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LIFER HEARING PAROLE SUITABILITY AND PREPARATION TIPS

Penal Code 3041 states that parole shall normally be granted to life term inmates unless they pose a current "unreasonable risk of danger" if released. This means parole is the rule (at least 50% of lifers who go to hearing should be granted parole). Though things have improved dramatically since Lawrence came down in 2008 -- the grant rate since has risen steadily (from 1990-2008 it was 3%; it is now about 25%, the Governor is reversing fewer of them (about 15%) than his three predecessors (over 75%) -- it is still far less than 50%). The Governor and the Board get away with this because the California Supreme Court rewrote parole law to give them nearly unlimited discretion over parole and by concocting the woefully inadequate, nearly toothless "some evidence" standard for reviewing parole decisions, effectively handcuffing courts from overturning those decisions, resulting in the Board being the fairer determiner of your parole suitability than the courts.

Because it is in this rigged casino that you are trying to win your freedom, you must know the law, how the Board, Governor, and courts apply/misapply it, and make your prison programming/parole plans so excellent and your insight into, responsibility and remorse for (IR&R) the Life Crime so complete and genuine that the Board, Governor, or courts cannot concoct any reasons for denying you parole.

I hope this pamphlet will help you accomplish this. It is derived from my experience representing 1500+ lifers at parole hearings and writ petitions in court. THIS PAMPHLET IS FOR INFORMATIONAL PURPOSES ONLY AND S NOT MEANT AS LEGAL ADVICE AS TO YOUR PARTICULAR SITUATION.

A. PRE-CONVICTION FACTORS

I. THE LIFE CRIME

Even after Lawrence, the life crime remains a major suitability factor. But except for the worst-of-the-worst crimes, it can only be used to deny parole if a "nexus" exists between it and your current dangerousness ("CD"), (i.e., if it was committed while you were drunk and you've taken no AA, had 115s for pruno, deny you're an alcoholic, and have no relapse prevention plan for the streets, a nexus exists between a major cause of the life crime (alcohol) and your CD (a likelihood you'll get drunk and commit crimes if released). To use the life crime to deny parole without a nexus violates your constitutionally protected liberty interest in parole. In theory, anyway, because most of our courts either do not understand this nexus requirement or simply choose to ignore it.

Since Lawrence and Shaputis I, the Board/Governor find the inmate lacks IR&R for the life crime as the nexus in most parole denials/reversals. Inmates who deny the life crime or whose version of it differs significantly from the so-called "official" version are

“minimizing" their responsibility for and lack insight into it. These tactics were blasted in In Re Ryner: “We question whether anyone can ever fully comprehend the myriad circumstances, feelings... that motivate conduct, let alone past misconduct. We also question whether anyone can ever adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone…In our view... one always remains vulnerable to a charge that he or she lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse…whether a person has or lacks insight is often in the eye of the beholder.”

But most of our state courts ignore this, so the Board and Governor will keep playing the IR&R denial/reversal game. So your IR&R needs to be as strong as possible.

Denying you for claiming innocence is illegal per Penal Code Section 5011(b) and Title 15 Section 2236 (Board cannot require you to admit guilt to earn parole). Still the Board and Governor often ignore this law and most of our courts still let them get away with it. Based on a misinterpretation of Shaputis II, the Board believes it may deny you for claiming innocence, unless it deems your innocence claim to be "plausible".

A recent case, In Re Swanigan, says this is illegal, but the Board still does it. So, until more courts agree with Swanigan, plan on trying to prove your innocence claim (or your version of the life crime where you admit guilt but your version differs significantly from the so-called "official" version) is plausible? To do so, consider submitting evidence or point to portions of the record that support you (i.e., affidavits or trial testimony from alibi witnesses, affidavits from witnesses recanting their prior testimony, favorable autopsy or ballistics reports). This won't be easy, but until the courts and the Board start applying the law as written, you may not have any choice.

II. INSIGHT, RESPONSIBIILTY, & REMORSE (IR&R)

To earn parole, you must convince the Board (and Governor) you have insight into, accept full responsibility and feel genuine remorse for your life crime. You can show IR&R during your psych evaluation, by writing an insight statement to give/read to the Board/psychologist, and/or a letter of remorse to the victim/VNOKs (even if you have no plans to send it), and/or by expressing it verbally at the hearing.

TIPS FOR DISCUSSING IR&R.

- Do not minimize your role in the life crime, even if it was minimal (i.e. you just drove the car, you weren’t the shooter). Accept full responsibility (tell the Board you are just as guilty as the shooter) where appropriate. Let your attorney argue as a matter of law you are less culpable, which is necessary for an effective proportionality argument (below).

- Don’t blame external factors, such as abusive family background, drug abuse, poverty.
    - You can say these factors contributed to the life crime, but make clear that you were responsible for your actions (i.e., you chose to get high that day/join the gang).

- To show insight, explain what you’ve learned in prison about why you committed the crime and why you won’t re-offend if released. Try to give an example of how you properly handled a recent situation that you would have handled poorly on the streets, based upon what you’ve learned in prison (i.e., you avoided a fight on the yard you would have gotten into years ago by using techniques you learned in anger management).

- Remorse means feeling bad about your crimes as well as understanding the suffering and pain you caused. But it must come from the heart. Don't over-intellectualize remorse.

- Prepare a letter to the victim/family. CDCR's Office of Victim & Survivor Rights and Services no longer accepts these letters due to budget cuts. So bring a copy to the hearing.

- A Step 8 list of all the people you've harmed is another great way to show remorse.

- Performing volunteer/charitable work and/or making contributions to charity are great ways to show remorse by showing you making amends. **Do as much of this as possible!**

- Know your victim(s) name(s). They are the real victims, not you. Only after showing remorse for them, is it okay to mention how the crime has impacted you/your family.

- Try to learn as much as you can about the victim and his/her family and how your crime impacted them (but not details that could make the Board think you plan to seek revenge if you are released). If the Board asks you about this, you'd must have good answers.

- A written IR&R statement and/or remorse letter can be a powerful way to show IR&R (and to counter in court a finding by the Board or Governor that you lack it.)
    - These should be put in your C-file as far before the hearing as possible. If it isn't give copies to the Panel and DA before the hearing and have them marked as Exhibits.
        - the Board now has a 20 page limit on **inmate writings** that may be submitted the day of the hearing. So be sure to submit your parole portfolio to your counselor and/or the prison Lifer Desk well (at least two weeks) before the hearing.

- Evidence of your IR&R from psych evals/prior hearings should be read into the record.

- Don't just mouth clichés like "I was young and stupid". Really think about this and dig deep into yourself to find answers (both external – what was going on in your life prior to and at the time of the crime – and internal – what was it about your psychological makeup and mental state at the time that caused you to commit the life crime.

- In preparing for the hearing, review your prior hearing transcripts, the statement of facts in the POR/appellate opinion, and past psych evaluations and Board reports to see what you've said about your life crime. Be prepared to explain any inconsistencies between prior statements you've made and your present version of the life crime.

- There is no such thing as an "official" version of the life crime. By law, the appellate opinion sets forth the facts of the crime MOST FAVORABLE TO THE PROSECUTION and the POR contains mostly hearsay and unsworn statements (that are often wrong). Yet the Board, Governor, and courts generally treat these documents as gospel truth and will use significant variances between them and your version of the crime to deny you for minimizing, failing to take full responsibility, or lacking insight.
    - Object at the hearing to their use as "official" versions of the crime and to using differences between them and your version to by themselves show that you lack IR&R.

Before Shaputis II I normally advised my clients NOT to discuss the FACTS of the crime. But Shaputis II gives the Board the right, if you refuse to discuss the life crime or IR&R at the hearing, to use earlier statements you made about it, and to deny you parole if those statements were problematic. As a result, unless there exist very good reasons not to, you should discuss the facts of the life crime, and IR&R.

III. PAST CRIMINAL RECORD

While the Board may cite your "escalating pattern of criminality" in denying parole, your priors are not very important. But if you don't admit guilt for them, the Board might believe you are minimizing them, and use this to create the nexus to CD.

So be prepared. During your Olsen Review check all documents to ensure they are accurate. Prior to the hearing go over your past record (it might be wise to write it down) and make sure you know it cold, including the disposition (i.e., dismissed, sentenced to jail, given probation) of each charge. This will make it easier for you to answer the Board's questions about it and challenge any inaccuracies. Admit priors you did commit. And remember, you are being judged on your credibility. No matter how honest a mistake you make about your priors, it will lessen your credibility with the Board.

Use of arrests that did not result in a conviction is improper (although the Board will often ask, especially if you were in a gang, about crimes you committed without being caught). Usually only violent crimes are relevant to suitability, and a minor prior criminal record is a factor favoring suitability; Make sure to cite the law correctly on these points.

IV. UNSTABLE SOCIAL HISTORY/SIGNIFICANT STRESS IN YOUR LIFE

These are hard factors to comprehend. The Board often cites unstable social history (USH) as a basis for denial, even though abuse you suffered at home, hardships you were subjected to, past substance abuse, or an unstable relationship with the victim, are **not by law** evidence of USH. On the other hand, the existence of significant stress in your life at the time of the life crime (i.e., severe family or emotional turmoil) is a factor the Board is required to consider and weigh IN FAVOR of granting you parole.

If this sounds contradictory and confusing, that's because it is. But you need to be aware of the problem and answer questions about your social history honestly. Do not make your past sound better or worse than it was, or play up or downplay your stress at the time of the life crime, because you don't know whether or not it will help or hurt you.

B. POST-CONVICTION FACTORS

I. PRISON DISCIPLINARY RECORD

Your prison behavior is obviously an important factor in determining your suitability. Most inmates who receive parole have no or few 115s, or have none recently. Recent 128(a)s are also viewed negatively by the Board, even though per established case law 128s are not discipline for unsuitability purposes.

While the Board should differentiate between major 115s (i.e., violence, cell phones, substance abuse) and minor ones (i.e., out of bounds, reporting late to work) it often doesn't, especially with recent 115s. If you have a recent 115, or even one within 3

or 5 years of the hearing, regardless of what for, the Board will probably deny you. This may not be proper (and there are cases saying it isn't), but they do it.

STAY AWAY FROM CELL PHONES!!! The Board takes cell phone 115s very, very seriously and a cell phone 115 could kill your shot at being paroled. Also, it is now a crime for an inmate to possess a cell phone, so you could also end up having a consecutive sentence for this tacked on to your prison time. Whatever your reasons for using the cell phone, **IT ABSOLUTELY, POSITIVELY AIN'T WORTH IT!**

II. SELF-HELP/THERAPY PROGRAMS

SIGN UP AND ATTEND AS MANY PROGRAMS AS ARE AVAILABLE!!!
(But quality means more than quantity. If you cannot articulate what you've learned from each program you take, all the certificates and chronos in the world won't matter.)

This is vital. The Board wants to know that you are working hard to rehabilitate yourself. By attending self-help/therapy programs ("SH/T") you can gain the knowledge to develop IR&R into the crime and in the Board's eyes be rehabilitated. Inmates who receive dates can show the Board years of SH/T, particularly in substance abuse (if you had a substance abuse problem), anger management, and victims awareness. And they will deny you parole if they don't think you've taken enough SH/T or **haven't internalized the programs**. So do SH/T and do it well, and be able to tell the Board (and its psychologists) what you've learned from each program you've taken! If you've taken AA or NA, you must know the 12 Steps – the Board will test you by asking you to recite them in random order, tell which steps you are working on, or which is your favorite. If you can't answer easily and correctly, they will question your sincerity in attending, giving them an excuse to deny you. DON'T GIVE IT TO THEM!

If there is no SH/T available, enroll in a correspondence course, get self-help books from the prison library or have your family order them for you from an on-line bookstore, read and do book reports on them to bring to the hearing. Be prepared to discuss the books with the Board. If you read scriptures, let the Board know which portions you read and what you learned from them.

Keep a running list of your self-help attendance and individual studies (it's a great idea to document all of your prison programming and parole plans). Bring copies to the hearing for the Board. It shows diligence and discipline, qualities the Board favors.

SH/T is not always necessary. If your psychological evaluation says you do not need more of it, the Board acts illegally in stating that you do as a basis for denial. Make sure you or your attorney makes the appropriate arguments and objections on the record.

III. PSYCHOLOGICAL EVALUATION

Since Lawrence held evidence of a present serious psychiatric condition and/or lack of insight MAY constitute the nexus necessary to find you currently dangerous, to have a real shot at parole, you want a violence risk rating of "low". Any higher rating, i.e. "moderate", and the Board will often say the psych eval isn't [totally] supportive of release and will cite it as a basis for denial. And it will likely work.

IN MY OPINION, any rating of "moderate" or lower supports release, especially if the doctor finds that you do not have a major mental illness (i.e., schizophrenia), or a diagnosis of Anti-Social Personality Disorder. Be sure to argue it that way. FAD admits that a "moderate" rating for a lifer is equivalent to a "low" risk for a determinate term inmate. Be sure to argue this as well.

You must treat the psych eval like a Board hearing: fully discuss the life crime, your past history, and IR&R in detail. A psychologist's opinion that you have good IR&R for the life crime is very helpful. A finding that you lack IR&R is usually devastating.

Getting a favorable rating does not guarantee a parole grant, even though the California Supreme Court has held that the Board acts arbitrarily and capriciously in ignoring a well-reasoned psych evaluation. So, if the evaluation is based upon solid analysis – which is not always the case – and the Board ignores a favorable risk rating, it will give you a fighting chance at winning a writ petition challenging the denial.

Many, but not all, of the Board's psychologists are incompetent and/or biased against you. Further, the Board is not following its own rules for when an error in the evaluation mandates that you be given a new one. But on the bright side, effective July 1, 2016, the Board will be giving you a new comprehensive psych evaluation every three years or prior to your next hearing, whichever comes first. There will be no more updated evals every three years with a full one only every five years. Hopefully, this will improve the quality and recency of the risk assessments.

Given the bias of many of the Board's psychologists, many of the you will have to make a tough decision: attend the evaluation or refuse. Neither option is especially appealing: if you attend, you stand a strong chance of getting screwed; if you don't attend the Board will hold it against you (and Shaputis II gives them cover for doing so).

The decision is dependent upon the specific facts of your case, so it is imperative that you and your attorney discuss the matter and arrive at a decision how to handle the situation if it arises. And if you do attend and do get screwed, make sure that your attorney makes the proper objections to and/or tries to invalidate the evaluation.

Finally, you have the right to attach a rebuttal to the evaluation stating your objections to it, such as bias or factual errors. It is essential that you do this so that the Board, the Governor (and a reviewing court) will have access to your side of it.

If you do receive an unfavorable evaluation, you will need to decide what to do. Some of the issues to consider are: are there enough factual errors or at least one really significant error in the evaluation that you can have it invalidated; do you obtain an independent psychological evaluation to counter the Board's evaluation (if you have the money); and if you can afford one do you have it done right away and go to your hearing as scheduled, or do you waive the hearing for a year or so and have the evaluation done just prior to the rescheduled hearing (so the evaluation is not simply a recent rebuttal to the Board's evaluation, but is also based on at least a year of growth and hopefully good programming). These pros and cons are individualized, so I cannot advise you on it in this pamphlet. Make sure to discuss them with your attorney.

IV. PAROLE PLANS

While having viable parole plans is a factor showing suitability for parole, LACK OF PAROLE PLANS IS NOT A FACTOR SHOWING UNSUITABILITY.

Nevertheless, the Board does deny parole for lack of parole plans and while you could fight this in court, it is in your best interests to have solid parole plans.

1. Support letters and what they contain are important.

- Because documents get lost, they should be addressed to the Board's Lifer Desk at your prison; copies should be sent to you and your lawyer.
- They MUST be DATED, SIGNED and contain the writer's contact information.
- They should be RECENT. Letters over 1 year old should be updated.
- They should state what support the writer is offering you (i.e., financial, spiritual, emotional) to help you become a productive citizen in society
- **They should state (if true) that you have expressed remorse for the crime and empathy for the victim and his/her family.**
- They should state (if true) how the writer has seen you change for the better since incarceration (the more knowledge the letter shows of who you were, are, and what you've been doing in prison (including being able to identify some of your more noteworthy accomplishments) the better.
- They should state (if true) that the writer feels remorse for your crime and empathy for victim/family.

2. Residence

a. You need a letter offering you a place to live.

b. You only need one residence offer, but can submit more. But make clear which is primary and which is backup.

c. Residence in your old neighborhood may be forbidden, especially if you have past gang affiliation or it is too close to the victim/VNOKs). If you think this will be a problem, try to get residence offers outside your old neighborhood.

d. Offers should include assurances their home is alcohol, drug, and weapon free.

e. **YOU DO NOT HAVE TO PAROLE TO THE COUNTY OF COMMITMENT**. By law you can parole to any county in California where you will have the best chance to succeed on parole, which is the county where you will reside, work, and/or where most of your support group reside.

f. You will likely have problems obtaining permission to parole out of state before being given a parole date. As a result, you should obtain a residence in California where you can live until your out-of-state transfer request is processed.

g. Even if you have a residence offer from family/friends, seriously consider (at least for the first few months to a year) residence in a halfway house or sober living home (particularly if you have any past history of substance abuse and/or the risk assessment in your psych eval is contingent upon you remaining drug and alcohol free). This will go a long way towards assuaging the Board's concern that you may relapse upon release.

- Even though the Department of Adult Parole Operations is now assisting lifers in finding transitional housing as their release dates approach, it is much better to have at least one acceptance in writing at the time of your hearing. Ask your counselor or attorney for information. There are plenty of them out there; if you make the effort, you should be able to get an acceptance from at least one.

3. Job Offer/Marketable Skills

a. Having EITHER a job offer or marketable skills satisfies the factor favoring suitability. Object if the Board tries to hold otherwise.
b. The job can be anything. It can be a business owned by family or friends.
c. The job offer should be on company letterhead, dated and signed, with the company's address and phone number, expressly offering you a job upon release. It should include a description of your job title, duties, salary or rate of pay, benefits, opportunities for promotions.
d. One job offer is sufficient, but more than one never hurts.
e. Your marketable skill can come from a vocation or prison job, or even from a job you had on the street. Object if the Board says otherwise.
f. Finding a job on the outside is not easy. However, showing the Board that you are trying to find one is easy. Prepare a resume and bring it to show the Board at your hearing. Bring copies of all letters you sent out looking for a job and any responses you've received.
g. If you get an offer of residence from a halfway house, sober living home, etc., these often include offers of employment, help finding employment, and job training. This will solve two problems at once.

4. Relapse Prevention Plan ("RPP"): **THIS IS CRITICAL, ESPECIALLY FOR INMATES WHOSE LIFE CRIMES WERE A RESULT OF SUBSTANCE ABUSE**.

a. The Board wants you to have a RPP and may deny parole if you don't have a solid one. The Board's psychologists are recommending RPPs for inmates with past substance abuse, anger, impulsivity, or gang issues, raising the violence risk rating on inmates who don't have one, and stating that such inmates can lower their risks of violence ratings by developing one.

Nothing in the suitability regulations requires a RPP. IN MY OPINION, you are better off developing one than fighting about it with the Board or in court. If you do not know how to prepare one talk to your AA instructor or a knowledgeable member about how to do so. And if the psych gave you a bad risk rating because you didn't have a RPP, be sure to argue that the risk rating should be lowered if you later develop one.

b. Do your best to obtain an AA/NA sponsor. Along with a transitional home, he or she will be the primary focus of your RPP.

c. If you plan to attend AA/NA upon release, obtain and bring with you a list and schedule of meetings in the area where you plan to parole.

If you have an active ICE hold you will likely be deported upon release. So you must have viable parole plans for the country to which you will be deported. And the Board CANNOT require that you have parole plans in California.

If you are disabled, elderly, and unable to work, if you can show you have income from Social Security, Disability, Medicare, Medi-cal, a pension from the VA or old job, an inheritance, or your support network will cover your living expenses, by law you have adequate parole plans. But be sure to provide adequate proof of this income (with the caveat that you might not want to reveal a large sum of money if the Victim or Next of Kin might try to sue you for it after you parole. Discuss this with your lawyer).

C. PAROLE HEARING AND PREPARATION DOS AND DONTS.

1. **ALWAYS DO YOUR OLSEN REVIEW**. Ensure your C-file contains everything it should and nothing it shouldn't.

- if you have a GED, High School, or College Diploma, make sure it's in there; make sure all your laudatory chronos, certificates, work reports are in there.
- make sure the disciplinary record is complete and accurate. If you were given a 115 and had it dismissed, make sure it has been removed from your C-file.

Documents often don't make it into your C-file. Documents that should be deleted from your C-file often aren't and often documents about another inmate are mistakenly put into your C-file. It is up to you to make sure your C-file is up-to-date and accurate.

2. ALWAYS attend your PSYCHOLOGICAL EVALUATION and cooperate fully with the doctor (except as discussed earlier).

3. DO NOT cite law to the Board. That is your attorney's job. If you do they may think you've spent more time learning law than programming and hold that against you.

4. DO NOT argue with the Board or D.A. or challenge statements they make. That is your attorney's job. Make sure he or she does.

5. DO NOT over-sell yourself. The Board does not often like salesmen types. They like meek, modest, soft-spoken, polite, and remorseful inmates. Be one.

- Answer the questions the Board asks you, not the ones you want them to ask (i.e., do not answer a question about your disciplinary history by telling the Board you have IR&R for the life crime). The Board will slam you for having your own agenda.
- **Do not tell the Board (or the psychologist) how easy it will be for you to go back out into society or they will think you are underestimating the difficulties facing you on parole and will use it to deny you parole.**

6. Be aware of your body language, facial expressions, and tone of voice. The Board will be watching and judging you on everything. They may fire hard questions at you simply to see how you handle them. Be sure not to lose your temper.

7. The regs limit the D.A.'s role at the hearing to opining on your suitability for parole and asking "clarifying" questions OF THE PANEL. The D.A. may not question you, either directly or indirectly, may not object to anything, and MAY NOT GIVE THE PANEL LEGAL ADVICE. However, the Board often allows the D.A. to do so. Discuss with your lawyer how to best keep the D.A. in line and make sure he/she does so.

8. The regs require that if the D.A. submits documents not in the C-file they must be submitted at least 10 days before the hearing or the Board **may** deny their use. Object to the introduction of late documents. (Contrary to popular belief there is no 10-day rule for inmates. You can submit documents any time, even at the hearing, subject to the Board's new 20 page limit on inmate generated documents, discussed earlier).

9. DO ask your lawyer questions make sure he or she explains everything about the hearing process to you. If you don't understand something, ASK! And during the hearing, **NEVER TRY TO ANSWER A QUESTION YOU DON'T UNDERSTAND!**

10. DON'T let your lawyer bully you into doing something you don't want to do. You are the client and have the final say on all important issues, such as what you will or will not discuss at the hearing. If you and your attorney cannot agree on how to proceed, request a new lawyer. If you can only get one by postponing the hearing, do so.

11. On the other hand, DO listen to and consider your lawyer's advice and recommendations. To ignore them without weighing them carefully is not wise.

12. FESS UP WHEN APPROPRIATE.

- If you were in a gang admit it. Don't say things like "I just hung out with them, but I wasn't jumped in", or "I hung out but didn't commit crimes with them". The Board will think you are minimizing your past gang involvement. Just say you were in the gang, then explain the extent of your participation.
- Admit the scope and duration of your substance abuse history.
- Admit to the priors you committed and the 115s you were guilty of.

SHOWING IR&R FOR YOUR PAST MISTAKES WORKS IN YOUR FAVOR.

13. Submitting a parole packet is an excellent idea. It should contain a **summary of your prison program** and parole plans and copies of all support letters, your Insight Statement, remorse letters, Step 8 list, Relapse Prevention Plan, book reports, and "attaboy" laudatory chronos from correctional officers and free staff.

IN MY OPINION, rather than including all of your chronos and certificates in the packet, just put in the written summary (bring the chronos/certificates to the hearing as prove if needed). I suggest doing two lists: one covering your accomplishments since your last parole hearing, the other covering your accomplishments prior to that hearing. This will make it easier for the Board, already swamped with reading material, to read your packet. A parole packets thick with chronos/certificates will only be skimmed.

14. Hope for the best, but expect the worst. The Board wants to deny you parole and will look for reasons to do so. Parole is a more a marathon than a sprint. Many lifers who have deserved a date for years are still waiting. And even where the Board gives a date, the Governor may still reverse it. But don't lose hope. The grant rate is much higher than it was just a few years ago, and the Commissioners are much better. If only our courts were much better, the system would be more than tolerable. But change is often slow, so keep doing your best to put yourself in position to be granted parole!

D. WAIVERS AND STIPULATIONS TO UNSUITABILITY

Since you may waive your hearing up to three times in a row, there is little reason ever to stipulate. If you request a waiver at least 45 days prior to your hearing the Board must almost always grant it. If there were good reasons why you couldn't request it at least 45 days before the hearing (i.e. your lawyer met with less than 45 days before the

hearing) the Board should but often doesn't grant it. If this happens, you'll have to decide whether to stipulate. Whether to waive/stipulate depends on the circumstances.

IN MY OPINION, you should only do stipulate when the Board will likely give you a multi-year denial (i.e., where you have a recent 115 or a recent unfavorable psych eval) if you go to hearing (especially with Prop 9 in effect), and you don't have valid grounds for a postponement, such as illness or you're appealing a recent 115.

In these situations you **MIGHT** be better off waiving for 1-5 years than receiving a lengthy denial at the hearing. But there may be good reasons to go to hearing, even if you know you'll get a multi-year denial. What's important is that you know your options and discuss them with your lawyer. You are doing the time, you are the client, and the decision whether to waive, stipulate, or go to hearing is yours alone.

If you do decide to waive or stipulate, state the reasons why clearly and narrowly in the form to your best advantage. This can mitigate the damage of stipulating.

NEVER SIGN ANY WAIVER/STIP/POSTPONEMENT BEFORE READING IT AND ENSURING IT IS CORRECT. AND NEVER SIGN A BLANK FORM!

E. PROP 9 (MARSY'S LAW)/1045 PETITIONS TO ADVANCE HEARING

As I expected, the California Supreme Court upheld Prop 9 in Vicks and the 9th Circuit reversed our win in Gilman that Prop 9, as applied by the Board, violates the ex post facto clause of the U.S. Constitution. Gilman will be appealed to the United State Supreme Court, but it is a long shot that the high court will even take up the case.

The California Supreme Court made two helpful rulings in Vicks: 1) the passage of time MIGHT be the change in circumstances necessary to entitle you to advance your hearing, and 2) the Board can and should review denials on its own to determine whether an earlier hearing should be given.

As a result, the Board has been granting many more 1045 Petitions to Advance, and now automatically reviews all 3 Year Denials a year after the hearing (this is called a "Sua Sponte" review) and MIGHT review some 5 Year Denials two years after the hearing). As a result, you should almost always try to advance your hearing if you have any legitimate basis for doing so (you can apply once every 3 years). However, if you received a 3 Year Denial, you should probably wait until after the Board's automatic review of the decision, and file your 1045 a few months after if the review does not result in your hearing being advanced.

F. GOVERNOR'S POWER TO REVIEW PAROLE DECISIONS (PROP 89)

The Gilman federal judge also held that Prop 89 violates the ex post facto clause. This ruling was also appealed. But the 9th Circuit reversed. It is being appealed to the United States Supreme Court, where it is a long shot that it will even be heard.

G. CONFIDENTIAL INFORMATION.

More and more, the Board and Governor are using confidential information to deny parole/reverse a grant, the substance of which they will not disclose. Usually it will be information that did not result in you receiving a 115 or prosecuted criminally. This is

beyond horrible and if our courts were fair and impartial would be blatantly illegal. But they aren't. I am litigating this matter, so far without success, but I will keep trying. Perhaps in response to pressure from the defense bar, the Board claims it will be providing your lawyer with copies of your 1030s for confidential information it believes will be used at the parole hearing. While this isn't sufficient, it is a decent first step.

In the meantime, get a copy of your 810 (list of confidential documents) and 1030 (summary of confidential document) for each document listed on your 810 before your hearing and make sure you object to the Board using confidential information without first giving you and your attorney access to it and sufficient time to defend against it. The objection will be overruled, but make it anyway to protect your rights.

H. SWARTHOUT v. COOKE (Shutting the Door to Federal Court)

In 2011 the U.S. Supreme Court stated that inmates have no federal constitutional right to parole, so the federal courts cannot tell California how to apply its parole laws. It is a horrible decision. We are trying to get lifers back into federal court, but it will be an uphill battle. The most promising scenarios involve challenging blatant PROCEDURAL due process violations, such as using confidential information to deny you parole.

I. In Re Butler/Term Setting/Proportionality.

The Board no longer does term calculations. If you are found suitable for parole, so long as you are past your MEPD and didn't pick up any new convictions in prison, you will be paroled if the Governor lets the decision stand.

This change was likely made in response to the second Butler decision of May 2015, which held that the base term set by the Board using its matrices **MAY** show that a lifer is serving a constitutionally excessive sentence. "the base and adjusted base terms relate to proportionality" as well as uniformity", in sentencing, "and can serve as useful indicators of whether denial of parole will result in constitutionally excessive punishment", because "the base and adjusted base terms represent an approximation of the punishment the Board deems proportionate to the particular prisoner's offense"

In In Re Dannenberg, the California Supreme Court stated, “no prisoner can be held for a period grossly disproportionate to his individual culpability for the commitment offense. Such excessive confinement violates the Cruel & Unusual punishment clause of the Cal Constit. Thus, we acknowledge that section 3041(a) cannot authorize such an inmate’s retention, EVEN FOR REASONS OF PUBLIC SAFETY, beyond this constitutional maximum period of confinement.”

What this seems to mean is if you have served **many years beyond the base term** the Board established at your hearing (and even though the Board is no longer setting base terms, older ones should apply to make this argument), you might have a chance to be released by a court because your sentence is unconstitutionally excessive.

So far, such challenges have failed: no court has applied Butler to have a lifer released for having served way more than the established base term. But keep trying

J. SB 260/261 (YOUTHFUL OFFENDER PAROLE HEARINGS ("YOPH"s))

If you were under 23 (SB261 just became law raising the age from 18 to 23) at the time of the life crime (you do not qualify if you have LWOP or death penalty), and have not committed certain serious crimes after turning 23, your next and all future hearings

will be YOPHs, at which, great weight must be given "**to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity**" in determining your parole suitability. This is a very new process, and there have not yet been any court decisions analyzing it, so what follows will necessarily be general.

i. If you are serving a determinate sentence you will be eligible for a YOPH once you have served 15 years (including CYA or county jail time).

ii. If you are serving a life sentence of less than 25-life (concurrent/consecutive sentences and enhancements do not stack to push you to 25-life or more), you will be eligible for a YOPH once you've served 20 years (including CYA or county jail time).

iii. If you are serving a life sentence of 25 or more-life, you will be eligible for a YOPH once you've served 25 years (including CYA or county jail time).

But if you are already eligible for a initial parole hearing, or you have already had a regular parole hearing and are past your MEDP, your next hearing will be held as a YOPH, even if you haven't served the requisite number of years (15, 20, or 25). And if you are found suitable, you would be eligible for immediate release (subject to the Governor's review).

iv. Prior to your YOPH you will be given a new or updated psychological evaluation by the Board at which the doctor is required to accord great weight to your age and circumstances at the time of the life crime.

v. **The suitability requirements in Penal Code Section 3041 and Title 15 Section II still apply to YOPHs**. But the hallmarks of your youth at the time of the life crime must be given "great weight" as well. Because no court has ruled on what "great weight" means, no one yet knows what it means, but for sure your prison program, including your disciplinary record, as well as your IR&R for the life crime, will still be significant factors at your YOPH.

vi. "Hallmarks of youth" include immaturity, impulsivity, recklessness, lessened responsibility, lessened ability to anticipate and appreciate consequences, imperviousness to punishment, susceptibility to negative family/peer influences, and lessened capacity to overcome/escape dysfunctional home environments or crime-producing settings

vi. People who knew you at or before the life crime (i.e., teachers, doctors, counselors, family members) and/or people who have known you since the life crime may submit letters at which they discuss your hallmarks of youth before and leading up to the time of the life crime and/or your growth since the life crime.

- These letters will be critical tools to help you show that your hallmarks of youth should lessen your responsibility for the life crime, and how you've changed since then. It will obviously be difficult to obtain letters from many people who might in

a position to comment on how you were many years ago, so as soon as you know you are eligible for a YOPH, start trying to get these letters together.

- Try to have these letters in your C-file prior to your new psych eval, as they will help the doctor understand your hallmarks of youth at the time of the life crime.

vii. Your court records could contain a wealth of relevant information on your hallmarks of youth. If you were sent to CYA for an Amenability Determination, it was made after you had a psychiatric and social worker evaluation. Those evaluations and the actual Amenability Determination should be in your C-file. Make sure they are.

- other valuable sources of information could be found in your Probation Report (and possibly a supplemental POR done after the Amenability Determination), your sentencing transcript, and your plea transcript (if you pled out). Finally, your school records, medical records, records of any therapy you were given, records from any juvenile hall, camp, or CYA placement, and from Child Protective Services, could help.

MAKE SURE YOU AND YOUR ATTORNEY EMPHASIZE YOUR AGE AND CIRCUMSTANCES AT THE TIME OF THE LIFE CRIME AND CONTRAST THAT WITH HOW YOU'VE CHANGED. IF THE PSYCH EVALUATION DOES NOT DISCUSS IN-DEPTH YOUR HALLMARKS OF YOUTH AND DOESN'T REFERENCE YOUR LETTERS AND RELEVANT OLDER COURT DOCUMENTS, OBJECT TO IT (UNLESS IT CAME OUT VERY FAVORABLE).

K. SB 9 AND MILLER V. ALABAMA (JUVENILE LWOP) RESENTENCING

This situation is beyond the scope of this pamphlet. I do represent inmates who received LWOPs for crimes they committed before turning 18 on petitions to be resentenced to life with the possibility of parole and will be happy to discuss representing you. Feel free to contact me or have your family contact me to discuss your case.

L. THE ELDERLY PAROLE PROCESS ("25/60 HEARING").

As part of the price for being given two additional years to comply with court-ordered prison population cap, the Board was obliged to set up a new parole process for inmates who are over 60 years old and have served at least 25 years of their sentence (both lifers and determinately-sentenced inmates. 25/60 Hearings began in October 2014.

There are no clear guidelines for how these hearings work, but the Board is supposed to give added weight to your age, health, and effects of long-term incarceration at the hearing, and you will be given a new or updated psychological evaluation that will focus on these issues. But so far, there are no court decisions interpreting these hearings, so exactly how much weight the Board is required to give is still not known. Stay tuned.

M. DEVELOP AN EXIT STRATEGY.

You need to develop and implement a plan to get paroled as quickly as possible (if you hire an attorney it should hopefully be to work together not just for one hearing -- unless you are clearly ready to be paroled at the upcoming hearing -- but to develop and implement this plan). Ideally you’ve been formulating, fine-tuning, and implementing your plan since you first came to prison, but if not, you’d better get started right away.

First, you must **accurately** assess how close you are to being a viable candidate for parole. This requires brutal honesty -- as opposed to wishful or delusional thinking -- in gauging your historical factors (life crime, priors, social history), the strength of your IR&R, psychological evaluations, and prison program your entire time incarcerated (and since the last hearing) by analyzing them under existing law, Board policies, and politics (which hopefully this pamphlet has given you a better understanding of) to determine how close you are to being in the ballpark for receiving parole at your next hearing.

If, after having performed this analysis, you believe you are close, your task is to develop and implement your strategy for getting a parole grant at your next hearing.

If however, after having performed this analysis, you recognize that you are not yet there, you will need to figure out what you need to do and how long it will take to get there, and develop and implement an exit strategy to get you paroled at the earliest possible date. This may be a short term plan, a medium term plan, or a long term plan, and might include deciding whether to go forward with your upcoming hearing and "face the music" of a recent 115 or a poor psychological evaluation, or waiving it for a year or more until through hard work and solid programming you are better ready to face the Board (even if you will likely be denied at that hearing).

Obviously, I cannot in this pamphlet advise you on how to analyze your situation or how to develop and implement an exit strategy to fit it. That will be for you (and hopefully your lawyer) to do. But it is critical that you perform this analysis honestly, and develop an appropriate and viable exit strategy. You will be lost without it.