

# Parole Matters. In this issue, you will find ways to maximize your prospects for leaving prison behind.

Getting a parole date is not a mystery. It is a convergence of the right ingredients coming together at the right time. It takes the correct insight, degree of rehabilitation, family and community support, a strong presentation before the Board, exceptional legal counsel, firm parole plans, and sufficient time served. These ingredients, however, are just the beginning. From here, you must present these factors in such a way that distinguishes you as worthy of re-entry. In these pages, you will learn just that and more.

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## **WHY "DEFENSE"** ATTORNEYS WON'T parole date. **GET YOU A DATE.**

A Real Parole Attorney Will Advise You On

You need an ADVANCE attorney,

not a DEFENSE attorney to get a

One of the great misconceptions about parole attorneys is that they provide the bulk of their legal assistance during the course of the parole hearing. A good parole attorney shines not only during the hearing, but more importantly before the hearing. A parole attorney is something akin to a fortune teller, but one who can actually see into your future, and advise you how to shape and alter your present strategy and course to ensure that your prospects at going home are maximized. Here are the details. Most parole attorneys make the fundamental mistake of thinking that their work and value comes during the hearing. While there are important and relevant objections, questions, and statements that can be offered by an effective parole attorney during the actual hearing, the real work of the attorney occurs outside of the hearing room. It is this vital work -- which I outline below -- that is a real work a parole attorney can offer.

## An Actual Parole Attorney Advances, Not De-

The hearing is not to defend your right to parole. A defense posture assumes that the government has the burden of proof similar to the burden of proof (guilty beyond a reasonable doubt) that applies in a criminal proceeding. In a parole hearing, however, you as the life inmate and by extension your parole attorney carry the burden to show that you are deserving of parole. Regardless of any legal obligation upon the Board to find you suitable, the reality of the parole process places the burden on you to affirmative prove that you are worthy of re-entering society. Therefore, you don't need a defense attorney to defend your right to parole. You need an attorney who is willing to and capable of advancing your parole suitability before the Board. You and your parole attorney can not simply be quiet hoping that in your silence or timid responses that the Board will have no reasons to find your unsuitable, and therefore will find you suitable by default. Unfortunately, it doesn't work that way. A great parole attorney will identify in advance of the hearing what are the issues that are specific to your case that you as the life inmate need to address before the Board. Your attorney should be able predict with a good degree of certainty the issues that the Board will pay particular attention to given your case factors.

fends Your Parole. A good parole attorney does

most of his or her work on you and your case outside of the hearing room. This involves educating you on what strategies and arguments before the Board will work well and which ones will not.

What You Should Be Doing In Prison.

Any parole attorney worth his or her salt will give you candid and on-point direction on what you can and should be doing while in prison. The Board often uses "boilerplate" language to deny inmates parole which doesn't help lifers actually know what are the specific things that the Board wants from the inmate to do or to accomplish while in prison. A great parole attorney can anticipate what the Board will ask of an inmate's in-custody history, and advise in detail what the lifer needs to be doing while in prison which will address the Board's concerns.

#### A Great Parole Attorney Can Help You With Your Psychological Report.

Because getting a parole date depends on getting a favorable psychological evaluation, your parole attorney should advise you on how to deal with your psychological evaluation. Your attorney should help you focus your discussion and your presentation with the psychologist in such as way as to help you present as best as possible before the Board's mental health staff. This doesn't mean gaming the psychologist. It means making certain that you are prepared to discuss your background in a coherent and thoughtful way with the board's mental health officials.

#### Your Attorney Should Inform You In Advance of the Hearing How Your Answers Will Work, Or Not Before the Board.

A sharp attorney knows which arguments and topics work before the board and which fall flat. Your attorney must be capable of making these discerning decisions and share them with you. Your attorney must act as a keen sounding board on what themes will work before the board and how to shape those arguments before the Board.

#### Your Attorney Must Be Able to Explain The Parole Process To Your Family.

Involving your family in the parole process is a must. In order to enable this, your attorney must be able to explain the parole process to your family in plain English and in a manner that deeply involves and inspires the family to be committed to the parole process.

### With Runner's Initiative and "Marsy's Law," the devil is truly in the details. If passed. these two ballot initiatives effectively foreclose the possibility of parole thereby converting indeterminate sentences in to actual life sentences for the 26, 000 plus inmates who are serving to-

life sentences

This MUST not

in California.

happen.

5.3 million Americans will not have the right to vote this November due to felony convictions.

## MARSY'S LAW: DESIGNED TO DENY.

In November, Californians will cast their votes on Proposition 9, the Victim's Bill of Rights Act of 2008: Marsy's Law. Backers argue Proposition 9 is necessary because Proposition 8 – the *Victim's Bill of Rights* approved by California voters in 1982 - has failed to adequately protect crime victims and to afford them their basic rights. Proposition 9 would amend the California Constitution and the Penal Code to expand the rights of victims. It would also greatly restrict a life prisoner's access to parole, including the elimination of 1- and 2- year parole denials and allowing for denials of up to 15 years. It would also reduce the due process rights of prisoners at parole revocation proceedings.

The bill is backed by crime victim billionaire Dr. Henry T. Nicholas, III, the cofounder and former President and Chief Executive Officer of Broadcom Corporation. With a net worth of \$2.3 billion, Nicholas made the Forbes' 2007 List of the 400 Richest Americans. Nicholas ranked 195th. Nicholas donated \$4.8 million of his own money to get Proposition 9 on the November ballot.

Proposition 9 is also backed by Nicholas' mother, Marcella Leach. Marsalee ("Marsy") Nicholas – the initiative's namesake and Nicholas' sister and Leach's daughter – was murdered in 1983 by her exboyfriend Kerry M. Conley. (Conley, convicted of second-degree murder and sentenced to 17 years to life, died in prison in 2007.)

In 1984, Robert Leach – Henry and Marsy's stepfather – co-founded *Justice for Homicide Victims, Inc.* Leach died this year, but Marcella Leach remains the group's Executive Director. Over the years, Nicholas has been extremely active in expanding the organization, including his financial donation to erect the interactive Homicide Victims Memorial located in Rose Hills Memorial Park & Mortuary in Whittier, California. Nicholas was the 2005 recipient of the Ronald Reagan Award for Pioneering Achievement in Criminal Justice.

Nicholas is no stranger to supporting tough-on-crime legislation and the elected officials who support such policies. Here's a sampling of where he's thrown his billion-dollar net worth:

In 2000, Nicholas provided financial backing for Proposition 21. This ballot measure, which California voters overwhelmingly passed, increased the punishment for gang-related felonies, carjacking, and drive-by shootings. The result was more people ending up in state prison or jail and serving longer sentences.

Proposition 66, which appeared on the November 2004 ballot, would have amended the decade-old Three Strikes Law to require the third strike to be a violent felony. In the months leading up to the 2004 election, polls showed a majority of Californians supported Proposition 66. But, in the final weeks before election day, Nicholas pumped \$3.5 million into the No On Proposition 66 campaign and the measure went down to defeat.

In addition to his \$4.8 million contribution to the Proposition 9 campaign, Nicholas donated \$1 million to support Proposition 6. This measure – also on the November 2008 ballot - is often referred to as the Runner's Initiative. If passed by California voters, Proposition 6 would dramatically increase penalties for crimes committed by gang members, including imposing life sentences for gang members convicted of home robbery, carjacking, extortion, or threats to witnesses; doubling penalties for prisoners who commit a felony as part of a gang; and, Proposition 6 would add an additional ten-year enhancement to the sentence of any gang member convicted of a violent crime.

Nicholas donated \$1.5 million to Gov. Arnold Schwarzenegger and his political committees, and contributed \$11,200 to help elect Jerry Brown to Attorney General. Nicholas worked closely with Brown, then mayor of Oakland, to defeat Proposition 66.

But, while Nicholas has been a staunch supporter of victims' rights and tough-on-crime legislation, Nicholas has lately been in the news for his own run-in with the law. In June of this year, Nicholas was indicted by a federal grand jury in Santa Ana, California. The 21-count indictment alleges Nicholas and Broadcom Chief Financial Officer, William J. Ruehle, committed conspiracy and securities fraud by backdating employee stock options to make them more valuable. The indictment further alleged that Nicholas and Ruehle deceived Broadcom stockholders and auditors by under-reporting more than \$2 billion worth of expenses. A second indictment, naming only Nicholas, detailed episodes of drug crimes, including Nicholas' alleged use of death threats and pay-offs - including a \$1 million settlement with an employee in 2002 – to silence any talk of his illegal activities.

The ballot initiative can be broken down into three main sections: (1) Expansion

of the Legal Rights of Crime Victims and Restitution, (2) Restrictions on the Early Release of Inmates, and (3) Changes Affecting the Granting and Revocation of Parole. Within each category the following broad changes are proposed:

**Restitution** Under current state law, a court is normally required to order full restitution to the victim. The court can waive restitution if it finds "compelling and extraordinary reasons" justifying the waiver.

Proposition 9 would <u>require</u> courts, without exception, to order restitution in <u>all</u> cases. Also, restitution payments would receive first priority. This means <u>any</u> funds – not just restitution – collected from a prisoner by a court or law enforcement agency would be used to pay off the restitution first, before being applied to any other fines and obligations the prisoner may owe.

## Notification and Participation of Victims in Criminal Justice Proceedings

Proposition 8, passed by voters in 1982, gave victims the legal right to be notified of, attend, and state their views at a sentencing hearing or parole hearing.

Proposition 9 would give victims the legal right to be notified of and participate at all public criminal proceedings, including proceedings involving a post-arrest or post-conviction release decision and plea hearing.

#### Other Expansions of Victims' Legal Rights

Proposition 8 established several legal rights of victims that are protected by the California Constitution. While Proposition 9 expands the rights of victims, several of the rights listed in the ballot initiative already exist under statute. Here are just some of the additional rights Proposition 9 would afford victims.

When fixing the amount of bail and conditions of a defendant's release on bail, courts would be required to consider the safety of the victim and his family.

Crime victims and their families would have the right to prevent the disclosure to the defendant of certain of the victim's confidential information or records.

A victim would have the right to refuse an interview, deposition, or discovery request made by a criminal defendant.

Law enforcement agencies would have a duty to return property to the victim when it is no longer needed as evidence in the prosecution of the defendant.

#### **Restrictions on Early Release**

Recently, the California state Legislature and the courts have considered various proposals that would reduce overcrowding in California's prisons. One proposal includes the early release of certain prisoners.

Proposition 9 would prevent the Legislature and California voters from enacting a statutory early release program to address prison overcrowding. Good-time and work-time credits would <u>not</u> be affected, and prisoners would continue to have their sentences reduced by those credits.

#### **Parole Suitability Hearings**

Proposition 9 would impose sweeping changes to the procedures the Board of Parole Hearings follows in both the granting and revocation of parole.

The Parole-Denial Period. Currently, lifeterm prisoners found unsuitable for parole can be denied parole for a period of 1 to 5 years. If parole is denied for 2, 3, 4, or 5 years, the Board must state on the record why parole could not be granted in the year following the hearing. Also under current law, prisoners with non-murder convictions that carry life terms – kidnap/robbery, attempted murder, and mayhem – cannot be denied parole for more than 2 years.

If Proposition 9 passes, parole denials would be for periods of 3, 5, 7, 10, or 15 years. This means <u>no</u> 1- or 2-year denials. And, all of these denial periods would apply to both murder <u>and</u> non-murder convictions alike. The Board would no longer be required to justify the denial period by stating the reasons why parole could not be granted earlier. In deciding whether to deny parole and for how long, the Board would be required to consider not only the public's safety but the safety of the victim.

The Board's Discretion to Advance a Hearing Earlier. Proposition 9 would give the Board discretion to advance a hearing earlier than the 3, 5, 7, 10, or 15-year denial period. But, the Board will only advance a hearing if there is a change in the prisoner's circumstances or new information establishes a likelihood that the public's – and the victim's – safety do not require a longer period of incarceration.

The Prisoner's Request for an Earlier Hearing. Under Proposition 9, a prisoner will be allowed to submit a written request to the Board asking the Board to advance a hearing date sooner than the denial period. The Board will summarily deny the prisoner's request unless he can demonstrate a change in his circumstances or new information that demonstrates public safety does not require a longer period of incarceration.

The initiative does not specify any timeframe within which the Board must respond to these requests. In cases where the Board denies a request to advance a hearing, its decision will only be subject to a court's review under an abuse of discretion standard, an extremely low standard in which the Board's denial will rarely be reversed

Limitations on the Timing and Number of Requests to Advance a Hearing Earlier. Proposition 9 would limit the number of requests a prisoner could make to advance a hearing to one every three years. No requests will be allowed during the first three years following a parole denial or during the first three years following the Board's denial of an earlier request to advance a hearing date.

So, let's assume a prisoner receives a 7-year denial. During years 1, 2, and 3 of the denial period, he can do nothing. Let's say at the beginning of the fourth year – after that 3year waiting period following the denial is over - the prisoner submits a request to the Board asking it to advance the hearing to an earlier date. Because Proposition 9 does not require the Board to respond within a certain time period, the Board could sit on the request for months, if not years. In this example, if the Board denies the request at the end of the fourth year, the prisoner would have to wait another 3 years before he can submit another request. This means he would not be able to ask the Board to advance the hearing date earlier until the end of the 7th year of the denial period, making the request process meaningless.

## Crime Victims' Appearance at Parole Hearings.

Under current law, victims are able to attend and testify at parole hearings with their next of kin (their closest blood relatives) and up to two members of their <u>immediate</u> family. Or, the victim can attend with their next of kin and, instead of two immediate family members, they can choose to have two representatives present. Also under current law, crime

victims are given 30 days advance notice of a parole hearing.

If Proposition 9 passes, the victim would be allowed to attend the hearing with (1) his next of kin, (2) an <u>unlimited</u> number of family members who would not have to be <u>immediate</u> family members, <u>and</u> (3) two representatives. If passed, Proposition 9 would also extend the parole hearing notification requirement to victims to 90 days in advance of the hearing.

Parole Revocation Hearings Under the federal court order stemming from the case of Valdivia v. Schwarzenegger, within 10 business days after being charged with a parole violation, parolees are entitled to a probable cause hearing. The purpose of this hearing is to determine whether there is enough evidence to detain the parolee until the revocation charges are resolved. Also under Valdivia, the Board must hold the parole revocation hearing within 35 days after the parolee is returned to custody, and, in all cases, the Board must appoint legal counsel to represent the parolee at the revocation proceeding.

Under Proposition 9 the deadline for holding the probable cause hearing would be extended to 15 days, and the Board would have 45 days, not 35, to hold the revocation hearing. Appointment of legal counsel would no longer be automatic but instead would be determined on a case-by-case basis. Counsel would only be provided if the Board determines (1) the parolee is indigent, and (2) the parolee is incapable of speaking effectively in his defense due to the complexity of the issues or because of the parolee's mental or educational incapacity.

Real Answers to the \$49,000 Question? California spends approximately \$49,000 per year per inmate. That is nearly four times as much as other states, like Mississippi. Where does the money go?

Security -- \$20, 429 Medical -- \$7,669 Parole Operations -- \$4,436 Facility Operations -- \$3,938 Administration -- \$2,871 Psychiatric Services -- \$1,403 Food -- \$1,377 Education -- \$687 Records -- \$513 Vocational education -- \$687 Inmate Welfare Fund -- \$282 Clothing -- \$152 Religion -- \$53 Activities -- \$23

## GOOD TIMES?: Good time credit served finally explained here.

Only CDCR would call any amount of time spent in prison "good time" credit served. Chalk it up to another absurdity within the California penal system. But despite the misnomer of its name, "good time credits" means you spend less time in prison. Because it means less days and nights in California's prisons, as a life inmate or short termer, you should know and understand how the good time credit system actually works. Parole Matters explains this process for you here.

#### 1. CREDITS IN JAILS ETC.

In local custody, good-time credits are governed by Penal Code § 4019. When a prisoner is in "a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, "s/he can earn credits as follows:

- --for every 6 days in custody, one day is deducted unless the prisoner has failed to perform assigned labor. (PC 4019(b)).
- --for every 6 days in custody, one day is deducted unless the prisoner has failed to comply with rules and regulations (PC 4019(c)).
- --"It is the intent of the Legislature that if all days are earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody." (PC § 4019(f).) In short, with good time credits, you can do as little as two thirds of your county jail time, by earning the maximum possible good-time credits. With a one-year sentence in county jail, you could get out in 8 months. This is still far more than the 10% figure stated by the petition gatherers.

#### 2. CREDITS IN STATE PRISON

In **state prison**, good-time credits are governed by Penal Code §§ 2930 – 2935. They are earned differently depending on the date when the prisoner's crime was committed.

For prisoners who did their crimes **before 1-1-83**, the following rule applies: "Total possible good behavior and participation credit shall result in a fourmonth reduction for each eight months served in prison or in a reduction based on this ratio for any lesser period of time." (PC § 2931(b) (emphasis added).) Section 2931 breaks down how much of this reduction may be attributed to work performance and how much may be attributed to staying discipline-free.

Prisoners in this category can opt in writing, if they choose, to fall under the potentially-more-generous good-time credit scheme of prisoners who committed their crimes on or after 1-1-83. (PC § 2934.)

For prisoners who did their crimes **on or after 1-1-83**, "It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Director of Corrections for performance in work, training or education programs established by the Director of Corrections." (PC § 2933(a).) Such credits allow up to a six-month reduction in sentence for every six months' work/training/education performance. "Under no circumstances shall any prisoner receive

PAROLE MATTERS: Know the law. It's your life.

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than six months' credit duction for six-month riod under this tion." (PC § 2933(a).)

#### 3. CONSERVATION CAMPS.

But for the lucky prisoners who do their time in Conservation Camps, Penal Code § 2933.3 states: "Notwithstanding any other provision of law, any inmate assigned to a conservation camp by the Department of Corrections who is eligible to earn one day of worktime credit for every one day of service pursuant to Section 2933 shall instead earn two days of worktime credit for every one day of service. This enhanced worktime credit shall only apply to service performed after January 1, 2003." That means these prisoners get a 66.6% reduction in time served. In short, a prisoner who did their crime after 1-1-83 can generally get up to a 50% sentence reduction, based on good work, training or educational performance, serving 50% of the term. But if lucky enough to be assigned to a Conservation Camp, that prisoner could get up to a 66.6% reduction, and serve 33.3%. As a general rule, the above possibilities represent the best-case scenario for a prisoner earning the maximum possible credits. It is, however, subject to an additional proviso. Penal Code § 2935: "Under the guidelines prescribed by the rules and regulations of the director, the Director of Corrections may grant up to 12 additional months of reduction of the sentence to a prisoner who has performed a heroic act in a life-threatening situation, or who has provided exceptional assistance in maintaining the safety and security of a prison." This section is implemented in Cal. Code Regs. title 15, § 3043(h), which provides that a prisoner can receive the 12-month sentence reduction for (1) preventing loss of life or injury, (2) preventing "significant" property loss, or (3) "Providing sworn testimony in judicial proceedings involving prosecution of a felony offense which occurred within the prison.

Moreover, there are many Penal Code provisions that limit the scope of good-time credits that may be earned. For example, "any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of work time credit, as defined in Section 2933." (PC § 2933.1(a).) Moreover, "Notwithstanding Section 2933.1 or any other law, any person who is convicted of murder, as defined in Section 187, shall not accrue any credit, as specified in Section 2933." (PC § 2933.2(a) (emphasis added).) ("This section shall only apply to murder that is committed on or after the date on which this section becomes operative." (PC § 2933.2(d); it was approved by the voters on June 2, 1998.))

GET OUT ON TIME:
MAKE CERTAIN YOUR
DATE IS ON TIME AND
PROPERLY
CALCULATED.

# RECENT PAROLE CASES YOU MUST KNOW ABOUT.

By Charles Carbone, Esq.

Parole Matters keeps you informed on the latest, greatest, and worst state and federal parole cases. And rather than giving you more than what you need or can understand, Parole Matters presents the cases as they are viewed by the courts, lawyers and judges.

Case law means often distilling cases to their essential "holding" or rule of law which the case stands for. The ruling of the case is what you really need along with the citation to read it yourself provided you can use the case to inform your legal briefs. On this page appears the list of the most recent parole case you need along with the actual importance of the case identified.

<u>In re Lawrence</u> Cal. App. 4<sup>th</sup> ; 2008 WL 3863606. This is *the* great decision by the California Supreme Court ruling that the immutable murder was no longer indicative of a present risk to public safety. The Court reviewed the numerous supportive psychological evaluations, exemplary prison record of Lawrence, and previous four parole grants to find that Lawrence no longer was a threat to the public. The Court found that lifers who serve their suggested base term can not have the crime alone as the only valid reason for a parole denial when there is strong evidence of rehabilitation and no other evidence of current dangerousness. The Court concluded that any reason to deny parole – including the life crime --- must address or relate to whether the prisoner remains a danger to the public. Any concern by the Board must relate and interrelate to support a conclusion of current dangerousness to the public. The Court took note that even an aggravated crime does not in and of itself prove present dangerousness unless something in the lifer's pre- or postincarceration history or present mental state indicates that the lifer is a threat. Reliance upon the crime to deny parole also did not turn solely on the exceptional nature of the crime, but rather on the complete record of the inmate's offense and in-prison record. In sum, the Board and the Governor must focus their respective inquiries on the fundamental question of current dangerousness.

In re Shaputis \_\_ Cal.4<sup>th</sup>\_; 2008 WL 3863608. This tandem California Supreme Court ruling reiterated the ruling of *In re Lawrence*, but found that the lifer was unsuitable based on limited insight into his alcoholism and former behavior. This reasoning was faulty because there is no proven link between alleged lack of insight and future risk to public safety.

#### In re Richard Lee Smith 2008 WL 2333274

This is a good decision by the California Court of Appeals which ruled that there was no evidence that the crime was "exceptional," or that the crime was evidence of the lifer's risk potential. Further, the Court ruled that the Board's finding that the lifer lacked remorse was false along with the Board's conclusion that the lifer needed more therapy.

#### In re Howard Armstrong 2008 WL 2231684

This is another good Court of Appeals decision in which the Court embraced the requirement that an exemplary prison record and an old commitment offense indicated that the lifer no longer posed a current risk to public safety. This decision affirmed the right of judges to "closely scrutinize" whether the Board's "exceptional" characterization of the crime was accurate, and whether the lifer's rehabilitation showed that he no longer posed a threat to public safety.

#### In re Edward James Willard 2008 WL

2612506. This is a favorable Court of Appeals decision in which a lifer's second degree murder (committed during a robbery) was no longer indicative of his risk to public safety as evidenced by the lifer's exemplary prison record and the "low risk" finding by the prison psychologist. The Court ruled there was no connection or "nexus" between the 30 year old crime and a current danger to society. Moreover, the Court determined that the lifer's CDC 115 relating to pruno did not evidence any violence potential as the inmate had been disciplinary-free for the last 20 years.

#### In re Byron Kenneth Mills 2008 WL

2332381 The Court of Appeals issued this good decision finding the lifer suitable after 17 years of disciplinary-free behavior despite the victim's next of kin opposing parole. The Court also over-ruled the Board that the motive was supposedly "trivial" when the crime was over an understandable jealous rage when the lifer learned his pregnant wife was cheating. The Court found that next-of-kin opposi-

tion "can not add weight where there is no evidence of unsuitability to place in the balance."

#### In re Brederick Farr 2008 WL 2139547

This is a bad decision by the appeals court that the lifer's priors offenses, CDC 115 six months prior to the suitability hearing, and "above average" risk assessment meant that the lifer was unsuitable for parole.

## In re Victor Sousa 2008 WL 2175259

This is a bad decision which ruled that a CDC 115 seven months prior to the hearing and a "moderate" risk assessment meant that the inmate was unsuitable. One silver lining in the decision was the Court's conclusion that the "unstable social history" was not evidence of a present risk to public safety.

## Saldate v. Adams E.D. Cal. 07-00309

This is a good federal case out of the Eastern District Court in California ruling that D.A. opposition was not evidence of unsuitability. The Court ruled, "voiced opposition to parole is not an enumerated unsuitability factor . . . and such argument is not evidence of unsuitability."

McCarns v. Dexter \_\_\_ F.3d \_\_; 2007 WL 360827. This is a federal decision which concluded that the lifer's prior criminal offenses which were not violent were not evidence of unsuitability. The Court also ruled that the Governor was wrong to conclude that the lifer's age old alcoholism and two 21 year old DUI convictions did not support a reversal of the parole grant. Plus, the murder which occurred because of a DUI was not an "especially heinous" crime.

# <u>In re Donald Ray Lewis</u> Santa Clara Superior Court, No. 68038

This is a good case over-ruling the Governor's reversal because the Governor relied solely on the crime.

#### In re Lennie Parker SCA6, No. C054210

This is a strong decision from the Court of Appeals ruling that a callous crime -- leaving a gunshot victim to die in a remote area—was not predictive of any risk to the public when the crime was over 17 years old. Other favorability factors including parole support from a correctional counselor, the lifer not being the actual shooter, and the lifer's perfect prison record.

In re Abraham Abraham CA4, no. D050029 San Diego County Superior Court, No. 050029 This is an excellent Court of Appeals decision which recognized that the crime partner's actions in the crime could not be transmitted onto the lifer who was not the chief perpetrator. The Court ordered the Board to properly consider whether the crime was truly exceptional once the Board considered the lifer's participation in the crime without his crime partner's actions in mind.

In re Justo Avalos CA2, No. B202101
Los Angeles County Superior Court, No. BH004543. This Court of Appeals decision over-ruled the Governor's reversal by finding a lifer on a second-degree murder was suitable. The Court considered the 23 year exemplary prison record, a supportive ("low risk") psychologist evaluation, and the fact that the lifer committed no crimes or violence since the life crime. The Court also discounted the Governor's finding that the crime involved abuse or defilement to the victim even though there was a heinous dimension to the crime.

Valdivia v. Brown E.D. Cal., 2008, No. 05-00416, 2008 WL 7062927. This is a good decision from the Eastern District Court in California ruling that there was no evidence to support the conclusion that the lifer's psychological evaluations were anything but supportive, and that a three year old CDC 115 was not evidence of unsuitability.

Trunzo v. Ornoski N.D. Cal., 2008, No. 05-0734, 2008 WL 703770. This is a good decision out of the Northern District Court in California holding that the lifer's non-violent prior offenses were not evidence of a risk to public safety. The Court once again cautioned the Board not to continually rely on unchanging characteristics to deny parole.

#### In re J.G. 159 Cal. App. 4th 1056 (2008)

This is a great decision ruling that a California lifer who is in federal protective custody has a right to personally (physically) appear before the Board. The Court ruled that telephonic appearance by a lifer did not satisfy the right to personally appear before the Board. The Court ruled that the lifer had a right to have his demeanor and personal character assessed by the Board through his personal appearance rather than telephonic appearance. This case can be relied upon by those California lifers who are housed in an out-of-state facility.

<u>Delaplane v. Duncan</u> (9<sup>th</sup> Cir., No. 04-55194) 2008 WL 1817271. This is a bad 9<sup>th</sup> Circuit Court of Appeals decision that relied on the lifer's need for more therapy and the crime to deny parole.

Mendoza v. Hernandez S.D. Cal. No. 05-1928, 2008 WL 1925247. This is a good decision from the Southern District federal court in California ruling that a 22 year old crime was no longer relvant in light of the lifer's good prison record (GED, vocations, selfhelp, etc.), firm parole plans, insight into the crime, and low risk finding by prison psychologists.

In re Viray CA4, No. D050934, 161 Cal. App. 4<sup>th</sup> 1405 (2008) The Court of Appeals vacated a Governor's reversal by embracing the new standard that the Board must have some evidence of a lifer's present risk to public safety. The Court considered 20 years of disciplinary-free behavior, unanimously supportive psychological evaluations, and the 24 years the lifer had spent in prison.

In re Singler CA3, No. C054634, 161 Cal. App.4<sup>th</sup> 281. This a strong Court of Appeals decision ruling that the existence of one factor of unfavorability does not wipe out or equate to some evidence of the lifer posing an unreasonable risk to public safety.

In re Burdan, CA3, C056099, 161 Cal. App. 4<sup>th</sup> 14. This is a positive Court of Appeals decision finding that there was no evidence of unsuitability after seven parole hearings and no evidence of such. The Court ruled that reliance on the unchanging crime was not some evidence.

In re Nam Van Huynh CA6, No. H031395 2008 WL 1735890. This is a good Court of Appeals decision ruling that the Governor had no evidence of unsuitability when the lifer had no criminal or violent history before the commitment offense, and the motive (jealousy over infidelity) for the crime was explicable.

#### In re Inez Tito Lugo CA3, A11411

This is a bad Court of Appeals decision ruling that the Board can issue a multi-year denial after issuing a one-year denial even though there had been no change in the circumstances of the lifer's case. The Court ruled that the panel that previously issued the one year denial may have been mistaken, and therefore could be corrected by the panel which denied for several years. The Court also concluded that the Board is required as per Penal Code Sec. 3042(b) and In re Bode, 74 Cal. App. 4<sup>th</sup> 1002, 1003, that the public, not the lifer, is entitled to a hearing transcript within 30 days.

In re Philip Sieler CA3, No. C056919 2008 WL 2738586. This is a good decision from the Court of Appeals finding that the Governor (after a previous remand) still had no evidence that the lifer was unsuitable.

In re Jimmy Dean Williams CA2, No. B203109, 2008 WL 2930754. This is a favorable ruling from the Court of Appeals that the mere presence of a heinous crime, without more, is insufficient to deny parole.

In re Olan Willis Santa Clara County Superior Court, No. 146545. This is an interesting and potentially good case where the Court expressed concern over the Board failing to ever find an inmate suitable at his/her initial hearing. The Court ordered the Board to produce records on how many lifers received a parole grant at their initial hearing.

Nearly 800,000 Americans are on parole. Add in those on probation, and the total is more than 5 million.

## Navigate Your Appeal.

Parole Matters brings you the first of a series of valuable charts on the appeal process.

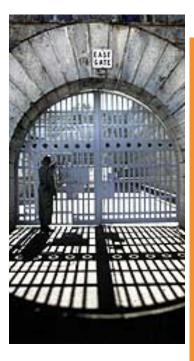
Stay tuned for more. Future issues will cover state and federal Habeas Appeals.

# SUMMER 2008 PAROLE MATTERS.

## FINDING THE RIGHT **PAROLE LAWYER?**

Finding a powerhouse parole lawyer means doing your homework and getting your family to financially support the effort. One of the best indicators is talking to those he or she has represented in the past. Or writing the lawyer a brief introductory letter indicating your ability to pay along with the facts of your case and previous appearances before the Board is often a good way to see if the lawyer is responsive or capable of assessing your case.

Bear in mind that plumbers don't work for free and neither do good parole lawyers. A lawyer is not free. Having a family provide the financial support to hire legal counsel can make the difference here too.



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