



## **CONVERSATIONS WITH THE BOARD**

One of many new practices instituted by the Jerry Brown-appointed administration at the Board of Parole Hearings is a quarterly meeting and conference call with all stakeholders in the lifer and parole process. While information on board policies and procedures was, at one time and under previous leadership, kept a tightly guarded secret, BPH Executive Director Jennifer Shaffer and Chief Legal Counsel Howard Moseley have, since their respective appointments, been accessible, open and informative about what goes on in that big building on K Street in Sacramento.

In mid-January the latest of these confabs was held and LSA was, aside from BPH staff, the only stakeholder in personal attendance, though others, largely attorneys and DAs, participated via teleconference call. Primarily a recap of 2014 administrative directives, policy and procedure changes, the gathering offered an opportunity for all those interested enough to join in to check their understanding of those new guidelines and how they are to be applied, as well as ask questions and make comments.

Never shy violets, the LSA reps were front and center, with our own questions and follow-ups. We were also afforded the opportunity to discuss ancillary issues with BPH staff after the meeting, in a more wide-ranging conversation. 2014 was an eventful year at the BPH, with the implementation of both youth and elder hearings, expansion of medical parole, plus the addition of various non-lifer inmate populations who were heretofore off the BPH radar and calendar.

While many topics were related to procedures for attorneys, of interest to all were the new hearing types implemented in response to the 3 judge panel. Those include, in addition to youth, elder and medical, parole consideration for non-violent second-strikers. Although complete figures for the entire year were still being parsed out, firm figures for actions from Jan. 1 through Nov. 30, 2014 were available.



will have reached that benchmark by the time a parole hearing under the new guidelines is scheduled will have that hearing and be eligible for release. As Shaffer explained, “numerous state laws” were ordered waived by the federal judges in order to accelerate the release of inmates to reach the population cap. In this case, the federal government, in the person(s) of three judges, trump state regulations. However, no DSL inmates who fall under this new process and are 24 months or less from their EPRD will be scheduled for a parole hearing.

In later discussions BPH leaders noted that those inmates who have been granted parole but have a future release date number only about 30 individuals at present. An additional 6 under those circumstances have already been released, time having been subtracted from their MEPD due to both the urging of the 3 judge panel and the prisoners’ good behavior since their grant. For those remaining in this situation each case is being considered, roughly in chronological order of the appointed release date. In other words, the farther out the parole release date the longer until that individual is reviewed by the board with an eye to early release. In the meantime, all progress hearings scheduled will go forward, with the opportunity at those for each inmate to receive additional time reduction in that setting.

10 Day Rule: Shaffer reminded interested parties that the 10 day rule, whereby all documents should be in the hands of the BPH no later than 10 days prior to a hearing, really applies primarily to District Attorneys. While inmates may submit documents on the day of the hearing those can and often are limited by the panel members to a total of 20 pages, excluding support letters.



She also explained that while a DA at parole hearings may offer both a closing statement and a statement from the victims who are not in attendance and have requested that service, the victim impact statement, no matter who voices it, must address the inmate, crime and possible parole from the viewpoint of the victim; it is not an opportunity for the DAs to have a second closing.

BPH Outreach: In a not-to-us-anyway surprising revelation Shaffer indicated the BPH’s concern about the mis-information rampant in the public about parole, lifers and early release. In Shaffer’s estimation (and ours) the greater number of lifers now being released is the result of court decisions and the BPH making a conscious decision to follow the law, not because of political or soft-on crime policies.

To foster understanding not only of the parole process but also of the impact lifers have (or rather don’t have) on crime statistics Shaffer has instituted an outreach to the community. At the meeting and conference call she issued a standing offer for anyone representing a group (community, church, fraternal or other) who might be interested in hearing about parole to request someone for the BPH attend a meeting. Noting the Board staff was prepared to travel “pretty much anywhere in the state,” she indicated a new and welcome concern by the BPH on how lifers are viewed by the public.

LSA made sure the first invitation the Executive Director received was from us, to appear at our upcoming family seminar in late February in Sacramento. Stay tuned!



## VALLEY FEVER TESTING—DON'T PANIC

We've received many letters and calls from both inmates and family members worried about the recent push at virtually all institutions to test for Valley Fever. Chief among the concerns is that CDCR will use the results to round up busloads of inmates to ship off to those hotbeds of *Coccidioidomycosis* (Valley Fever to those of us who speak English), Avenal State Prison and the unfortunately named Pleasant Valley State Prison.

And while we would be the last to say CDCR never does nefarious things, this is not one of them. Or at least that isn't the intent. And it isn't even really CDCR's idea. LSA met recently with a representative of the Receiver's Office, going over various medical issues, Valley Fever testing among them.

The testing is done at the behest of the Medical Receiver's Office, in response to direction from the Center for Disease Control (the other CDC, which actually knows what it's doing). As many will remember last year there was quite a binge of inmate shifting, CDCR under direction from the medical folks, to remove from constant exposure at ASP and PVSP all those ethnicities who are known to be particularly susceptible to VF.

The new testing push is a follow up to that population shift, and is being done to identify those inmates who have already been exposed and/or perhaps have acquired an immunity to the disease. A positive test result means that at some point the inmate has encountered the Valley Fever 'bug.' A negative showing means that particular individual has not yet been exposed—and shouldn't be. According to the Receiver's Office test results will be included in each inmate's file and will be considered if and when that inmate is considered for transfer to another prison. If the individual has already been exposed to Valley Fever he will then be eligible, but eligible only, for transfer to ASP or PVSP. But being eligible does not mean an automatic transfer there; it is one of the factors to be considered in transfer recommendations nor does it mean he would automatically be sent there.

If, however, the inmate shows no indication of having been exposed to Coccid-whatever, that result would exclude his potential for transfer to either ASP or PVSP. In other words, the testing may say yes, you could possibly go there or no, you're exempt from those locations.

Additionally, whether or not to take the test is a voluntary decision and refusal to do so will not garner the inmate a 115 or a stay in the hole. Those are the medical office's expectations on the way this process is to be handled and we have a commitment from that office to swiftly investigate any reports of retribution against inmates who decline to be tested.

Those who refuse the test will be eligible for transfer, but again, not automatically transferred. The test is being administered for medical, not custodial or punitive reasons. Women, who obviously aren't in the running for transfer to ASP or PVSP, will not be tested, nor will those of African-American or Filipino ethnicity. The latter two groups are known to be susceptible to Valley Fever and have already been excluded from transfer to the problem areas.

If problems or other issues occur regarding Valley Fever testing LSA would like to hear about them. Although the Receiver's Office has prepared and distributed to the prisons videos to be shown in the prison network and printed material explaining the testing it appears, from the volume of correspondence and panicked calls LSA has received, that somehow the word has not gotten out.



## **WHEN THE PTA IS YES, BUT THE PAROLE DECISION IS NO**

In the aforementioned conversations with BPH administration many topics were discussed and reshaped. One of the first we broached was our concern regarding those individuals who are granted an advanced hearing due to successful PTA or AR (Administrative Review) and who are then denied parole at that advanced hearing. Hope is raised when a prisoner receives notification that the board thinks they may have made substantial progress and wishes to review their situation before the end of that last denial, but that hope is often devastatingly dashed when the inmate then receives another denial at that advanced hearing.

Asked why this is often the case, BPH Chief Legal Counsel Howard Moseley said it basically comes down to the difference between people and paper. While the gains may look impressive on paper (i.e. many more certificates, classes, programs) when the parole panel actually has the opportunity to converse with the lifer they may find that while the paper accomplishments are numerous, the take-away from all those programs was negligible.

This again address the fact that the board is not looking for quantity so much as quality. Did you actually learn anything, acquire any insight, new coping skills, new understanding that you can apply to your life, from those classes or were you simply there for the certificate and chrono?

Insight, that elusive but board-coveted quality, is difficult to define in person, but even harder to see on paper. Mosely indicated that the Deputy Commissioners, in perusing possible advancement candidates, are able only to review files. If the accomplishments listed appear to indicate the inmate has vigorously sought more information and self-help that may be enough to snag a hearing advance. But once that individual is before the panel in person, it becomes not how many classes did you take, but what did you actually get out of them.

Mosely also indicated the AR and PTA process provide the benefit of bringing more prisoners to hearings more often, as many denied parole are now being seen before the end of that 3 year period. He also noted that once a parole decision has been made, that re-sets the clock for the one-every-3

years PTA process. And, decisions can be appealed both through request for a Decision Review as well as the writ avenue.

The takeaway from the conversation was simply that if you receive notification that your hearing has been advanced, don't look at that as the ticket home; you still must prove your bona fides to the board. Any programming you engage in should receive your full attention and effort; an accumulation of paper will not open the gate.

## **SECOND STRIKE RELIEF**

Many California inmates serving second strike terms for non-violent, non-sexual offenses will soon be considered by the BPH for possible release, a situation they nor the board ever expected to deal with. Under orders from the 3 federal judge panel CDCR and BPH have come up with a new parole process to address the above individuals once they have served 50% of their sentence. The new second strike process began January 1, with actual reviews expected to begin about February 15.

Initial eligibility for consideration will be made by classification units at each prison and those found eligible will have their cases referred to the BPH for consideration by a Deputy Commissioner. No in-person hearing will be held; all the review is done 'on paper,' though actually it is more likely to be done 'on (computer) screen.' The first qualification, to have served 50% of sentence or be within 12 months of that point, is pretty cut and dried. The remaining qualifications, engaging in 'negative institutional behavior,' is a bit more dicey.

Any of the following will disqualify an inmate from release consideration:

- Currently or within the last 5 years served a SHU term
- Serious RVR, Division A-1 or A-2, within the last 5 years
- Placement in Work Group C during the past year
- Received two or more serious rules violations within the last year
- Found guilty of drug-related offense or refused to provide a UA sample in the last year

Once referred the prisoner will have 30 days to submit any written statement to the board, if he/she wishes. Prisoners may request to review their C-file prior the classification hearing or before preparing any statement. DAs from the county of commitment any registered victims will be notified and allowed to submit written statements as well.

Within 50 days of referral from the classification unit an Administrative Review will be held at the BPH, where all relevant information will be considered and a determination made as to whether or not the inmate would pose a danger if released. The institution, and thus the prisoner, will be notified of the decision by (yet another) form, BPH Form 1047C, Non-Violent Second Striker Decision Form. If granted release, the prisoner will be released to supervision of state parole or post community release supervision, depending on the statutory requirements for his offense, and this will happen no less than 50 days after the decision to release has been made.

It should be noted, both referral for release consideration and the grant of release itself can be lost, as the classification committee can rescind the referral and the board can vacate the grant, should the inmate indulge in any 'negative institutional behavior' at any time prior to release. Be careful out there!



## MISCELLANEA

Odds and ends, bits and pieces of information collected at various times and places over the past month, all related to lifer matters.

In previous conversation in the past year or so BPH administrators indicated that, following few years of increasing parole grants, the number of grants might decline, as the "low-hanging fruit," those lifers long-suitable but in the past never able to achieve a grant due to political and other reasons, were at last given lawful consideration and paroled. Although no one expected to see a decline to the single digits of yesteryear, some decline in numbers was anticipated.

Now, however, with the advent of youth, elder and specialized parole hearings (2nd strikers, DSL) that expectation is no longer in play. While the rates may fluctuate somewhat from year to year no one now foresees a marked decline. Good news for lifers!

Under a directive issued last year the board will now accept video and audio renditions of victims' statements at hearings, should the victims and/or their representative be unable or choose not to appear. The caveat with these is that a written transcript of the offering must accompany the submission, so that there will be a written record of the remarks. Should such a submission be offered at the hearing without accompanying transcript, it will not be accepted.

It has been reported that physicians in prisons have told prisoners they are no longer able to provide/prescribe/authorize such items as aspirin, sun screen, cough drops and the like. While these and similar items have long been considered medical issue, recently the Receiver's Office reached an agreement with the department whereby a variety of what in the world are over-the-counter remedies will be available to inmates in the canteen or made available to indigent prisoners.

The process is apparently still underway and we are still hoping to receive a comprehensive list of what is expected to be available in the canteens, information we will release as soon as it become available. Sunscreen and some lotions are also expected to be among the items now stocked.

Despite what some sages, and even some attorneys may say, neither transitional housing or a firm job offer are required by law or even by the commissioners in order to find an inmate suitable. While job offers are always nice and the board members do like transitional housing, the absence of either or both in parole plans will not alone be grounds for denial.

One more cautionary item, and again, this is being spread by some attorneys as well as rumor on the yard. Elder parole factors do not carry the same weight as the 'hallmarks of youth' do for those in SB 260 hearings. While the requirement that parole panels give 'great weight' to the attributes of youth (primarily the inability to make good decisions, easily led, etc.) the panels are under no such firm direction for elder factors. That is because youth parole was promulgated via legislative action; a bill or law passed by the legislature and signed by the Governor.

Elder parole consideration and the factors therein, did not come into play as a law, but rather as an agreement between the state, in the venues of CDCR/BPH and the 3 federal judges as one way to help the state meet the population cap set by those judges. While the factors of elder parole were agreed to by the state and commissioners are trained and expected to consider those factors in both finding of suitability and determining length of denial, they are not required to give elder factors 'great weight.'