

## **HOSHINO'S LAMENT; THE BPH DIRECTOR AS SPIN-MASTER**

At the Board of Parole Hearings Executive Board meeting on Jan 19 Executive Director Martin Hoshino launched into a several minute defensive complaint of how mis-understood and mis-represented the BPH is by "some" people. (No names were named, but you know who we are).

Hoshino defended every aspect of the Board's conduct and action, with the exception of the training given both commissioners and the board's board of pet psychologists. Oddly, he mentioned nothing about that issue, despite the lack of such training being the focus of an Inspector General's report last summer.

The Executive Director was quick to quote from Penal Code 5075.6 (b)(1), "Insofar as practicable commissioners and deputy commissioners shall have a varied interest in adult corrections work, public safety and shall have experience or education in the fields of corrections, sociology, law, law enforcement, medicine, mental health or education." Hoshino, and others, seem to feel this portion of the Penal code means only law enforcement personnel, or former personnel are to be on the BPH. Apparently he missed the commas between the fields listed.

Hoshino made a point of noting two thirds of Deputy Commissioners are not of law enforcement background, some even having been prisoner's attorneys prior to joining the BPH, and maintained Deputy Commissioners are equals in every way to Board Commissioners. (Which begs the question, then why are they called Deputy Commissioners?). He announced BPH was undertaking a study, which, he felt sure, would reflect commissioners with a law enforcement background granted parole dates more often than those without a custodial background.

This brings to mind a few questions: who is doing this study, and when will the results be available; what is the purpose of the study, if not self-justification, and most, importantly, will those undertaking this academic project be able to find enough non-law enforcement commissioners to provide information that is not 'statistically insignificant,' as we are often told lifer parole statistics are, due to the small sample size? We feel sure the number of BPH commissioners without law enforcement backgrounds will also constitute a small, 'statistically insignificant number.'

Hoshino claimed it was "a fact" that grant rates have increased over the years, and offered as his proof a table that purports to document lifer parole hearings and grants from 1978 to 2009. Starting at 1978 Hoshino's table shows one (1) parole hearing scheduled and one (1) parole granted for that year. Similar results are shown for a few years, with the notation that the source of these numbers is "historical."

Once again, we are left with more questions raised than answered by Mr. Hoshino's "proof." His source for the early years is "historical;" historical what? Statistics? Memory? Lore? Not to mention comparing conditions in California in general and the prison system in particular in 1978 and 2009 is akin to comparing apples to grapefruits.

Hoshino continued, insisting there are not 20,000 to 30,000 lifers ready to parole as "some have said." Life Support Alliance has never heard anyone, even the staunchest reform advocate; maintain 20 to 30 thousand lifers are immediately ready to parole. We, and indeed, the CDC, have said there are 20-30,000 lifers in the system right now. He maintained there are at present 9,900 lifers who are "eligible" to parole, but failed to define his meaning of "eligible." Past MEPD? Waiting hearings? Having been denied and awaiting yet another hearing? Actually, all life term prisoners are "eligible" for parole, not having been sentenced to Life Without Parole.

The Executive Director maintained the board schedules five to six thousand parole hearings each year, with about half that number actually held. The reason for the discrepancy between scheduled and held was not offered. Perhaps we must await the vaulted study results for that information. His proudest statement was his assertion that the board grants parole dates for lifers in 16 to 18% of the hearings held, representing a 42% increase in grant dates over the last three years.

Two things stand out here. A 42% increase over an unacceptably low number is still an unacceptably low number. And just what sort of grants are included in this 16-18% approval rate? LSA has long wondered, as Attorney Michael Beckman mentioned during his en banc comments, does this much-touted grant rate include those grants made to prisoners returning to the board via court action, with orders to be found suitable?

We, among other stakeholders, suspect it does. In which case the Board and Hoshino are taking credit for someone else's work, cleaning up their mistakes. There are indications that as much as half of the board's parole grants are in response to court directives, which would make the Board's actual rate of parole grants perhaps 9 to 10 %. Impressive.

Regarding the psychological evaluations performed by the vaulted FAD, Hoshino gave an impassioned defense of the tests used in these evaluations, labeling them valid and affirming their use in other states. True, as far as that statement goes. But once again, Hoshino follows the BPH path of obfuscation by omission. The tests used, HCR-20, PCL-R, LS/CMI and Static-99 are professional tests used in other states. But not on lifer inmate populations and not by those who have not been extensively trained in the very specific disciplines of these certain tests. Hoshino did not, of course, address the finer points of this truth. For more information on this situation, see else where in this issue of *Lifer-Line*.

In another bit of shell-game speak, Hoshino maintained 80% of FAD evaluations rate the prisoners as low or moderate risk of dangerousness, but offered no source for these figures. Perhaps he's had a sneak preview of that coming study that will show former law enforcement commissioners are generous parole granters. But again, as so many times in his monologue, he failed to address the whole picture. How many FAD evaluations raise the level of dangerousness reported from low to moderate, and most importantly, does he not understand, or just choose to ignore, the fact that parole commissioners see a "moderate" risk as too high and a reason for parole denial?

Wrapping up his quest for empathy and understanding, Hoshino forecast the year ahead as "difficult" but left out the most interesting part. Does he foresee financial difficulty? No second sight needed there. Political difficulty. Again, pretty apparent.

But as lifers and their families can tell him, while the year ahead may be difficult, the years past have been no picnic.

## **TARDY FOR THE PARTY**

Apologies to our readers and supporters for our tardiness in producing January's *Lifer-Line* issue. Preparing our written opposition for the hearing on Title 15 changes required substantial time and research, which curtailed the time we were able to devote to the newsletter.

However, it was time well spent. LSA was able to produce, print and submit a 66-page document spelling out our opposition to all aspects of the proposed change and provide supporting evidence for each objection.

## **TITLE 15 HEARING**

The LSA requested hearing on proposed changed to Section 2240 of Title 15 dealing with psychological evaluations of all life term prisoners was held Monday, January 31 in Sacramento.

As noted via email to our supporters, none of the BPH commissioners felt a public hearing was worth their notice and all failed to attend. Although this may be legal, it is also very dismissive toward the public (who after all pay the not-inconsiderable salaries of the commissioners and executive staff) and shows a real disregard for the basics of governmental process. All in all, about what we've come to expect from the BPH as a group.

While we don't, as yet, know the exact number and details of written objections submitted in response to this proposed change, we do know the number and quality of those submissions we received copies of and we are impressed by the what we have seen, especially those coming from many prisoners, who, with little resources available, managed to put forth some very credible, well presented and documents statements. Among the noteworthy contributions were those from the Solano MAC Facility IV and Theresa Torricellas at CIW.

In addition, opposition testimony from eight individuals who spoke at the hearing was received and will be added to the written comments. No one at the hearing spoke in favor of the proposed changes.

From here the BPH will be required to answer, in writing, all objections, questions and points raised either in written objections or in testimony given at the hearing. That response will be sent to the Office of Administrative Law (OAL), which will evaluate the responses to each item and issue an opinion as to whether the board's response sufficiently addresses the issues raised. While the OAL can hand down an opinion as to the sufficiency of the responses and whether or not implementation of this change would be a wise action or one taken in accordance with legal procedure, they cannot prevent the BPH, or any governmental agency from changing government code administratively. This is a problem across state government and if we and others want this process changed, not only for BPH and CDC but for other governmental departments, it must come through action by the legislature, an option LSA is already exploring.

Given the BPH's obvious intent to do what they want when they want, we fully expect they will, in spite of opposition, reason and logic, implement the changes to Title 15 and the Forensic Assessment Division's process will become part of Title 15. The public hearing, however, has provided an opportunity to galvanize and organize the opposition to this sham group and extensive evidence to bolster our position to legislators that this is an unnecessary, fiscally imprudent move and one they should take note of and action on. It was, in summary, fuel for the larger fire.

While action on such proposed administrative changes is usually taken at the next scheduled meeting of the Board (in this case, February 15) the lone representative from the Board's legal division in attendance hedged a bit when pressed for time lines, saying it might be the following month's meeting, scheduled for March 15, 2011. Between now and whatever meeting the Board addresses the issues raised at the hearing and takes action on the proposed change, LSA will continue to oppose this and other dubious actions and policies of the BPH in public and in the legislature.



Much as been made by the CDCR of their supposed reliance on 'evidence-based' or 'best practices' in decisions on programs and policies to implement and pursue. BPH Executive Director Martin Hoshino in particular recently emphasized the professional quality and use in other states of psychological tests used by the Forensic Assessment Division in the FAD's across the board psychological evaluations of life-term inmates.

So let's take a quick slice-of-life look at these tests and their professional use in other states, states often used as reference comparisons by the CDCR. LSA, as part of our research for the recently held Title 15 public hearing, contacted the corrections departments in several states and inquired about their practices and procedures in this area. Results follow.

**New York:** does not automatically perform psychological evaluations for all potential parolees. Evaluations are required only when ordered by the court as part of the original sentencing, if the prisoner is designated as a mentally disordered offender or sexually violent predator (MDO/SVP), if the crime was committed against a child, or if a mental health issue develops while incarcerated and the prisoner was placed under the care of the State Office of Mental Health (OMH)

All psychological evaluations and services are under the separate control of the Office of Mental Health. Evaluations may be requested by the prison or the parole board. However, if OMH doesn't deem the testing necessary, the department (OMH) can decline to perform the test.

Before any evaluation is done the OMH interviews the inmate, decides what type of testing is required and the uses only the test(s) deemed appropriate for the individual concerned. New York does not routinely use any of the battery of tests used by the FAD on all inmates. And they acknowledge those tests used in California are not appropriate for the every life term inmate.

**Texas:** No psychological evaluations for potential parolees are done unless ordered by the court or the inmate is a MDO/SVP. Testing is also dependent on criminal history or possibly the type of crime (such as multiple murder), or if the inmate has had violence problems during incarceration.

The process for requesting evaluations goes first to the prison where inmate is located. The prison then contacts the University of Texas Medical Branch (UTMB) which does all mental health evaluations for Texas prisons/parole/probation. Only appropriate tests are used, not a standardized array.

UTMB has the final word concerning mental health issues, the parole board cannot overrule UMTB. If the parole authorities wish to oppose the UTMB decision not to evaluate they must go to court and obtain a court order. Texas finds that lifers that have been in prison for 15 years or more have the lowest recidivism rates, somewhat impacted by gang membership or drug/alcohol issues. This finding was recently "discovered" by the CDCR office of research and reported, albeit without mentioning lifers, in an October, 2010 report.

**Florida:** substantially the same procedure as Texas, with the exception that the evaluations are done by the Florida Department of Mental Health, whose psychologists are located in each prison, yet completely independent of the Parole Board and Corrections Department.

**Missouri:** No automatic psychological evaluations, the risk assessment protocol is much like Texas. Psychological evaluations are done by the Mental Health Dept

**Arizona:** No automatic psychological evaluations for potential parolees. Only MDO/SVP prisoners are evaluated, if the court required the evaluation as part of the original sentence or the prisoner has had some problems during their time in prison.



The Parole Board may request an evaluation, if during the parole hearing, the inmate exhibits behavior that causes concern. Evaluations are conducted by the mental health department.

**Washington:** After enactment of Washington's sentencing reform act in 1984, the Parole Board does not have any automatic requirements for psychological tests prior to parole hearings. Evaluations are ordered only if a court has required them as part of a prison sentence, the prisoners in question are MDO/SVP, or have developed a mental problem while an inmate.

Psychological evaluations and tests are performed by the Psychiatry Division of the Washington State Department of Corrections (DOC), which, while responsible for all evaluations within the DOC, is independent of the corrections side of DOC. The clinicians select from an assortment of tests, and use only those applicable to the needs of the inmate being evaluated (Static 99 only on sex offenders or someone who has committed a sex crime while in the system).

Washington DOC uses a static risk assessment (created by the Washington State Institute for Public Policy) on all incoming inmates. They do not use COMPAS, as has been reported by the CDCR and BPH.

**Tennessee:** The Tennessee Board of Probation and Parole asks for psychological evaluations for one of three reasons; if the prisoner is a sex offender and the Board, by law, must have a psycho-sexual evaluation prior to any decision on whether the offender should be released; second, in other cases where the Board feels there may be unresolved and untreated psychiatric problem(s); and third, if a judge requests a mental health evaluation as part of a sentencing hearing. Until recently, evaluations were done by staff of the Tennessee Department of Correction, but the TBPP now contracts with the Tennessee Department of Mental Health and Developmental Disabilities for this service.

**Michigan:** Michigan has a unique and forward-thinking corrections process and outlook that has allowed the state to embark on a program of closing several correctional facilities, while maintaining an impressively low recidivism rate. As the prisons close, Michigan re-invests the saved monies into programs within the remaining prisons focusing on such rehabilitative efforts as education, vocations and life-skills. At present the state feels they are realizing a return of \$3 in saved incarceration costs for every \$1 of saved monies put back into the correctional system.

On psychological evaluations specifically, Michigan evaluates all MDO/SVP automatically or if such an evaluation was ordered by the court as part of the original sentencing. Within 30 days of the granting of a parole date the victim/victims family may file an objection and, if the objection is sustained, a public parole hearing is held which anyone may be attended by anyone interested. At that time the potential parolee will have a psychological risk assessment is given by Corrections Mental Health division, under the supervision of the State Mental Health Department.

**Mississippi:** Mississippi is the lone state of those surveyed that requires a psychological evaluation for any lifer sentenced for a violent crime. This does not, however, include lifers under Mississippi's version of 3-strikes, if no violence was involved in the third-strike crime. Even then psychological evaluations are done through the state mental health division, not the prison system.

And then there's California, which requires a psychological evaluation of every life term inmate prior to parole hearing, performed by a small, secretive group of questionably trained clinicians, using an array of inappropriate tests, all under the oh-so self-serving watch of the Board of Parole Hearings.

Perhaps we all, especially the BPH and CDCR, need to ask ourselves, do we really want to be in the same category as Mississippi? On anything?

## **SURVEYS REQUESTED**

We are once again requesting any lifer having a recent parole hearing complete and mail to us the following survey. The surveys are a source of information with which we can support or oppose board commissioners at

confirmation hearings, based on their actions, not just emotion or hearsay.

Several commissioners will be sitting for confirmation in coming months, including some new appointees; we need your information, and as detailed as possible, please.

## **PECK CONFIRMED AS EXPECTED**

On January 12, for the first time in many months the Senate Rules Committee (SRC), the body charged with confirming gubernatorial appointments, held a confirmation hearing on a parole commissioner. Commissioner John Peck, for 25+ years a part of the green line and now a part of the Parole Board party line, was, not surprisingly, confirmed by the Senators to finish out his Schwarzenegger-appointed term on the BPH.

While we found Peck's actions and decisions in parole hearings no more egregious than the average commissioner and not as outrageous as some, LSA nonetheless submitted to SRC several areas of concern and lines of inquiry to pursue in their examination of his performance. LSA also spoke at the hearing, one of two individuals/groups to do so, both in opposition.

Whether by coincidence or possibly the power of suggestion, several of the Senators asked questions of Peck right out of ASL's play book. Senator Darrell Stein berg, SRC Chairman asked Peck for his definition of "insight."

"Insight, to me, is how the offender understands themselves as a person, how the offender understands the motivations that shape their lives and if the offender understands the decisions that lead to their involvement in a life of crime," was Peck's response. He also admitted the concept of insight was a subjective decision and was not a suitability factor listed in Title 15 but held that lack of insight "does fit into the past and present mental attitude toward the crime."

After giving an abbreviated recap of *Shaping*, Peck then flew in the face of other court decisions, when he digressed into whether "the degree of insight makes them (prisoners) a present unreasonable risk of dangerousness." Apparently he has not taken notice of the court directives noting there is no "degree" of insight. One either has insight, or does not, no degree required.

Questioned by Schoenberg on his confidence in psychological reports, in light of the Inspector General's report detailing the number of errors found in these reports, Peck blithely replied he had confidence in the reports and found them helpful in 90% of the cases he reviewed. Maybe Peck missed the page in the OIG report that noted 100% of the psychological evaluations they sampled contained errors.

ASL's questions were a bit more pointed, inquiring of Peck if he was aware of recidivism mitigation factors detailed in the CDCR "Adult Outcomes Evaluations Report" and was prepared to apply them when considering parole decisions. Peck responded, "I'm probably not as familiar as I need to be. I can't think what they are right now." Schoenberg assigned a bit of homework to the commissioner, extracting a pledge from Peck to study those mitigation factors.

Peck denied on record that he had a blanket policy to deny parole if a prisoner had received a 115 in the five to ten years prior to the parole hearing, provided the events of the 115 did not involve violence. We'll be keeping an eye on that claim, as we will regarding his assertion that he gives weight and consideration to a private psychological evaluation presented by a prisoner.

In response to an LS-posed question Peck promised Stein berg he would "think about" the possibility of agreeing to allow a prisoner's family and friends to attend parole hearings in an observer status. You can be sure LSA will



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follow up on that point, and on Peck's promise to learn the mitigation factors identified by the CDCR report.

## **MISSION STATEMENT**

Life Support Alliance is an advocacy group dedicated to promoting the fair, unbiased consideration and granting of parole dates to eligible term-to-life prisoners in the California prison system. We believe the over-riding concern of safety for our communities can be met in a more cost-effective and socially responsible manner than presently being evidenced by the Department of Corrections and Board of Parole Hearings. We are dedicated to the rehabilitation not only of the individual prisoner but also of the California prison system itself. We believe in and insist on the basic dignity, human rights and humane treatment of all individuals and believe adhering to these commitments will inevitably bring a greater degree of public safety to our communities.

## **NEWSLETTERS**

Back issues available on request, via email or regular mail. Inmates, if possible, allow us to send the newsletters via email to family or friends who can print them and send in to you, saving us greatly on postage costs. If no one is available to do this for you, you will be added to our mailing list—stamps and SASEs appreciated if possible.

## **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.**

# LIFE SUPPORT ALLIANCE



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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

To our friends and supporters: If you are printing off the survey form to send in to prisoners please do not change or alter the form. It causes confusion among those who receive it. We want all prisoners to feel confident this form is from LSA and the information provided will be protected and used only as stated. Thank you.