimes by decades—beyond the minimum period of incarceration imposed by the sentencing courts and how these practices trap us in traumatic cycles that wear on our emotional and psychological well-being over time—a torturous punishment never intended by the sentencing courts. The subjects of this article represent a distinct category of incarcerated persons. These men and women have been convicted of violent felonies and are serving indeterminate life sentences⁶; they have served their minimum period of incarceration, and they have been denied release to parole on two or more occasions.

I. THE CYCLICAL TRAUMA OF SERIAL PAROLE DENIAL

In a general way, our understanding of the New York State Board of Parole is framed by bits of statistical data as they relate to release rates,

⁶ These sentences have a finite minimum, such as 15 or 25 years, and an infinite maximum of life in prison.

recidivism, and parolee demographics.⁷ This way of framing the discourse tends to portray the parole process as an assembly-line-like operation where an applicant periodically appears before a board of examiners, makes his or her case for release, and receives a thumbs-up or thumbs-down from a panel of somber-faced functionaries—an image made popular by Morgan Freeman’s character in *The Shawshank Redemption*.⁸ This articulation of the parole processes obscures the fact that parole hearings involve *real people* and have *real-life* consequences. For this reason, it is important to contextualize the Board experience by briefly outlining the statutes governing the Parole Board’s decision-making processes and the impact those decisions have on the lived experience of individuals and their families.

A. Parole in New York

In the New York State parole scheme, there are no guarantees of release to parole. The Board of Parole is vested with almost unbridled authority to grant or deny release to parole within established legislative parameters.⁹ According to the relevant statutes, discretionary release “shall not be granted merely as a reward for good conduct . . . but after considering if there is a reasonable probability that, if . . . released, [the person] will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law.”¹⁰ In addition, the parole panel must consider the applicant’s instant offense, institutional record, statement of remorse, and COMPAS risks scores.¹¹ However, the decision to grant or deny release to parole ultimately rests on the parole panel’s subjective judgment. According to Tina Stanford, the current chairperson of parole, the statutory language requiring that the

⁷ See, e.g., N.Y. STATE DEP’T OF CORR. & CMTY. SUPERVISION, COMMUNITY SUPERVISION LEGISLATIVE REPORT (2017), <https://perma.cc/UM5P-5TU7>.

⁸ THE SHAWSHANK REDEMPTION (Castle Rock Entertainment 1994).

⁹ See N.Y. EXEC. LAW § 259-c (McKinney 2019); see also Edward R. Hammock & James F. Seelandt, *New York’s Sentencing and Parole Law: An Unanticipated and Unacceptable Distortion of the Parole Boards’ Discretion*, 13 J. C.R. & ECON. DEV. 527, 529-32 (1999); Jennifer Gonnerman, *Prepping for Parole*, NEW YORKER (Nov. 25, 2019), <https://perma.cc/6T9F-9CB5>.

¹⁰ N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2019) (emphasis added).

¹¹ COMPAS is an evidence-based risk and needs assessment instrument utilized by the Department of Corrections and Community Supervision (“DOCCS”) to assess an offender’s risk of reoffending, committing another felony, being rearrested, violating conditions of parole, etc. Decisions by the Parole Board are required to be guided by COMPAS. N.Y. COMP. CODES R. & REGS. tit. 9 § 8002.2(a) (2020); see N.Y. EXEC. LAW § 259-c(12) (McKinney 2019).

person's release not "deprecate the seriousness of the offense as to undermine respect for the law" allows parole commissioners to insert their personal opinion into the decision-making process if they believe the offender's release "would undermine respect for the law in the mind of the community [the offender] would be going to."¹² In other words, determinations to grant or deny parole rest on whether the applicant meets some subjective, largely unarticulated standard of readiness for release dependent on the commissioners' proficiency in assessing the applicant's character *and* their ability to divine "the mind" of the community the applicant will presumably return to upon release¹³—what the Supreme Court describes as a "discretionary assessment of a multiplicity of imponderables, entailing primarily what a man is and what he may become."¹⁴ This is a formula that lends itself to arbitrary decision-making, inconsistent parole outcomes, and serial parole denials.

Serial parole denials are two or more consecutive appearances before the Board of Parole resulting in unfavorable parole decisions. This practice gained traction in New York during the mid-1990s under the governorship of George E. Pataki, who rode into office on a tough-on-crime agenda, specifically targeting violent felony offenders ("VFOs").¹⁵ One of Governor Pataki's first acts in office was to order the removal of VFOs from all work release and temporary release programs, limiting VFOs from medium-security facility housing ("right-sizing"), and denying VFOs release to parole as a matter of policy.¹⁶ During his terms in office, Pataki sought out and nominated commissioners to the Board of Parole,

¹² See NYSenate, *Senate Standing Committee on Crime Victims, Crime and Correction - 02/13/18*, YOUTUBE (Feb. 13, 2018), <https://perma.cc/7PJD-LNW4> (quoting Tina Stanford, Esq., Chairwoman for the Board of Parole, addressing the Committee).

¹³ An almost impossible feat, considering that most parole commissioners are white males from Upstate New York and most applicants are Blacks and Hispanics who reside within the five boroughs of New York City. See Michael Winerip et al., *For Blacks Facing Parole in New York State, Signs of a Broken System*, N.Y. TIMES (Dec. 4, 2016), <https://perma.cc/V8L7-BZGZ>.

¹⁴ *Greenholtz v. Inmates of the Neb. Penal & Corr. Complex*, 442 U.S. 1, 10 (1979) (citation omitted).

¹⁵ See generally Raymond Hernandez, *Pataki Eases Parole for Many, but Tightens It for the Violent*, N.Y. TIMES, Aug. 3, 1998, at B1, <https://perma.cc/53TB-BMKG>; Clifford J. Levy, *Pataki Proposes a Ban on Parole in Violent Crimes*, N.Y. TIMES, Dec. 12, 1995, at A1, <https://perma.cc/ES5B-PHAQ>.

¹⁶ See, e.g., *Graziano v. Pataki*, 689 F.3d 110, 114 (2d Cir. 2012); John Caher, 'Dismantling Parole': Parole Release Rates Plunge Under Pataki's Tough Policy, N.Y. L.J. (Jan. 31, 2006, 12:00 AM), <https://perma.cc/8MMQ-5YUM> ("The Sentencing Reform Act of 1995 abolished parole for second felony offenders and Jenna's Law in 1998 abolished parole for all violent offenders and added a post-release supervision component."); Hernandez, *supra* note 15; Levy, *supra* note 15.

including W. William Smith,¹⁷ who would execute his declared goal of “mak[ing] sure . . . that people convicted of violent crimes serve the longest possible sentences.”¹⁸ During Pataki’s tenure, parole release rates dropped from twenty-eight percent in 1993-1994 to a low of three percent in 2000-2001.¹⁹ Focusing primarily on the “nature of the crime” as the basis for parole denials, to the exclusion of the applicant’s institutional history, rehabilitative efforts, or personal growth, Pataki’s unwritten policy had the effect of “convert[ing] hundreds of indeterminate sentences into determinate sentences of life in prison without the possibility of parole,”²⁰ and thus extended the collective sentences of countless prisoners by thousands of years.

B. Serial Parole Denials’ Traumatic Effects on Prisoners

Because the practice of repetitive parole denials (and reappearances) is a “new” development, primarily at the backend of the criminal justice process, little attention has been given to the deleterious effects serial parole denials have on the individual’s emotional and psychological well-being. Indeed, the experiences reported in this article are based on individualized reports, personal experiences, and observations of those directly affected, including those of the author. In general, there is no uniform way of responding to, processing, or coping with the trauma of an adverse parole decision.²¹ In a system that provides little or no mental health services, discourages the formation of social networks, and fosters an environment of mistrust, resentment, and suspicion, each individual is left to deal with the effects of traumatic events in his or her own way.²²

¹⁷ W. William Smith is currently the longest-serving member on the New York State Board of Parole. Smith is noteworthy for his unprofessional conduct during parole hearings and for “unilaterally” denying parole based solely on the nature of the crime. See PAROLE PREPARATION PROJECT & RELEASE AGING PEOPLE IN PRISON CAMPAIGN, NEW YORK STATE PAROLE BOARD: FAILURES IN STAFFING AND PERFORMANCE 12-15 (2018), <https://perma.cc/REJ5-5MAR>. Smith sat on several of the parole panels who denied John MacKenzie release of parole, including his tenth and final one. *Id.* at 19-21. Advocacy groups have called for the immediate dismissal of Smith from the New York State Board of Parole for his “illegal, unprofessional, and racially biased conduct” at parole hearings. *Id.* at 12.

¹⁸ Caher, *supra* note 16.

¹⁹ *Graziano*, 689 F.3d at 114.

²⁰ *Id.* at 117 (Underhill, J., dissenting in part).

²¹ See Alison Liebling, *Prison Suicide and Prisoner Coping*, 26 CRIME & JUST. 283, 342 (1999) (explaining that “[p]rison is not a uniform experience” but trauma associated with imprisonment “may be concentrated at particular points in time,” including a parole denial).

²² See, e.g., Stefen R. Short, *Grassroots Challenges to the Effects of Prison Sprawl on Mental Health Services for Incarcerated People*, 45 FORDHAM URB. L.J. 437, 440-42 (2018) (describing the deinstitutionalization movement, which led to “increasingly draconian criminalization of conduct often related to, or directly attributable to, mental health needs”); Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.-C.L. L.

Their stories intersect in their shared experiences of standardized parole practices and having been denied release to parole at multiple parole hearings, providing a unique lens through which to understand what these encounters are like and fleshing out the deleterious effects serial parole denials have on their mental health. In a general way, my own experiences and encounters with the Board of Parole are representative of how these parole practices are perceived, experienced, and processed by these individuals.

I have been before the Board of Parole six times and was denied release to parole five times. Each time, I was held for an additional twenty-four months²³ before being granted parole in 2019. I spent thirty-eight years incarcerated before being released at age fifty-five.

In 1981, I and four others attempted to rob a local bar. During the ensuing chaos, I shot a patron of the bar, off-duty New York City police officer Robert Walsh. At the time of my arrest, I was sixteen years old, illiterate, and a habitual drug abuser.²⁴ I was sentenced to an aggregate sentence of thirty years to life for my crimes.

Since my incarceration and before being released, I earned a GED, two associate degrees, a bachelor's degree, and a master's degree. I was also a bachelor's degree candidate at Bard College through its Bard Prison Initiative program at Eastern Correctional Facility. In addition to my educational achievements, I devoted myself to the service of others as a caregiver, mentor, and advocate for the rights and humane treatment of prisoners, especially the more vulnerable and marginalized populations. Working with these men has been a transformative experience, teaching me the meaning of compassion, empathy, and, most importantly, everyone's worthiness of being treated with dignity and respect.

I still struggle with feelings of guilt and agonize over the pain and suffering I caused the Walsh family and others. I take full and complete responsibility for my crimes and try to live my life in ways that will honor and respect the memory of those I have hurt. Confession as a way of ac-

REV. 391, 391 (2006) (discussing the high number of incarcerated people suffering from mental illness, rendering prisons as the de facto largest mental health providers in the United States despite not being "designed or equipped for mentally ill prisoners").

²³ Twenty-four months is the maximum number of months an applicant can be held back before s/he has to be rescheduled for another hearing. *See* N.Y. EXEC. LAW § 259-i(2)(a) (McKinney 2019).

²⁴ Author's personal and family histories are documented in his Pre-Sentence Investigation ("PSI") report and related court and DOCCS records.

cepting guilt condemns, liberates, and, most importantly, “catalyzes transformation.”²⁵ I know that today I am a different person, but being a different person does not absolve me of my terrible crimes—I live that every day. No one knows the operations of the conscience like the guilty.

In 2010, at the age of forty-five, full of hope and optimism, I made my first appearance before the Board of Parole for release consideration. I was no longer the reckless, impulsive sixteen-year-old child I had been thirty years prior. I was mature, educated, older, and wiser. After a ten-minute interview,²⁶ I was denied parole and ordered to be held for an additional twenty-four months. The decision was devastating.

Why was I surprised? Why was the decision so upsetting? I killed a man. I was a convicted murderer. What did I expect to happen? Did I expect to get released? Did I expect forgiveness? No. I had no such expectations. It was not about the release, but about the denial. In the mind of the parole applicant, a grant of parole has the effect of affirming that he or she is ready for release; a denial, however, has the effect of invalidating how that person conceives of himself or herself—the person that individual has become. It is an existential repudiation of the individual.

No one is ever caught off guard by their parole interview date. It is an anticipated and long-awaited event. The date of appearance is set at the moment of sentencing and endowed with meaning and significance in the imagination of the convict. Despite the fact that you have been sentenced to what seems like a lifetime, you enter the system resolved to make some changes, to survive and leave prison a better person than you were before coming to prison. You accept and take responsibility for your crimes. You are genuinely remorseful. You try to do all the right things: to participate in all the required programs, take advantage of all the educational opportunities, stay out of trouble, and become an agent of change and a role model to others. The person you were ten, twenty, or thirty years ago no longer exists. You become, by the choices you make, a *different* person.

Ten, twenty, or thirty years later, you are ready to make your appearance before the Board. You have a demonstrated history of positive change. You are ready: *it is your time*. You appear before the Board; you are nervous, but you push forward. You make the best case possible for release, and you are denied. The reasons for denial are vague and difficult

²⁵ Margaret Klenck, *The Psychological and Spiritual Efficacy of Confession*, 43 J. RELIGION & HEALTH 139, 145 (2004).

²⁶ Sources differ on how much time applicants are given at parole interviews, but they can range from three to fifteen minutes long. On average, however, parole interviews last for “less than 10 minutes.” Winerip et al., *supra* note 13.

to conceptualize: your release was deemed “incompatible with the welfare of society,” and releasing you would “undermine respect for law.”²⁷ Reappearance is scheduled in twenty-four months.²⁸ You are confused, shocked, crestfallen, disappointed—you become numb.

Before you have had the opportunity to process the news, you are on the telephone trying to comfort and reassure your family and friends, telling them that it is going to be alright, that it is only another two years, that they should not worry.²⁹ Back in the solitude of the cell, you deal with your feelings of confusion, uncertainty, and self-doubt; you begin to second-guess yourself, wondering where the interview went wrong, what you could have done differently, trying to guess what the Board wanted you to do, and on and on and on. But there are no answers because the Board never tells you what you could have done differently; they give no indication of what you should do in the future or what programs, if any, you neglected to take. You experience depression, frustration, and anger. You are simply shocked.

Eventually, some weeks or months later, because all you know is how to survive, you begin to rationalize. You lean on your guilt and remorse; you justify the logic of the Board’s decision to deny release. You rationalize until you convince yourself that you are deserving of two additional years because despite all your rehabilitative efforts, you did commit a terrible crime. You rationalize, you accept, and you recommit yourself because you hope that the next time the Board will see you not for the person you were but for the person you have become. Next time will be *your time*.

Now imagine going through this process over and over and over again. I do not have to. When I started writing this article, I was recovering from my fifth denial and preparing for my sixth. John MacKenzie went through the process ten times before it broke him. Others have gone

²⁷ Parole denials typically parrot the statutory language, citing the standard without explanation. See N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2019).

²⁸ Twenty-four month “holds” became the norm under Pataki administration’s “longest possible sentence” philosophy and continues through to this day. See Caher, *supra* note 16.

²⁹ Friends and families of the applicant are just as emotionally and psychologically invested in the parole board’s decision. An adverse decision tends to affect them as much, if not more, than it does the applicant. Little attention has been given to this matter, however. *But see* DANA DEHART ET AL., THE IMPACT OF INCARCERATION ON FAMILIES: A SINGLE-JURISDICTION PILOT STUDY USING TRIANGULATED ADMINISTRATIVE DATA & QUALITATIVE INTERVIEWS 7, 10-11 (2017), <https://perma.cc/XUG5-77UC> (documenting a 367% higher risk of mental health diagnosis for family members during their loved one’s incarceration than risk after incarceration, as well as common themes of stress, loneliness and isolation and stress-related physical conditions felt among families).

through it eight, twelve, even sixteen times.³⁰ Each “hit” and reappearance becomes more traumatic than the next.

Trauma is defined as “an event in which there is physical harm, the self is wounded, or when a person who directly experiences, witnesses, or learns about a violent event is ‘damaged’ by it.”³¹ An adverse parole denial is a painful experience that damages the individual’s emotional and psychological well-being. Among prisoners, an adverse parole decision is referred to as a “hit,” suggesting the violent way in which it is conceived, perceived, and lived.³² As a trauma, a “hit” is processed differently by each individual. In general, however, it is perceived and experienced as a shock, a disappointment, or as an emotional and psychological blow,³³ resulting in feelings of depression, despair, anger, and invalidation. An adverse parole decision is described as a dislocation,³⁴ similar to “those overwhelming dislocations experienced by victims of disaster or trauma, leading to severe problems of relatedness and identity.”³⁵

Trauma takes two forms: simple trauma (Type I) and complex trauma (Type II).³⁶ Simple trauma is a level of injury, pain, or shock usually derived from a single event, while complex trauma is the injury, pain, or shock that results from multiple incidents over time.³⁷ Serial parole denials take the form of a Type II or “complex” trauma. They are *anticipated, repetitive* events that result in emotional and psychological injury and shock to the individual’s sense of self.

As a lived experience, the period between each successive hit and reappearance is fraught with uncertainty, stress, and a heightened sense of anxiety, trapping the individual in two-year cycles of hope and despair, certainty and doubt, subjective affirmation and objective invalidation. Each successive hit takes the form of a new sentence, restarting the anxi-

³⁰ Prison Action Network tracks parole hearings by number of reappearances before the board and publishes their findings in the Building Bridges Newsletter. *See Building Bridges* (Prison Action Network, Albany, N.Y.), Jan. 8, 2020, <https://perma.cc/E295-XYSF>.

³¹ Mika’il DeVeaux, *The Trauma of the Incarceration Experience*, 48 HARV. C.R.-C.L. L. REV. 257, 261 (2013).

³² Based on the author’s personal experience. *See, e.g.,* Gonnerman, *supra* note 9 (“You go to the board, they sit up there and smile at you. They crack jokes. You go back to your cell, and they hit you for two more years.”).

³³ In the author’s personal experience, adverse parole decisions are universally described in violent terms. Words like “hit,” “smacked,” or “shot” are used to describe parole denials.

³⁴ Based on experiences relayed to the author by individuals who have been denied parole on more than two occasions.

³⁵ Liebling, *supra* note 21, at 321.

³⁶ *See generally* Yves Wauthier-Freymann, *Simple Versus Complex Trauma: A Clinician’s Guide to Indications, Treatment Plans, and Therapeutic Methods*, 6 ENERGY PSYCHOL. J., Nov. 2014, at 2-3.

³⁷ *Id.*

ety-filled process all over again. After each hit, the individual is essentially placed on a clock: he has two years (or less) to recover, regroup, reassess, and prepare for the next appearance—two years (or less) to move from despair to hope. At first helpless and uncertain, he becomes more confident and optimistic as his next parole date approaches. This is a period characterized by anticipatory anxiety in which the individual oscillates between extreme feelings of uncertainty and optimism, only to be denied again and to begin the process of recovery and reintegration all over again.

The key to traumatic events is that they are uncontrollable, incomprehensible, and intense events. This absolute control, wielded by an unpredictable power, creates the condition of helplessness and despair that ultimately exceeds the individual's abilities to cope.

In this context, the individual's subjectivity is inseparable from the operational and relational aspects of the prison regime, which include encounters with parole. The interactions and relations between the individual and situational factors provide insights into how these encounters are interpreted and experienced. Parole-induced distress is a situational aspect embedded into a legislative scheme that lends itself to the production of subjective, arbitrary, and inconsistent parole outcomes. As a lived experience, serial parole denials strip the individual of agency and ability to plan for the future, leaving him feeling helpless and powerless. Based on my personal experience and interviews with individuals caught in the cycle of serial parole denials, lack of control and inability to plan for the future are the most common sources of anguish.³⁸ Over time, serialized parole denials have the effect of wearing on the individual's ability to cope and rebound from the traumatic experiences, undermining his sense of agency and control over his future, and creating a state of ontological insecurity and heightened levels of existential anxiety.³⁹

It goes without saying that prisoners are totally and completely invested in their scheduled appearances before the Board of Parole. Appearances are the culmination of their sentences. They are what prisoners have been preparing for since entering the system. As such, one's parole date acquires both real and symbolic meaning over time, representing not only the real possibility of freedom but an affirmation of one's readiness for society. In this sense, the decision to grant or deny release acquires exis-

³⁸ Based on personal experience and interviews with similarly situated individuals. See Liebling, *supra* note 21, at 322.

³⁹ "Ontological insecurity" is a phrase used by Anthony Giddens to describe a state where the future is impossible to plan and all tasks seem meaningless. See Liebling, *supra* note 21, at 322 (quoting ANTHONY GIDDENS, MODERNITY AND SELF-IDENTITY: SELF AND SOCIETY IN THE LATE MODERN AGE 53-54, 243 (1991)).

tential meaning, validating or invalidating the individual's self-image, acknowledging or ignoring years of rehabilitative efforts, and accepting or rejecting remorse or acts of contrition.

Parole-denial fatigue describes the state of existential weariness experienced by individuals after multiple hits and reappearances before the Board of Parole. As repetitive events, serial denials take the form of cyclical traumatizing events, trapping the individual in an endless chain of depression, despair, anger, frustration, rationalization, acceptance, hope, and anger, each episode contributing to the deterioration of the individual's mental stability, wearing away his resiliency, eroding his confidence, devaluing his humanity, and threatening to collapse or fragment his inner psychological structures with each successive "hit."

Parole-denial fatigue is not a condition experienced by all prisoners who are denied release to parole. Prison is not a uniform experience, and vulnerabilities, resiliencies, and coping strategies vary among individuals.⁴⁰ Most prisoners, I have observed, respond to their first, second, or even third hit with the resourcefulness and resilience that have allowed them to survive years of incarceration. That is not to say that they are not affected by the hit; they just have better coping strategies and are better able to process trauma. Each successive hit, however, wears on the individual, tearing at his defenses, eroding his conception of self, which results, I suggest, in a state of existential despair.

"I am sick and tired of being sick and tired"⁴¹ is a common expression among long-termers that captures the feelings of meaninglessness and despair that characterize the day-to-day experiences of those pushed beyond their ability to cope by serial parole denials. These individuals express feeling beat down, worn out, and defeated, struggling to find hope and purpose in their day-to-day existence.⁴² The responses to parole-denial fatigue range from listlessness, despondency, or apathy to anger, bitterness, or manic exuberance. Some prisoners will respond by refusing to appear before another parole panel, unable to tolerate another denial or cope with another round of "going through the process." Despite the apparent futility of such efforts, a few decide to fight on: appealing the offending decision, preparing to "make" the next parole interview or the next or the next, doubling down and recommitting to another round of self-help programs, remaining "ticket-free," sometimes with neurotic obsession—all a form of proactive resistance against the absurdity of this

⁴⁰ Liebling, *supra* note 21, at 288.

⁴¹ See Jerry Demuth, *Fannie Lou Hamer: Tired of Being Sick and Tired*, NATION (June 1, 1964), <https://perma.cc/F2KA-96M9> (quoting civil rights activist Fannie Lou Hamer).

⁴² Based on personal experience, observations and interviews. See *generally* Liebling, *supra* note 21.

predicament motivated by an almost righteous anger at a system that refuses to recognize them.⁴³ Most, however, just take on the confused and far-off look of battlefield survivors.

It is generally believed that such long-termers are survivors.⁴⁴ It is assumed that over time these individuals become acclimated—immune, if you will—to the situational stresses and distresses of prison by developing effective coping strategies and becoming better able to navigate the prison environment. However, that construction presupposes that prison is a static environment and that an individual’s coping strategies, once adapted, are fixed, implying a state of individual and situational equilibrium that ignores the affective and subjective experience of prison life. The narrative of the “seasoned” convict is a myth that is detrimental to the long-termer, inscribing them with a psychological and emotional immunity which they do not possess, making them invisible to health care professionals. The fact is that the operational and structural context of prison and the lived experience of the prisoner are contested sites that place the individual in a constant struggle to “keep anguish and distress under control.”⁴⁵ The tipping point at which serial parole denials become unbearable varies according to each individual’s coping abilities, but when the trauma itself wears on those coping abilities, that tipping point becomes more difficult to discern, identify, and mediate.

In September of 2018, I made my fifth appearance before the Board of Parole. In addition to my many accomplishments and demonstrated history of reform, I had earned another college degree, been accepted into the Bard College bachelor’s degree program, married my sweetheart, and remained misbehavior-free since my last appearance. For this hearing, as for the previous one in 2016, volunteers from the Parole Preparation Project assisted me in preparing for the interview; together, we produced a parole packet detailing my program and institutional histories, rehabilitative efforts, statements of remorse, and release plans, which included housing, employment, and transitional programs.⁴⁶ The hearing lasted less than thirty minutes and I was again denied release.

This time, in addition to the now all-too-familiar emotions, I experienced something I had never experienced before after a hit: I experienced

⁴³ Based on personal experience and observations of similarly situated individuals. *See also* Liebling, *supra* note 21, at 312-16.

⁴⁴ Liebling, *supra* note 21, at 286-87.

⁴⁵ Liebling, *supra* note 21, at 288.

⁴⁶ The Parole Preparation Project is a non-profit that, among other things, trains “community volunteers to collaborate with incarcerated people on their applications to and appearances before the Board of Parole.” *About Us*, PAROLE PREPARATION PROJECT (last visited Feb. 26, 2020), <https://perma.cc/X55R-43KW>.

shame. After years of advising others to stay strong and hopeful and extolling the virtues of education and good conduct, the last hit made a liar out of me. It took a few weeks before I could look those guys in the eyes and attempt to explain that another hit did not diminish my rehabilitative efforts or invalidate the person I had become. I convinced no one, including myself. I was tired.

When John said that he did not believe that he could last “much longer,”⁴⁷ he revealed the cumulative effects of serial parole denials and the existential exhaustion that is characteristic of parole-denial fatigue. John was tired, not of living but of living as an invalidated man. Trapped in an endless cycle of hits and reappearances, suicide becomes a legitimate means of escape. In this sense, John’s suicide can be conceived of as an affirmation of himself in the face of a system that refuses to affirm the person he had become, a final act of contrition, an absurd resolution to the absurd. John was traumatized to death.

II. THE NEED FOR A NEW PAROLE SCHEME

The guards at Auschwitz liked to play a particularly cruel game with the inmates. “Be good,” “work hard,” they would tell them, “and you will soon be free.”⁴⁸ Of course, there was no set sentence, and release—if possible—depended on factors which were unpredictable.⁴⁹ However, that did not stop the guards from promising the inmates an eventual release, or the inmates from believing them. In this way, the guards weaponized hope against the inmates. Of all the suffering, indignities, and inhumanities of the Nazi prison camp, the inmates found this practice the most unbearable, the most torturous, the “crushing blow” that fostered helplessness and undermined their mental stability.⁵⁰ Serial parole denials have a similar effect.

The effects of serial parole denials on the emotional and psychological health of the individual are traumatic. The subjects in this article represent a vulnerable population who would benefit from further study and early intervention. Although the deleterious effects of serial parole denial have yet to receive serious attention, the evidence suggests that repetitive adverse encounters with the Board of Parole are painful experiences that disrupt social networks, invalidate the individual’s sense of self, ignore

⁴⁷ Wegman, *supra* note 1.

⁴⁸ John MacKenzie, *Auschwitz to Attica - Methodologies of Psychological Abuse*, PAROLE NEWS (Aug. 07, 2016), <https://perma.cc/Y7JU-7NPM> (citing RUDOLPH HÖSS, DEATH DEALER: THE MEMOIRS OF THE SS KOMMANDANT AT AUSCHWITZ (Steven Paskuly ed., Andrew Pollinger trans., Prometheus Books 1992) (1956)).

⁴⁹ *Id.*

⁵⁰ *Id.*

any personal growth and maturity, undermine rehabilitative efforts, and devalue feelings of remorse and acts of contrition.⁵¹ Parole-denial fatigue is symptomatic of serial parole denials, expressing itself through feelings of helplessness, meaninglessness, and despair.

A parole scheme that lends itself to arbitrary decisions, inconsistent outcomes, and repetitive parole denials contributes to this population's vulnerability and morbidity. Under the current parole scheme, release will only be granted after a finding that "release is not incompatible with the welfare of society and will not so deprecate the seriousness of [the] crime as to undermine respect for the law."⁵² This language, which is contained in every unfavorable parole decision, is overly vague and abstract, leaving the applicant confused and uncertain. As many prisoners will attest, it is the "not knowing" that wears on them: the *not knowing* why they were denied parole, the *not knowing* what they can do, and the *not knowing* what the future holds that they find most unbearable.⁵³ Various advocacy groups have called for the removal of vague language from Executive Law Section 259-I, and we support those efforts.⁵⁴ Applicants should be given clear and unambiguous reasons for their denial of release to parole so as to inform them of the reasons for denial and enable them to be better prepared for any future hearings.

Finally, parole regulations should be amended to require parole panels to provide individualized reasons for denial of release and guidance on what the applicant must do to better his or her chances of release at any future parole hearing. Currently, adverse parole decisions are issued in the standard boilerplate language of incompatibility and deprecation

⁵¹ Based on the author's first-hand experience and interviews with similarly situated individuals. See also Liebling, *supra* note 21, at 311, 318, 324, 342.

⁵² N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2018).

⁵³ Based on conversations with prisoners who have been repeatedly denied release to parole.

⁵⁴ Parole Justice New York (PJNY), Parole Preparation Project (PPP), and Release Aging People in Prison (RAPP) are just a few of the organizations actively calling for sensible parole reform and the appointment of commissioners to the Board of Parole. See Gonnerman, *supra* note 9; *About RAPP*, RELEASE AGING PEOPLE IN PRISON CAMPAIGN (last visited Feb. 5, 2020), <https://perma.cc/3VWJ-4ZGW>; *Take Action*, PAROLE JUSTICE N.Y. (last visited Feb. 5, 2020), <https://perma.cc/N8TK-LVST>. Other parole efforts that advocates have been calling for include eliminating the "severity of the offense" as a criterion and shifting the statutory presumption to release individuals when they reach parole-eligibility. See Assemb. B. A4346A, 2019 State S., 2019-2020 Reg. Sess. (N.Y. 2019) (shifting the statutory scheme of Exec. Law § 259-i to presumptively grant parole release when an applicant is eligible); Amy Robinson-Oost, *Evaluation as the Proper Function of the Parole Board: An Analysis of New York State's Proposed SAFE Parole Act*, 16 CUNY L. REV. 129 (2012) (discussing the Safe and Fair Evaluation ("SAFE") Parole Act, which would eliminate as criteria the severity of the offense and the parole applicant's prior convictions because these static facts fail to serve the rehabilitative goal of incarceration).

contained in the governing statutes.⁵⁵ The applicant is never told with any degree of specificity why they have been denied parole, or what—if anything—they could have done differently, or should do differently, to better their prospects of release. This vagueness creates a state of uncertainty and unpredictability similar to that experienced by the inmates at Auschwitz: it weaponizes hope. A “reasonable probability” of release means nothing to the applicant if the promise is shrouded in uncertainty and unpredictability.

CONCLUSION

The impact of serial parole denials can be prevented or lessened with the implementation of sensible mental health practices and meaningful parole reforms. Parole-denial fatigue is a condition that does not have to exist. It is a state-induced trauma, a crisis created by our broken system of parole. Early monitoring of serialized parole candidates by mental health care professionals can lessen the deleterious effects of serial parole denials, and parole reforms that inform and enable parole candidates to play an active role in their release will ameliorate the helplessness and despair of parole-denial fatigue. John MacKenzie’s case is an extreme example of what the system can do to a person. By all accounts, John was a stand-up guy, and his death sent a shockwave throughout the prison community. It surprised many, most significantly those caught in cycles of hits and reappearances, who wondered how many times they could appear before the Board of Parole before they would lose all hope—how much more they could endure. We all have our breaking points. For those caught in endless cycles of hits and reappearances, it is not a matter of *if* they will break but *when*.

⁵⁵ N.Y. EXEC. LAW § 259-i(2)(c)(A) (McKinney 2019).