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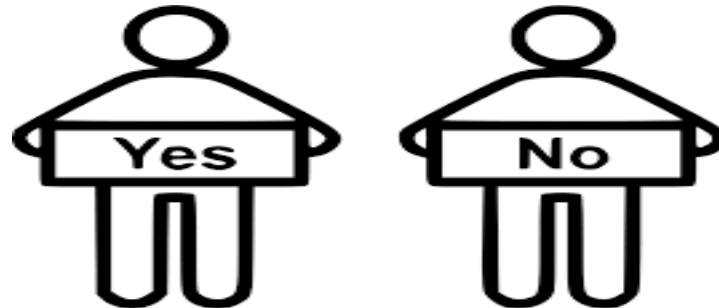
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THE EN BANC REFERRAL PROCESS

Given the increase in en banc referrals evident under the current Governor, it was perhaps providential that BPH Chief Legal Counsel Jessica Blonien provided the board, and the public, with a review of the en banc process recently. We've included a summary here, for those who are still unclear (as many of us are...) on how en banc works.

There are basically 4 ways/reasons a parole decision can be referred to en banc consideration. "En banc" is a legalistic term for review of a decision by an entire body, "full court or full body," which, in the case of the BPH, means review of the decision by all 17 commissioners, or at least however many are present on the day of the review (it must always be a quorum for the proceedings to go forward).

Referral by Chief Counsel:

The BPH has up to 120 days to review any parole decision and may, as a result of that review, refer the decision to en banc if the review finds

- An error of law
- An error of fact
- New information has become available during the 120 days

Should one of these be discovered and it appears there is a substantial likelihood that correct or new information would have resulted in a different decision, that decision is referred. The possible outcomes of these referrals are that the board as a whole will:

- Affirm the grant
- Vacate the decision and schedule a hearing
- Affirm denial of parole but modify (shorten) the denial length

An en banc referral can also be made by a member or members of the hearing panel that made the decision. This can be done for any reason within 60 days of the hearing. Possible outcomes of a hearing panel decision:

- Affirm the panel decision
- Vacate the decision and schedule a new hearing

The third prospect for en banc referral is a tie vote by the hearing panel, these days usually composed of two individuals, a commissioner and a deputy commissioner. A tie vote automatically is referred for en banc hearing review by the entire board.

In these cases, the commissioners consider the entire record of the hearing, but only the record of the hearing, no additional or new evidence or comment is allowed. And the commissioner sitting on the original panel, regardless of whether his/her vote was to grant or deny, is recused from en banc participation. Outcomes can be:

- Deny parole
- Grant parole
- Resolve a disagreement in denial length

The last route for a parole decision to reach en banc action is referral by the Governor, and this is where the process gets a bit fuzzy and problematic. Acting under PC 3041.1 (a) the Governor can “any time before an inmate’s release [sic] request review of a decision by a parole authority concerning the grant or denial to any inmate in the state prison.”

Among the reasons cited by the Governor can be:

- Public safety concerns
- Inadequate (in the Governor’s opinion) consideration of the offense(s).
- Inadequate consideration of other (unspecified) factors

In deciding referrals from the Governor, the board is charged with considering whether the grant and current release date may not be appropriate under the above standards. In deciding on each case, the board can, if considering a grant 1) affirm the parole grant or 2) schedule a rescission hearing. If considering a denial referred for review by the Governor (something we haven’t seen) the board’s options are either to affirm the denial or vacate the denial and schedule a new hearing.

Where things get a bit more dicey is in the notification process for a Governor’s referral. According to law and policy, the Governor writes a letter outlining his opinion after review of the parole panel’s decision, a letter that is then emailed to the prison to be delivered to the inmate. Except. That’s seldom how it works.

We personally have dozens of examples of inmates, and their families, who are entitled to appear at the en banc to personally plead their loved one’s case (just about the only time families can personally participate in the parole process), who never know that prisoner is up for en banc consideration until after the hearing was held. In better circumstances, they often find out just a few days before the hearing, leaving precious little time for any prisoner to marshal his forces and supporters to trek to Sacramento or even provide letters or emails in his/her support. Just about the best case scenario we know of is that the inmate or family discovers the pending en banc by checking the public calendar of the Board’s Executive meetings, published 10 days prior to the meeting.

Indeed, the Board, once an en banc is calendared, sends their own notice to the prisoner informing him/her of the en banc. Unfortunately, that notification follows the same path as the Governor’s decision; emailed to the institution, where it becomes the responsibility of the institution to inform the inmate. In this case, the DA and the inmate’s attorney are also notified by email. But the likelihood of a DA reaching out make sure an inmate is notified is pretty small (as in non-existent) and unfortunate most lifers still depend on state attorneys for their representation and, as a cohort, those attorneys have not been concerned, let alone required, to be certain their client is informed. There are

exceptions to this, and for those state appointed attorneys who put forth the extra effort to notify their client and/or act on their behalf, we salute you.



Where's the breakdown? Frankly, it seems to be in two places; the Governor often doesn't make his decision until the last minute and when that decision is made and emailed to the prison, the inmate is still at the mercy of the prison communication system, with all the foibles, intentional or otherwise, therein.

If an en banc referral results in a rescission hearing on the grant/denial, there are standards, at least officially, for rescission of the original decision. Those include

- Disciplinary conduct
- Psychiatric deterioration
- Fundamental errors
- New information indicating parole should not be allowed

Public comment, in favor of or opposing parole, is allowed at en banc hearings, each speaker being given 5 minutes only (and timed) to provide the Board with what information they feel probative to the parole decision. While the number of speakers is not limited, the Board is strict on maintaining the 5 minute limit.

If you find yourself at en banc consideration and your friends and family wish to speak for you, please suggest they contact LSA, as we can help them create informative and time compliant remarks. And of course, you, the prisoner in question can offer your own support, by sending a letter to the board. If you find out in time.

LOOSE ENDS

BPH Executive Director Jennifer Shaffer has noted the implementation of AB 965, authorizing the California Department of Corrections and Rehabilitation to grant credits regarding an inmate's Youth Parole Eligibility Date, thus possibly moving the date of a scheduled hearing forward as a result of those credits, will be delayed, pending approval of regulations and introduction of technical improvements in the technology systems available to the board. Other new legislation, not yet implemented, will require the FAD to administer a standardized risk assessment for sex offenders as part of the CRA interview, in addition to the currently used Static-99R. More on this as it become available. Shaffer also noted the new regs regarding Non-Violent Parole Process for Indeterminately Sentenced Nonviolent Second Strikers became effective Oct. 21, 2019.

It appears the board is still having some difficulty recruiting enough attorneys to fill slots on the panels for High Desert State Prison, Chuckawalla Valley and Ironwood State prisons, as well as Centinela and Calipatria prisons, though recruitment efforts continue. FAD head Dr. Cliff Kusaj noted the FAD faced "an uphill climb" in 2019 to complete an estimated 3,500 CRA reports. In order to facilitate more timely completion and release of the CRAs to the inmates and counsel Kusaj noted the FAD would be implementing efficiency measures and hiring new clinicians beginning January 1.

Stay tuned and watch this space for updates.



WAIT...DID HE REALLY JUST SAY THAT?

Each month, at BPH Executive Board meeting of the BPH, the board hears comments from the public. This time on the agenda, though limited to 5 minutes per speaker. Over the 10 years of LSA's existence we've taken the opportunity to express our concern where and when necessary and provide a perspective the commissioners may not otherwise get.

And we've listened to many others comment; some we agreed with, some we did not. We don't make a habit of rebutting comments or getting into a 'he said/she said situation'. That isn't what the public comment time is for and it would be unseemly.

But occasionally, someone has said something so egregious, so reprehensible, so obviously wrong (dare we say ignorant?) that we're compelled to respond. Such was the case recently at the BPH board meeting, when an Assistant DA from a Southern California county, arose to pontificate in a somewhat jumbled fashion on random topics related to parole and lifers....clearly he knows nothing about. His claims were pretty ludicrous--that inmates learn to cry at hearings by taking acting classes in prison; there's no connection between events in early life and actions in later life; that organizations working to assist prisons do so only to sell their version of rehabilitative programs; that DAs and custody officers stand around rating the sincerity and suitability of specific inmates during breaks in hearings. This one may be true, but to admit that sort of breach of acceptable behavior on both sides was a bit surprising and probably a bit unwise. And those are just the 'highlights'.

Had we not been so incensed, we'd have been embarrassed for the schlemiel. All of which led us to feel obliged to respond. After all, we're all about educating the unschooled on lifers and parole, and clearly, this.....individual ... fits in that category. Herewith are the comments offered in response by LSA Director Vanessa Nelson-Sloane.

“We've heard all sorts of prognostications, pronouncements and postulations expressed before this body over the year, indeed, over the years. I even recall a time when a speaker at an en banc hearing, opposing parole, noted that she understood you, as commissioners, must follow the law, but asked ‘do you have to follow all of the law?’ I thought that was perhaps the most bizarre, uneducated, uninformed and unschooled statement I'd heard. Until recently.

But few opinions were as reprehensible, uninformed and just plain ignorant as some expressed here recently regarding the authenticity of rehabilitation in prisoners appearing before the board. To suggest that events in formative years of anyone's life don't have an impact on life-long beliefs and actions flies in the face not only of the YOPH laws, but the decades of sound scientific and social research on which those laws were based.

To suggest prisoners practice fake emotions in acting classes is an insult not only to the inmates who are trying to rehabilitate themselves, but also the NGOs [non-governmental agencies, usually non-profits] that provide self-help groups and even the commissioners, who are pretty savvy about such things—as Ms. Shaffer once noted, commissioners have pretty well attuned BS meters. And I'm sure prison wardens would be interested in the idea that members of custody staff stand around gossiping with hearing participants on the pros and cons of any individual inmate.

In all, quite a bucket of offal.

But, on the upside, we're confident and grateful that commissioners are more professional, better trained, more insightful and simply above the sort of paltry opinions—and they were only opinions, thus expressed. And as many disagreements as we continue to have the CRAs, no FAD clinician has ever expressed the opinion that events in formative years don't have an impact on behavior and

criminogenic thinking. That's well proven and to question that concept shows an astounding level of disregard and arrogance.

Are all inmates suitable for parole? No. Are some just faking it in the hope they'll make it? Of course. We're not Pollyannas. But we're also not prone to feeling so superior to anyone that we're willing to summarily and arrogantly dismiss the efforts and advances of prisoners trying to become citizens, discount the work and dedication of those trying to assist inmates in that journey—which by the way, includes an entire division of CDCR, the DRP, or to suggest that anyone is irredeemable. But perhaps we should rethink that last position.

This was perhaps a blessing in disguise, as it reminds us of the current level of commissioners' training and performance, the continuing efforts of the board to make even more progress in these and other areas. And we are secure in the knowledge that while the panels hear and consider all information presented, they are able to identify nonsensical drivel when they hear it, no matter from what side of the table it originates.”

ON THE ROAD AGAIN

Life Support Alliance is on the move again, working out a schedule for the first months of the coming year, trying to fit in all the prisons and groups who have contacted us about bringing our programs to the men and women in those various locations. Time and distance are always impediments to that process so we're hoping to start early and plan well. Those interested in participating in any of the workshops currently offered are encouraged to have their self-help group sponsor or facility CRM contact us to get the ball rolling. And while we try to respond to every group who expresses an interest, we've found our best and most effective path is to work with the institution's staff and CRM, perhaps spending a weekend there, and making the relevant workshop available to as many as possible at that location.

For the past four years we've offered The Amends Project, helping lifers and others understand and write appropriate and meaningful letters of apology and amends to their victims and victims' families. Over 400 certificates of accomplishment for successful amends letters have been awarded and research shows that nearly 30% of those who received certificates have since been paroled.

Two years ago, we began the two-part Connecting the Dots course, helping identify causative factors of criminal thinking and behavior and developing insight. The Dots program has been presented at over a dozen prisons, reaching nearly 1000 men and this year we'll be bringing this program to the female institutions as well.

In late 2017 we began the RISE program, a RAC-accredited 12-week curriculum of overlapping and interconnected modules will take participants through several aspects of self-examination, personal reclamation and initial reintegration into society. RISE integrates four workshops, Connecting the Dots, The Amends Project, Understanding Suitability and Lifers and Wifers, and other elements into a continuum of discovery in the development of insight and understanding.

January will see the debut of Understanding Your CRA, offering assistance in understanding and applying the information presented in Compressive Risk Assessments, the background on that process and how to incorporate that information into parole plans and hearing presentation. Understanding Your CRA offers prisoners assistance in internalizing and applying the factors identified in their psych evaluation to assist in their rehabilitation and parole success.

For more information on bringing one or any of these programs and workshops to your current location we suggest having a self-help sponsor or CRM contact us or send us the name and contact information of that sponsor and CRM and we'll try to follow up. Reach us at: Life Support Alliance, PO BOX 277, Rancho Cordova, Ca. 95741. Sponsors are also welcomed to reach out by phone or email: (916) 402-3750; staff@lifesupportalliance.org.

Happy New Year!

thank you

YEAR END THANK YOU

Each year end, as we contemplate closing one chapter in the LSA history and opening another we take stock of those who have contributed to our mission and work, one way or another. There are acknowledgements to send, forms to fill out, reflections to be made. And thanks to be given.

One of our biggest thanks goes to our readers and supporters—we like to refer to all of you as our constituents. Politicians have constituents and while we aren't quite in that field, we do feel as though we're representing lifers and their families in the alteration and framing of new laws and policies—the definition of a constituent-representative relationship.

Our constituents, prisoners and their families and friends, provide us with support in so many ways. LSA/CLN remains donation-driven, meaning we depend on those we aim to serve to keep our finances sufficient to provide those services. And those donations that often come from prisoners are especially meaningful to us, given the state of most inmates' finances. And to those who send stamps, know that those are greatly appreciated as well.

At roughly 200-250 letters a month passing through our small office and equally small staff, each stamp is a financial donation that helps us keep responding. Your friends and family who support us will receive our thanks also, by mail and email as well.

And while these financial supports are so important and appreciated, please know that those of you who answer our calls for information, from patriation in attorney and other surveys, to sending us your CRAs, reversal and en banc letters and just general information and queries from the inmate population, are the grist of our mill. You're our ears to the ground, our anonymous sources that keep us on track on our mission. Your participation and input are invaluable.

Over the years we've seen some pretty impactful changes in law, policy and practice and we're hoping, and working, for even more. We'd like to work ourselves out of a job—and perhaps we will, one day. Until then, we'll try to provide what help we can to those reaching for suitability, change, parole and freedom.

