



The Assembly Public Safety Committee hears from prisoner advocates and the CDCR on conditions inside SHU units

### **A TALE OF TWO BAYS; GUANTANIMO AND PELICAN**

In a packed hearing room in front of members of the Assembly Public Safety Committee former SHU prisoners, family members, religious leaders, attorneys, psychologists and social activists told the shameful story of California's ultimate gulag, SHU incarceration in the state's prison system.

Sparked by the recent hunger strike by Pelican Bay SHU prisoners that spread throughout the state and to California prisoners housed in other states, the hearing was called and chaired by Assemblyman Tom Ammiano (D-San Francisco), who expressed his commitment to working with stakeholders to achieve some relief for the situation. In addition to Ammiano the Public Safety Committee is composed of Assembly members Steve Knight (R-Antelope Valley), Gilbert Cedillo (D-Los Angeles), Curt Hagman (R-Chino Hills), Jerry Hill (D-San Mateo), Holly Mitchell (D-Culver City) and Nancy Skinner (D-Oakland).

One of the first to testify was Earl Fears, a former inmate at Pelican Bay SHU. Fears spoke movingly of the inhumane treatment meted out, including withholding of toilet paper, showers, even timely access to insulin. He spoke of being cut off from family, lawyers, no human contact including phone calls, wondering if anyone cared what was happening. Rev. William McGarvey of the National Religious Campaign Against Torture, noted the components of the SHU, solitary confinement, sensory deprivation and assault, were torture, adding there is no respect or protection within the SHU confines for religious practice or needs. He added SHU terms lead to abuse of lesbian, gay, bisexual and trans-gender inmates and more suicides occur in SHUs due to torture and hopelessness.

Well known inmate attorney Charles Carbone told the committee SHU confinement does not create or promote public safety but simply creates unjust treatment through senseless suffering and misery.

“Courts do not have the ability to fix this injustice,” Carbone told the hearing, “therefore it is upon the legislature to bring on the remedy.” Carbone took the present committee back several years to the time when legendary state Senator John Vasconcellos, in an earlier hearing on SHU abuses, told CDCR that inmates confined to SHU terms must be told the reason for that designation, a requirement the department continues to ignore in practice.

Carbone also spoke to the inaccuracies in gang identification and the flawed practice of using confidential source information, which he called both common and suspect. Carbone noted the wide variance in prison operations, which he characterized as the reign of “personality not policy.” Carbone reported that while the CDCR maintains prisoners “earn” their way into the SHU there is a lack of 115 violation reports to back up this assertion.

University of Santa Cruz psychology professor Craig Heaney concurred, verifying his profession has long known solitary confinement can drive people mad and noting that as early as the 1970s solitary confinement was determined to be cruel and inhumane punishment. Heaney chastised the CDCR for repeatedly ignoring both the expert opinion of clinicians and of such judicial voices as Thelton Henderson regarding the long term effects of prolonged or permanent SHU assignment. Heaney noted that under these conditions the gang problems becomes worse, so the CDCR’s justification for the SHU is “not only in vain, but counterproductive.”

Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children and a member of the negotiating team working with the Pelican Bay SHU prisoners, questioned why tactics determined to be torture when used at Guantanamo Bay were not considered torture at Pelican Bay.

Dr. Terry Krupers, noted psychologist and critic of SHU confinement, took the CDCR to task for being “out of compliance” with humane requirements for SHU inmates. Dr. Krupers cautioned the assembly members that while CDCR representatives would assure the committee the department is in compliance with requirements and taking care of inmate needs, the committee should not believe those assurances. Krupers noted that 50% of prisoner suicides occur within the 2 to 6% of the inmate population housed in SHUs.

Krupers told the committee members the CDCR has done nothing to correct the major issues already identified. SHUs are not creating safer prisons and the department’s vaulted “de-briefing” can get inmates killed.

The awkward task of trying to cast the CDCR and its SHU policy in a positive light fell to Undersecretary Scott Kernan, a long-time department agent and usually glib communicator. At the hearing, and faced with a perfect storm of a hostile audience, irrefutable expert testimony on the egregious effects of SHU terms and skeptical legislators, Kernan scrambled to defend the indefensible. Trotting out the old CDCR bromide of “the worst of the worst” must be housed in SHU facilities, Kernan sought to justify the policy by throwing out an assertion that 8,000 correctional officers were assaulted each year.

Of course Kernan neglected to mention an “assault” on a correctional officer can be virtually anything, including accidentally coming into contact with an officer or verbal “assaults,” though when questioned by Assemblywoman Holly Mitchell on how many officers had been killed while working in SHUs Kernan had to admit “I don’t have that data.”

Kernan defended the department’s policy of restricting media access to SHU inmates saying the department “simply can’t allow” this contact, as the media would “sensationalize their cases like Scott Peterson and Charles Manson.”

Assemblyman Ammiano, in a well-punited swipe at how intransigent the CDCR is to making changes, questioned why none of the changes recommended in 2007 had been implemented, asking “Isn’t this

2011?" Ammiano also challenged Kernan on why there was no way for an inmate to challenge or appeal information given by an anonymous informant, asking what protection inmates had against erroneous "information." When Kernan confirmed there was no appeal of this sort of information, but defended the department's effort to "corroborate" the information Ammiano noted that despite Kernan's "experience with many years in [the department]...something is clearly wrong."

Other members of the committee voiced similar concerns. Assemblywoman Nancy Skinner noted that despite Kernan's assurance that it was possible for inmates to "work their way out" of the SHU, "...it appears once someone is in there, they usually stay in there..doesn't this go against what you've just told us?" In answer to her question on average length of time in the SHU (Kernan admitted to "6 to 8 years"), Skinner noted "That's a really long time and is contradictory to what you just told us."

Assemblyman Hagman questioned to security advantage gained from preventing SHU inmates from contact with their family and isolating them. Hagman asked if a third party could advocate for SHU inmates or they had access to an independent review of their status. This prompted Kernan to launch into a "woe is us" grievance about how "over audited" the CDCR is.



**Assemblyman Tom Ammiano speaks to an anti-SHU rally prior to chairing a hearing on SHU procedures and abuses**

Assemblywoman Holly Mitchell expressed her concern over the point system used to validate prisoners for SHU terms, exclaiming "It could be me. I think that's amazing, Mr. Chair." Mitchell told Kernan she had been "cautiously optimistic about hearing your testimony so we could get some answers, but I must say, I am disappointed to hear you say that the current status quo is 'appropriate.' Our job is to determine if there is a violation of human rights here and when we talk public safety that also means inmates and officers. It appears the SHU process doesn't work."

In an unusually long public comment period of over an hour many spoke of SHU abuses and near life- time incarceration in the SHU (25 years in some cases). Life Support Alliance reminded the committee of the challenges faced by life term inmates in the SHU, where they are denied access to the very components required by the Board of Parole Hearings to be found suitable for parole.

Ammiano expressed his commitment to continue this debunking of the SHU and holding officials accountable for continued abuses and torture. LSA is making a concentrated effort to get our newsletter into SHU inmates and will pursue what additional efforts and measures the legislature undertakes to remedy this disaster.

For more see Page 8.

## THE LATEST LIE

Many nerves have been rattled and rumors run rampant recently due to the introduction of a last-minute, Johnny-come-lately bill by Sen. Ted Gaines (R-Roseville). SB 391, peddled under the misleading and self-serving title "Parole Reform Act of 2011," is in reality a politically exploitive bill based not on fact, but on the desire of the sponsors to grab their 15 minutes of political fame through the old canard of tough on crime, facts be damned. This bill, if passed and signed into law, would allow parole commissioners to deny parole to life term inmates simply and solely on the commitment crime; in essence, this bill is an attempt to reverse the *Lawrence* decision.

Masquerading as an improvement to public safety and a solution to the system errors that allowed federal parolee Phillip Garrido to go free, kidnap and hold young Jaycee Dugard for 18 years, all the while he was on parole and submitting to visits by parole officers, SB 391 would in fact make no impact on horrendous situations like the Dugard case. Gaines, uninterested in facts and reality, is hawking his premise that legislative overturn of *Lawrence* would advance public safety and prevent the Dugard/Garrido scenario from playing out again.

Prior to Gaines' formal introduction of the bill Life Support Alliance met with his legislative staffer, one Michael Cox, to acquaint Cox and Gaines with the facts of lifer parole and recidivism. While admitting this bill would not have prevented Garrido from being released, nor likely prevented the abduction of young Dugard, Gaines' office was simply uninterested in facts. Phillip Garrido, the convicted perpetrator, was never a life term inmate under the California system, was never required to appear before a California parole board to prove his suitability. The Garrido fiasco was a failure of California parole supervision, not parole granting. The sole reason to tie this unscrupulous bill to the Dugard case is to take unconscionable advantage of the publicity value.

In Gaines' haste to get this egregious fabrication before the public for maximum publicity value he opted for a drastic tactic known as "gut and amend," taking an already dead bill on a different subject (in Gaines' case, SB 391 originally dealt with vehicle registration), toss out all the original language and amend, or change it to fit the present purpose. This was the only way Gaines could manage to present this bill to the current session of the legislature, the deadline for introducing new bills having long passed.

SB 391 will see its first challenge in the Senate Public Safety committee and communication from the office of committee chair Sen. Loni Hancock (D-Oakland) this week indicates she does not intend to hear the bill before the adjournment of this legislative session, expected within a week. This means Gaines' misbegotten bill will remain in suspended animation until next year. Immediately after formal introduction of SB 391 LSA issued a call to action to our members and many, many responded, peppering members of the Senate Public Safety committee with letters of opposition. An informal poll of legislators in both houses indicates there is at present little support for the bill and the likelihood of Gov. Brown signing it if passed is hardly assured.

We urge all our supporters to keep up the pressure on legislators to defeat this egregious, exploitive bill whenever it rears its ugly head. In addition to your own legislators and those on the Senate Rules committee contact the co-sponsors of the Gaines bill: Senators Doug LaMalfa (R-Rocklin); Mark Wyland (R-Carlsbad); Assembly members Susan Bonilla (D-Contra Costa); Alyson Huber (D-EI Dorado Hills); Jim Nielsen (R-Gerber, also a former BPH chairman); Beth Gaines (R-Roseville, and wife of Sen. Gaines) and Dan Logue (R-Chico).

Gaines and his cohorts are using a family's tragedy and unsubstantiated pretense to fan the fires of public fear. This is political opportunism and exploitation at its most egregious. It is time to call our politicians to account for their actions, their misrepresentations and intentional omissions of fact. Gaines et al should retract this wasteful, dishonest and unneeded bill from consideration and offer their apologies to the citizens for this attempt to further their own ambitions at the public's expense and to the family of Jaycee Dugard for re-victimizing them in a most callous manner.

## **THE BPH FAILS TO LAUNCH--WILL THE FAD FADE?**

Following the Board of Parole Hearings' latest attempt in July to justify the creation and continuation of the notorious Forensic Assessment Division (FAD) for preparing psychological evaluations of life term inmates Life Support Alliance found and presented to the Office of Administrative Law (OAL) clear evidence of the BPH's brazen fabrication of supposed professional support for the FAD (see July, 2011 *Lifer-Line*). The BPH had until 5 pm on Sept. 2 to deliver to the OAL their response to the objections and evidence offered by LSA and many other stakeholders.

As *Lifer-Line* goes into production, on Sept. 2 at 7 pm, the OAL had not received the BPH response.

The OAL, admittedly a bit stunned by the Board's failure to make the deadline, has indicated this attempt to codify and justify the FAD is now dead. Should the board decide to proceed in their attempt to follow the law, they must find and develop new reasons, new evidence, new proof that the FAD is not only needed, but being lawfully constituted.

What happens now largely depends on the BPH. Will the board begin anew in an effort to save their pet project, or will they simply, in spite of the OAL's denial of authorization and in the face of the underground determinations, continue to subject lifers to the FAD's inequities? Or, will the board administrators take a good, hard and uncensored look at the FAD and realize it needs to just go away?

Many stakeholders in the life term inmate parole process once again submitted objections to the FAD, offering probing questions into the operation and creation of the FAD as well as the utility of its practices and intent of clinicians. Among those whose submissions were particularly probing was the office of attorney Michael Sattris, who succinctly questioned the need for universal psych evals for all lifers and the Board's assertion that psychologists working in prisons and treating prisoners cannot provide a professional, unbiased evaluation. Dr. Barry Krisberg, noted psychologist and participant in the 2006 meeting the Board purports to be the empirical basis for the FAD, wrote a pointed letter stating unequivocally that the Board had "mischaracterized" his participation in and the conclusions of that group and disputing the need and appropriateness of the FAD's tests. Dr. Janice Thomas, a licensed clinical psychologist, offered a detailed and professional critique of the FAD methodology; it was not a flattering picture.

Whatever happens, LSA will continue to fight the FAD at every level.

## **LIFER-LINE IN SPANISH**

In an effort to reach the maximum number of life prisoners with information and assistance Life Support Alliance has begun producing our monthly newsletter, *Lifer-Line*, in Spanish. Because we utilize an on-line translation system the resultant product may not be of fluent conversational quality but should be adequate to convey needed information to that large segment of the California prisoner population whose first language is Spanish.

If you would like to receive the Spanish version of *Lifer-Line*, either through the mail or via email, please send a request to switch your edition Spanish. As with the original version of the newsletter we encourage those who receive the publication by email to print and mail multiple copies and those prisoners who receive *Lifer-Line* to share the information with as many others as possible.

Because we are, by necessity, using a generic translation program we recognize there will from time to time be inaccuracies or awkward phrasing; we ask our Spanish-speaking readers to bear with us on this. Unfortunately, we do not have fluent Spanish speakers on staff, so please continue to send requests and questions in English.

## **BPH AUGUST MEETING; MORE NEW FACES**

High points of the August Executive Board meeting of the Board of Parole Hearings were comments by several members of the public urging the board members to look beyond crime and conviction toward rehabilitation and redemption when contemplating granting parole as well as the introduction of several new parole commissioner appointees.

Among the comments from the public was a reminder that while the nature of a crime that resulted in a life sentence will never change, those who committed the crime and are serving prison terms can change. History remains the same, but people move forward, mature and grow.

Another speaker voiced the belief that “we are doing an injustice to ourselves by incarcerating 18-year-olds and continuing to hold them until they become old men. At some point they are no longer a threat and we must understand they are no longer a threat.”

The Board, including a phalanx of new appointees, appeared to listen to the speakers, some of whom came from Southern California not to plead the case of an individual prisoner, but to speak for the fair consideration of all lifers.

Six days before the Executive Board meeting Governor Brown announced the appointment of six more parole board commissioners, a mix of new faces and hold-overs from the Schwarzenegger days. Reappointed by Brown were Commissioners Michael Prizmich, Jack Garner and John Peck. All three have already spent several years as commissioners, but must be confirmed in this new appointment cycle, first by the Senate Rules Committee and then by the full Senate, all within a 365-day window from their appointment date.

New to commissioner seats are: Dan Figueroa, 60, of Blythe. A former correctional counselor at Chuckawalla Valley State Prison from 1996 to 2010 and business services supervisor from 1992 to 1996. Figueroa has held other positions with the CDCR and the state Board of Equalization.

Howard Moseley, 44, of Sacramento, has served as an adjunct professor at the University of the Pacific, School of International Studies since 2005, has held several positions at the Office of the Inspector General and was a deputy attorney general in the Criminal Law Division of the California Department of Justice.

Terri Turner, 56, of West Sacramento, has served as a retired annuitant deputy commissioner with the Board since 2008. She retired as a regional adult parole administrator in the California Department of Corrections and Rehabilitation after serving there since 1980. Turner has served as a DC on lifer parole hearings.

## **ADVOCACY SEMINAR PLANNED**

Life Support Alliance principals Gail and Vanessa field countless letters and phone calls each week, many asking what they can do to help with our efforts. The answer? Become involved, become an advocate and work the system.

To aid in increasing our pool of advocates LSA will hold a seminar/training session for those wishing to gain a better understanding of both the political system and the parole process. The seminar will be free and will provide aspiring advocates with information and encouragement on contacting politicians, who to contact, how to make that phone call or write the letter and mount an effective argument.

The first seminar will be held in Sacramento, preliminary date in late October. If interest and resources permit we hope to hold a similar meeting in Southern California in early 2012. If you are interested in attending such a meeting please email or call with your name and availability.

## **SENATE PUBLIC SAFETY COMMITTEE MEMBERS/CONTACT INFO**

Send to State Capitol, then room number, Sacramento, 95814

These Senators will be the first to consider SB 391, Sen. Ted Gaines' effort to reverse the *Lawrence* decision and continually imprison lifers based solely on immutable factors of the original crime. Please continue to contact these legislators and your own local Senator to oppose this bill.

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SEN. JOEL ANDERSON  
ROOM 2054, FAX (916) 447-9008

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## A TALE OF TWO BAYS, IN PICTURES



Both of these prisons, one federal, one state, have been accused of condoning and using torture methods on inmates. Both espouse to house “the worst of the worst.” Both are secretive, notorious and synonymous with human rights abuse. One is a national shame, the other a state disgrace. Is the only difference between Guantanamo Bay and Pelican Bay geography? Can you tell the difference?

