



FAD: WRONG AGAIN. STRIKE TWO.

In a significant move in early May the Office of Administrative Law (OAL), the watchdog for proper legal procedure in administrative changes to law, ruled for the second time that the Board of Parole Hearings had improperly promulgated and enforced psychological evaluations for lifers through the Forensic Assessment Division (FAD).

The OAL *REJECTED* the Final Statement of Reasons (FSOR) submitted by the Board of Parole Hearings in the Board's efforts to enshrine the Forensic Assessment Division into law. This is a significant event, as it opens many avenues for inmates who received negative psych reports from the FAD to challenge the legality of those reports. The ruling is a major black eye for the BPH and FAD and is the first time in recent and not so recent memory that the BPH has been slapped down in such an unrelenting manner. Just what the ramifications of this decision will be are not totally yet apparent as the BPH so rarely loses in this manner.

LSA lead the effort to cause the BPH to hold the public hearing on this issue, a hearing that resulted in 128 written submissions and 8 oral testimonies at the hearing, all in opposition. There were no supporters. Thanks to all our members and supports, many of whom made monetary contributions that enabled us to have printed and bound our 60+ page opposition report.

In disapproving the FSOR from the board the Office of Administrative Law gave no ground to the BPH, stating on the first page of their opinion that the Board had offered no reason or proof that psychological evaluations, let alone the FAD, were needed to thoroughly evaluate all lifers for parole suitability. The OAL went on to chastise the BPH in every aspect of their presentation for the aforementioned lack of need, through lack of clarity in the proposal to failure to completely address public comments. Perhaps the most amusing aspect of the OAL's rejection of the BPH document is the page dealing with "Incomplete Documentation," wherein the OAL with great simplicity and patience, lays out for the lawyers and leaders at the BPH how the board not once, not twice but three times improperly completed the cost and financial impact report for creation of the FAD, as required by law.

Although BPH lawyers have been described as an "excellent legal team" by Board Chairman Robert Doyle, the "excellent attorneys" apparently can't figure out how to fill out and file a simple government form, from first failure to file to form, to filing without a signature the second time, to the third and final attempt, wherein the form was signed, but by a personage with no authorization to do so. So, Mr. Doyle, how's that "excellent" legal team workin' for ya?

The FAD and universal lifer psychological evaluations were first found to be an underground regulation in November of 2010 as a result of a challenge filed by inmate Michael Brodheim. This ruling, is, therefore, the second time the BPH has been told this nefarious practice is illegal. One would assume that would be enough to make the board at least pause in the practice and retrench. Not so. The BPH has indicated they intend to continue requiring the evaluations and using the FAD to so do in spite of twice being found in contravention of the law.

How the former (or not-so-former) law enforcement types who make up the BPH commissioners reconcile the ethical conundrum of using an illegal regulation to hold others accountable for breaking the law remains to be seen. But, as much evidenced over the years, ethical conundrums don't seem

to bother the BPH. LSA has learned the BPH's crack legal team is already at work getting ready for yet another run at getting it right in changing Title 15 to accommodate the FAD. Having now had two bites of the apple, the board wants yet another. Obviously, they believe in second chances (and third) once a mistake of law is made. Sorry, our irony is showing.

LSA will be on alert for the next attempt and will again challenge this effort. We can but hope that it can be three strikes and out for the FAD as well.

COURT DECISIONS

Major news recently from the California Fourth Circuit Court of Appeals, which ruled the long-term denials of parole hearings under Marsy's Law constitute ex post facto jeopardy for inmates sentenced and imprisoned prior to the law's imposition in 2008.

In legal terms this means the Court held 7, 10 and 15 year denials of parole hearings were improperly imposed and these denial terms should not be applied to crimes committed and sentenced imposed prior to 2008. *In Re: Vicks on Habeas Corpus* the court upheld the Board of Parole Hearings' finding of unsuitability of Michael Vicks for parole at his 2009 parole hearing but vacated that part of the 2009 order "to the extent it defers Vicks' subsequent parole suitability hearing for five years under section 3041.5 as amended pursuant to Marsy's Law, and the BPH is directed to issue a new order rescheduling the hearing under section 3041.5 in effect in 1983".

While this is a hopeful sign, another court found just the opposite shortly before the Vicks ruling, so how the two differing court opinions will be reconciled remains to be seen. Still, this is a significant finding and a hopeful one for lifers facing extended denials under Marsy's.

Also of note in court rulings was the late May decision by the US Supreme Court upholding the three-judge panel's finding that California must reduce the prison population in order to make needed and Constitutionally necessary improvements to both conditions of confinement and health/mental health care issues. In a 5 to 4 split opinion the highest court held overcrowding in California prisons to be the "primary" cause of the Constitutional violations and thus "no other relief [than reducing prison population] would [remedy] the violation."

The state now has roughly two years to implement changes that will bring the prisoner population to 130% of design capacity of the prisons, which most "experts" estimate will result in the reduction of 30,000 to 40,000 prisoners over the two year period. As to how this ruling will affect lifers in particular, the answer is probably not directly. None of the proposals put forth from any quarter on reducing the population or releasing prisoners have identified lifers as among those prisoners considered for "early release."

While the wisdom of this is highly debatable, given the low recidivism rate of lifers compared to other prisoner cohorts, releasing lifers as part of a general population reduction is such a politically charged bombshell that few observers expect politicians to be able to bring themselves to address it. With population reduction, however, it is hoped conditions will become somewhat more tolerable until such time as more parole dates can be achieved for more lifers.

PAROLE WORKSHOP SUMMARY

A summary of suggested actions and projects for lifers and their families to undertake as part of preparing for parole hearings is available from Life Support Alliance. Based on suggestions and conversations with attorneys and others stakeholders involved in the lifer hearing process this 12-page report gives common sense and cost-sensitive specifics lifers can do to help their chances with the parole board and ways their family members can help them prepare for

the hearing. From considering the possibility of hiring an attorney to the reason such mundane things as book reports can make an impact on the parole board, the summary can be a useful tool to those who acknowledge that preparing for parole hearings is the most important job a lifer can undertake and can offer family members the chance to help in other ways than simply letters of support. Copies are available to family members either free via email (send a request to lifesupportalliance@gmail.com) or request by mail and send a SASE (3 stamps). Lifers who have no one on the outside to receive the summary online and mail in can obtain one via the mail/SASE route. To request a copy by mail send your request to LSA, PO Box 3103, Rancho Cordova, CA. 95741 and please remember to include your complete mailing address in the body of the request, as envelopes can become separated from letters.

THE DOG AND PONY SHOW

Confirmation hearings for Board of Parole Hearing Commissioners have begun in the Senate Rules Committee, the first on June 1 when Board Chairman Robert Doyle and Commissioner Jeffrey Ferguson were “considered” and approved for the remainder of their terms by the Senators.

While both these commissioners were expected to be approved LSA was present at the hearing to voice our objections and provide specific examples of what we believe to be improper and inadequate decisions, based on a months-long review of dozens of transcripts from hearings done by both men. Although their approval was no surprise what was more unsettling were to “softball” questions pitched to the commissioners by Senators, some of whom appeared not to grasp what the lifer parole process covers or what information the commissioners should be able to provide. Questions such as how to reduce recidivism in parolees and to how the recent US Supreme Court ruling will affect parole hearings (it won't), were clearly off-point and show the Senators must be educated in what parole is and isn't.

LSA was the only organization to speak at the hearing though several lifer attorneys indicated they planned to submit written opinions on the worthiness of Doyle and Ferguson. Speaking out at the hearings is a chancy proposition for attorneys, as the possibility of hostility toward them being borne by their clients is a real consideration. LSA is in a position to receive input from these and other stakeholders and provide voice for their concerns.

Although both Doyle and Ferguson came out tacitly in favor of the new medical parole process how well this process will be implemented and embraced by the BPH remains to be seen. The first case of an inmate eligible for medical parole was decided two weeks ago with a denial, based on the fact that while the inmate is a paraplegic, because he can still talk, he can still “convince” someone to carry out illegal acts on his behalf. How this differs from his present situation in custody was left unexplained. Both Doyle and Ferguson benevolently indicated if a prisoner were “permanently comatose” they would be inclined to grant medical parole. Too kind. About ten more hearings for possible medical parole are scheduled to be held in June.

Ferguson opined he can “just tell” when an inmate is ready to parole and Doyle concurred, saying he can “tell when their heart has changed.” Just how these two law enforcement retirees came to develop this remarkable “insight” was not explained. Both agreed insight by inmates was something like art; I-can't-explain-it-but-I-know-it-with-I-see-it.

On firmer ground both indicated they would not specifically object to friends and supporters of inmates attending hearings in an observer, non-participant capacity, as is presently allowed by law but never granted. Doyle cautioned however that he thought supporters in attendance might distract the prisoner and he wanted the inmates' full attention on the parole board. Apparently Doyle does not consider the possible presence of hostile victims' relatives a distraction worth noting. Ferguson noted he had had relatives of inmates attend hearings, then added they had also been relatives of the victims when the

crime was of domestic violence nature, and thus the relatives, be they in support or opposition to parole, cannot be excluded.

LSA voiced our empirical concerns with both commissioners, based on the capricious nature of their parole decisions, inadequate adherence to facts and the law and reversal rate in court. We also could not help but notice and voice our observation that the wise and caring men who appeared before the Senate Rules Committee bear little resemblance to the confrontational and erratic individuals evidenced in the hearing transcripts.

Act Two of Confirmation Hearings of 2011 will be presented June 8 when Arthur Anderson is slated for review, with Troy Arbaugh due before July 1. Anthony Adams, Michael Prizmich and John Garner are slated for coming months. Commissioner Hollis Gillingham resigned effective May 17 and word is that commissioner Susan Melanson will not be heard for confirmation.

BILL PROGRESS

LSA supports the following Senate and Assembly bills; this is an update on their progress through the legislative process.

SB 9 (Yee, Juvenile LWOP) passed the Senate and is now traveling through the Assembly. This bill may need help to get through the Assembly; LSA will be sending calls for support letters and calls, if necessary.

SB 139 (Alquist, staff searches) passed the Senate and is now in Assembly Appropriations. Resistance and opposition from CCPOA and other law enforcement organizations is expected.

SB 490 (Hancock, change in Inspector General's office) passed Senate, now in Assembly.

SB 601 (Hancock, CDCR report card) passed Senate, now in Assembly.

AB 219 (Portantino, CDCR recidivism reduction plan) re-sent to Assembly Appropriations

AB 520 (Ammiano, sentencing reform) through Assembly, now in Senate Rules.

CONTACT US

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Donations greatly appreciated

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Visit us on Facebook

Phone: (916) 402-3750 or (916) 743-1654. We will accept collect calls from prisoners.

SEEKING INFORMATION ON FAD PSYCH EVALS FOR OAL COMPLAINT

LSA is seeking information regarding psych evals given lifers by the BPH Forensic Assessment Division psychs as a prelude to filing a possible complaint with the Office of Administrative Law regarding the BPH continuing to use an already known underground regulation on lifers seeking parole. If you received a psych eval from an FAD psych after November, 2010 please fill out the questions below and mail to LSA. If you would like to file your own complaint and need instructions send a SASE to LSA (or request via email) and we will send you the information to do so. If you would like to be included on our over-reaching complaint, please give us your name and CDC number and you will be included. Please be as specific as possible in your examples, quote from the evaluation/transcript if possible or send us the appropriate pages of those documents. If you have had an FAD evaluation but not yet had a parole hearing your information is still needed.

Name(optional)_____ CDC# (optional)_____ Prison_____

Date of eval*_____ Psych name*_____ Risk level*_____

Changed from previous_____ Prev. risk level_____ Date of prev. eval_____

Did you participate in eval_____ Length of eval interview (20 min, 1 hr, etc)_____

Date of hearing_____ Commissioner*_____ Outcome_____

Was psych cited in denial/grant_____ Other reasons cited_____

Did you have a private psych eval also?_____ Risk level of private eval_____

Do you feel the FAD psych eval adversely/will impact your parole hearing outcome?_____

Was any private eval considered as well?_____

Were you informed the FAD eval would be held in your C file, not confidential medical file?_____ Specific questions, comments made by FAD psychologist you feel were improper (specific as possible please)

Comments by BPH commissioners re:psych eval (specific again please)

*REQUIRED INFO.

LSA mailing address: PO Box 3101, Rancho Cordova, CA. 95741

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 but it is very helpful.

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 **Mail to Life Support Alliance, PO Box 3103 Rancho Cordova, Ca. 95741.**

NAME (optional) _____ CDC # (optional) _____

DATE OF HEARING* _____ INSTITUTION* _____ SENTENCE _____

MEPD _____ COMMISSIONER/DEPUTYCOMMISSIONER* _____

OUTCOME* _____ LENGTH OF DENIAL* _____ INITIAL/SUBSEQUENT _____

REASONS FOR DENIAL* _____

EVER BEEN FOUND SUITABLE/WHEN* _____ REASONS PREV DENIAL _____

STATE/PRIVATE ATTORNEY _____ ATTORNEY NAME _____

DATE OF PSYCH EVAL.* _____ RISKLEVEL* _____ PSYCHNAME* _____

COURT ORDERED TO BOARD FOR DATE?

RISK ASSESSMENT CHANGED FROM PREVIOUS HEARING _____ PREV LEVEL _____

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? _____

*required information USE ADDITIONAL SHEETS IF NEEDED

