



COURT TAKES BPH TO TASK—TWICE

In two separate decisions in the last month California's First District Court of Appeals summarily smacked the parole board for substituting their own analysis, hunches, guesswork, gut feelings, for evidentiary finding or a nexus that would connect the *opinions* of commissioners with actual *facts* indicating current dangerousness of lifers. Equally important, an additional opinion in one of the cases at last recognizes the long-simmering issue of DSL vs. ISL sentencing and the Board's failure to follow the precepts of 3041, wherein the law mandates the board will "meet with the inmate and *shall normally set a parole release date* . . ."

The two cases, *In re: Young* and *In re: Morganti*, both dealt with long-time lifers, both arguably well rehabilitated and both denied parole by parole panels putting their own spin to facts and findings. Both Young and Morganti had served more than 20 years each, both exhibited exemplary behavior while in prison and both received favorably low risk psychological evaluations. Both had long histories of self-help classes and positive programming, well documented and solid parole plans and considerable support in the community. Yet both were denied parole by panels trotting out the ever-popular 'lack of (sufficient, enough, substantial, adequate, pick-your- adjective) insight' into their crime as a prime reason for denial.

Although both *Shaputis* decisions affirmed that the Parole Board is allowed 'broad discretion' in their findings of suitability, both decisions also reiterated that Board decisions must be based on 'some evidence' and factual conclusions. Which is where both the Young and Morganti panels ran afoul of court.

In the Young decision the Appellate Court stated; "The Board violated due process in this case because it considered only some of the relevant statutory factors in making its decision ... the Board ignored numerous suitability factors and evidence that were directly relevant to an evaluation of his current dangerousness. ... the presiding commissioner also made incorrect factual contentions, thereby further indicating that the Board did not consider actual evidence that was relevant to its analysis."

Further, the judges found, "[S]econd, the Board's analysis relies on guesswork. The presiding commissioner did not refer to any evidence, and we have found none in the record (such as an assessment by an evaluating psychologist), that supports his statement that it was "extraordinarily unusual" for a person to have no recollection of the crime in these circumstances, or that, as he implied, such a lack of recall impaired petitioner's insight in a way that was rationally

indicative of current dangerousness. Nor have we found any evidence supporting the Board's apparent view that petitioner *could* recall more about what happened by "thinking" and "praying" more about it. Neither proposition is self-evident. The Board simply speculated about what people should and can recall when they commit extraordinarily violent acts. It cannot rely on such guesswork."

The justices continued their criticism of the denial, singling out in particular several comments by the Presiding Commissioner (Prizmich) for his off-point comments and reasoning, including his dismissal of the low risk finding of the psychologist as "puzzling" (thereby substituting his own lay opinion for that of an [alleged] expert) and his finding that Young's offense was particularly egregious due to "multiple victims;" Prizmich counted family members of the actual victim as additional victims. The Appellate Court was moved to quote directly from the penal code on the legal definition of a victim and remind the panel members they could not, on their own, change that definition.

The Morganti decision, coming later in the same month as *In Re: Young*, was similar enough in circumstances that the court took note, writing, "We very recently collected and confirmed the applicable rules that govern here, in *In re Andrew Young* (2012)." Once again the court singled out statements by the Presiding Commissioner (this time Peck), noting in refreshingly plain language, that one factor on which the denial was based "is manufactured by the Board's mischaracterizations of Morganti's statements to the Board and to Dr. Pritchard—[and]does not exist" and further "the presiding commissioner's conclusion that Morganti did not consider his continued participation in AA or NA 'essential' and might rely only on 'his faith and Catholic upbringing' utterly distorts Dr. Pritchard's comments. "

Peck, in expressing his concern that Morganti might, absent attendance in AA/NA, return to the use of drugs (despite decades of abstinence, deep religious convictions and medical issues that would render drug use a terminal adventure) also "puts words in Morganti's mouth--words he not only never uttered, but words he repeatedly disclaimed," the court found.

The deputy commissioner did not escape unscathed, however. The justices, in making a point to the Board that lifers and advocates have for years called on the Board to recognize, the lack of programming available to lifers, commented ".the deputy commissioner appears to have voted to deny Morganti parole for the additional reason that the 12-step and other rehabilitative programs he participated in were all either so short, or met so infrequently, or consisted of correspondence courses, or were conducted by video conference, that none could be deemed 'comprehensive.' *If the quality of the rehabilitative programs Morganti participated in were deficient, they were the only ones made available to him by the state. So to deny him parole on that basis is, frankly, outrageous.*"

"The distressing nature of this case arises not just from the Board's distortion of the record, but as well from its abject indifference to the considerable evidence Morganti is unlikely to relapse and is suitable for release. While it is not a basis on which we rely, we cannot help but note both commissioners' indifference to the undisputed factors rationally indicative that Morganti is not currently dangerous: his age; his numerous medical infirmities; and most significantly, the several risk assessments uniformly indicating he was a "low risk." (Emphasis added.)

We concur.

In a lengthy and (dare we use the word) insightful concurring and dissenting opinion Justice Kline, while agreeing with the decision to grant Morganti's writ, went further in addressing two additional issues denied by the majority of the court; ISL vs. DSL sentencing and the Board's extreme resistance to granting parole at the initial hearing, despite the mandate of 3041. Morganti's writ seeking relief of the denial of parole also requested the opportunity to conduct discovery and have an evidentiary hearing to establish a factual basis for a due process claim that life term prisoners are almost never granted parole on their initial hearing and the Board's practice of fixing the prisoner's base term only after parole has been granted leads to unconstitutionally long prison terms.

Justice Kline, taking the larger Constitutional view of the entire parole process, sought to bring judicial notice to the board's arguably unconstitutional practices, which, Kline noted, could "deprive[s] him and implicitly all life prisoners a liberty interest safeguarded by article I, section 7, of the California Constitution and the Fourteenth Amendment to the Constitution of the United States." Kline took note of the evidence provided by Morganti, a statistical study undisputed by the California Attorney General, showing that over a 10 year period, from 2000 to 2010, the BPH, in its various incarnations, held 5,993 initial parole hearings. And parole was granted at initial hearings only 22 times, or .37%. If there is any more irrefutable proof that a political rather than factual agenda has governed parole decisions, it has yet to be presented.

In arguing that Morganti's request to pursue this evidentiary hearing should be granted Kline also noted the Board's habit of setting sentence term only after approval of parole, combined with the near-universal denial of parole on initial hearing,

now exacerbated by the long-term denials possible under Marsy's Law, "does not guard against but facilitates the disproportionate sentences resulting from application of the policy." In other words, lifers, because of the decisions and policies of the BPH, are serving inordinately and unnecessarily long terms. Again, we concur.

As welcome as Justice Kline's recognition of this is, it's not news to LSA, to lifers or their families. And while the majority of the three appellate judges did not find enough merit in Morganti's arguments on these issues, the judicial notice given by Kline and his extensive exploration of the facts may well be useful in future cases, and certainly will be useful to those of us fighting this battle in venues other than the courts.

The decisions are: *In re Young* (2012), Cal.App.4th [No. A131729. First Dist., Div. Two. Mar. 14, 2012.] and *In re Morganti* (2012), Cal.App.4th [No. A132610. First Dist., Div. Two. Mar. 28, 2012.]

WHEN YOU WRITE US

LSA receives several dozen letters from lifers each week and we make every good faith effort to respond to all of them. Because our staff is quite limited this often takes longer than we would like, most especially if those letters pose a question that requires some research and fact checking.

We ask your patience in awaiting our response. We also ask your assistance in making our job easier. Please include all your contact information, including name of institution and housing assignment in the body of your letter. Envelopes and correspondence sometimes get separated and while we make every effort to find a prisoner's location (using the CDC's inmate locator) to do so takes extra time, slowing the process even more.

The same applies for requests to be added to our newsletter mailing list. Our regular mailing list at present is nearly 500 names. We are aided in distributing *Lifer-Line* by our supporters who are part of our mail tree; they receive a list of 5-10 inmate names and addresses to which these members mail our newsletter, using LSA's address as the return address.

These mail helpers make it possible for us to reach the many inmates we do, assisting not only in sharing the postage expense but also in the printing costs and time involved. A huge thanks from us to all of them and all lifers receiving *Lifer-Line* owe these members of our extended family their gratitude. This also may help to explain why prisoners within the same institution may get copies of *Lifer-Line* that look slightly different from each other.

Another way we try to keep costs down is to email *Lifer-Line* to prisoner families and friends who then print and mail it in to their loved one. If you have a family member or friend who is willing to take on this service for you, please have them email us at: lifesupportalliance@gmail.com, and mention your name in asking to be placed on the mailing list.

If you don't have anyone to provide this service for you, we will keep you on our mailing list so that you can continue to receive *Lifer-Line*. We thank those of you who take the time and make the effort to contribute to us by sending stamps. They are put to great use and greatly appreciated. Stamps, either books or singles, are more efficient for us than SASE.

In the next few months we anticipate some changes in LSA, all of which we feel will make us a more efficient and effective organization. We may even be able to catch up on the mail more quickly! But undoubtedly there will be some speed bumps along the way, so we ask your indulgence as we move forward.

WHO'S WHO, LATELY, IN CDCR

Amid the revolving doors and musical chairs at CDCR headquarters during the last few months it's been a challenge to figure out who the players are and what position they're playing. For years the prisons system has been carved into several 'missions,' roughly in line with security levels, plus female institutions, with an Associate Director assigned to each mission.

Along with realignment of prisoners has come realignment of assignment areas of responsibility. Gone are the 'missions,' and with them, most of the familiar names of individuals in CDCR hierarchy who have for many years occupied various seats. And as the old canard goes, you can't tell the players without a scorecard.

Following is a listing of the newest definition of missions and corresponding Associate Directors. Please keep in mind, these names can change swiftly and frequently, but as of press date, this is the most current listing available. All can be reached at CDCR, 1515 S. St., Sacramento, CA. 95811

RECEPTION CENTERS: **Ken Clark**, Clark has held several posts in the CDCR, including stints as Warden at both SATF and Corcoran.

HIGH SECURITY (MALE): **Michael Stainer**, Stainer is also a former warden, in fact is still listed as Acting Warden at CCI.

GENERAL POPULATION (MALE): **Terri Gonzales**, another former Warden, this time from CMC.

FEMALE OFFENDERS: **Kathleen Allison**, formerly a warden at SATF, Allison, by virtue of her oversight of female institutions, is also the go-to person for visiting issues.

CONTRACT BED FACILITIES: **Dalinda Harmon**, listed as 'Chief' of this division, somewhat lower in ranking than the Associate Directors above.

As nearly as can be determined, the old Levels II and III have been combined under the heading of "General Population," while what were Level I institutions are largely being converted to other 'levels' as those prisoners formerly housed at this level are no longer entering the state prisons system, but are being diverted to county custody. Those institutions formerly listed as 'High Security' and 'Transitional Housing' are now simply deemed 'High Security.'

As discussed in last month's *Lifer-Line*, many institutions will be formally converted to house different populations as realignment continues. This new outline reflects a reduction in headquarters staff, which overall has decreased by more than 25% since the advent of budgetary constraints and continues to evolve under realignment.

It should be noted, of the above named Associate Directors three, Stainer, Gonzalez and Allison as well as Harmon, are currently noted as being on 'Acting' status, which means things could change at any moment. Stay tuned.

WHERE WE STAND



The urge for revenge, whether it is the death penalty, unreasonable prison sentencing or warehousing of mentally ill because they offend us is one of the great ills of our society. The death penalty is nothing more than ritualized murder. It is the sacrament of our religion of revenge. We as a society indulge in it to make ourselves feel better, more superior and enjoy the false illusion that killing makes us safer. It does not. When we sanction the killing of anyone, most especially those for whom innocence or even redemption is a real possibility, we are nothing more than members of a murderous mob. And those who scream the loudest in favor of the death penalty are usually those who are the most fearful, narrow minded and vengeance driven.

OMBUDSMAN—YOUR FIRST LINE OF RECOURSE

One of the first lines of recourse for prisoners and family members faced with mis-conduct, questionable practices and decisions and just plain irresponsible (not to say brainless) actions by the CDCR has always been the Office of the Ombudsman.

Not too many years ago the Ombudsman’s office had numerous staffers, each assigned to a handful of prisons, to monitor issues and problems and respond to pleas from families and prisoners. Then the Ombuddies office shrank to a low of only 3 individuals to cover all 33 adult institutions in the state, with many juvenile facilities thrown in. Needless to say, that was a daunting task, made even more difficult by a virtual freeze on travel to individual prisons.

Recently, however, the Ombudsman’s office has been resuscitated with the assigning of several more ombudsmen. The staff now numbers five, including long-serving Head Ombudsman Sara Malone. Each has been assigned a slate of institutions to concentrate on.

It is important to understand that the ombudsmen cannot overrule decisions made by prison administrators or CDCR policy; however, they are the first official line of mediation between stakeholders and officials. Their official mission is to work “independently as an intermediary to provide individuals with a confidential avenue to address complaints and resolve issues at the lowest possible level. The Office proposes policy and procedural changes when systemic issues are identified,” and is as close to an official watchdog as CDCR is ever likely to have.

Prisoners, family and friends may contact the ombudsmen by phone or mail with concerns on nearly any subject other than legal factors of cases or parole. Prisoners concerned with the fate of their 602s on any issue are advised to mail a copy of the 602 to the Ombudsman’s office via the legal mail process. However, a 602 is not necessary; you may simply write a letter. Friends, family and interested parties with concerns may write or call directly.

Any correspondence, whether by phone or mail, should include the name and CDCR number of the prisoner and the prison where (s)he is located; the name and contact number of the person providing the information and the relationship to the prisoner. A brief but clear description of the problem or issue should follow, including what actions the prisoner or communicant has taken.

Herewith is a listing of each ombudsman, along with individual contact information and the prisons on which they focus. Please note, mail for all ombudsmen should be sent to the individuals’ attention at: CDCR, Office of Ombudsman, 1515 S St. Sacramento, CA. 95811.

SARA MALONE: (916) 327-8467

CCC CCWF CIM CIW
CRC HDSP VSPW

CHERRITA WOFFORD: (916) 324-6123

CAL CEN COR MCSP
RJD SATF SCC

ROSALINDA ROSALEZ: (916) 323-2944

CCI CTF LAC PVSP
SVP DJJ FACILITIES

SONYA VALLE: (916) 327-8446

AVE CVSP DVI ISP
KVSP NKSP WSP

JEAN WEISS: (916) 324-5458

CMC CMF FOL PBSP
SAC SOL SQ

We dedicate the publication of this original verse to the Parole Board Commissioners, who have made 'insight' both a buzz-word and a curse. And many of whom, we believe, could use a little 'insight' themselves.



UNSIGHT

Tell me the worst thing you've ever done
for that's all you are to me
Speak only of the mistakes you've made
that's all I need to see

Reveal to me your faults and flaws
and the anguish you have cost
failings, to me, are all you are
the rest of you is lost

I will not take you at your word
or acknowledge who you've become
you are to me nothing more
than that dreadful thing you've done

The rest of us are each a sum
but of you such is not true
So tell me the worst thing you've ever done
that is all I'll see in you

B.Brown 2012

LSA CONTACT

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