



**A Report to Mayor Michael R. Bloomberg and
to the New York City Local Conditional Release Commission**

**The Department of Investigation's Examination of the Local
Conditional Release Commission's Procedures and the Early
Release of Guy Vellela, Hector Del Toro and Manuel Gonzalez**

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November 2004

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I. INTRODUCTION

On May 17, 2004, former State Senator Guy Velella and co-conspirators Hector Del Toro and Manuel Gonzalez pleaded guilty to the crime of Conspiracy in the Fourth Degree in violation of Penal Law §105.10(1).¹ Velella was sentenced to one year of incarceration. Del Toro and Gonzalez were each sentenced to nine months of incarceration. They commenced serving their sentences on June 21, 2004 at the Rikers Island Correctional Facility.

On July 21, 2004, the law firm of Stillman & Friedman, P.C., made a submission to the New York City Local Conditional Release Commission (the “Commission,” “LCRC” or the “NYC LCRC”) requesting early release for Velella. On July 29, 2004, Steven Kartagener, Esq., made a submission for early release on behalf of Del Toro, and on June 25, 2004, the law firm of Ortiz & Ortiz made a submission for early release on behalf of Mr. Gonzalez.

On August 6, 2004, the Commission granted a conditional early release to Gonzalez and voted unanimously to deny Velella’s and Del Toro’s applications for early release. Gonzalez was released on August 24, 2004, after he had served 65 days in jail.

On September 22, 2004, the Commission reversed its August 6, 2004 decision and granted conditional releases to Velella and Del Toro. They were released on September 28, 2004, after each had served 100 days in jail. Newspaper reports of the Commission’s decision were first published on or about September 28, 2004. The New York City Department of Investigation (“DOI”) immediately opened an investigation into the Commission’s reversal of its August decisions denying early release to Velella and Del Toro, as well as the circumstances surrounding Gonzalez’s release.

This report summarizes some of DOI’s findings to date regarding the Commission’s procedural and administrative practices, in particular, its voting processes. It also analyzes the statutory scheme and legislative history of New York State’s LCRCs, other applicable provisions of law, and cases from this and other jurisdictions on issues pertaining to LCRCs. It identifies areas in which the Commission’s practices contravened applicable State laws governing early release. Lastly, it makes recommendations for procedural and other changes based on DOI’s factual findings. This remains a continuing, active investigation. A joint investigation with the New York County District Attorney’s Office is also underway. This report is being issued solely by DOI and not jointly with the New York County District Attorney’s Office. The information in this Report is limited in scope due to the continuing joint criminal probe.

¹ Velella, Del Toro and Gonzalez were charged with engaging in a scheme to solicit bribes from contractors who were applying for public works contracts. Among other things, Velella, a state senator, and Del Toro, a state housing official, were charged with use of their official positions in order to assure that contracts were awarded to contractors who paid bribes. In total, Velella received over \$137,000 in illegal gains from the scheme. See Press Release of District Attorney’s Office, New York County, dated May 9, 2002; Indictment No. 2722/2002.

II. THE LOCAL CONDITIONAL RELEASE COMMISSION

The Local Conditional Release Commission was formed pursuant to State law, *i.e.*, Chapter 79 of the Laws of 1989 and codified primarily in Article 12 of New York State Correction Law § 270 *et. seq.* According to the legislative history of the statute, the purpose of Local Conditional Release Commissions statewide was, *inter alia*, to reduce overcrowding in prisons and the related costs by identifying inmates who would adapt well to conditional release.²

Pursuant to New York Correction Law, Article 12, §271, each county within New York State was required to establish a Local Conditional Release Commission that is charged with determining which local inmates are to be released, prior to the expiration of their sentences, to supervision by county probation departments. The New York City Local Conditional Release Commission reviews applications from inmates housed in the five boroughs of New York City. The New York State Legislature has re-enacted Article 12 roughly every two years since the statute was initially enacted in 1989. The Law next expires September 1, 2005.

Article 12 states that the Commission must consist of at least three board members and is empowered to review and decide inmate applications for early release.³ Eligibility for conditional release is governed by Article 12, Section 273(1), which cross-references Penal Law Section 70.40(2). Those provisions state, *inter alia*, that an inmate serving a sentence in excess of 90 days in a local correctional facility is eligible for early release any time after service of 60 days or more of that sentence.⁴ In addition, Article 12 states that the Commission shall review written applications submitted by inmates within 30 days of receipt of such applications.⁵ In the performance of its duties, the Commission may require the local department of probation to conduct supplemental background investigations of inmates applying for early release.⁶ The Commission also has the power to issue subpoenas, to compel the attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of its inquiry.⁷ Finally, the statute indicates that an inmate must serve at least 30 days of his sentence before he or she may apply for early release.⁸

The Commission may grant or deny an inmate's application for early release. The statute unambiguously states, "[n]o determination granting or denying such application shall be valid

² See letter of William Pelgrin, Counsel to the State Commission of Correction, dated, April 21, 1989, included in legislative history of S-2486A; A-3686A (1989). A copy of that letter is attached as Exhibit 1 hereto.

³ N.Y. Correct. Law §§ 271-273 (Consol. 2004).

⁴ N. Y. Correct. Law § 273(1); Penal Law §70.40(2).

⁵ N. Y. Correct. Law § 273(2).

⁶ *Id.* § 272(2).

⁷ *Id.* § 272(5).

⁸ *Id.* § 273(1).

unless made by a majority vote of at least three Commission members present.”⁹ If the Commission votes to grant conditional release, the Commission shall set the conditions for release of the inmate and provide the inmate with said conditions of release.¹⁰ The inmate must agree in writing to the probation conditions set by the Commission.¹¹ Once released, the inmate remains in the legal custody of the Commission for a period of one year under the supervision of the local department of probation.¹²

If the Commission votes to deny conditional release, it must inform the inmate in writing of the factors and reasons for the denial within fifteen days of the decision.¹³ Inmates who have been denied conditional release are eligible to reapply 60 days after the date of submission of the denied application.¹⁴ DOI was told by the Director of the Commission, Eileen Sullivan, that denial notifications are sent to the inmates via mail.

If, at any time during the period of conditional release, the Commission, or any member thereof, has reasonable cause to believe that an inmate who has been conditionally released has lapsed into criminal ways or company, or has violated one or more conditions of release, the commission or such member may declare such person delinquent and issue a written declaration of delinquency, upon which the Commission or such member may issue a warrant for the retaking and temporary detention of such inmate.¹⁵

Any actions by the Commission or any member thereof pursuant to Correction Law Article 12 are deemed a judicial function and are not reviewable if done in accordance with law.¹⁶

Article 12 does not list or specify any factors and/or criteria which the Commission must consider in assessing an inmate’s application for early release. Therefore, the Commission has full discretion in determining whether to grant or deny an inmate’s request for conditional release.¹⁷

⁹ *Id.* § 273(2).

¹⁰ *Id.* § 273(3).

¹¹ *Id.* § 273(4).

¹² *Id.* § 273(5); N.Y. Penal Law § 70.40(2).

¹³ N.Y. Correct. Law § 273(6).

¹⁴ *Id.*

¹⁵ *Id.* § 274(1).

¹⁶ *Id.* § 274(10).

¹⁷ In 1991, the Commission sought guidance from the Corporation Counsel’s Office on whether the Commission should promulgate criteria and standards with respect to their decision-making process. In an advisory opinion dated March 28, 1991, the Corporation Counsel’s Office wrote that the Commission’s decisions are discretionary, and that the Commission need not and ought not promulgate rules regarding its criteria for decision-making.

III. THE NEW YORK CITY LOCAL CONDITIONAL RELEASE COMMISSION

A. The Commission Members

The former Commission members in place at the time of the decisions in the Velella, Del Toro and Gonzalez cases were former Chairman Raul Russi, and former Commissioner members Amy Ianora, Irene Prager, and Jeanne Hammock.

Raul Russi¹⁸

Russi was first appointed Chairman of the Commission by former Mayor Rudolph W. Giuliani on January 8, 1997 to serve the remainder of a four-year term (vacated by a prior Commission member) that expired on May 6, 1997. Russi was reappointed by Mayor Giuliani via a letter dated June 23, 1997 to a full four-year term that expired on May 6, 2001. Thereafter, Russi served as a hold-over appointment from May 7, 2001, until his resignation on October 12, 2004. (Public Officers Law, Section 5).¹⁹

Russi and the other Commission members each received \$175 each time they reviewed cases at the Commission's offices located at 33 Beaver Street, New York, New York.²⁰ From July 1, 2000 until his resignation in October 2004, Russi appeared in the offices of the Commission to review cases on approximately 169 occasions.²¹

¹⁸ From 1971 until 1986, Russi was a police officer with the Buffalo Police Department. In 1986, he was appointed Superintendent of the Erie County Sheriff's Department. In 1989, he was appointed as Chairman and CEO of the New York State Division of Parole, where he served until May 1995 when he was appointed as New York City Sheriff. In September 1996, he was appointed Commissioner for NYC Dept. of Probation, and his term as Commissioner ended in May 2001. From May 2001 to January 2002, he was Executive Vice President of America Works, an entity that contracts with the New York City Human Resources Administration ("HRA") to provide employment services to HRA clients. From January 2002 to the present, Russi has served as the Executive Director of BASICS Inc. (Bronx Addiction Services Integrated Concepts Systems, Inc.), a non-profit organization that provides residential treatment for substance abusers, funded in part by the NYS Office of Alcoholism and Substance Abuse Services (OASAS). Russi also is the Executive Director of BASIC Housing Inc., which provides shelter services for homeless families via contract with the NYC Department of Homeless Services. In November 2003, Russi was also appointed to the NYC Board of Correction.

¹⁹ On October 12, 2004, Mayor Bloomberg appointed Daniel C. Richman to the position of Chair of the LCRC. On October 29, 2004, the Mayor appointed four additional Commissioners to the LCRC: Milton L. Williams, Jr., Susan Herman, Kerri Martin Bartlett and Mireya D'Angelo.

²⁰ Pursuant to an agreement executed on December 7, 1989 between the Office of the Mayor and members of the New York County Local Conditional Release Commission, Commissioners are paid a fee of \$175 per session not to exceed one session per day.

²¹ This information was obtained from available records of the New York City Department of Probation Fiscal Services ("Fiscal Services"). Fiscal Services records indicate that Russi received \$2,300 in fiscal year ("FY") 2001; \$7,600 in FY 2002; \$9,450 in FY 2003; \$8,575 in FY 2004; and \$1,750 thus far in FY 2005.

Amy Ianora²²

Amy Ianora first was appointed to the Commission by Mayor Giuliani, by a letter dated January 8, 1997, to serve the remainder of a four-year term that expired on May 6, 1997. Thereafter, she appears to have become a hold-over pursuant to the Public Officers Law, Section 5. An appointment letter from Mayor Giuliani dated May 15, 1998 stated that Ianora was appointed to a four-year term that commenced on May 7, 1997 and expired on May 6, 2001. Like Russi, Ianora continued to serve as a hold-over Commission member from May 7, 2001 until her tenure on the Commission ended on October 14, 2004. From July 1, 2000 until she left the Commission, Ianora appeared in the offices of the Commission to review cases on 23 occasions.²³

Irene Prager²⁴

On March 12, 2003, Mayor Bloomberg appointed Irene Prager to the Commission, to the remainder of a four-year term that commenced on May 7, 2001, which would have expired on May 6, 2005. Prager resigned from her position on October 13, 2004. During her tenure on the Commission, Prager appeared in the offices of the Commission to review cases on 26 occasions.²⁵

²² From 1953 until 1964, Amy Ianora worked as a social worker; from 1964 to 1970 she was the Acting Director of the Angel Guardian Home where she supervised social workers and clerical staff. She was employed by DOP as a probation officer from February 1972 until January 1988, when she retired from the position of Supervising Probation Officer.

²³ Fiscal Services records indicate that Ms. Ianora received \$175 in FY 2001; \$175 in FY 2002; \$1,050 in FY 2003; \$1,400 in FY 2004; and \$700 thus far in FY 2005.

²⁴ Irene Prager joined DOP as a probation officer in 1972, she was promoted to Supervising Probation Officer in 1982, to Branch Chief in 1987, and to Assistant Commissioner in 1992. Prager served as Assistant Commissioner until her retirement in October 2002.

²⁵ Fiscal Services records indicate that Prager received \$450 in FY 2003; \$3,325 in FY 2004; and \$700 thus far in FY 2005.

Jeanne Hammock²⁶

Jeanne Hammock was appointed to the Commission by Mayor Bloomberg, by letter dated April 1, 2003, to the remainder of a four-year term that commenced on May 7, 2001, which would have expired May 6, 2005. Hammock resigned from her position on October 13, 2004. From the date of her appointment until her resignation, Hammock appeared in the Commission's offices to review cases on seven occasions.²⁷

B. The Commission's Staff and Budget

In addition to its four former Commission members, for the last two and one-half years, the Commission has had four full-time staff members. These individuals are employees of the New York City Department of Probation who are on assignment to the Commission.²⁸

Department of Probation employee Louis Gelormino was assigned to the position of Executive Director and Counsel to the Commission beginning in approximately May 2002. While assigned to the Commission, he remained a DOP employee. According to the job specifications (tasks and standards) in Gelormino's personnel file, he was responsible for providing guidance on managerial, administrative and legal matters. However, by all accounts, including those of the Commission members and Gelormino himself, he was doing little work for the Commission. In an attempt to explain his lack of involvement with the Commission, Gelormino repeatedly told DOI that since assuming the role of Executive Director and Counsel to the Commission he had never been informed of his job specifications and had never been evaluated. However, his personnel file shows that he was provided written tasks and standards, among other written descriptions of his work responsibilities, and he received a performance evaluation on or before February 14, 2003. Mr. Gelormino resigned from the DOP on October 14, 2004.

The Commission's Director is Eileen Sullivan, who has worked with the Commission since its inception in 1989 and is in charge of processing all applications for early release. The Commission also has two full-time clerical assistants, Mildred Leon, who assisted Gelormino, and Laura Gentile, who assists Sullivan.

For the last three fiscal years, the Commission has had an operating budget of \$318,884 to cover personnel expenses. To cover "other than personnel services" (operating expenses) the Commission's budget for fiscal years 2005 and 2004 was \$50,000; and for fiscal year 2003 it was \$15,500.

²⁶ Jeanne Hammock graduated from law school in 1980 and joined the Office of the Special Prosecutor for the State of New York. From January 3, 1990 until August 18, 2002, Hammock was an Assistant District Attorney with the Kings County District Attorney's Office.

²⁷ Fiscal Services records indicate that Hammock received \$175 in FY 2003; \$875 in FY 2004; and \$175 thus far in FY 2005.

²⁸ LCRC staff reported that at inception, in 1989, the NYC LCRC consisted of one Chair, six Commissioners, and approximately nine DOP employees assigned to work with the LCRC.

The Commission operates out of offices located on the 23rd floor of 33 Beaver Street, where the DOP headquarters are also located. The office space consists of a conference room, a large office for Gelormino, and cubicle space for Sullivan and the two clerical assistants, Gentile and Leon.

IV. THE NYC LCRC'S EARLY RELEASE APPLICATION PROCESS

The New York Correction Law, Article 12, §273(1), requires that an inmate's request for conditional release be made in writing, on forms prescribed by the Commission.²⁹ However, according to former Chairman Russi, unlike other Local Conditional Release Commissions, the New York City Commission does not require that an inmate, to be considered by the Commission for early release, submit a written application and has not required written applications for at least the last eight years. Instead, the Commission automatically reviews all eligible inmates. To that end, the Commission receives a weekly list provided by the New York City Department of Correction ("DOC") containing the names of newly-admitted inmates who are eligible to apply for early release, *i.e.*, those inmates who have been sentenced to Rikers Island (a local correctional facility) for a term of at least 90 days of incarceration.³⁰

Russi and Sullivan both testified that the Commission's practice of automatically reviewing all eligible inmates was implemented years ago in the interest of equity. They stated that the practice was based on the fact that not all eligible inmates would know about the process, have equal ability to apply on a timely basis, and have access to the necessary forms for making an application. With the automatic review process, Sullivan stated, "no one inmate would fall through the cracks." To date, Sullivan has been unable to locate any memoranda or other documents generated regarding the implementation of the automatic review process.³¹

On occasion, the Commission also received written applications from inmates or their counsel. Letters of support on behalf of inmates were also received by the Commission. Velella, Del Toro, and Gonzalez, via their respective attorneys, each submitted a written application for early release, along with letters of support.

Russi stated that before reconsidering its denial of an inmate's automatic application for early release, the Commission required the inmate to submit, directly or by counsel, a written application for reconsideration; there was no automatic review process for such reconsiderations. The inmate was informed that a written application was required for reconsideration, Russi said, by the Commission's standard denial letter, which was mailed to the inmate at Rikers Island, and

²⁹ N.Y. Correct. Law § 273(1).

³⁰ DOC provides for the care, custody and control of inmates convicted of crimes and sentenced to one year or less of jail time. See Mayor's Management Report Fiscal Year 2004, p. 181.

³¹ The only document DOI has obtained from the Commission on this issue is a mention of the automatic review practice in a series of emails dated July 23, 2003, between the Commission staff and DOP, which state, among other things, that the practice was implemented in 1994 "so that it would be more fair and equitable and protect the legal duties and obligations of the Local Conditional Release Board as well as the rights of the inmates."

which stated, in its last line, “. . . you may apply for reconsideration after a period of 30 days.”³² Vellella and Del Toro each submitted a written application for reconsideration via their respective attorneys. Vellella’s reconsideration submission was supplemented by letters of support not previously included in his original submission.

V. COMMISSION’S FAILURE TO FOLLOW ARTICLE 12 REQUIREMENT THAT DETERMINATIONS SHALL BE MADE BY A MAJORITY VOTE OF AT LEAST THREE MEMBERS PRESENT

Article 12 of the Correction Law, §273(2), states that “[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present.” As detailed below, the Commission’s voting practices did not conform with this requirement, and, in his interviews with DOI, former Chairman Russi admitted as much. Furthermore, in interviews with DOI, the other Commission members and Mr. Gelormino expressed a general lack of knowledge of the existence and/or requirements of Correction Law §273.

Each time the Commission obtained the weekly DOC list of eligible inmates, Sullivan prepared a folder for each inmate’s application/case. Each folder contained a cover sheet that Russi and other Commission personnel referred to as a “face sheet.” (A blank “face sheet” is attached as Exhibit 2 hereto). The face sheet is a form created by Russi and Sullivan, both of whom said they were not sure when it was first devised. It was used as an aid to the Commission members in determining the aggravating and mitigating factors of each case. Among other things, the face sheet includes a section entitled “Possible Reasons for Denial.” Sullivan said she often checked off the possible reasons for which the Commission could deny an inmate’s application for early release. Eventually, the face sheet was used to record the Commission members’ votes. In addition to the face sheet, inmate files contained a Pre-Sentencing Investigation (“PSI”),³³ a rap sheet, and any letters or submissions that the Commission received on behalf of the inmate. Sullivan placed the inmate files, when ready for Commission review, in the Commission’s conference room.

Russi stated that the Commission might consider granting early release if the inmate was a non-violent, first-time offender. But he also stated that he and the other Commission members considered the seriousness of the offense.³⁴

³² That is not an accurate statement of the law. See Article 12, Section 273(6), which states that inmates denied conditional release are eligible to re-apply 60 days after the date of the submission of the denied application.

³³ PSIs contain detailed information about an inmate, the crime of conviction and any other prior criminal history. Russi stated that any inmate with multiple, prior felony convictions would be denied early release, and that PSIs were not ordered by the Commission staff in such cases.

³⁴ According to NYC Dept. of Correction statistics, the large majority of city-sentenced inmates have prior convictions. So, as the former Commission members explained in substance, the offense of conviction may be relatively non-serious, but the inmate’s prior criminal history could nevertheless foreclose early release. On the other hand, a first offense of a serious nature could also cause the LCRC to decline early release.

Russi explained that the Commission's common practice was to have the Commission members review the inmate files separately whenever each of them was able to do so, in-person, at the Commission's offices. Members did not physically gather together to review inmate applications. Rather, members visited the offices separately at their convenience. If the Commission member conducting the initial review of an inmate file voted to deny an application, no one else reviewed the application, and the denial by the one Commission member would be the final vote. If the initial reviewing Commission member voted to approve the application, another Commission member would be asked to consider the file. If the second Commission member voted to approve the application, the application was considered approved and no other Commission member would consider the application. However, if the second Commission member voted to deny, a third Commission member would be asked to consider the application and cast the deciding vote.³⁵

Former Commission member Irene Prager confirmed the Commission's voting practices as described by Russi. Former Commission member Amy Ianora was less certain of the Commission's voting practices. She was unaware of the total number of votes needed to approve or deny an application. She added that she did not know whether the applications she reviewed were reviewed by other Commission members, but she assumed they were. Former Commission member Jeanne Hammock stated that she reviewed applications independently of her fellow Commission members; she did not know whether the applications she reviewed were also examined by other Commission members, but she assumed they were. The former Commissioners were unaware of any requirement regarding meetings.

Eileen Sullivan's understanding of the Commission's voting practices was identical to Russi's explanation. Gelormino, counsel to the Commission, offered no explanation and professed ignorance of the Commission's practices.

Sullivan stated that in the limited number of cases in which two Commission members had already approved an inmate's application for early release, Sullivan's practice was to send standard letters to the prosecuting assistant district attorney and the sentencing judge, soliciting their comments regarding the inmate's early release. Sullivan said she could not remember the Commission's ever receiving a response from the prosecutors or the judges.³⁶

DOI has confirmed that the Commission's practice was to deny applications by only one Commission member vote. DOI analyzed a sample of fifty files from June 2003 through September 2004. Specifically, forty-eight of those files reflect denials by a single Commission member's vote; the two remaining files reflect approvals voted by only two members.

³⁵ Russi stated that when he joined the Commission in 1997, the practice in place was that staff members made the determinations on cases. He stated that he stopped that by implementing the procedures set forth above, that is, he changed the practice to require one member to vote on a denial and two to vote approvals or three if a tie-breaker was needed for an approval.

³⁶ Sullivan reasoned that sending letters to judges and prosecutors in all cases was a pointless waste of time and resources because the overwhelming majority of applications were denied. What Sullivan's explanation leaves unclear is what effect a prosecutor's or judge's letter opposing early release would have had on an application that the Commission had already approved.

Moreover, Commission staff members provided DOI with nine additional case files where early release was granted from 2000 to the present. In some of those cases, only two Commission members voted. In three cases, there is no face sheet, and so DOI cannot determine how many votes were cast in those cases. At present, the LCRC does not record in its computer database the number of votes cast in each case or the name(s) of the member(s) who voted in each case. (See Section X below for additional “data” obtained from the former Commission).

Russi, as well as the other former Commission members, stated that they had never been instructed or updated on Correction Law Article 12, specifically Section 273(2), which requires a majority vote of three members present to either approve or deny a request for early release. Russi stated, “I believe that we got those [provisions of Article 12 of the Correction Law] originally, when we first were appointed.” Russi further indicated that he thought, but was not sure, that there might have been some amendments made to Article 12 in 2003. After Russi was shown and given an opportunity to review Correction Law, Article 12, Section 273(2), and was informed that the statute had not been amended since its enactment in 1989, Russi acknowledged that the voting practices of the Commission for the last several years did not conform with the requirements of Article 12. Russi explained that, in the past, the Commission had occasionally received advice and input from the Corporation Counsel’s Office as well as the Office of the Criminal Justice Coordinator, but there had been no communications with those offices in recent years. At another point, he discussed the connection between the Commission and the DOP. As previously mentioned, he also stated that he did not receive or rely on advice from Gelormino.

When Ianora was asked whether the Commission had ever been instructed as to Correction Law Article 12, she stated, “I don’t even know what you’re talking about. What is Article 12?” Prager stated “I don’t know what Correction Law Article 12 is.” Both stated that they had never been provided with the statute and that they had not been advised as to the statute’s requirements.

Hammock recalled reviewing the statutory provisions governing the Commission on her own when she was first appointed so she would know what she was supposed to do. She stated that she had never been provided a copy of the statute or advised of its requirements by anyone on the Commission. She stated that she did have a recollection about a majority vote being necessary, but she was not aware of the Commission’s actual voting practice.

All four former Commission members stated they had not been advised, either specifically or generally, of the requirements of Correction Law Article 12 by the Commission’s former Counsel, Louis Gelormino.

VI. AUGUST 2004 -VELELLA AND DEL TORO DENIED; GONZALEZ GRANTED EARLY RELEASE

Sullivan began assembling early release application case files for Velella, Gonzalez and Del Toro soon after all three of their names appeared on the DOC weekly list, which the Commission received on June 29, 2004. Shortly thereafter, their respective attorneys submitted

written applications with supporting documentation.³⁷ Gonzalez's attorney made a submission on June 25, 2004; Velella's submission was on July 21, 2004; and Del Toro's submission was made on July 29, 2004.

Contrary to the Commission's general voting practices, as described above, at Russi's request, Sullivan arranged for a meeting of all the Commission members for August 6, 2004, in order to review the applications submitted by Velella, Del Toro and Gonzalez. Russi, Prager and Ianora attended the meeting, which took place in the Commission offices; Hammock was unavailable on that date and did not attend. As a result of the meeting, Velella and Del Toro were denied early release, and Gonzalez was approved for early release. The meeting was not recorded, and no minutes were taken. Sullivan was present for the meeting, including for the deliberation process on all three applications. Gonzalez was subsequently released on August 24, 2004.

The face sheet for Velella, which is undated, contains a check mark next to "Serious Offense" under the "Possible Reasons for Denial" section of the face sheet. Velella's face sheet also contains the signatures of the four former Commission members with a check for "Denial" next to each.

Del Toro's face sheet similarly contains the signatures of the four former Commission members with a check mark for "Denial" next to each. Del Toro's face sheet does not contain any check marks in the "Possible Reasons for Denial" section.

Gonzalez's face sheet contains two check marks in the "Approved" column followed, respectively, by Ianora's and Prager's signatures. Gonzalez's face sheet contains one check mark in the "Denied" column followed by Hammock's signature. The face sheet contains the notation "recused himself" next to Russi's name.³⁸ Gonzalez's face sheet does not contain any check marks in the "Possible Reasons for Denial" section.³⁹

In their respective DOI interviews, each of the four former Commission members and Sullivan gave the following accounts of the August 6th voting process and surrounding circumstances:

A. Raul Russi

Russi stated that, as Chairman, he chose to convene the Commission to review Velella's case because he believed it was a high profile case, he knew it would attract press attention, and

³⁷ Each of the three submissions contained supporting letters. Velella's submission contained approximately 57 letters of support; Del Toro's submission contained four; and Gonzalez submitted the materials he previously submitted to the DOP in connection with his sentencing, which included approximately 30 letters. The attorney submissions and some of the letters of support are attached as Appendix A. Several letters of were withheld and/or redacted for legal and privacy reasons. Letters of support for Gonzalez withheld included letters from family members, ex-City officials, a prominent sports figure, lawyers and community people.

³⁸ Sullivan stated that she made this notation on Gonzalez's face sheet.

³⁹ Attached as Exhibit 3 are the three face sheets from the August 6, 2004 meeting.

he thought it would “be important to have everybody’s vote on the record in case there was going to be any questions about it.”⁴⁰

According to Russi, he and Commission members Prager and Ianora gathered on August 6th at the Commission’s offices to consider the three applications. Russi, Prager and Ianora reviewed and discussed the three files. Russi, Prager and Ianora each voted to deny Velella’s and Del Toro’s applications. Russi stated that the seriousness of the crime, including the length of the conspiracy and the amount of money involved, persuaded him, Prager and Ianora against the release of Velella and Del Toro. Russi also stated that he was particularly concerned because Velella was a politician and had violated the public’s trust.

Russi further stated that he recused himself from voting on Gonzalez’s application. Russi told DOI that the basis for his recusal was that he had once met Gonzalez in a restaurant.⁴¹ Russi’s recusal was not put in writing. Moreover, although recused, Russi remained present for the discussion and deliberations of Gonzalez’s case, along with Prager and Ianora. Hammock was not present. Ianora and Prager then both voted to approve Gonzalez’s application. Russi testified that, although he had decided to recuse himself prior to arriving at the meeting, he did not actually inform Prager and Ianora of that fact until the moment before they were ready to vote on Gonzalez’s application. Russi stated that Gonzalez’s application was approved by Prager and Ianora because they felt Gonzalez was the least culpable of the three co-defendants in the case and because he was not an elected or public official. According to Russi, Hammock arrived later that day and voted to deny all three applications.

B. Eileen Sullivan

The only recent occasions that Sullivan could recall on which Commission members convened to consider any early release applications were the meetings to consider the applications of Velella, Del Toro and Gonzalez. Sullivan stated that, at the direction of Russi, she contacted the other three Commission members and scheduled a meeting for August 6, 2004. Present for the meeting were Russi, Prager and Ianora, but not Hammock. Sullivan further stated

⁴⁰ Russi stated, “Obviously in this case, and probably a few other cases because they are high profile, I would normally call the Board and say this is a case we all have to look at.” Specifically, Russi recalled one other occasion involving a “high profile” case for which he convened the Commission. This was a meeting to determine whether to rescind the Commission’s decision to grant conditional release to former New York Jets football player Mark Gastineau.

⁴¹ Russi gave testimony to DOI that he met Gonzalez on one occasion while at Venice’s Restaurant, in the Bronx. According to Russi, he was introduced to Gonzalez by Charlie LaPorte who was Director of a program at Hunts Point Multi-Services Center, Inc. (“HPMS”) and a board member and President of BASIC Housing Inc. (where Russi is employed as Executive Director). Gonzalez had worked as a consultant for HPMS. Russi also referred to the fact that Gonzalez’s conviction was related to his former role as a consultant to HPMS. Specifically, Gonzalez’s guilty plea arose from charges that in 1999 he had used his position as a consultant for HPMS to facilitate the payment by HPMS of bribes to Velella in return for the award of City contracts to HPMS. See Press Release of District Attorney’s Office, New York County, dated May 9, 2002. According to Russi, he met with LaPorte and Gonzalez at the Venice Restaurant to discuss a merger (never consummated) with a sports foundation whose director was a friend of Gonzalez’s.

that immediately prior to the meeting she spoke to Russi privately about Gonzalez's application. Specifically, she informed him that one of three cases was that of Gonzalez, who had worked with Hunts Point Multi-Services. Sullivan, who had worked with Russi at DOP when he was the DOP Commissioner from September 1996 to May of 2001, knew that DOP had "done business" with Hunts Point Multi-Services. Furthermore, she was aware that, during his tenure as the Commissioner of the DOP, Russi regularly dealt with Hunts Point Multi-Services. Accordingly, she urged Russi to read the Gonzalez file, and the PSI in particular, and she urged him to recuse himself. According to Sullivan, Russi read the file, stated that he did not have to recuse himself, and went into the conference room to begin deliberations on the Velella, Del Toro and Gonzalez early release applications.⁴²

Sullivan stated that thereafter she too joined the Commission members in the conference room for deliberations. According to Sullivan, the Commission members without hesitation unanimously voted to deny Velella's application because of the length of the underlying conspiracy, the amount of money Velella received, and the fact that Velella was a government official. For the same reasons they denied Del Toro's application.

According to Sullivan, when the Commission began to consider Gonzalez's application, Russi discussed the case with the other members and then stated that he was recusing himself because he had met Gonzalez on one occasion at a restaurant in the Bronx. Sullivan further stated that Russi informed Prager and Ianora that if he was voting, he would vote to release Gonzalez. Sullivan recalled that Prager and Ianora then voted to approve Gonzalez's application based on the fact that he had not profited from the crime and was not a government official.⁴³

Sullivan further stated that on August 10, 2004, Hammock arrived at the Commission's offices to review Velella's, Del Toro's and Gonzalez's applications. Sullivan accompanied Hammock to the conference room where the three files were located and waited in the conference room while Hammock reviewed the files. Sullivan distinctly recalled that prior to voting on Velella's application, Hammock placed a call to her husband, Edward R. Hammock, Esq., of Hammock & Sullivan, LLC. According to Sullivan, Hammock specifically asked her husband if he had any involvement with the Velella case.⁴⁴ According to Sullivan, after Hammock's conversation with her husband, she stated to Sullivan, "it's okay," which Sullivan interpreted as meaning that Ed Hammock had no involvement with Velella's application before the Commission.

⁴² Sullivan only discussed recusal with Russi in connection with Gonzalez's case.

⁴³ After the Commission voted to approve Gonzalez's release, Sullivan informed Gonzalez's attorney, Frank Ortiz, that his client's application had been approved. Sullivan stated that sometime between August 16th August 18th she received a call from a DOC Warden. The Warden stated that he had been approached by inmate Gonzalez who wanted to know if there was anything that could be done to speed up his release. Sullivan told the Warden that there was nothing that could be done and that the earliest Gonzalez could be released was August 23rd or the 24th.

⁴⁴ In her DOI interview, Jeanne Hammock explained that her husband's specialty is post-conviction work, and on occasion he has clients that apply to the Commission for early release. Additionally, Edward Hammock is a former Chairman of the New York State Division of Parole. By a letter dated Sept. 14, 2004, the Commission was notified by Velella's counsel that Velella wished to apply for reconsideration. In a letter from Velella's counsel dated Sept. 17, 2004, the Commission was advised that Edward Hammock had been retained to consult on Velella's application for reconsideration.

C. Irene Prager

Prager stated that it was her understanding that Russi chose to have Velella's application reviewed by the entire Commission "because of the nature of this inmate." She recalled that the August 6, 2004 meeting was attended by Russi, Ianora and herself and that Hammock was not present.⁴⁵ According to Prager, the three members discussed Velella's case and reviewed letters submitted on his behalf. Prager stated that she was not personally persuaded by the letters written in support of Velella's application. She described them as written by important people simply "trying to throw their weight around" and stated that they had the effect of pushing her towards denial. She stated that the members also reviewed the applications of Velella's co-defendants, Gonzalez and Del Toro, at the same August 6th meeting. As for Velella and Del Toro, Prager denied their applications because in her opinion their crimes represented a serious betrayal of public trust. As for Gonzalez, she voted to approve his release, because Gonzalez was a non-violent, first-time offender and because she found Gonzalez to be the least culpable of the three defendants in the crime for which they were convicted. Prager recalled that Russi recused himself from voting on Gonzalez's application. She confirmed that Russi, despite recusing himself, remained in the conference room during the deliberations on the Gonzalez application.

D. Amy Ianora

Ianora recalled the Commission met on only one or two occasions to consider an application, and one of those occasions was August 6, 2004 for the consideration of Velella's application. She recalled with certainty that Russi was present that day, but she could not recall whether Prager was present. She was certain that Hammock was not present. Ianora stated that she voted to deny Velella's and Del Toro's applications, even though they were both non-violent, first-time offenders, because she felt that Velella should serve more time in jail. She voted to approve Gonzalez's application and confirmed that Russi remained present in the room for the deliberations.

E. Jeanne Hammock

Hammock also recalled only two occasions when the entire Commission was asked to convene as a group, and those two meetings were to vote in connection with Velella's case. However, she was not present for either meeting. Hammock recalled that while she was not able to attend the August 6th meeting, she did review the files of the three inmates on August 10, 2004 in the Commission's office.⁴⁶ She noted that the face sheets on which she recorded her votes already indicated the votes of the other three Commission members. After reviewing the files, Hammock concluded that all three individuals were well aware that their conduct was criminal and therefore they should serve their entire sentences. For that reason, she voted to deny all three applications. As to Velella in particular, Hammock stated that based on his submissions he

⁴⁵ Prager stated that the only time she ever met Hammock was at a Christmas lunch in 2003.

⁴⁶ A review of stipend payment vouchers confirms that Hammock reviewed the files on August 10, 2004 not August 6, 2004.

appeared to be a “crybaby,” and furthermore there was nothing in the submissions that convinced her that he should be relieved from having to serve his full term.

Jeanne Hammock stated that she did not inform her husband, Edward Hammock, of the fact that Veleva’s application was under review by the Commission. She also stated that she did not discuss the case with her husband on or prior to August 10th or at any other point during the month of August. As of August 10, 2004, Jeanne Hammock knew from the face sheet, including her own vote, that Veleva’s application was denied. According to Jeanne Hammock, she did not become aware that Gonzalez’s application was approved by the Commission and that he was released, until she was informed of that fact during her DOI interview.

VII. THE COMMISSION’S SEPTEMBER 2004 RECONSIDERATION OF THE VELELLA AND DEL TORO APPLICATIONS - BOTH APPROVED

After Veleva and Del Toro received their denial letters from the Commission on or about August 13, 2004, both Veleva and Del Toro, as well as Veleva’s attorney, called Sullivan inquiring about the reconsideration process. Sullivan discussed the eligibility date for reconsideration and informed them of the need to submit a written request for reconsideration. Specifically, Sullivan stated that she informed Veleva, Veleva’s attorney and Del Toro that they could reapply for early release thirty days from the date of their denial letters.

During the next several weeks Veleva made several calls to Sullivan.⁴⁷ She explained that each time he sounded highly distraught, often crying very hard, and that he said that he missed his family and was very unhappy with prison. Sullivan advised Veleva to write a letter to the Commission describing his feelings and circumstances and anything he wanted the Commission to consider in connection with his application for reconsideration, which he did. Sullivan told Russi about these calls. However, Sullivan did not think that Veleva was suicidal, and she stated that she never told Russi that he was. The calls from Veleva did not prompt either Sullivan or Russi to contact DOC to report the nature of his calls or to see if his condition required any special or emergency assistance. (During this period, Veleva was housed in protective custody in the Rikers Island infirmary.) No letter from a psychiatrist was submitted in connection with Veleva’s reconsideration application. Sullivan also stated that Veleva was extremely angry and resentful that Gonzalez had been released. According to Sullivan, Veleva did not agree that Gonzalez’s role in their criminal scheme justified Gonzalez’s early release.

Both Veleva, via letter dated September 14, 2004, and Del Toro, via letter dated September 13, 2004, filed written requests through their attorneys to have their applications reconsidered.

⁴⁷ Ms. Sullivan routinely received calls from inmates inquiring about the status of their applications. DOC telephone records indicate approximately 1,082 calls from inmates to the Commission offices May 14, 2003 to October 5, 2004.

Events of September 22, 2004

On September 22, 2004, the Commission convened again at Russi's request to reconsider the applications for early release of Velella and Del Toro.⁴⁸ Velella's face sheet for the September 22nd reconsideration contains two check marks in the "Approved" column followed by the signatures of Russi and Prager. The face sheet contains the notations "approved via phone 9/22" next to Ianora's name, and "recused" next to Hammock's name.⁴⁹

Del Toro's face sheet for the September 22nd reconsideration contains two check marks in the "Approved" column followed by the signatures of Russi and Prager. Del Toro's face sheet does not contain any notations with respect to Ianora or Hammock.

A. Raul Russi

According to Russi, he and Prager attended the September 22, 2004 meeting at the Commission offices, and each voted to approve both applications. Russi stated, "...as far as I am concerned, I'm comfortable with release and...Irene said 'fine,' she's comfortable. Then we called Amy [Ianora], and she felt comfortable and released him." Russi stated that he called Ianora, that same day, using the Commission's conference room telephone, and that he "believe[d], that...we told her that we were moving to release both [Velella and Del Toro] and she agreed." According to Russi, Ianora, over the telephone, approved release for *both* Velella and Del Toro, although Del Toro's face sheet reflects no vote by Ianora. When asked why Del Toro's face sheet does not indicate Ianora's vote to approve, Russi stated that Sullivan "must have forgotten" to indicate Ianora's vote.

Russi stated that Hammock recused herself from considering both Velella's and Del Toro's reapplications. Russi stated, "[i]t was my interpretation that she recused herself from both [Velella and Del Toro]" (although he did not speak to Hammock directly). Russi's understanding, based on conversations with Sullivan, was that Hammock recused herself because the Commission had received a letter, dated September 17, 2004, from Velella's attorneys, Stillman & Friedman, advocating early release, which also indicated that Edward Hammock had been retained to work on the efforts to get Velella released. (See Sept. 17, 2004 letter from Stillman & Friedman, in Appendix A.)

Russi stated that in deciding Velella's reapplication, he considered Velella's own letter to the Commission dated September 16, 2004.⁵⁰ Russi also believed that Velella was becoming "dysfunctional, breaking down, maybe he would hurt himself." Russi based that view on conversations he had with Sullivan, who had spoken to Velella by phone. (Russi denied ever speaking to Velella directly.) Russi also stated that he approved Velella's application for reconsideration because Velella had served another 30 days in jail and because he "was a broken

⁴⁸ The face sheets for the Sept. 22, 2004 reconsideration of Velella and Del Toro's cases are attached as Exhibit 4 hereto.

⁴⁹ Ms. Sullivan confirmed making both notations on Velella's face sheet.

⁵⁰ Velella's letter is attached at Exhibit 5 hereto.

man.” Russi stated he did not read “every single letter” submitted to the Commission on Velella’s behalf, but he “perused” them.

With respect to Del Toro’s application for reconsideration, Russi stated that he, Prager and Ianora voted to approve it out of “equity.” Russi asserted that it would have been unfair to deny Del Toro’s application given that Velella’s role in the offense was more serious. Moreover, since Gonzalez had also been approved for release in August, Russi stated it would have been unfair for Del Toro to be the only defendant from the conspiracy remaining in jail. Russi stated that without Velella’s phone calls and letter he probably would have voted to deny Velella’s application again, because there were no other changes in circumstances.

B. Irene Prager

Prager stated that the Commission reconvened on September 22, 2004 to consider Velella’s and Del Toro’s reapplications. Prager and Russi were the only Commission members physically present at the Commission offices that day. Commission members Ianora and Hammock were not present. Prager stated that she was informed that Hammock had recused herself from the vote, but she did not remember who told her that. Prager recalled being told by Sullivan that Ianora had approved Velella’s application for reconsideration, but Prager did not know under what circumstances Ianora had cast her vote. Prager did remember that Russi told her that Velella had frequently called the Commission offices crying and that he might be suicidal. Russi informed Prager that he was going to vote to release Velella. Accordingly, Prager also voted to release Velella based on Russi’s description of Velella as a broken, suicidal man and the fact that, by this time, Velella had been incarcerated for approximately 90 days. Prager also voted to release Del Toro. She reasoned that, “...when we agreed on letting Velella out, it didn’t seem fair to keep Del Toro in.”

C. Amy Ianora

Amy Ianora stated that she was unable to attend the September 22, 2004 meeting due to prior commitments. She confirmed that Russi did call her regarding Velella’s reapplication. However, Ianora stated that Russi did not call her on September 22, 2004, the day of the meeting. Instead, she stated, Russi called her on either September 23rd or September 24th. Ianora recalled being informed by Russi that Velella had been calling and that Velella was extremely upset, was suffering, and had health problems. Ianora voted to approve Velella’s application based on the information provided to her by Russi regarding Velella’s emotional and physical condition, and because Velella was not a danger to society, was non-violent, and had served three months in jail.

Ianora stated she did not vote on Del Toro’s application and that “[Russi] did not mention Del Toro at all...” during their phone call. No minutes were kept of the telephone call Russi made to Ianora, and, as previously indicated, there is no vote by Ianora recorded on Del Toro’s face sheet.

D. Jeanne Hammock

Hammock recalled that on September 16th or 17th Sullivan left a message on her home telephone answering machine. To the best of Hammock's recollection, Sullivan stated in her message that "our friend is coming back . . . Raul . . . wants to have a meeting on the 22nd so we can . . . consider this Velella as a group." Hammock understood this message to mean that at Russi's request, the Commission was going to convene on September 22, 2004 to consider Velella's application for reconsideration. In her message, Sullivan did not mention that Del Toro had also filed for reconsideration or that his application would also be reviewed at the September 22, 2004 meeting. Hammock stated that she did not hear Sullivan's message until September 18th. On Sunday, September 19th, Hammock and her husband left for vacation in Virginia. According to Hammock, on either Monday, September 20th, or Tuesday, September 21st, she returned Sullivan's call, from Virginia, and told Sullivan that she was unable to attend the meeting on September 22nd because she would be out of town. Hammock informed Sullivan that if she was needed to come in to review Velella's application she could do so when she returned on Monday, September 27th. Sullivan told Hammock that she would leave a message on Hammock's home answering machine to let Hammock know if she was needed to review Velella's application for reconsideration. Hammock never received a message from Sullivan, so she assumed she was not needed. Hammock was certain that during the conversation of the 20th or the 21st she never informed Sullivan that she was recusing herself from considering Velella's case.⁵¹ In fact, Hammock stated that the first time she learned that she had been counted as recused from voting on Velella's reconsideration application was when she read about it in the newspapers.

E. Eileen Sullivan

According to Sullivan, at Chairman Russi's request, Sullivan contacted the other Commission members, Prager, Ianora and Hammock, to schedule a meeting for September 22, 2004 to review Velella's request for reconsideration. Only Prager and Russi were able to attend the meeting. According to Sullivan, Hammock called Sullivan on September 20th and informed her that Hammock was recusing herself from consideration of Velella's application because of her husband's involvement with Velella's reapplication. According to Sullivan, Ianora informed her that she had prior commitments and would not be able to attend the September 22nd meeting.

⁵¹ DOI questioned Jeanne Hammock about when she learned that her husband, Edward Hammock, had been retained by Velella's counsel in connection with Velella's application for reconsideration. Jeanne Hammock told DOI that she had not seen the September 17, 2004 letter from Velella's attorneys to the Commission, which states that Edward Hammock had been retained on Velella's behalf. Jeanne Hammock said that the first time that she learned that her husband had been retained was after her telephone call to Sullivan on either Monday, September 20th, or Tuesday, September 21st, in which she informed Sullivan that she would be unable to attend the September 22, 2004 meeting being convened to vote on the Velella case. Jeanne Hammock told DOI that her husband overheard that telephone conversation and informed her that she had to recuse herself because he had been retained by Velella's counsel to assist with Velella's re-application for early release. According to Hammock, she told her husband, "I'll call [Sullivan] back and tell her that, but I already told her that I can't be there." Hammock further stated that she did not call Sullivan back, and reiterated that she never informed Sullivan that she was recusing herself from the Commission's review of Velella's re-application.

Sullivan stated that she was not present throughout the deliberations. She later learned that Prager and Russi had voted to approve both Velella's and Del Toro's applications. Sullivan stated that Russi informed her that he had contacted Ianora by phone and that she had voted to approve both Velella's and Del Toro's applications. Accordingly, it was Sullivan's understanding that, as of September 22, 2004, the Commission had approved both Velella's and Del Toro's applications for early release.

When asked why Del Toro's face sheet did not indicate that Ianora had voted to approve, Sullivan hypothesized that she forgot to mark Ianora's approval on the face sheet.

VIII. OTHER NOTEWORTHY CASES

There are several other cases, two involving LCRCs from other counties, which are instructive and/or dispositive to some of the issues presented by the findings in this report.

A. The Livingston County Case (McDonald)

First, the parallels to a case in Livingston County are striking.⁵² The Livingston County LCRC and the NYC LCRC were little-known entities until each made a questionable determination involving a government official convicted for abusing public office. In both cases the public outcry led to intense scrutiny and an investigation. In the Livingston case, the investigation led to the re-opening of the LCRC proceedings and the re-incarceration of the defendant.

In addition, in the Livingston case, the findings included a determination that the Livingston LCRC routinely failed to adhere to the laws governing LCRC procedures. Most notably, the Livingston LCRC failed to adhere to Correction Law, Article 12, which requires determinations to grant or deny release be made by a majority of at least three commission members present. Rather, in a manner similar to the actions of the former NYC LCRC, determinations of the Livingston LCRC routinely were made by the vote of a single member without the presence or participation of the other members. Additionally, the SIC report describes the Livingston LCRC as lacking knowledge of the statutes that govern the procedures of LCRCs. Specifically, all four Livingston LCRC Commissioners interviewed stated that they were unaware of the requirements of Article 12, including, among other things, the requirement that any action of the LCRC had to be approved by a majority of at least three members present. DOI interviews of the former NYC LCRC demonstrated a similar lack of knowledge of fundamental requirements.

⁵² See Report of the State of New York, Commission of Investigation, ("SIC") dated June 1999, regarding the case of inmate Jeffrey McDonald, who had been Deputy Sheriff of Livingston County (hereinafter "the SIC Report" and "the Livingston case"). A copy of the SIC Report is attached as Appendix B. McDonald pleaded guilty to two counts of official misconduct stemming from his having provided information to a drug dealer in return for narcotics. The Board of Supervisors of Livingston County asked the Governor to investigate, among other things, whether the Livingston County Sheriff had improperly intervened with the LCRC in the conditional release of his former Deputy.

Additionally, although the Correction Law requires that an inmate serve thirty days of his sentence before being eligible to apply for early release, McDonald made an application after having served only twenty-six days of his sentence. The SIC found that to be a violation of Correction Law §273(1).⁵³

The SIC also concluded that a lack of oversight by the County government and unclear standards of accountability within the County government regarding the Livingston LCRC contributed to that commission's failure to comply with the law. Members of the County Board of Supervisors and Judicial Committee, who were only dimly aware of the Livingston LCRC and its legal framework prior to the highly publicized McDonald case, believed that the Probation Department was overseeing its operations; however, the Probation Department was not doing so and did not believe it was its responsibility to do so. Similarly, Russi stated that during his eight years on the NYC LCRC, he received advice variously from the Office of the Corporation Counsel, the Committee on Judicial Conduct and the Departments of Correction and Probation.

The similarities to DOI's findings in connection with the NYC LCRC continue. The SIC found that from 1993 until McDonald's release in 1998, the Livingston LCRC never met with the requisite number of Commissioners present. In light of that failure, the SIC found that McDonald was not the only inmate whose application was improperly ruled on by the Livingston LCRC. Having examined the operations of the LCRC since 1991, the SIC found that it had operated in violation of virtually every statutory requirement of §§ 270 *et seq.* of the Correction Law. Further, the Livingston LCRC failed to document its work adequately, if at all. In a similar vein, the catalyst for the DOI investigation of the NYC LCRC was the Vellella release, which prompted the instant investigation, which has uncovered systemic procedural problems dating back for years, as well as a deficient and unreliable record-keeping program.

Moreover, among other things, McDonald's approved order of release was personally picked up by a member of the Probation Department. The SIC report pointed out that these circumstances did not routinely occur with other applicants.

The SIC found in the Livingston case that the totality of the above-described actions, whether they were intended to favor McDonald or not, lent credence to a perception that McDonald, a former sergeant in the Sheriff's Office, had been given favored status compared with other members of the public who had broken the law. See SIC Report at pp. 8, 33.

B. The Rensselaer County Case (Anslow)

Mary Beth Anslow was released in January 2004 by the Rensselaer County Conditional Release Commission ("Rensselaer LCRC"), after serving 90 days of a one-year sentence. Anslow had been convicted of endangering the welfare of a child and making a punishable false written statement, after a three-month-old child died while at an unlicensed day-care facility she operated. Anslow's initial application for release was denied, but her application for reconsideration was approved by the Rensselaer LCRC. However, the Rensselaer LCRC's decision to release Anslow was annulled by court action on the grounds that, under the statute, an

⁵³ See SIC Report at pp. 6, 8, 20, 30.

application that has been denied cannot be resubmitted until 60 days after the date of the original application for release.⁵⁴

As previously mentioned, the NYC LCRC receives lists of eligible inmates' names from DOC on a weekly basis, triggering an automatic case review. The DOI investigation has determined that the NYC LCRC has considered and calculated the inmates' application dates to be the date the inmates' names appeared on the DOC list. Those DOC lists are sometimes submitted to the NYC LCRC only a week or so after the inmate arrives at Riker's Island. Therefore, the inmate is deemed to have applied for early release after only a week or so of incarceration. The effect is that those applications are premature, because Correction Law §273(1) states that inmates may apply for early release only after serving 30 days of their sentences.

This error becomes significant if the inmate applies for reconsideration after denial. Specifically, pursuant to Section 273(6), an application for reconsideration may not be made before the passage of 60 days *after* submission of the original denied application. In the Anslow case in Rensselaer County, Anslow's application for reconsideration was made within less than the requisite 60 days, and, therefore, the court held it was improper for the LCRC to have acted on the reconsideration application, rendering it a nullity. In Vellella's and Del Toro's cases, the same issue may exist, but it is complicated further by erroneous instructions given by the former LCRC in the letters of denial sent to these respective inmates. (See Chronological Summary below in Section IX).

C. The Mark Gastineau Case – NYC LCRC

The case of Mark Gastineau, a former football player for the New York Jets, further illustrates the problematic manner in which the NYC LCRC conducted its affairs. Although the NYC LCRC apparently voted to release Gastineau on December 22, 2000, its files fail to indicate how many members voted for the release, where they were when they voted, or the reasoning for their decision. This failure in documentation was typical of many of the NYC LCRC files reviewed by DOI as part of its investigation. Gastineau's release received media attention. Subsequently, his release also became the subject of a reconsideration proceeding, when apparently-material evidence that had not been before the NYC LCRC when it made its December 22, 2000 release decision came to light. In sharp contrast to its otherwise improper procedures, when the NYC LCRC reconsidered Gastineau's release, it convened a public hearing on January 4, 2001, and, on a stenographically prepared record, three former Commissioners present -- Raul Russi, Betty Dees and Amy Ianora – heard testimony from several witnesses and extensive argument from counsel for both Gastineau and the City, at the conclusion of which the NYC LCRC unanimously rescinded Gastineau's release. Although the NYC LCRC cannot be faulted for following proper procedures with respect to the decision to reconsider Mr. Gastineau's release, it seems it only employed proper procedures in connection with a high-profile inmate whose case had garnered media scrutiny.

⁵⁴ Winn v. Rensselaer Co., Conditional Release Comm., 6 A.D. 3d 929, 775 N.Y.S. 2d 412 (3d Dept. 2004); see also, Correction Law § 273 [6].

IX. CHRONOLOGICAL SUMMARY OF VELELLA, DEL TORO AND GONZALEZ APPLICATIONS AND POSSIBLE VIOLATIONS OF RELEVANT CORRECTION LAW PROVISIONS

The factual findings of this report give rise to the possibility of violations of Article 12 of the Correction Law in the Velella, Del Toro and Gonzalez cases, as well as in many other cases.⁵⁵ In addition to an analysis of the procedural requirements of Article 12, the newly-constituted NYC LCRC should also analyze Section 41 of the New York General Construction Law, and the Open Meetings Law (N.Y. Pub. Off. L. §100 *et seq.*),⁵⁶ to determine if the former LCRC's practices were in conformity therewith. In particular, Section 41 of the General Construction Law requires, *inter alia*, that when three or more public officers are given power or authority to perform a public duty as a board, no action by them shall be valid unless taken by a majority of the members of such board while gathered together at a meeting held upon proper notice.

A. Guy Velella's Applications For Conditional Release

- 6/21/04:** Velella enters DOC custody.
- 6/29/04:** Velella's name appears on a list of all inmates eligible for conditional release pursuant to Penal Law §70.40(2) generated by DOC and forwarded to the Commission.
- 7/21/04:** Date of Velella's written application with supporting documentation, submitted through his attorney.
- 8/6/04:** Commission members Irene Prager, Amy Ianora and Raul Russi meet to review Velella's application. All three members vote to deny it.
- 8/10/04:** Commission member Jeanne Hammock votes to deny Velella's application.
- 8/13/04:** Date of letter from the Commission to Velella informing him that his application has been denied. Last line of the denial letter

⁵⁵ DOI will provide all information and documentation it received regarding all such cases to Chairman Daniel Richman.

⁵⁶ The Open Meetings Law may not apply because, by its own terms, it does not apply to "judicial or quasi-judicial proceedings" (Pub. Off. L. §108), and Article 12 of the Correction Law, §274(10), expressly states that the function of an LCRC is "deemed a judicial function." *But see*, New York Committee on Open Government AO-3784 (April 22, 2004).

incorrectly states “you may apply for reconsideration after a period of 30 days.”⁵⁷

See Correction Law, § 273(6), which states that “[i]nmates denied conditional release are eligible to reapply sixty days after the date of submission of the denied application.”

9/14/04: By a letter dated September 14, 2004, Velella, through his attorney, re-applies for early release.

See Correction Law § 273 (6), which states that “[i]nmates denied conditional release are eligible to reapply sixty days after the date of the submission of the denied application.” Velella’s denied application was submitted on July 21, 2004; accordingly, the earliest he could apply for reconsideration was September 20, 2004.

9/17/04 More detailed letter from Velella’s attorney submitted in support of reconsideration application.

**9/22/04-
9/24/04:**

Board members Raul Russi and Irene Prager meet on September 22, 2004 to review Velella’s re-application. Both vote to approve. Amy Ianora votes to approve via telephone on either the 23rd or the 24th of September. Jeanne Hammock never votes, but is marked on the voting sheet as having recused herself.

See Correction Law § 273 (2), which states that “[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present.”

⁵⁷ Additionally, Eileen Sullivan provided the same incorrect information regarding the reapplication date to Velella’s counsel, by telephone on or after August 13, 2004. See, supra, p. 14.

B. Manuel Gonzalez's Application for Conditional Release

6/21/04: Gonzalez enters DOC custody.

6/25/04: Gonzalez, through his attorney, by a letter dated June 25, 2004, submits a written application for early release.

See Correction Law § 273(1), which states that "[a]ny inmate who is eligible for conditional release . . . and who has served a minimum of thirty days in a local correctional facility may apply for conditional release."

6/29/04: Gonzalez's name appears on a list of all inmates eligible for conditional release pursuant to Penal Law § 70.40(2) generated by DOC and forwarded to the Commission.

8/6/04: On August 6, 2004, board members Irene Prager, Raul Russi and Amy Ianora meet to review Gonzalez's application for early release. Ianora and Prager vote to approve, Russi recuses himself.

See Correction Law § 273(2), which states that "[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present."

8/10/04: Hammock reviews Gonzalez's application and votes to deny it.

See Correction Law, § 273(2), which states that "[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present."

8/23/04: The Commission informs DOC that Gonzalez has been approved and will be released on August 24, 2004.

8/24/04: Gonzalez is released.

C. Hector Del Toro's Applications For Conditional Release

6/21/04: Del Toro enters DOC custody.

6/29/04: Del Toro's name appears on a list of all inmates eligible for conditional release pursuant to Penal Law § 70.40(2) generated by DOC and forwarded to the Commission.

7/29/04: Del Toro, through his attorney, by a letter dated July 29, 2004, submits a written application for early release.

8/6/04: Commission members Irene Prager, Amy Ianora and Raul Russi meet to review Del Toro's application. All three members vote to deny it.

8/10/04: Hammock votes to deny Del Toro's application.

See Correction Law, § 273(2), which states that "[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present."

8/13/04: Date of letter from the Commission to Del Toro informing him that his application has been denied. Last line of denial letter incorrectly states "you may apply for reconsideration after a period of 30 days."

See Correction Law, § 273(6), which states that "[i]nmates denied conditional release are eligible to reapply sixty days after the date of submission of the denied application."

9/13/04: Del Toro, by a letter dated September 13, 2004 requests that his application for early release be reconsidered by the Commission.

See Correction Law, § 273(6), which states that "[i]nmates denied conditional release are eligible to reapply sixty days after the date of submission of the denied application." Del Toro's denied application submitted on July 29, 2004; accordingly, the earliest he could apply for reconsideration was September 28, 2004.

9/22/04-

9/24/04: Board members Raul Russi and Irene Prager meet on September 22, 2004 to review Del Toro's re-application. Both

vote to approve. Amy Ianora states that she is contacted by telephone by Russi on either the 23rd or the 24th of September and is asked to vote on Velella, but not on Del Toro. The voting sheet for Del Toro indicates only two votes, Russi's and Prager's votes to approve.

See Correction Law § 273 (2), which states that “[n]o determination granting or denying such application shall be valid unless made by a majority vote of at least three commission members present.”

See Correction Law, § 273(6), which states that “[i]nmates denied conditional release are eligible to reapply sixty days after the date of submission of the denied application.” Del Toro's re-application was considered prior to September 28, 2004, the date on which he became eligible for reconsideration.

9/28/04: Del Toro is released.

X. DATA FROM FORMER COMMISSION ON ELIGIBLE INMATES, APPROVALS/DENIALS FOR FISCAL YEARS 2000 TO THE PRESENT

The chart below outlines the data the LCRC provided at DOI's request for the number of eligible inmate applications and the number of approvals and denials, for the period of 2000 to the present. However, the data provided was difficult to obtain and analyze because of the poor record-keeping practices. For example, some records given to DOI did not indicate whether the inmate had been approved or denied for early release. Except where case files still exist (which is roughly files for Fiscal Years 2004 and 2005), the computer records given to DOI do not reflect how many former Commission members voted in any given case. None of the files or records reflect where votes were taken. In some cases there is no date indicating when the determination was made.⁵⁸

Sullivan also indicated that the former Commission was in some cases not in compliance with the provision of Correction Law Section 273(2), which states that the Commission shall review and make a determination on each application within 30 days of receipt of such application. On occasion, Sullivan would contact former Commission members to inform them of review deadlines and would request they come to the offices to make determinations on cases by certain dates. She stated that former Commission members were not always able to do so. In some cases records indicate, and Sullivan confirms, that inmates' sentences were completed before the former LCRC had reviewed the inmate file.

⁵⁸ While Eileen Sullivan has been cooperative, obtaining basic data from the LCRC is difficult, if possible at all. DOI's inquiry revealed that LCRC's record-keeping needs to be improved, modernized and expanded to include additional relevant data (such as the total number of approvals and denials and the date of same, the number of votes on each, where the votes were taken, and the basis for the determinations so that equity overall can be assessed going forward).

In addition, some inmates approved for early release declined the LCRC's early release determination and, instead, chose to serve their full sentence, because they did not wish to be subject to the terms and conditions of probation.

Fiscal Year	Eligible Inmates	Number of Inmates Approved ⁵⁹	Number of Inmates Not Approved ⁶⁰
FY 2000	6066	15	6051
FY 2001	5965	12	5953
FY 2002	5956	7	5949
FY 2003	6634	48	6586
FY 2004	6832	29	6803
FY 2005 (July 1, 2004 to Present)	1099	5	1094

In addition, according to records supplied by the LCRC, there are approximately 948 inmate applications awaiting review by the LCRC. Those 948 cases are applications that were filed from the period of August 24, 2004 through the week of October 25, 2004.

XI. RECOMMENDATIONS

1. DOI recommends that the appropriate legal analysis and action be taken with respect to the Velella, Del Toro and Gonzalez early release decisions, to determine whether the underlying process by which they were released was in accordance with Article 12 of New York State Correction Law, Section 41 of the New York State General Construction Law, and any other applicable statutes.

⁵⁹ Based on records received from the LCRC, this category represents the total number of inmates which the former Commission approved for early release. Of the inmates approved, the following number of inmates accepted early release: 1 in FY2000; 1 in FY 2001; 1 in FY 2002; 2 in FY 2003; 3 in FY 2004; and 5 thus far in FY 2005.

⁶⁰ As best as DOI can determine from the records received, that this is the number of inmates which were either denied early release by the Commission and/or who were not considered by the former Commission because the inmate had been discharged from jail prior to the Commission reviewing the inmate's file. We were told that the vast majority of these inmates were denied. However, DOI is unable to calculate the exact number of denials due to the Commission's incomplete and inaccurate record keeping.

2. DOI recommends that the appropriate legal analysis and action be taken with respect to other cases decided, both denials and approvals, in which the former LCRC used questionable procedures. In particular, the Commission should consider reviewing any applications denied by a single vote for inmates still incarcerated.

3. The newly-constituted Commission should establish new, lawful procedures for making valid determinations, so that all cases may be decided on a proper and timely basis, and the backlog of undecided cases that the new Commission has inherited may be decided as quickly as possible.

4. In particular, the Commission should establish procedures pertaining to the convening of meetings with at least three members present. Additionally, DOI requests that the Commission keep written minutes of all meetings and that all recusals be put in writing and kept for the record.

5. DOI recommends that the Commission should then apply its new, proper procedures uniformly in each case.

6. DOI recommends that the Commission revise its form denial letter to reflect the proper time periods and procedures regarding reconsideration, as set forth in Article 12 of the New York State Correction Law.

7. DOI recommends that if the Commission continues its practice of sending letters inviting prosecutors and sentencing judges to comment on particular release applications, the recipients of the letters be given sufficient time to submit responses before the Commission's formal vote. If sending such letters in all cases is impractical, the Commission might develop a case-screening procedure and send the letters in those cases in which it is seriously considering approving an inmate's early release.

8. DOI recognizes that the NYC LCRC's long-standing practice of automatically generating conditional release applications for all new inmates gives each and every inmate the opportunity to have his or her case put before the Local Conditional Release Commission. But it also is not required under Article 12, and it creates a very high volume of work for the Commission. Moreover, whether it is a permissible practice, given that the statute suggests applications are to be made by the inmates (see Corr. Law §273(1)), is something the Commission should analyze. However, if the new Commission considers changing that practice, it should be mindful of the fact that the population of inmates whose cases go before the LCRC includes, in large measure, individuals who are uneducated or who have little schooling, do not speak and/or read English, and are not people of means. Article 12 of the Correction Law, with its various time limits applicable to different procedural steps, is complex, and the potential relief it offers is not well-known or understood among the public and the inmate population. In addition, DOI has been informed that, historically, disseminating information in the jails via mailings and flyers failed to establish an application process that was known and equally accessible to all inmates. Therefore, if the newly-constituted Commission considers changing the practice of automatically generating applications for all new inmates, it should be mindful

that the needs of the inmates may require alternative, compensating efforts by the LCRC and the Department of Correction to ensure that all potentially-eligible inmates have access to appropriate sources of information and opportunities to apply.

9. If the automatic review process is maintained, the Commission should consider instituting a practice whereby the effective date of any application – regardless of the actual submission date on an automated list from DOC – will be no sooner than 30 days from the commencement of the inmate’s sentence. See Correction Law, Art. 12, §273(1).

10. DOI recommends that the Chair of the LCRC promulgate directives that include the distribution of all governing and applicable laws to each member of the Commission, and its Director, including but not limited to Article 12 of the New York State Correction Law, Section 70.40 of the New York State Penal Law and Section 41 of the New York State General Construction Law.

11. DOI recommends that the Commission develop a pamphlet in English and Spanish outlining the proper early release application process and reconsideration process and identifying all relevant time periods set forth in Article 12 of the New York State Correction Law. DOI also recommends that all inquiries regarding applications be submitted in writing to the Commission, and to the extent possible, the recommended pamphlet be used in responding to such inquiries.

12. DOI recommends that the Commission establish a webpage, perhaps as a link to the “NYC.gov” website, containing the LCRC’s mission, mandate, rules, meeting schedule, etc. Other boards and commissions, such as the Charter Revision Commission and the Mayor’s Committee on City Marshals, have webpages. The Department of Information Technology & Telecommunications could assist the LCRC with this project.

13. DOI recommends that the Commission develop a reliable, accurate record retention policy that is at least in accordance with New York City record retention policies. Specifically, DOI requests that there be an accurate record of the number of cases coming before the LCRC and the date each application was received (both the original and any reconsideration application), as well as an accurate record in each case of: the determination, the basis of the determination, the date of the determination, the number of votes cast, and where the vote took place. DOI also recommends that as much of this data be automated as possible.

14. The LCRC should be included each year in the Mayor’s Management Report (“MMR”) and should include as indicators, among possible others, the number of cases it has received, and the number of approved and denied applications. Including this Commission in the MMR would ensure its public accountability.

15. DOI also recommends that, in order to keep track of the LCRC’s activities in a more effective manner, there be some consideration regarding whether the Commission, on policy and procedure issues only, not on specific cases, should consult with the Office of the Criminal Justice Coordinator, the Corporation Counsel’s Office, or the Department of Probation. The entity selected should assign someone to consult with the LCRC.

16. DOI recommends that Raul Russi be asked to step down from the NYC Board of Correction.



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION

80 SOUTH PEARL STREET
ALBANY, NY 12207 1596
(518) 474-1416

CHAIRMAN
WILLIAM G. McMAHON

COMMISSIONERS
~~XXXXXXXXXXXX~~
DEBORAH A. REYES

April 21, 1989

Hon. Evan Davis, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.2486-A: AN ACT to amend
the correction law, the
executive law and the
penal law, in relation to
release and supervision
of persons serving a
definite sentence and
providing for the repeal
of the provisions hereof
on May 1, 1990

Dear Mr. Davis:

The Commission supports this bill which would create local conditional release commissions to make conditional release decisions for county inmates.

This proposal should encourage more comprehensive and responsive local planning vis-a-vis alternatives to incarceration. The Commission also believes that the creation of local conditional release commissions will lead to greater participation in local conditional release. At a time when local correctional facilities are experiencing chronic overcrowding, this should provide counties with needed flexibility and assistance in the management of their jail populations.

Thank you for the opportunity to comment on this proposal.

Very truly yours,


WILLIAM PELGRIN
COUNSEL

000015

EXHIBIT 2

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: _____

NYSID #: _____ CRC Case #: _____

Instant Offense: _____ F _____ M _____ V _____

Criminal History: F _____ M _____ V _____ Known Sub. Abuser: Yes _____ No _____

Age: _____ Education: _____ Race: _____ Gender: Male _____ Female _____

POSSIBLE REASONS FOR DENIAL: _____ GRD: _____

<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: _____ Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review _____
(Date)

Approved Denied _____, Raul Russi, Chairman
 Approved Denied _____, Amy Ianora, Commissioner
 Approved Denied _____, Irene Prager, Commissioner
 Approved Denied _____, Jeanne Hammock, Commissioner

EXHIBIT 3

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: Vallella, Guy
NYSID #: 3959873J CRC Case #: 46683

Instant Offense: _____ F _____ M _____ V _____

Criminal History: F _____ M _____ V _____ Known Sub. Abuser: Yes _____ No _____

Age: 59 Education: _____ Race: _____ Gender: Male Female _____

POSSIBLE REASONS FOR DENIAL: _____ GRD: 2/18/05

<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input checked="" type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: [Signature] Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review _____
(Date)

Approved Denied [Signature], Raul Russi, Chairman
 Approved Denied [Signature], Amy Ianora, Commissioner
 Approved Denied [Signature], Irene Prager, Commissioner
 Approved Denied [Signature], Jeanne Hammock, Commissioner

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: Di Toro, Victor

NYSID #: 3445745M CRC Case #: 46680

Instant Offense: _____ F _____ M _____ V _____

Criminal History: F _____ M _____ V _____ Known Sub. Abuser: Yes _____ No _____

Age: 52 Education: _____ Race: _____ Gender: Male Female _____

POSSIBLE REASONS FOR DENIAL: GRD: 12/19

<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: [Signature] Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review _____
(Date)

Approved Denied [Signature] Raul Russi, Chairman
 Approved Denied [Signature] Amy Ianora, Commissioner
 Approved Denied [Signature] Irene Prager, Commissioner
 Approved Denied [Signature] Jeanne Hammock, Commissioner

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: Gonzalez, Manuel

NYSID #: 1925529L CRC Case #: 46682

Instant Offense: conspiracy F M V

Criminal History: F O M O V O Known Sub. Abuser: Yes No

Age: 67 Education: _____ Race: L Gender: Male Female

POSSIBLE REASONS FOR DENIAL: GRD: 12/1

<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: [Signature] Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review _____
(Date)

Approved Denied _____, Raul Russi, Chairman *-recused per EDO*
 Approved Denied _____, Amy Ianora, Commissioner
 Approved Denied _____, Irene Prager, Commissioner
 Approved Denied [Signature], Jeanne Hammock, Commissioner

2nd review
Sept 22nd

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: Yelena, Guy

NYSID #: _____ CRC Case #: 46683

Instant Offense: _____ F _____ M _____ V _____

Criminal History: F M V _____ Known Sub. Abuser: Yes No _____

Age: _____ Education: _____ Race: _____ Gender: Male Female _____

POSSIBLE REASONS FOR DENIAL:	GRD:
<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: [Signature] Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review _____
(Date)

Approved Denied [Signature], Raul Russi, Chairman

Approved Denied _____, Amy Ianora, Commissioner

Approved Denied [Signature], Irene Prager, Commissioner

Approved Denied _____, Jeanne Hammock, Commissioner - revised

nl terms
approved
via phone
9/22 - EFS

2nd Review
Sept. 22nd

THE CITY OF NEW YORK
CONDITIONAL RELEASE COMMISSION

Name of Applicant: Del Toro, Hector

NYSID #: _____ CRC Case #: 46680

Instant Offense: _____ F M V

Criminal History: F M V _____ Known Sub. Abuser: Yes No

Age: _____ Education: _____ Race: _____ Gender: Male Female

POSSIBLE REASONS FOR DENIAL:

GRD:

<input type="checkbox"/> Extensive Criminal History	<input type="checkbox"/> Violation of Probation
<input type="checkbox"/> Violent Criminal History	<input type="checkbox"/> Violation of Parole
<input type="checkbox"/> Multi-State criminal history	<input type="checkbox"/> History of Bench Warrants
<input type="checkbox"/> Serious/Violent Nature of Instant Offense	<input type="checkbox"/> INS Hold
<input type="checkbox"/> Failure to comply with Court mandate	<input type="checkbox"/> Outstanding Warrant
<input type="checkbox"/> Open case pending	<input type="checkbox"/> Waiver of 70.40
<input type="checkbox"/> Failure to benefit from previous Incarceration.	<input type="checkbox"/> Lack of Verifiable residence
<input type="checkbox"/> Failure to benefit from previous Probation	<input type="checkbox"/> Out-of-State residence
<input type="checkbox"/> Failure to benefit from previous Parole	<input type="checkbox"/> Consecutive Sentences
<input type="checkbox"/> Number of arrests within a short period of time	
Other _____	

Prepared: [Signature] Eileen F. Sullivan, Director

Supplemental Investigation _____ Raul Russi, Chairman
(Date)

Conditional Release Review

(Date)

Approved Denied [Signature], Raul Russi, Chairman

Approved Denied _____, Amy Ianora, Commissioner

Approved Denied [Signature], Irene Prager, Commissioner

Approved Denied _____, Jeanne Hammock, Commissioner

[Signature]

EXHIBIT 5

September 16, 2004

Ms. Eileen Sullivan
Director of Conditional Release
New York City Department of Probation
33 Beaver Street
New York, NY 10004

Dear Ms. Sullivan and Board Members:

I am writing this letter in an attempt to explain my personal feelings in a way that cannot be conveyed by my attorneys. I believe my prior application addressed the issues of my sorrow for my crime and my return to a law abiding life with a new found respect for the law as a result of my experience.

I write this letter as I have almost completed three months of incarceration. As you know I am not in a "Club Fed" but on Rikers Island in maximum security/protective custody that is almost the same punishment as solitary confinement. I live in a small cell, an actual cage that allows no one access to me. I am in this cell 22 hours a day on weekends and 18 hours a day on weekdays. While it is for my own safety it is extremely lonely and intense. I feel very sad and depressed. Even my daily trips for my diabetes treatment require my being escorted in hand and leg shackles by a captain and isolation from other inmates, which further depresses me.

As I advised you in my last letter I have been totally demoralized and humiliated. I am constantly in fear of doing or saying the wrong thing. I dwell all day and night on what my life has become. Walking around in shackles, being subjected to strip searches and cell searches, having my wife and children searched when they desire to see me, the fear of my daily interactions with possibly violent prisoners and the constant pressure of not saying or doing the wrong thing when a guard yells out orders or during prison counts.

I have been totally dehumanized. I can not take this much longer. I cry in my cell at night before I try to sleep. Once I start to fall asleep I jump up feeling that I can't breath. I can only sleep a few hours at a time as I usually wake up gasping for air. Once awake I often lie there listening to my heart beat fearing that I am going to have a heart attack. I cry in my cell in the morning when I wake up. I can't control my thoughts and emotions. I forget what I did from one day to the next. When I have the chance to talk to my wife or attorneys, they tell me that I constantly repeat what I said in prior conversations. I don't do this intentionally. I just don't remember what I said. I feel as though I am going to break down.

I have gone to the medical doctor at Rikers seeking help. The doctor prescribed a mild medication for me called atarax that he said would help with my nerves and sleeplessness. He said that only the prison psychiatrist could prescribe stronger medication after completing a mental health evaluation. Since the atarax did not help I sought out a complete mental health evaluation from the prison's psychiatric department. I met with the prison psychologist who spoke to me and advised me to try various breathing and stress reducing exercises. The psychologist said that only the prison psychiatrist could prescribe stronger medicine for me, but that the psychiatrist was on vacation. I asked that an appointment be set up for me with the psychiatrist so that I could get something to truly help me. I have been waiting for this appointment. My condition has only worsened, as the exercises have not helped at all.

I also spoke with a private psychiatrist over the phone from jail seeking help. He said that he could only treat me if he had private access to me and not during a regular jail visit. My attorneys requested that this psychiatrist be allowed to see me in a private setting at Rikers, but this request was denied. I don't know how to cope with my problems anymore. I truly feel as if I am losing my mind.



My personal anguish from trying to cope with maximum security incarceration is further compounded by the guilt I feel from the effect my imprisonment has had on my family. My children who once proudly talked of their father now are the subject of vicious verbal attacks. When the name Velella is spoken now it will be associated with a jailed criminal, someone who lost his Senate seat, his right to be an attorney, and even his right to vote. I have destroyed my family's legacy and I spend countless hours dwelling on how I have harmed my loved ones. The only way I can begin to make it up to my family is to be there with them and start devoting the rest of my life to helping them as well as my community. I ask this Board to not only release me for my freedom and sanity but allow me to go to my family and begin to make up for the pain I put them through.

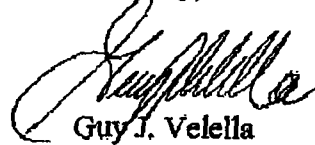
I fully realize that the seriousness of my crime cannot be diminished. I have reflected on this since my indictment and decision to enter a guilty plea and even more while here at Rikers. I ask myself how could I have been so stupid to have participated in this conspiracy. My only rational, while not an excuse, was that I fooled myself into believing that my actions were within proper political and legal boundaries. I closed my eyes to what I did not want to see and split hairs to justify my actions. There is no getting away from the fact that the calls I made on behalf of my father's law firm's clients were wrong. The truth is that improper, illegal influence was attempted to be exerted and I deserved to be punished. I have truly learned a lesson and I have truly suffered.

Please allow me to begin to start my life over by releasing me from this nightmare. I am willing to accept any additional alternatives this Board deems appropriate as a condition of my release such as:

- a) House Arrest
- b) Probation with Restrictions
- c) Community Service

Please help me. Please contact me if you need any other information. Thank you for your time and consideration.

Sincerely,



Guy J. Veillea