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**LIFER-LINE**

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THE NEWSLETTER OF LIFE SUPPORT ALLIANCE

### **VOICES INSIDE THE WIRE**

As prisoner responses to Life Support Alliance's parole hearing questionnaire continue to come in we are mining the surveys for information on an array of specifics involving the attitude, comments and actions of commissioners, deputy commissioners and psychologists and the hearing proceedings themselves.

And while there are few real surprises the depth and breadth of the transgressions by the officials involved paint a picture of a parole board with a definite mind set (against parole) pursuing an agenda of their own (denial of parole dates) and bent on finding reasons to justify their actions. Though settled law has determined the life crime itself is not sufficient, or even paramount reason, to deny parole, most denials still cite the crime and circumstances as the primary reason for the decision.

But commissioners have learned: they now couple this canard with the newer, more subjective finding of no or insufficient "insight." Nearly 60% of the reasons for denial in the survey responses listed the "heinous nature" or cruel circumstances of the crime as the reason for denial of parole, coupled 42% of the time with a reference to lack of insight. In finding lack of insight the commissioners rely heavily on the psychological evaluations made by the BPH's Forensic Assessment Division (FAD), a questionable and secretive group of psychologists working at the direction of and accountable only to the BPH. Indeed, in nearly 20% of the denials on which we received information the psych report itself was cited as a reason for denial.

While this trio of primary reasons for denial are used across the board by all commissioners, some seem more wedded to these terms than others. Commissioner Michael Prizmich used the crime in 90% of his denials (in figures for the first four months of 2010 Prizmich denied over 68% of cases before him) with Commissioner Hollis Gillingham following close behind with the crime the reason for 83% of her denials (January through April, 2010 Gillingham had a 58% denial rate).

Insight seemed to be the favorite reason for Commissioner Lea Ann Branch (Chrones) who used a finding of lack of sufficient insight in 66% of denials she handed down (overall denial rate January through April nearly 49%). Insight also appealed to Commissioner Prizmich, who made use of it in 63% of his denials, often coupled with the crime itself.

Former Commissioner Mary Ann Tardiff, who resigned her seat on the board last month, was the most egregiously fixated on these reasons, using both the crime and insight in 100% of her denials reported in our survey (her denial rate in the first 4 months of the year was nearly 55%).

Least anyone receive the impression that commissioners are increasing their rate of parole grants when a denial rate of 55% is reported it should be noted that no commissioner's grant rate in the period January through April, 2010 exceeded 18% and some were as low as 6%. Postponements or cancellations made up the remaining numbers of commissioner's scheduled hearings to reach the 100% mark. The average parole grant rate in 2009 was 16%. This figure does not include those dates set by the parole board and reversed by the Governor.

Comments made by the commissioners to prisoners ranged from the laughable to the bizarre to the truly outrageous. One inmate was chastised for his "repeated association with criminals while in prison" (Garner, 11/09); another prisoner "possesses a dark side that will keep him from attaining" parole (Tardiff, 12/09); family support from out of state "might as well be from the dark side of the moon" (Arbaugh, 4/10) to the prisoner "just haven't [sic] done enough time" (Anderson, 11/08).

Many commissioners frequently admonished prisoners for not attending or “stopping” attendance to AA and NA programs, never bothering to inquire if those programs were available at the institution on a regular basis. Or prisoners were told that despite years, often decades of participation in AA/NA that they had not done enough. Indeed the issue of what is enough and how to reach that level is often rhetorically asked by survey respondents. Perhaps the poster boy for this question is an inmate who has been to 32 parole hearings (receiving 1 year denials until the advent of Marsey's Law) and being repeatedly denied.

In October of 2009 he appeared before the board with a package of rehabilitation that included 309 self-help chronos, 8 vocational trades, 19 vocational skills and 885 laudatory chronos over the course of his incarceration. The decision? Denied three years, recommendations to continue to remain discipline free, continue in self-help programs and continue to gather supportive chronos.

Other objectionable instances included prisoners being forced to show and explain their tattoos, with a deputy commissioner noting in one instance he “always had a problem with prisoners and their tattoos” (DC Harmon, 12/09). And commissioners seem to be at odds as to how prisoners are to become suitable for parole, one telling a prisoner “you can't program your way out.” (Doyle, 9/09) while another told a different prisoner “you have to earn your release date” (Anderson, 4/09). Perhaps Doyle and Anderson should compare notes.

The psychologists performing the pre-hearing evaluations, all part of the BPH's FAD, seem to be of much the same cloth and intent as the commissioners. LSA is delving into the creation, workings and funding of the FAD, a division of BPH so little known and discussed that many, including legislators and even some BPH staff, are unaware of its existence. Indeed, when we contacted a senior psychologist at the FAD her alarmed response was not about answering our questions but trying to discover how we acquired her office phone number. No secret, like most state numbers, it is available on the internet.

As detailed in previous newsletters (July and August) the FAD and psychologists employed there are an issue we believe merits examination and oversight. The psychologists often exhibit reprehensible behavior on par with the commissioners.

One FAD psychologist told an interviewee he did not understand the prisoner's references to the Biblical Book of Proverbs in gaining insight into his previous actions and suggested the prisoner needed to talk to a priest. When prisoners declined to participate in the interview (there is no legal requirement for a new psych eval prior to parole hearing) the psychologists often created an evaluation and profile strictly from documents in the prisoner's C-file, some of which were years old.

Prisoners who did participate in the interviews often found information in their C-files to be incomplete or incorrect but the psychologists seldom seemed interested in correcting or verifying the information. Indeed, one inmate went through his entire “evaluation” without the psychologist ever confirming the prisoner's name or CDC number and there have been numerous documented instances in which the commissioners received an alleged psychological evaluation bearing the wrong name and/or gender for the inmate at the hearing.

Psychologists often suddenly offer up a diagnosis of a personality disorder, despite the prisoner having spent years in custody and programming with no such diagnosis; a finding of “unstable social history” seems a popular item with the FAD, based on questions regarding the inmate's childhood and early sexual experiences. Many, many prisoners indicated they were uncomfortable with questions regarding their past sex lives when there was no sexual component to their life crime and sexual offenses had never been a part of their past. Prurient interest? Professional interest? Or questions take from the Static-99 test, ment for use in determining treatment and housing for sexual offenders but seemingly often used as part of the “evaluation” for the majority of prisoners?

In summary of what the surveys have so far revealed, 55% of those responding said their risk level gleaned from the psychological evaluation went up, usually from a previous finding of low risk to a finding of “moderate/low” or moderate, though some elevations from moderate to high/moderate were noted after an FAD evaluation. Commissioners seem to seize on the “moderate/low” finding, shortening it to a finding of just moderate, which they judge to be too dangerous to release into society.

However, the definition of "moderate" includes "calm, temperate, average." If moderate, calm, temperate, average individuals are too dangerous to be in society it begs the question who is safe to be in the free world.

In simple numbers, 38% of those inmates sending responses said they were told lack of insight figured in their parole denial and 55% saw their psych rating elevated from the previous evaluation. And interestingly in light of budgetary impact, fully 72% of those with denials indicated they have, will or are currently filing habeous writs in the courts, thereby increasing the cost to all Californians for the BPH's failure to follow the intent of the law, in "shall normally find" prisoners suitable for parole.

LSA urges all life-term prisoners to continue to respond to the survey (see page 5). The information provided on individual BPH commissioners will be used to form the basis of our position when that commissioner faces confirmation hearings and information on FAD psychologists and their actions is useful in our look into this shadowy and questionable group.

### **BPH EXECUTIVE BOARD**

The September meeting of the Board of Parole Hearing Executive Board was rather short and unremarkable, save for the announcement of another departure from the commissioners' ranks.

Commissioner Peter LaBahn was not called before the Senate Rules Committee for confirmation within the requisite 365 days since his appointment by the Governor, so his appointment and service on the BPH ended as of Sept. 8, 2010. With the resignations last month of Commissioner Mary Ann Tardiff and several months ago of Commissioner Thomas Powers the departure of LaBahn, in combination with last month's appointment by Schwarzenegger of Susan Melanson (awaiting confirmation) to the BPH brings the total number of commissioners available for hearings to 10, down from the full board compliment of twelve.

Schwarzenegger also recently re-appointed several sitting commissioners, meaning their confirmation clock begins ticking again. Chairman Robert Doyle, former Riverside County sheriff; Lea Ann Branch (Chrones), career CDCR official; Arthur Anderson, formerly of the California Highway Patrol; Troy Arbaugh, 25+ year veteran of the Nevada County Sheriff's office and Hollis Gillingham, late of the Santa Clara County probation department, were all re-appointed to the \$111,845 yearly job. It was noted by Executive Director Martin Hoshino that Commissioner Chrones is now re-adopted her maiden name of Branch.

Hoshino also took the opportunity at the meeting to praise the commissioners for continuing to perform their jobs, including travel, in spite of budget issues which have resulted in lapses in their pay and expense reimbursement schedule. LSA notes, however, that the commissioners are, in this respect, in much the same predicament as many other state employees, but at the rate of over \$9,000 per month salary, may be better able to weather this storm than the average state worker, who is also expected to remain on the job.

During the open public comment segment of the meeting LSA offered remarks (see following) on the performance of District Attorneys during both parole hearings and Executive Board meetings. Though we expect no particular change in this we felt it was an opportune time and place to put into the public record our observations, objections and concerns over the continual retrial of prisoners by the DAs in these sessions.

During closed session the BPH agreed to refer one inmate to the courts for compassionate release and declined another inmate the same finding. On a positive note the commissioners affirmed their decisions to grant parole dates to 7 inmates whose dates were referred back to the commissioners by the Governor, as well as one prisoner whose grant of parole date was up for en banc review and ordered rehearings for two others due to term calculation error.

### **LSA ON THE RECORD**

*The following comments were offered for inclusion in the public record of the Sept 21, 2010 Board of Parole Hearings Executive Board meeting.)*

Good Morning Commissioners

I am Vanessa Nelson speaking on behalf of Life Support Alliance. We advocate for the parole of suitable term to life prisoners.

My remarks today concern the tenor and content of statements made by the various District Attorney's representatives who appear before you not only at parole hearings, but monthly at these Executive Board Meetings as well.

While it is not surprising that almost without exception these individuals speak against either compassionate release or parole, what is troubling is the content of their comments. Parole hearings, including, we must assume, en banc considerations, are said **not** to be wholly about the original crime, but rather the prisoner's rehabilitation, present status and parole suitability. However, each District Attorney's proxy recounts, in exquisite detail, nothing but the circumstances of the original crime.

One recently offered to provide the commissioners with autopsy findings and we have verified incidents during parole hearings in which the DA representatives, contrary to hearing guidelines, addressed questions directly to the inmate and/or referred to the inmate as "the defendant."

From our reading of numerous transcripts it appears Commissioners go to some lengths at the start of parole hearings to inform the prisoner that the hearing is **NOT TO BE** a retrial of the original crime. The facts of the crime, the verdict and sentence are available to the commissioners in the prisoner's C-file, and are, the commissioners state, taken as fact.

However the comments and performances by the District Attorneys belie that assurance. We see it here, in these proceedings, and find it in the multitude of hearing transcripts we read. It is one of many aspects of the parole process we find troubling and questionable. We request the board and the various District Attorneys to be mindful of the board's statement, that the parole hearing **NOT** be a simple retrial of the life crime. The focus of the hearing should be, as intended, an evaluation of the entirety of the presentation, including due consideration to the caliber of rehabilitation and **current** status and suitability of the prisoner.

### IN COMING WEEKS

While it seems all legislative eyes and attention remain on passage of the state budget LSA will use the coming weeks to make the rounds of Senate and Assembly offices documenting the flawed conduct of the BPH and its minion Forensic Assessment Division (FAD).

We will be requesting various Senators to seek an in-depth examination of the BPH process and purpose in creating the FAD and the conduct, costs and consequences of the FAD. We believe we have ample documentation to show legislators that:

1. the BPH and FAD are operating without sufficient oversight and control
2. the results of this wayward operation are excessively costly to the already strapped state budget
3. some oversight and accountability must be brought to bear on the BPH/FAD for both the protection of the state's financial resources and the human and constitutional rights of prisoners.

In coming weeks we will be requesting our supporters and followers to write, call or FAX their own and other state Senators in support of this request. As often stated, while we cannot bring all of our number to Sacramento and the capitol to meet with various legislators, we can bring our voice and numbers to bear on issues of importance.

At the appropriate time LSA will send an email update to all on our email list with information on who to contact and how to encourage the Senators to call for and support this look into the BPH.

**REVIEWING ACTIONS OF COMMISSIONERS, DEPUTY COMMISSIONERS AND PSYCHOLOGISTS IN LIFER PAROLE HEARINGS, 2007 TO PRESENT**

This is an anonymous questionnaire. It is not necessary to disclose the name or CDC number of the prisoner who appeared before the parole board. If you wish to reveal that information it will be kept confidential.

LSA has been given the opportunity to make use of a legal and confidential third party investigatory team to review parole denials with an eye toward improper decisions, comments, attitude and demeanor, misstatements of fact and other possibly egregious errors committed by the BPH in hearings.

Using the general information of date of the hearing, institution where the hearing was held, and names of the commissioner and deputy commissioner sitting at the hearing this team will access several days of hearing transcripts, thus obscuring the target transcript from identification.

Detail provided such as reasons for denial, comments/statements of the board will point the team toward problems to look for; these problems are often found in other than the target transcript, exhibiting a pattern of improper decisions which can be highlighted at confirmation hearings and other actions. This same procedure can be used for psychologists preparing the pre-hearing evaluations.

Please provide as much detail as possible, use additional sheets of paper if desired. We will fight this battle on behalf of all lifers, but you must give us the tools to do so. **Mail to Life Support Alliance, PO Box 3103 Rancho Cordova, Ca. 95741.**

DATE OF HEARING\* \_\_\_\_\_ INSTITUTION\* \_\_\_\_\_ SENTENCE \_\_\_\_\_

MEPD \_\_\_\_\_ COMMISSIONER/DEPUTY COMMISSIONER\* \_\_\_\_\_

OUTCOME\* \_\_\_\_\_ LENGTH OF DENIAL\* \_\_\_\_\_ INITIAL/SUBSEQUENT \_\_\_\_\_

REASONS FOR DENIAL\* \_\_\_\_\_

EVER BEEN FOUND SUITABLE/WHEN\* \_\_\_\_\_ REASONS PREVIOUS DENIAL \_\_\_\_\_

STATE/PRIVATE ATTORNEY \_\_\_\_\_ ATTORNEY NAME \_\_\_\_\_

DATE OF PSYCH EVAL.\* \_\_\_\_\_ RISK LEVEL\* \_\_\_\_\_ PSYCH NAME\* \_\_\_\_\_

RISK ASSESSMENT CHANGED FROM PREVIOUS HEARING \_\_\_\_\_ PREVIOUS RATING \_\_\_\_\_

DO YOU FEEL COMMISSIONERS EMPHASIZED NEGATIVES/IGNORED POSITIVES(HOW SO) \_\_\_\_\_

IMPROPER/INCORRECT COMMENTS BY BPH OFFICIALS(EXAMPLES) \_\_\_\_\_

COMMENTS/QUESTIONS BY PSYCHOLOGIST YOU FEEL WERE NOT RELEVANT(EXAMPLES) \_\_\_\_\_

HAVE YOU/WILL YOU FILE A WRIT ON THIS DECISION \_\_\_\_\_

DO YOU FEEL THIS HEARING WAS A RE-TRIAL OF THE CRIME \_\_\_\_\_

\*required information

## NAMES AND ADDRESSES YOU CAN USE

### **Board of Parole Hearings Commissioners**

Robert Doyle, Chairman  
Arthur Anderson, Jr.  
Troy Arbaugh  
Lea Ann Branch (Chrones)  
Jack Garner  
Hollis Gillingham  
Susan Melanson  
John Peck  
Robert Pepler  
Michael Prizmich

### **BPH Address**

PO Box 4036  
Sacramento, Ca. 95812

### **Elected Officials**

Gov Arnold Schwarzenegger  
State Capitol Building  
Sacramento, Ca. 95814

Sen. Mark Leno  
Chair, Senate Public Safety Committee  
State Capitol, Room 4061  
Sacramento, Ca. 95814

Sen. Darrell Steinberg  
Senate President Pro Tem  
Chair, Senate Rules Committee  
State Capitol, Room 205  
Sacramento, Ca. 95814

Assemblyman Tom Ammiano  
Chair, Assembly Public Safety Committee  
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