

## PAROLE AFTER SHU SEMINAR

(Partial transcript includes Keith and Terry's Part.)

### First Congregational Church

Oakland, California October 7, 2017

Since 2012, 2500 prisoners were released from SHU to general population due to the historic hunger strikes of 2011 and 2013, CDC regulation reform and the *Ashker v. Brown* settlement

Now the question is:

### Will they be paroled?

Following is a partial transcript from a seminar, organized and presented by the Parole Committee of the Prisoner Hunger Strike Solidarity Coalition.

[https://www.youtube.com/watch?v=\\_1l4jwzKRR8&feature=youtu.be](https://www.youtube.com/watch?v=_1l4jwzKRR8&feature=youtu.be)

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### **CS: What can you tell us today about how the parole commissioners look today at a validated prisoner coming up for parole?**

**KW:** The parole commissioners operate today, for the most part, the way they have been for quite a few years – same kinds of questions, same kinds of concerns and, in some ways, it's a mistake to think that this is a whole different process, because it's really not. And you haven't suggested that, but you have suggested that there are some ways that we need to think differently about the Parole Board (PB) in light of people coming out of the SHU – and that is true. I've had a lot of experience dealing with the PB and people who've been in the SHU, and with a lot of people who haven't been in the SHU. The bottom line in my experience is that it is very, very hard to litigate your way through the PB. A lot of people have done that, but it's a whole lot harder to do now than it used to be because the PB has gotten a lot better at protecting their decisions against courts that might want to reverse them. So most of our success now comes the old fashioned way. People do the work that they need to do to change their lives in the way that they need to, talk openly and honestly with the PB in order to go home. It actually does work. And in fact with the PB, it's just about the only thing that works, in my experience.

There are kind of three groups of people that the PB will not release. They are broad categories.

First is liars – people they think are lying to them will not be released. If they think you're lying about any minor thing today, they will deny you parole, for the most part.

Second is strangers – people they don't know or understand, or just can't identify with. If they can't get your story, they're going to deny you parole, because they're going to make up a story about you that may not fit. If you're not giving it to them, they'll make up one that works for them and usually won't work for you.

The third category is defendants – people who show up in a very defensive way. They assume a posture that is very defensive as if when they were originally charged with the crime their attitude was, *'I'm not going to give them anything they don't already have; I'm not going to give them anything to use against me; I'm going to keep my answers really short, and not help them do their job.'* Those people are denied parole all the time, because the commissioners are mostly law enforcement folks in some capacity or another and they spent their careers locking those folks up. So it's a very familiar dynamic for them: *'Ok, I'm going to try to get the*

*information, they're not going to give it. My job is to lock this person up.'* They're pretty good at that. And so as soon as they recognize that familiar dynamic, the hearing is pretty much over. So that's the defendants category.

But coming back to the liar part, you have to be willing to, and able to, tell the truth - about your family background, about drugs, alcohol, about gangs, before prison, in prison. Now gangs is a broad enough category, so if you're willing to talk about the political structures within the prisons that's plenty. You don't have to admit membership. But if you go along with the politics of it, follow the unwritten rules that keep you safe, that keep you alive in prison for 20 or 30 years, you need to talk about that, be willing to share that with them, your experience with that. And that also involves rule violation reports. If you have 115s, talk about them. Show that you're responsible for whatever it happened to be. That information, your sharing that with them, starts to build your credibility, especially when you tell them things you don't have to.

As I said before, this is how you get the PB to feel comfortable enough to grant you parole. It's not the same thing as litigating your way out of prison. It can be, but it is a different avenue. But if you want to go through the PB and have them feel that they can release you, they have to get to know you first. They have to feel like you're telling them the truth; they have to feel like you've given them your story and it makes some sense. It doesn't have to be their story, but it has to be a true sounding version of your story. And again, you can't be defensive. You have to be really wide open about all those things. So that's one thing you have to do.

Part of that truth is, once you've identified factors from your past that contributed to decisions you made, whether it's joining a gang or whether you got involved in the drug trade, or whatever it happens to be, you have to show them how you found the time and accessed the programs in prison that would help you address those factors. This is where most people who've been in the SHU are lacking, because there's not much in the way of programming available to people housed in the SHU. So for the PB, in addition to the fact that they would rely on the Department of Correction's determination: *'This person's a validated gang member, therefore dangerous,'* - so the PB has already made that decision. But they're also saying, *'I know, because he's been in the SHU, he hasn't accessed the programs, so that part of my decision is done.'* But you have to be able to show that you have taken advantage of whatever programming is available, to figure yourself out, to address those issues that contributed to decisions you made in the past.

And then the last part that you really need to do is, you need to show that you've developed a positive support system going forward. Whether it's family, friends, or other connections on the outside, showing that you'll be released to a safe and supportive place. So that's what people going to the PB have to do - everybody has to do.

What their families need to do is one of the toughest parts. They need to give their loved ones permission to tell the truth - because a lot of times, the clients I work with, they're holding on to things so they don't make mama look bad. So they don't talk about their alcoholic father. So they don't talk about abuse in the family. And so they hold on to it - *'No, it's my fault. I did this. I'm not going to put this on anybody else.'* Well, we're not asking you to put it on anybody. We're asking you to tell the truth about what was going on. Families can help tremendously by giving their loved ones permission to tell the truth. Some of that is permission that's also saying, *'We're not going to abandon you. We're not going to leave you alone. We're here with you. Admit you did this crime. We already know you did it. Let's get past that. We're not going anywhere just because we know you did it.'* Now, there are way too many people in prison for crimes they didn't commit, and those cases present different challenges.

Being willing to tell the truth also allows the family to start to explore - together - what was going on prior to and at the time of the crime. *'Why did we make some of these decisions we did? We all contributed to this in some way.'* There's definitely a significant family component to the *telling the truth* part. And that involves things since you've been in prison, too. You know, if your family member has been paying your cell phone bill for the last 10 years in prison, that's a problem. You have to deal with that. We all have to deal with that. Be honest about it. Let's get past it. *'I'm not doing that anymore. I'm not supporting that anymore because that's going to keep you in prison and away from home.'* That's a reality. So telling the truth about what's been happening and what's happening now, as well as families creating that support system to be able to identify it and document [it] through a letter: *'Here's where he'll be able to live when he comes home. Here's where he'll be able to continue with his 12-step meetings when he comes home. Here's the church he'll belong to. When he comes back to live with me, I'm his spouse, we've identified a therapist who has agreed to see us every week or every month through this transition.'* Specific, concrete ways in which families are going to support their loved ones when they come out [are necessary]. So they have to do all those things.

Now, the big part in the middle that people in the SHU are missing is the programming part. They need to show that there are some programs they participated in and they need to show that they've gotten some benefits from those programs. Those are two different pieces. I have to say that I had a client very recently who was validated, had been in the SHU, had just gotten out a year before his very first parole hearing. Not a whole lot of time to be on the mainline. But he was granted parole. Never debriefed. And he had some status with a gang. Now the reason he was granted parole is because he told the truth about all that. He described his role, why it was something he got into, what he did, the kinds of actions he was involved in, and he talked about recognizing how wrong-headed that was, how misguided that was, and that he decided to turn his life around. He started to do that. He got out of the SHU because of the settlement and because of the new rules, and when he got to general population, he associated with different people doing different things. This other part is where the lawyering comes in. The commissioner asked the question, *'Well, if you made all these changes, why not debrief?'* I said, *'You can't ask him that.'* The commissioner said, *'Well, It's a legitimate question and I'm curious about that.'* I said, *'I understand you're curious about that, but you can't require him to debrief. I don't think you can ask him to debrief. I've directed him not to answer that question.'* And the commissioner kind of hemmed and hawed a little bit, and was concerned, but couldn't pursue that question because I made it clear that it was my decision to not have the client discuss it. And they went on and talked about other things. Again, he was granted parole.

Asking those questions – they may want to know, but he doesn't have to talk about it. Not everybody can get away with that. But [with] this particular person, the thing that made the biggest difference was that middle piece I keep coming back to, about the programming. He started when he was in the SHU: He started correspondence courses, reading books, *understanding* himself before he got out of the SHU. So when he got to the mainline, he was able to hit the ground running, get involved in some of the programs and by the time he got to the PB, a year out of the SHU, he was able to show that he had an understanding of himself that really proved to the PB that he had done the work. Again, *he started in the SHU*. He had probably done about six months or a year of correspondence courses and books before he got out of the SHU, and then in that year after his release, he did whatever was available in the general population setting.

This case shows that you don't have to have that long of a positive history – but if it's genuine, if the change you make is genuine, if your understanding of yourself is real – it scores a lot of points with the PB. It took him away from being somebody who's a gang member they don't understand, to somebody who's opening up to them and showing who he really is. So it actually does work.

The other thing [that] was a big difference in this case was [that] the commissioners are all former law enforcement in some way, some of them within the Department of Corrections. There's one [commissioner] who's a former Gang Lieutenant. He prides himself on knowing the gangs better than anybody else. But some of these commissioners haven't been working in the prisons for a while and they may be unaware of how things have changed over the years. So I was able to explain to them what has changed. So when the client was explaining that *'...'*, well, the commissioners were having a hard time. They were saying, *'Look, we know that anybody who's been hooked up like that, that's been as involved as you were, can't just walk away. It doesn't work that way. That's like the oldest understanding within the Department of Corrections. You can't just walk away. Not and still be on the mainline.'* This guy was not on the Sensitive Needs Yard. He was on the mainline. They said, *'Well, you can't just walk away, so this is not credible.'* But what I explained to them was that things have changed – that you can be on a Lifer program in prison in the General Population, even if you used to associate with some of these structures, and did some of the dirtiest dirt they do, you can choose to be on a Lifer program and it doesn't get you killed. But it's a trade-off. You're saying, *'I'm no longer participating in that stuff.'* And the gang associates are saying, *'We got it. You want to go home, this is the program. You do what you gotta do. But don't look to us for any kind of help. We're not going to protect you. You're not a part of this anymore. So you're completely on your own.'* That's the trade-off. If you're going to walk that path, walk only that path and don't dabble in any of this other stuff. It's a mutual respect thing. Now that's how yards are these days. They weren't like that a couple of years ago. The commissioner kind of understood: *'Okay. That makes sense. Things have shifted. The people who are on the prison yards – there's a different mix of people, there are different programs people are doing.'*

So because we helped the commissioner understand something he didn't know already, and because it made sense with what this particular client was explaining – his own journey, they said, *'This makes sense.'* And the

last piece to that was: they said, announcing their decision, ‘*We find you suitable. There were about 10 pages of confidential information – 10 pages of lists of documents - but we didn’t use that because you already told us all that stuff.*’ The confidential information wasn’t even helpful to them, because he gave them everything they needed to hear; [he] showed them who he was, showed them how he changed and the support system that he created – so that’s what it takes to get through the PB.

If folks are not busy doing that, they’re not going to get through the PB. Whatever else they may be involved in, if you’re not doing those things, it’s not going to happen. But if you do those things, it can happen. It can take a while. You have to access the right programs. If you get stuck in a place that doesn’t have much programming - even though they’ve expanded some programs, they’re still not as available as they need to be - start with correspondence courses. Start with books. People start that in the SHU. It makes a huge difference, wherever you are – do that. There are lists of books. (See page page 16) Have people start doing their work. It can happen. The way the PB operates, if you find a way to show them who you are, it makes it so they believe you, so you are no longer a stranger to them. And you’re not defensive. They don’t parole defendants. They parole people who have transformed that relationship with the truth, to themselves, to former lifestyles. Those are the people they grant parole to.

**CS: When you say you were able to explain to the commissioners how it is now, is that something you did in writing in advance, or is that something you did in the hearing?**

**KW:** I did it in the hearing. Now, there are times I have submitted things in advance to help them understand what to anticipate in the upcoming hearing. And it made a difference in this case. I could see them, ‘*Oh, I didn’t realize that. That makes a lot of sense.*’ So that can be helpful to frame the case they’re about to review. Some of them don’t read the paperwork as closely as we’d like. (CONTINUED ON PAGE 4)

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**CS: Would you say the approach you’re describing would be the same or similar for the prisoner being interviewed by the psychologist?**

**KW:** Yes. In a lot of ways the interview with the psychologist is the same as the meeting with the PB. The difference is, you usually have less time to explain yourself to the psychologist. They are filling out forms. They’re checking boxes, scoring different answers, and not often giving you a lot of time to elaborate, so a lot of people feel rushed. They feel like there’s not an opportunity to share everything there is to share about their story. Try it anyway. It helps to bring as much as you can in writing. For example, if you write out a statement of your crime; a statement of remorse; a letter of apology to the victim’s family; a relapse prevention plan – that comes up a lot, and we can talk more about that today. But the more you can bring to the psychologist to show, ‘*Look, I’ve done this work.*’ then the more likely they are to put some of that in your report. But even then, it’s kind of hit or miss. Especially the very first parole hearing, like the client I was talking about – that was his first hearing. He had never been to the Board before, on a first degree murder – it can happen. But the psychologist stated that because he refused to debrief suggests that there is some allegiance to the gang stuff and the PB should investigate this further. That’s sort of how that works. You have to prepare with everything you can, with the psychologist, the same you would with the PB. And the psychologist will come see the client maybe three, four or five months before the hearing. It could be as far out as six months.

**CS: So we had received an announcement or notice from a prisoner who had gotten this thing from the PB. He had been validated. They advanced his hearing and they said, ‘We want you to come back and answer these four questions.’ What’s your take on that? Have you seen that before?**

**KW:** Well I was very curious about how they communicated those questions. Was it in the miscellaneous decision that it said ‘*We’re advancing your hearing to address these questions?*’ I’ve never seen that before. It doesn’t surprise me. They’re trying to figure out how to handle these cases. Is this someone who’s been denied parole?

**CS:** He'd gotten a three-year denial. It seemed like the Parole Commissioners were advancing on their own motion, people who'd gotten like a three-year denial.

**KW:** That's almost standard, almost automatic if you get a three-year denial... especially if you got a low risk assessment on the psych evaluation, as long as you don't get any 115s, you will automatically be advanced.

**Audience member:** Does it make a difference to have an attorney with you in front of the PB?

**KW:** Yes. It absolutely makes a difference to have an attorney with you.

**Audience member:** And thousands of people going in front of the board don't have that, right?

**KW:** Every year they conduct about 6,000 hearings. Now everyone has a right to have an attorney to represent them, and the board will appoint someone if folks can't hire or find their own. It's important to go with an attorney, because – some of the work I talked about before, the things I explained to the board – the client can't do that. And the client cannot say, *'You can't ask me about that.'* *'You can't do that.'* There are two roles here. That's one of the most controversial things I say to my clients. I say, *'Look, you can't be in there advocating for yourself.'* – as crazy as that sounds. I say, *'Your job is just to be yourself. My job is to advocate. My job is to say, 'What you just saw and heard and the person you just met should be out of here, and let me explain why.'* That's my job. Your job is just to show who you are. And they have to get that you're genuine about that – not that you're arguing: *'You must release me because . . .'* People who say that, are denied parole. There are two roles. They can't do both of those things.

I want to talk a little about these questions, though. The first one: **How have you broken away from the prison gang?**

The first thing is, you have some people who would say, *'Look, I was never part of a gang. My validation was always bogus, etcetera.'* And in that case you may say - or the attorney should say -, *'He's not going to answer that question because he was never in a gang.'* But the real question is, *'Why did you go along with the politics, and how did you get away from that? When did you decide that you weren't going to do that anymore? When did you decide you were going to stop following those rules that kept you associating with the people you did, exercising where you did, working where you did, getting the rule violations that you did?'* That's the real question. And if you're not going to tell the truth about that, you will stay in prison. It's not really about gang validation. You know gang validation is their substitute way to say, *'You chose a course of action. You chose a group of people to associate with. You chose activities in prison that we recognize as not pro-social. When did you stop doing that? And why?'* They're not really asking, *'Did you choose that?'* They already know that. We all know that. It's prison. You come in when you're 16, 18 and you've been there for 30 years – you did that when you came in. It's not a question. You did that. Be honest about it, and then they can hear you. But if you, *'nah, nah, I never did that . . .'* hearing's over. So they're really asking, *'Are you willing to tell the truth about where you've been, how you've changed and why?'* and talk about that progress, or not? And so these questions, this is sort of their shortcut to say, *'who do we have coming in here, somebody who's ready to be straight with us, or somebody who's playing games?'*

[If they ask] the question, *'What efforts have you taken to not affiliate with the prison gang?'* I would encourage my client to answer that, because it gives them an opportunity to say, *'When I came in I followed the rules . . . I did this, and this, and this. This is the kind of stuff I did, and when I recognized, that's not going to get me home, it's going to get me further away from my family, I changed my life and now here's who I choose to associate with.'* Answering that question allows them to tell that story, which is an important part of *their* story, *their* journey. And I don't mind that question at all.

Just keep coming back to: the client has to have the opportunity to tell their story in their own words, not be sticking with some squabble about 'was I in a gang, was I a member, was I an associate'. None of that really matters, not really. So you can get past that when a person's telling the truth about it.

**Audience member: Can the severity of the case override one's transformation and the changes they've made?**

**KW:** Legally, it's not supposed to, but as a practical matter, absolutely it does. Some cases are too high-profile, too politically charged for the PB to feel comfortable granting parole, or if you can get through the PB, it's too much for the Governor to let go. In those cases, you have to go to court. We do that a lot. We actually just got a favorable decision from one case of ours. We were in Superior Court challenging the Governor's most recent reversal of his parole grant and we got an order from the court that was favorable, just yesterday. But that's kind of what it takes. Some cases are so high-profile that you have to take them to court. At the same time we're in court, we're also going back to the PB every opportunity we can to get a favorable decision – kind of keeping a couple of irons in the fire.

**Audience member: What does it mean if you were a juvenile when you had the case and now you're much older – should that be given some different weight?**

**KW:** There are some laws that require them to treat cases of young people very differently, to give great weight to the fact that you were young and impressionable, impulsive, and didn't anticipate consequences, etc., partly because of your brain development before age 25. The PB is supposed to give great weight to that in deciding who's suitable to be released or not. But often times, you've got the high-profile nature of the case that is still exerting its own weight in those cases. It remains to be seen how some of those are going to play out. Some of those new rules, they're still new. There are some cases in the court that hopefully will shed more light about how much the PB can ignore those youth factors.

**Audience member: For people who do not have representation, what should they do in response to these questions, why not debrief?**

**KW:** As I said, everyone has the right to an attorney, the board will appoint one, and that attorney may only meet with them one time before the hearing, and they will show up on the day of the hearing. But in that time you do have with the attorney, let them know, *'Look, this is an issue in my case. What are we gonna do about this?'* Either the client has an idea about how they want to handle it, or the attorney may have an idea. You should tell the attorney you don't want to answer those questions because it can neutralize that issue for them. It's not going to force the board to do anything, but it removes one of the issues that they would be concerned about.

If they use it against them, the fact that they are not responding to a question, that creates a kind of issue that could potentially lead to a court challenge because the state says that they can't legally require this. So the fact that you won't talk about it shouldn't be a basis for denying parole. But again, a lot of these things are brand new and they have to be tested in court. Like the case I talked about, the Governor might reverse that client's parole grant. And we'll either have to go to court or go back to the board. We don't know how this is going to play out. I've given one example, but a lot of this is yet to be determined.

**CS: Well that's an interesting example, because it seems like there are good reasons why someone would not want to debrief. But are you saying that in general, it seems like if you're worried something may happen to your family or you feel like these were your friends for a while and you don't want to do anything to hurt them, that those sorts of reasons should satisfy someone's curiosity and shouldn't negate your release?**

**KW:** You're right. But the risk is, in explaining that, if the client is explaining that, he might say something that the board thinks sounds like you're still adhering to the criminal code and have more allegiance to these gang members than the larger society, and that's a concern to us, so we need to see you change that. There's no upside really for me to have my client wade in there – it's better for me to talk about it. There are a lot of things I can say, I can describe and defend, that the client just can't do, shouldn't do.

Questions might come up, like how you'd deal with a certain situation: *'If you see a crime on the streets, then what would you do?'* Most of us would say we'd report it. Most of us probably would not report that stuff, but we know that's the right answer. But a lot of people who've been in prison for decades, in my experience, they've forgotten the right answer. Because it *wasn't* the right answer from their understanding of prison life. For them, it wasn't a *real* answer, because they knew that it gets them hurt or killed. But what they're getting at is whether the person in front of them understands how they think people *should be* acting, not how they would actually act. So the board is listening to see if you remember another way to be out there, and if you can share your understanding of that.

But some of these are tricky questions, because the answer, however honest it may be, can be the kind of thing the parole board points to, to say this shows somebody who is too concerned about that. If you honestly say, *'Debriefing would put my family in jeopardy, put me at risk, or I've got a brother here in prison . . .'* that's true. But in their view, that's why you were associated to begin with. Because you were afraid of standing out, standing on your own, etc. So there's not much upside, in my opinion, to most clients talking about that stuff.

**CS: This question has to do with the scenario where a prisoner may be in fact honest and truthful in what they are saying, but it contradicts confidential memos they have in their file.**

**KW:** That happens a lot. In my experience what happens is, when people are asked about their activities in prison, they often don't tell the whole story. When the commissioner says, 'Have you ever been involved in drug trafficking in prison? We know on the streets your case was drug-related, a drug deal that went bad. Have you ever been involved since you've been in prison?' [prisoner responds:] *'No I haven't.'* And the person has no 115s for drug activity.

But the commissioner is looking at a confidential memo that says in June of 2003 this person was selling drugs on the yard. And they ask you, *'Have you ever been involved?'* [prisoner responds:] *'No.'* *'Well, we find you not credible because the confidential information indicates otherwise.'* Now they may not even be that specific in explaining why they don't find you credible, but they've seen this [confidential report] and aren't talking to you about the confidential memo, they just file away [in their mind] that they asked you about that and you lied about that.

But usually in the cases I work with, we get a list of everything that's in the confidential folder. It's not that detailed, it just says June of 2003, for example, there's something in there. So I ask the client, and when we get to the parole hearing the question comes up from the board, *'Have you ever been involved in drug trafficking?'* And then they say, *'No I haven't, but in 2003 I remember someone dropped a kite on me and said I was involved because they wanted to get off the yard or something like that, but nothing ever came of it.'* Now they've just neutralized that whole thing – as long as they didn't get a 115 for it, or a 128 for it, that's done. Because he acknowledged there was something in there he knew about, [but] had nothing to do with. If he didn't do that because he didn't know about it, then the board will say this happened and he's lying, he's not credible. Establish credibility by addressing it. You aren't admitting to anything you didn't do.

In other cases, a client admits, *'Yes back then, I was still selling drugs.'* No problem, really, like *really*. As long as it's far enough in the past, you can tell the board just about anything. I'm not saying make up anything, you don't have to. There's plenty of truth out there. But they are trying to figure out if you're going to tell the truth about it, the dirt you did when you came into prison, own up to it and you're fine.

I had a client who came to prison on a gang murder, and while in prison committed another gang murder. He still went home because he had changed so much in the time since he did that. It was genuine and real, and they got it – he went home. With that having happened, nobody can tell me anything they've done in prison that bothers me. You may have put some time in, some distance since you've done that, but there's really not an upside to lying about things you were doing in the past, and you actually establish a lot of credibility when you own up to things you don't have to, things that aren't documented anywhere. You neutralize a lot of the confidential information. Like this guy I mentioned earlier, he already painted a worse picture of himself than was even documented in the confidential file, so it wasn't even of use to the board in determining whether he was safe to be released.

Now that's different from the person who absolutely didn't do the crime, and is obviously trying to show insight or remorse, etc. We can talk about that. I have definitely had those cases too.

**CS:** So the prisoner or the lawyer gets those lists, those documents, the 1030s of what is alleged in your confidential file?

**KW:** There are two different pieces to this – the 1030 is a disclosure form, saying this date we received information that says X, Y, and Z. People who get validated or rules violations from this information, that are based in part on confidential information, will get a 1030 disclosure form, which says what was alleged – you were associated with gangs, you made weapons, you sold drugs, whatever it happens to be. There is some substance, where you can say, *'I did or didn't do that.'* But you only get the 1030 if some action was taken against you based on the information. If they didn't act against you, put you in the hole or issue you a 115, then the only information you get on that is the 810, which only says that on this date something was put in your file, and you do get that.

**CS:** But if the PB is reading those confidential memos, and then they use that against you, aren't you supposed to get that in advance too? Is there some new protocol about getting stuff that they might use against you?

**KW:** Well, back in July they started a new procedure prior to each hearing, because they knew that a lot of institutions were not providing 1030s when they should, or even providing the 810. People were really in the dark about what information might be in the confidential folder. So they started to create their own version of the 1030 where they would look at the confidential information in the file and write up a summary, saying , *"information in the file, from these dates, indicates this information about you."* So you get some little bit of a hint of what the concern may be. You get that in the 10 days before the hearing. That's what's supposed to happen. That's the new procedure.

**CS:** We have family members and supporters in the room and one of the questions is how can family members help. People do get lawyers, but lawyers may do just one interview, maybe not a thorough interview, and this strikes me as something that family members could help a prisoner with. What are the 1030s you already know about, how are you going to talk about them, etc?

**KW:** That's true. A lot of people keep a lot of things from their families too, so there are a lot of things in the file that the family does not know about, and things that might be confidential or otherwise. Sometimes people don't want their families to see their psych evaluation for example, or the transcript from the hearing, because there's embarrassing stuff in there or stuff they don't want them to know about, even though it's available to the public. So encouraging them to address those things absolutely family members should do. Another thing family members could do for people going to the board—if they know that they don't have access to programs, get them the correspondence stuff, get them the books to do this work, because it makes a difference. But in working with them in anticipation of the hearing, encourage them to talk about those things. Especially encourage them to focus on the most shameful stuff, that's where the magic happens - sadly.

**CS:** I think of your work as the Cadillac of parole representation – partly because you have volunteers and students you work with who you're able to send in to do pre-hearing interviews and help the clients you work with – is that right?

**KW:** We do more counseling than lawyering, and it's not really just an interview. It's like a counseling session. We work with teams of students who go in and work with a client over the course of a year, typically. They will see them 12 to 14 times during that year for a couple of hours each visit, figuring out this stuff, how to understand lifestyle choices made, programming in prisons, disciplinary and gang stuff. We do that with the students and it's also what we do. I have a social worker on my team, other attorneys on our staff who volunteer, and that's what I do too. It's sitting at the table figuring this stuff out, and family members can do

that, for sure. Parole-appointed attorneys don't do that because they're not set up to do that. They are hired to see the person one time before the hearing, to read their file and prepare the best they can, and to be there to represent them on the hearing day. It's a different relationship. Don't expect that to produce the kind of long-term engagement, involvement and kind of therapeutic relationship that some other attorneys like those on our team can do.

**CS:** So family members can figure out how to supplement what the PB attorneys can do, rather than thinking, *'the lawyer's no good,'* etc. There are a lot of negative feelings about some appointed lawyers, just like public defenders. But if we take them for what they can do and supplement it somehow, maybe a family member sends in someone else to talk to them who isn't a family member, etc.

**Audience member:** **What is this Lifer program you mentioned earlier in describing the one person who had recently been released from the SHU?**

**KW:** It's sort of a different path. It says, *'I am not participating in the politics, I'm not running with any particular group that's involved in violence or gangs or drugs.'* Our program as lifers is to participate in self-help, education, vocation, getting ready for the board and supporting each other. That is the program they are on; That's who they associate with. In some places - every place is a little different - people who commit to that program are "allowed" to do that by other people in prison to do that and not have to follow the regular regimen - whether it's exercise, violence, drugs or whatever it happens to be - that other people of that group would otherwise have to do. That's what I mean by that. It's *how-you-operate-in-prison*. It's a collection of those kinds of groups you may choose to be involved in, over *'I'm gonna hang out in the yard and get into whatever there is to get into.'* It's saying, *'I'm in this program, therefore I'm not doing something else.'* This is more like an informal reference to how people are doing their time.

**Audience member:** **What if you are on a yard where the politics/the unwritten prison rules, are really strong and strongly enforced, and you go to the PB and you want to be honest with them, but you also have to give them the realistic answer of how life is in prison?**

**KW:** This is a very difficult challenge. It's why when the PB goes to a Level 4 prison, they are not expecting to hand out many parole grants, because they assume that anyone who has been there for any length of time is involved in the politics in one way or another. And if you're not honest about that, they think, *'This hearing is over, no problem.'*

The other thing that's related, though, is as long as you're on those yards, you're going to get 115s for something - either participation in a riot, assault on somebody, possession of this or that. That's going to happen. And if you have a rule violation report, anytime within a couple years of your parole hearing, you're going to be denied, too. It's one of those things that communicates to the parole board that this is somebody that is not ready - he's still on this yard, and he got a 115 last year. It doesn't matter what it was for. For someone who doesn't have that, but they're on the yard, they're still leaning against granting parole because they think you're up to something that you're not disclosing. It's a huge bias against granting people parole at a Level 4. There's a process now that allows people who are at higher security level prisons to come down to a lower security level.

At their annual classification, they look and see if you've stayed clean and sometimes you can do that. Sometime, the parole board says, *'We need to see you get down. We see you've been clean, but we need to see more programming, and that you're taking advantage of your lower security level.'* It's not fair and I don't have great answers for how you get around that. But I've seen people just honestly say, *'This is who I associate with because that's who I have to associate with or else I might be killed. But I don't participate in violence, I don't participate in this stuff, I go to yard when I need to, exercise, etc. But they respect that I'm trying to go home, so I don't have to be involved in some of the same things I used to be involved in.'*

But a related issue, and this used to happen for people who were never validated, but they were on a Level 4. The commissioners would basically ask, *'What are you still doing here and how are you not involved?'* The honest answer in a lot of cases is that they went to the guy running the yard and said, *'I can't do this. I'm trying*

to go home. I have a family to get to. I have done the time. I'm not gonna step on any toes, but I don't want to be a part of that.'

Again this is a version of 'I'm on the Lifer Program' that has kind of existed for a long time. But people go to the PB and they don't want to acknowledge that they had to tell somebody. But when they say they had to do that, there was a reckoning. You establish credibility because they know you're telling the truth. Sometimes they say, 'Yeah, I had to go to guys in the yard and say I'm not involved, and well I got jumped. And then they left me alone.' Or, 'I got stabbed.' It's crazy, the stuff we put people through, but that's the reality. It's the description of your journey away from that and it's credible, it's what actually happens and they get that. And you have a record that shows how you got away from that, distanced yourself from that and might be ready to go home.

In regards to the question about how much we know about who we're going to appear in front of, and **do we prepare for particular commissioners**. The board now tries to keep it pretty secret who we're gonna see until the week of the hearing. If you have a hearing that's later in the week, those commissioners have been there all week, so you'll know by then. But we generally don't prepare for any particular commissioner—you kind of have to be ready for whoever you get, to be as honest as you can be. But at the same time, some do have a style. Some are more aggressive or confrontational than others, so I'll let the client know the commissioners may be a certain way. 'Don't let it shake you from who you know you are, and don't let them knock you off your game.' But we don't really try to target any particular commissioner, they all have their issues.

In response to audience member comment:

**KW:** First, you just said you went to the board 21 times and it took you three grants before you finally got home – welcome home, one. I'm really glad that it worked out. It's terrible that it took that much.

The kind of support people have on the outside to help make it happen is a huge part of this. If the board feels like you don't have anywhere to go, you don't have a support system, somebody to not only keep you going in the right direction, but also to get you there, then they may feel that you're better off here in prison. But at the same time, people who don't have that connection to the outside, their motivation to go through the PB is different. Unfortunately I had a client who had been in prison many many decades. He said, 'Look, my family is gone. I don't know anybody else outside.' And his motivation to do the things that it takes to get to the parole board are not the same, his outlook is not the same. That happens. It doesn't happen often, but it's sad when it does happen.

We talked about the psych evaluations. The psychologists diagnose people with an antisocial personality disorder. That's really about whether there are certain historical factors to your case, in your past, that fit into this collection of factors, that we can say, 'yeh that's the label we want to put on it.'" It doesn't really help predict the future of California lifers. But they put it in these reports all the time. In my experience, most lifers get this label of antisocial personality disorder, but a lot of people still get to go home. They really want to know who are you now, so that label really applies to history more than anything else in my experience.

**CS:** Now we are going to hear from Terry Kupers. Terry's been involved in prisoner support work for decades and you particularly specialize in solitary confinement. He's a national expert who's worked on many cases and with a lot of lawyers. He's more than an expert, but an activist as well, and an educator, therapist, and counselor. His latest book is *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It* (Univ of CA Press, 2017). Terry was one of the experts in the *Ashker* case. Currently he's helping lifers move toward parole and have been working with our committee trying to change the system a little bit. Terry, can you give us some basic information about the FAD, the CRA, who are these psychologists who prepare the report and what is that system all about?

**TK:** I'd be happy to. First of all, I am happy to be here with all of you, and Carol was a dynamo in the *Ashker* case and other cases.

What Danny Murillo did was very courageous. One of the biggest problems that people have who get out of prison is isolation. You have to break the isolation, you have to be involved with people to make it. So the program that Danny was and is involved with, Underground Scholars Initiative, is really important. We're in a cultural war and there are two stories – one story is that prison is filled with heinous criminals who are awful,

they're murderers and bank robbers and such, that are absolutely incorrigible and the best you can do is lock them up, preferably in solitary confinement, to protect society. And in order to do that, we need to multiply the prison budget geometrically, that's one story. So people who get to solitary confinement are called "the worst of the worst" and such.

And there is another story, and I hear this universally from every prisoner I've ever talked to – *'When I was a kid, I did stupid things, most of them on drugs. And then I got caught up in the prison, in the culture. For various reasons, I got into more and more trouble.'*

And then you meet people who are 35 or 40 years old in prison. They've been educating themselves, they help each other, particularly young prisoners, and they're very neat people; they're very bright. And I meet people in prison who don't have a college education, but I can talk with them about anything; philosophy, literature. They are extremely educated and bright and caring. That's another story. And if you help those people tell their story to the parole board, you're going to help them get parole.

So for instance, antisocial personality disorder has character traits, personality traits, like callousness and lack of empathy. I haven't met those people. I meet prisoners who are extremely caring, to the point they're asking about how I am doing during our interview and they're taking care of me, asking, *'Are you comfortable, are you okay with this?'* I think, *'Wait a second, you've got "antisocial personality disorder" on your chart here. Something doesn't compute here.'* So my job, since we did the *Ashker* case, has been doing more and more parole work, because if we help people get out of the SHU and they don't get out of prison, what have we accomplished? And the committee is really doing great work to educate people and struggle with the PB about what's going on.

Parole has a number of considerations. One is risk. Risk is a very important consideration and actually the criminal justice system bends over backwards so that the kind of scene that happened in Las Vegas won't happen. Now it's absolutely impossible to prevent what happened in Las Vegas. In fact, from everything I've read in the paper, the guy who did the Las Vegas massacre absolutely makes a lie out of what we're doing with our psychological assessments. He doesn't have a violent background, he doesn't have a criminal background. There are none of the precursors of violence in his life, as far as we know yet. What the system says is we have to predict risk so that we'll only let people out of prison who are not a risk to society, and we're going to bend over backwards, particularly after an incident like Las Vegas, to keep people in prison who offer any kind of risk out there. Now who are we going to get to put some scientific validity on that? Well, let's ask the psychologists to do that.

So the FAD, the Forensic Assessment Division, is a separate unit. The PB is separate from the California Department of Corrections, by the way, and the FAD works for the Board of Parole. It's composed of a few psychologists in Sacramento and we've been negotiating with them. And then it's a whole lot of psychologists out in the field, who are hired mainly on a contract basis, very few on salary. They go around and interview prisoners and do a thorough document review. They get the confidential information. Then they write a very, very long report and there are several components to the report: their history, what it was like to talk to the individual, their life story, their career criminally, all of the crimes they've been convicted or accused of, or arrested for, all of their disciplinary proceedings in prison, and all of the programs they've done. They go through and they list all these things. And then they do psychological tests and they come up with a diagnosis, like antisocial personality disorder, to show risk. This report is called a Comprehensive Risk Assessment– that's what a CRA is.

So the psychological report gets collapsed into a risk assessment. And the risk assessment is going to indicate that there are multiple incidents of violence in the past, that there's callousness in the violent incidents, that there are disciplinary problems in prison, substance abuse related to the violence, and that there's antisocial personality disorder, or narcissistic indications, or anything that has a negative stigma. They write this report and in getting to the diagnosis they say this person is a minimum, medium, or maximum risk.

Now I'm going to build on something that Keith said about getting representation. That psychologist report looks *very* convincing. It's built on a lot of false information, or information they aren't giving us, the people who are representing the prisoner, or the prisoner, [like not receiving] the confidential file. It has to be picked apart. Now if the psychological report, the CRA, says that this person has an antisocial personality disorder and they are a medium or maximum risk, get a psychologist or a psychiatrist to do an individual report. I don't think that prisoners are entitled to it, [and] it won't be paid for, so the family has to pay for it. But we have to pick

apart this report and that's what I've been doing. I've been recruiting people, psychologists, to do one or two parole evaluations. What happens is we get whatever records we get, and if there is representation, if there's a lawyer, we get the lawyer to turn over all of the paperwork we have. We get the CRA – then we also get from the prisoner *all* the risk assessments, because every time they've gotten up to the parole board they've gotten a risk assessment. We read all of those and figure out what they are doing. Most of them are just copying what the last risk assessment said before them. It was probably on their computer and they fill in a few pieces of recent data. What I do is I go through and debunk it. [Terry Kupers asks permission of Kalima, who is in the audience], "Kalima, is it okay if I mention something in your background?" After 21 or 22 appearances, and the last several times getting vetoed by the Governor Schwarzenegger once and then Jerry Brown once or twice, Jerry Brown, under pressure, approved it. Usually the PB denies parole. But I've been working with several prisoners where the board grants parole and then the Governor vetoes it, and then we have a whole different type of problem, which I would turn over to Keith and other attorneys.

So on Kalima's record is substance abuse, and crimes of conviction involved with substances. And now he is in remission in an institution setting. What does that mean? That's code. That means Kalima is a heinous criminal who uses substances and the only reason he's not using substances right now is because we've got him locked up. So I have to say, '*Hold on a second.*' My understanding, first of all, is that you can use substances in prison, so being locked up is not the reason he's not using substances. Second of all, in Kalima's case, he did use substances in prison, the first several years. Then he *totally* transformed himself in 1981 or 1982, and became clean and sober, became an imam in his Muslim religious group, and counseled younger prisoners on recovery and staying clean and sober. So in my letter I wrote, '*Wait a second. If you've got somebody who is running drugs in prison and doing drugs themselves the whole time they're in prison, you're going to say they have a substance abuse problem. And you're saying Kalima has a substance abuse problem, are those not different? That he has been clean and sober for what, 35 years? And he's been counseling other people in recovery? So your category of substance abuse in remission because of an institutional setting is totally bunk.*' And I didn't word it quite that way in the report, but I said this does not make any sense.

Another one came to my attention recently – 115s. If we're doing a psychiatric report we have to *really, really* know the disciplinary history. 115s are very important. A colleague just told me about a prisoner who he's doing a parole report for who was involved in a riot many, many years ago. My reaction – 'A riot. What is that?'

We have to find out what happened, so we have to ask the prisoner, '*You were involved in a riot in 1990 something; What is that?*' And the prisoner says, '*I got jumped and I fought back. The guards came in and a bunch of people were fighting and they said we were rioting.*' And I say, '*Ok, tell me more about that.*'

We have to stick that in our report, and here's what we're doing – back to the two stories. There's the one story that says the heinous criminal, who, of course if there was a riot, would be the instigator of it, and needs to be in SHU, [and] he can't be let out. And the other story is that this is a decent human being, just like you or me, but because of fortune he's in prison, did some stupid things when he was young or whatever, did substances, and changed. And the riot is understandable as a predicament he was in where he had to fight, you can't just stand there if you get attacked. So we give it another spin, we tell another story about someone who was far from a heinous criminal, and we work that through so that, as Keith was saying—everything in their files is on the table. So we have to give it a different story, put it into a different context.

So now we get to the SHU. First of all, and I think I disagree with you a little, Keith. I think our criminal justice system is based on the informant system. I have done a couple of dozen innocence cases, people who have done 25 or 30 years – they were literally innocent. Some of them had a criminal background, some didn't. But we had evidence. The liability part of their eventual civil lawsuit was that the DA (and the DAs are immune in this sort of situation), and the sheriffs put someone in a cell next to them, who was a real sleaze, and had that person testify to them, that they had confessed to doing the crime. And in payment for that, the person who informed on them got a lighter sentence.

A lot of prisoners say they didn't do anything. Some of them are lying and some of them are telling the truth, but there has been a large subgroup of prisoners who got caught up in the informant system, who got false testimony against them. The DA says, '*Look (the prisoner doesn't have an attorney at this point, or they may be meeting a public defender for the first time), and the DA says, 'Look, we have enough on you to send you up for 75 to life. Now if you'll play ball with us and either roll over on someone else or plead to this or whatever,*

*we'll give you 10 years.* Now compared to 75 to life 10 years looks good. So, there are an awful lot of people this happens to, same as the SHU, gang validation is a tricky process. Mainly white officers see these Latino guys slapping five with tattoos and stuff, they don't know what's going on and they say, *'Well, we think that guy is related to the gang, so that guy hanging out with him must be related to the gang too, so we're gonna put them in the SHU.'* Now I'm not saying everybody in the SHU is innocent, but a lot of people are.

So they put them in the SHU and the next thing that happens is someone says, *'Wait, I don't belong here. I'm not affiliated.'* And the officers say, *'We don't care. You need to debrief. And that means you need to give us three people.'* So now he's stuck, the same as the guy who had the choice between the 10 and 75 years. An awful lot of people have that story. I don't know who is telling me the truth and who is not, but an awful lot of people tell me a story like that.

Now comes the thing Carol mentioned, which is the six-year... active/inactive review. When I collect data, I'm talking to people who are fairly straight shooters. The most honest people I talk to are the prisoners. A hundred percent of prisoners tell me that that six-year review is totally bunk. They'll find things, like Danny said. There are evidently some symbols on the Mexican flag that guys like to make tattoos of or put into letters, stuff like that. And the system thinks it's gang stuff. So they find that, or the card they've signed or a picture of someone. One hundred percent of prisoners tell me that their six year review is totally bunk and they were falsely continued in SHU. And this is before the *Ashker* case, so that happened over and over again and they spent 30-40 years in the SHU. They hadn't done anything. There were no 115s. And it was alleged that they were still gang-affiliated. Now I don't know the absolute truth, but there is a lot of slippage. And I really question that the guys that were the named plaintiffs in our case, in the *Ashker* case, had been active in any kind of gang activity for decades. Some of them admit that as a youngster they were involved in some bad stuff. But they are 20-30 years clean and they're getting six-year re-validations; it's bunk. That is evidence against them for parole. The fact that they were continued in SHU, means they aren't upstanding citizens. So we have to go back and look at that, and give another explanation.

It's fascinating how Keith explained it and I think it's absolutely true. You have to be honest about all this. So the person who gets charged with a riot for defending himself in a fight that becomes a group fight has to say, *'Well, that's what happened.'* And we have to go back incident by incident and explain that, as part of a different story, as someone really trying.

So the issue of not enough programs: *'Well, I was in SHU,'* countered by, *'Well, we have programs in SHU, we give you manuals.'* Well, one of the symptoms I report about being in the SHU is you can't concentrate. So it's amazing that you [Danny] were able to study in the SHU. And I find lots of people who are able to study in the SHU, but they are doing it against a huge disadvantage – their memory is impaired, they aren't able to concentrate fully. So a lot of people tell me *'I can't do that manual. I was in school and I never did well in school with a teacher and tutors. I can't sit in this isolation cell and accomplish a course by manual.'*

So I put that in my report. Yes, it's true that they didn't do a college course in the SHU – they were not able to and there was nothing else available to them. Repeatedly, you have to kind of tell the story that this is a guy, who got caught up in stuff and that was 40 years ago and since then he's been suffering greatly, hasn't done anything particularly awful and you've got no 115s for 20 years, except for the hunger strike.

So that is the next thing. It's on those CRAs. There was this case where a prisoner sued, where the result said you cannot be punished for taking part in the hunger strike because it's a First Amendment Right. So I put in my report, which is a psychiatric report: *Look, they are in the SHU. They've filed grievances, they've done every single thing they possibly could to stand up for their rights, and at every turn they've been disrespected, (and I watch my language in saying that, I don't accuse staff or guards of anything), but they have not been able to have their grievances redressed in any other way. So as a last desperate act, they do a hunger strike. They are peaceful, they are extremely articulate. The demands made actually were extremely reasonable and actually the department eventually agreed to all of them when they settled the Ashker case, so how can you hold that against them?*

But there's another side to it, and I say to the PB, *'You are trying to decide whether this individual will make a good citizen in the community once they are released. What qualities do we want in a good citizen?'* One is that they remain sane in an extremely stressful situation that tends to make people insane. Second of all, they have a moral system that they abide by and they're very principled. For instance, refusal to debrief. (I actually explain it as part of that.) Their refusal to debrief is not a sign that they are still part of gangs, which is what the

nasty story is. They just never gave up their gang affiliation. It's that they have a set of principles and they're adhering to it. And that's why they didn't debrief. And you want them to be able to express themselves and in a peaceful and social way to accomplish goals—the hunger strike. They did all of that. *'They showed you they can do all of that, and then you agreed to their demands.'* So that's actually a plus, that's a pro-social.

So what I'm doing over and over again is moving people from this heinous criminal, incorrigible, needs to stay in SHU forever image, to: this is a really decent human being with a lot of admirable traits, who would actually do very well out here in the community. And so if there is anything in the CRA that would bear poorly on the person getting paroled, I believe we need to do some organizing around this and get volunteer psychologists and psychiatrists, because this is not supported financially. [Keith responds that the right to legal representation is paid for by the state – \$400 per case.] But there's no such thing for a psychologist or psychiatrist to rebut the CRA.

So if there's anything in the CRA that's at all negative and bodes poorly for parole, I think an independent psychiatric evaluation has to be done. And we have to educate the psychologist or psychiatrist. I can't do all these reports. People don't understand about hunger strikes and the SHU and the damage of SHU, and that kind of thing. We have to educate people. That's why I do the writing I do and wrote a book on solitary. The point is to make something that goes on in a dark and secret place (the SHU) known out in society so we can have a discussion about it. Do we really think people should undergo successive cell extractions and be sprayed with pepper spray for something they've done alone in a cell? What sense does that make out here in society, and do we really want our representatives (the correctional officers) to be treating people like that? And the more we make that public, in my little corner of making things public, I try to train psychologists and psychiatrists to do parole evaluations.

Or the other thing, by the way, which is extremely comparable – the *Miller v. Alabama Supreme Court* case, which was about juveniles across the board being given life without parole. And it was decided that that can't happen. We have thousands of people who were tried as juveniles and given life without parole. They have to be re-sentenced. A re-sentencing report is similar to a parole report, and in the same way they have to be presented as a decent human being who got caught up in some bad stuff, and is not defensive about it. I like the way you formulated that, Keith. We have to honestly address each of the incidents, not be defensive about it, be honest in the response, but make it part of a different narrative. And the narrative is that this is a decent person who got caught up in things when they were a kid, did stupid things when they were a kid, whatever, and here they are now as this rather admirable human being. And then point out all the strengths and community support.

**CS: So I'm wondering if there's a little bit of a tension between what you're talking about picking a report apart, which sounds a bit about the defensive.**

**KW:** Yeah, I'd like to talk about that. If I were to hire a psychologist, and we've done this in the past, used to do it fairly often. We'd get a negative report from the parole board's psychologist, we hire our own psychologist to do a full evaluation and then present that to the board. The commissioners will, at worst, attack our report and its author. At best, they'll completely ignore it, in a lot of cases. And when we get to court – we'd do this to incorporate it into a court challenge – the court will say, 'Well, the parole board doesn't have to give that any weight, if they don't want to. We're not going to require them to give it weight.' So what I would say is that, especially in the re-sentencing context for young people, that kind of evaluation that you're talking about is really, really valuable. And it's treated more as an objective assessment than the one that I may get for the parole hearing specifically. So what I might do now is, rather than hire someone to write a report, is hire someone to provide therapy and counseling. So if they are saying there were some concerns or a deficit in this area, [the counselor can say] *'I've spent the past six months working with this person on this area, here's the work we've done, here's what he's gained from that.'* - that report then becomes more documentation of the programming the person has continued to do. It's more like an objective *"here's more work that he's done to address those issues,"* not that it's a critique of their report. This is more information and it's relevant and seems reliable. So if I'm going to use it to help them understand the client better, or recognize the client has tried to fill whatever gap their psychologist identified, it's better received by the parole board in my experience. That's how I use it now.

**TK.:** Well, let me just respond to that. First of all, on the issue of defensive, it's one thing for a prisoner to say, *'I didn't do it, or that's not a valid charge'* or something, and another thing for a hired professional who is doing a professional assessment to say that. For instance, the riot example or the 115 for the hunger strike. As an outside psychiatrist, I think I can have a reasonable discussion with the parole board. They're experts, they're professionals in their correctional status, and I'm a professional in my status. And for me to say to them, *'You know, when you're looking at whether someone is going to do well after they're released or get into more trouble with substances, violence and crime, I actually would like to respectfully disagree with you about their participation in the hunger strike, as "evidence of continuing antisocial traits"'* (which is literally how they say it). I am an expert on antisocial personality disorder, as is the person who wrote the FAD report, and I am basically saying, *'I want to respectfully disagree with you. Here is the DSM description of antisocial personality disorder, and here is what this person, the FAD psychologist, said about participation in the hunger strike, and here is why I, another professional giving a contrary opinion, don't think that's valid.'*

Another point where I'm argumentative (professionally) is about personality disorder being a lifetime unchanging characterization, so that someone who has antisocial personality disorder, first of all has the same personality disorder their whole life – I don't believe that and there's a valid debate within psychiatry and psychology about that – and second of all, is not amenable to treatment. Those are the assumptions about antisocial personality disorder. They are wrong. Now in some individuals they are right. And the reason is because the individual isn't changing and isn't amenable to growthful experiences, that's true and there are such people. But actually, that's few and far between. Most people I meet, who legitimately could have been called antisocial personality disorder earlier in their life – because one of the criteria is you have to have conduct disorder or oppositional behavior before the age of 14—then they had to have activities like crimes where they have victims, where they didn't really care about the victim's experience, well that's true when they were 16 and did such and such, and yeah, I don't think that shows much empathy for the victim—but they've spent 30 years discipline-free in prison and they've turned into this interesting person I'm meeting who by character traits—empathy, caring, discipline to delay gratification and plan for the future—all of which are contrary to the antisocial personality disorder diagnosis. They do not fit the diagnosis and therefore the diagnosis is wrong. Now I do that over and over again and basically debunk the antisocial personality disorder. If the prisoner did it, it would be defensive. If I'm doing it, I'm joined in a debate in mental health. I think that's valid and they listen. In Kalima's case, I went to the head of the FAD, who I have an ongoing, adversarial but friendly exchange with, and I said to him exactly what I just said here. *'Are you telling me that you're giving him points for risk assessment – medium or high risk – based on one factor being substance abuse? And you're telling me that he's the same as someone who is still using and dealing drugs in prison? They both have substance abuse so they both have the same mark against them? Or is there something qualitatively different when he becomes clean and sober by his own doing in 1981?'* And the guy agreed with me and he said, *'We're gonna revise that criteria.'*

**TK.:** I think what's really important about what you're doing is you're educating them. And they're much more open to being educated than they are to being told or forced or litigated. And you present it in a way that says here is a different opinion, consider this for context, and I definitely see that being successful.

Audience member question: **Do you adhere to the DSM 4** (Diagnostic and Statistical Manual of Mental Disorders)?

**TK.:** You know, in my writing I'm very critical of the DSM, but I don't think the PB is the proper place to have that debate, so yes, I use the DSM 4 and DSM 5.

We're working with real people who are doing real things. We know how the PB behaves; we know what kind of argument they'll listen to, and I agree, it's mainly education that I'm doing when I challenge them. In the antisocial personality disorder, there's a technical problem. The technical problem is that the way the thing is written, there's no timeline. They don't say, *'They were this way when they were 16, and they're this way now.'* They say, *'They're this way sometime in their life, callous, uncaring about . . .'* Ok, they were, and therefore there's something we can say about them now because of that. And I'm saying, *'Oh no. That's not correct!'* That in fact, in clinical experience, what we find is a lot of people, because of the immaturity of the

juvenile mind, because people grow, because, for instance, most crimes and most substance abuse happens in a huge rise in frequency between the age of about 16 and the age of about 25. That's where most of this stuff happens. And then people get caught up in prison and ones who get into prison life get into further trouble, because I think prison damages them, particularly solitary confinement. But most people get over it. There are millions of substance abusers out there. They're not all caught, but there are millions of them. Some of them go on to corporate and political jobs. They stopped doing it in college or grad school or whatever, or when they have a family. And so it's not correct to assume that because someone committed a crime that demonstrated callousness at 16, that they have a personality disorder that's lasting and unchanging, or that they would not be amenable to treatment.

By the way, Keith, I like the idea of having someone treat, if you can arrange that, to address everything the PB raised in the previous hearings. That's really important. And that prisoners show that they're doing that. 'So, you have not explained yet what you were thinking when you did this crime.' Prisoners should think about that. These people, they happen to be heavily police-oriented, but when they raise questions like that, if I were the prisoner, I would say, 'Oh! So you didn't like my explanation. Maybe it's not deep enough. Let me think about that.' And you want to show the PB next time that you've done that, and that you've advanced your self-understanding and your explanation of why you would not be at risk of doing that again.

**CS:** And that's what they sometimes call insight, right?

**TK:** Right.

**CS:** So that's the end of our "parole" presentation, but I'd like to go back to Terry. Because of all his interviews, [he] has a lot of insight into what SHU has done to prisoners, and we thought it would be helpful for him to spend a few minutes talking to you about your loved ones, or people that you know who were in SHU, who were harmed by that experience, and how that manifests itself, what you might anticipate and what you might have already experienced. And Terry has also written a book that's here for sale, and he'll be here to sell and sign the book at the very end of our program.

**TK:**..Let me make a point about the SHU Syndrome. I want to flip the understanding of experience in SHU. Since we settled the *Ashker* case – although I think it was a huge victory – it isn't right to put people in a box and leave them there for decades. That's what the State of California and the courts decided. Now, there's a group of people that that was done to, and they survived it more or less well. A lot of people killed themselves, a lot of people went crazy, a lot of people debriefed. Now they're on the Special Needs Yard and they're a problem for the State. There's a lot of violence on the Special Needs Yard. The gangs are on the Special Needs Yard. So for someone to have done their time in an extremely unfortunate situation, which has since been decided is overly harsh, to have survived and educated themselves, come out sane and keep contact with loved ones, which is another big issue for the PB, is *rather remarkable*. People who have been in SHU for a long time survived and came out as remarkable and admirable people, should be a sign for the PB, and the fact that they've been in SHU, is not over on the side of being a heinous criminal and incorrigible. We want to reverse that story. It's on the side of them having remarkable strength of character, and is just what we want in someone who's going to come out and be in our society.

**DM:** I think it's important to understand, the transformation that occurred in the SHU at Pelican Bay with me, and a lot of other people, is not because of Pelican Bay SHU, but in spite of it. I went in understanding that this place is literally designed to break me. So we, me and other people, tried to figure out a way how to overcome that. Whether it was through books, whether it was through conversation, writing letters, just getting to know ourselves better, it was not because it was designed by the SHU. It was done in spite of that.

**CS:** I've had conversations with people at Pelican Bay, just talking about what it's like to live in a pod of eight people. People talked about: well, you're quiet because you're respectful because of the other cells near you. There's sharing; people send magazines around so everybody can read them, or they take the various

things that they have, like food – and they make a cake on someone’s birthday! Or there’s just a way in which the pods themselves create this little social environment where there’s a lot of support. Now, maybe every pod isn’t like that, but the prisoners are trying to help each other, and it’s across racial lines and group lines, and that’s part of the solidarity that developed after The Agreement to End Hostilities. These people are all in the same boat and they recognize that – about the humanity of each other. To me there’s a story of the SHU that actually, for many people, can be told in a kind of favorable way. So it might not have been programming, but they were having a life experience with other people in which they were developing their own humanity. Now some people were just there by themselves getting messed up, that’s true. But I think a lot of people were having that other kind of social... – like the guy you talked about who mentored you. That was powerful for you. He was doing something powerful for you. He was someone who might come up for parole, and that can be pointed to; that even while he was in SHU he was helping others. We see that a lot, where someone falls down and they’re calling a guard saying, ‘*Hey, so-and-so fell down. We need help here.*’ There’s a lot of camaraderie and friendships that happen, too. We’re trying to find ways to talk about the SHU that reflect positively on who you are today.

**Audience member:** Carol, I didn’t get my question answered: I asked about the SHU Syndrome and the damage done to the people that don’t get all this other stuff, the damage to the thousands of people that went through there. They’re permanently fucked up for life, right?

**TK:** They may be. But Danny’s sitting right here. I don’t think he’s fucked up for life. *That* is admirable and pro-social.

**Audience member:** But what’s happening with the people who didn’t make it.

**TK:** Let me just say a little about, first of all, suicide. A lot of people don’t make it because they’re dead. There is a stunning statistic across the country. Suicides in prison are at least twice as frequent as in the general population on the outside. But 50% of successful prison suicides happen among the 4 or 6 or 8% who are in the SHU or in other forms of isolation. That is a stunning statistic. Actually, in California, it’s 60%. 60% of successful suicides in the CDCR happen among people who are in solitary confinement of one kind or another; ASU, SHU.

So that’s the awful worst damage. There’s a set of symptoms we used to call the *SHU Syndrome* – we haven’t been calling it that for years – that almost everybody has. I’ve never met anybody who didn’t have a certain number of these things. [Those symptoms] are high anxiety, panic, thinking distortions, some problems having logical thought (paranoia being a frequent variety of that), difficulty concentrating, difficulty with memory, repetitive compulsive acts (cleaning cell, pacing, whatever), counting lines (some people count the bricks on the wall), despair (severe and depressed mood, and that kind of thing). These are symptoms in relatively stable people. This is everybody, who has some combination of these symptoms.

People with mental illness, and this includes people who’ve never had an episode of mental illness yet, because remember, people go to prison when they’re 16 or 18. With schizophrenia, usually the first psychotic break occurs in the late teens or early 20s, so we have a large group of people who are going to be diagnosed schizophrenic later. They go to prison, they get sent to SHU, often because their mental illness keeps them from following the rules. Or they get victimized. They have a psychotic episode in SHU. So now, unless you spend some time doing a thorough diagnostic assessment, this is someone who is going to suffer from schizophrenia, and the awful conditions in SHU are causing that first breakdown and making it worse. And the depression will be worse, and that’s where the suicide comes in. Bipolar, just think of someone who’s manic. You all know people who are manic. They like to move around, they’re very energetic, they talk a lot, and if they talk a lot with a guard, they’re going to get a 115. They get angry . . . People with bipolar don’t do well in SHU, and what it does is exacerbate their mental illness, so it makes it much worse.

So that’s what we used to call the *SHU Syndrome*. We have other names for it now.

**CS:** One of the questions about having gone through the experience of the long-term SHU, with that collection of symptoms, what not, does that make them a high risk, or medium or low risk? A lot of times

people come out, that we've talked to that have been in long-term SHU and are now out in the community, and they don't want to go to a store because there are too many people around. They're still suffering some of that anxiety and whatnot, and what I've seen is they may go into self-medicating or alcohol, and that seems to be negative risk, but other than that I've been seeing people just trying to live a quiet, normal life.

**TK:** Well, that actually is complicated and we need to talk about it. Having a mental health jacket is not going to do anybody any good. I could argue, this person has post traumatic stress disorder from previous trauma, that's why they did something they did. I would think that's going to help them. That might be exactly when the PB says, *'Yeh, and we don't want to let them out of here if they're going to be like that.'* So, mental illness is a little bit of a wringer in all of this, and what's consistent with the *Ashker* case is that all of the named plaintiffs in the SHU refused mental health help, and I think the main problem I saw among the guys was severe depression and they said, *'Of course I'm depressed. I'm in this torture chamber, I'm depressed. I'm not going to talk to their shrink. First of all, I don't trust them, and second, it's going to hurt me in the future, if I ever do get to the PB.'* So it's a little bit complicated.

**KW:** That is a well-shared idea and it's not really true. It used to be more than it is now. Instead, the PB, rather than saying, *'Because you have history of mental illness or instability in the institution, because you're a CCCMS or EOP or one of the other programs, that raises concern and elevates your risk.'* Instead what they're saying is, *'The fact that you reached out for help shows that you're taking care of yourself, shows you're doing something you didn't do when you were 16, 18 or 20 . . .,'* and it actually works in people's favor more than it ever did before. But it takes awhile because you've got decades of a culture where that's not the case. [One must overcome] the stigma that, *'No I don't want that label, I don't want to be that because they'll think I'm crazy and unstable.'*

**Audience member:** The challenge, having worked in the system, is that the continuity of care is highly interrupted.

**KW:** And it's also a part of the release planning to identify the resources available in the community – where is he gonna go and where will he get the continued service – and right, in some places it's just not existent, not beyond what they call the parole outpatient clinic. The same place as the parole office where there will be an assessment to decide whether someone needs continued treatment, but what they actually get is variable and inconsistent. So to the extent that family members and other supporters can identify those resources and have a letter about their acceptance to outside programs, that helps to complete the picture.

**DM:** One of the things when I came home, my focus was to have structure in my life and that's what community college gave me. As long as you create a program, have something to do every day. Same thing as in prison, I needed to have a structured program—I wake up, do work out, read, watch TV, etc. When I came home, going back to the point that Keith made about not seeking help, my first two years in college, my very first semester, I got paired with somebody who, although was not formerly incarcerated, grew up in a community where he had seen drug life and violence, all these things, and he became my mentor. And he would always tell me, *'Dude, you need to go to DSP—disabled students program.'* And I held onto the belief for a very long time, saying, *'No I don't need that shit. I'm good, I'm good. As long as I got my job, I'm doing my homework, I'm good.'* And it wasn't until I came to Berkeley in 2013 when I got involved in the hunger strike and I started doing interviews with the media – I realized, I needed help. I would do these interviews, and then for the rest of the day or next two days I couldn't do nothing; I felt paralyzed, depressed, sad.

**CS:** So Pam Griffin is an amazing person, she is on our committee, she's an attorney whose husband was a long-term SHU prisoner gang-validated and she litigated his case. So she brings everything to the picture.

**PG:** Well Carol I think you already said some of the background, which is explaining what Prison Hunger Strike Solidarity Coalition is and how our committee got formed when we started hearing these reports of prisoners running into these things in parole hearings, being asked to debrief, being penalized for hunger strikes,

being penalized for the lack of programming in all the years in SHU, and, another issue that has come up along the way, is the use of confidential information in the hearings.

So after we formed, what we originally did was start collecting materials. A lot of prisoners were very generous in providing transcripts and their psych reports, so we could kind of build something to see what was happening in parole hearings. And then together we started putting together our thoughts and arguments against these practices and why it was wrong for the board to rely on them under their own standards. And that turned into an outline that we have called **Rethinking Parole**. (Editors Note: See page 18.)

And then we had the opportunity to meet with Robert Barton, who was the Inspector General of the state. For those who don't know, the job of the Inspector General is basically to audit and do investigations of what the Department of Corrections does in the state, including the parole board. So, we met with him and interestingly enough, he's now been appointed as a parole commissioner recently. So we had a good meeting, [and he sent] our materials over to Jennifer Shaffer who is the Chief Executive of the board and basically cleared the way for us to meet with her. So after several delays we finally met with her in January of this year. She was very gracious. She had two lawyers with her – always a wise thing to do. She seemed a little skeptical about our claims, as they always do, and as Carol predicted they would, and they asked for specific examples. So over the next couple months we sent them about 20 examples of transcripts that we wanted them to look at. So we've followed up two or three times. Not much has come of it, so I think about now is time for us to follow up and maybe apply some pressure for some real discussion with them about this.

Also, Terry was kind enough to give us some assistance in putting together a memo on how prisoners and their families and supporters can counter these board psych reports. So we also have that memo, it's part of Legal Services for Prisoners with Children (LSPC)'s packet of materials that they've put together, which includes some things from Keith's organization, Uncommon Law, and also includes the memo we put together. We also knew that many parole attorneys don't really know that much about the SHU experience, what happens there, about debriefing, about all of these things. So Carol put together a webinar for parole attorneys and reached out to a lot of the appointed attorneys and generally parole attorneys around the state. That one is still online for anybody who wants to see it any time.

Then we said okay, we need to reach out to family members and supporters, too. So we had an event in Southern California in July and now we're having this one in the Bay Area. One other area that we're starting to focus on is the parole commissioners. As you know, the Governor appoints the commissioners and then they have to be confirmed by the Senate Rules Committee. So we're starting to work with some other groups that are lobbying the Rules Committee on commissioners that they are not liking. One thing we did recently is share some of our CRAs, or psych reports, with the Life Support Alliance, which is working on a project to challenge the board psychologists in their evaluations.

**CS:** And then Terry went up to Sacramento and met with the head guy of FAD.

**PG:** Right. Terry, and Virginia of our group, went up and had a meeting with the director of FAD, the psychologist group there, and one area that you guys are focusing on is the use of confidential information.

**TK:** I think Keith spelled out what they told us and it's new: that the prisoner and the attorney can get that list of things on their confidential file. Because we were getting a lot of reports saying they were going to deny parole, or the psychologist in the risk assessment would say confidential information says such and such. And we would say what confidential information? We don't know anything about this and so we couldn't rebut it. So they made this correction.

**PG:** And actually Jennifer Shaffer told us about that in our meeting with her. That their attorney staff was going to start reviewing the confidential information and writing up summaries themselves. And I was thinking to myself, 'This could be great.' Because our past experience is that if you have the original confidential memorandum and you have the 1030, they don't match—they're misrepresented, the dates are misrepresented—so if the board is actually looking at them, we could end up with something that actually reflects what the original confidential memo is. It won't tell you if the original informant was lying, but at least knowing it's accurately reflected in the documentation.

**KW:** I want to make one update about the CRAs. We have a class action against the board about these risk assessments and we reached a settlement that required them to establish an appeals process, a formal way to challenge errors in these reports. They drafted regulations to implement that settlement that we didn't like, nobody liked. We objected to those and we asked the federal court to reject them also. And we just learned yesterday afternoon that the court rejected the regulations, requiring the board to go back and rewrite the part that spelled out the kinds of errors you could challenge. The biggest most egregious thing is they wanted to say people could challenge factual errors in the reports, but factual errors would not include the psychologist misquoting the person's statements. So, if you your client said something was an accident, but the report says you said it was the victim's fault in the report, and you talk to the client: *'I didn't say that, that's not what I said, I said it was something different.'* Well the board wanted to define that as not an error. The psychologist got that completely wrong but they wanted to say that wasn't an error. So the court applied logic and common sense and actually cited the dictionary definition of factual, like the basic stuff, but sent them back to the drawing board. So we'll be reworking those regulations over the next couple months.

**TK:** Can I make one more comment? You know, really what I said about there being two stories, two narratives, one that this person is a heinous criminal who should be in SHU, the other, this is a decent person with lots of admirable qualities. I make that distinction in my psychological/psychiatric report, but there's a file that goes to the PB and the file should be entirely consistent with that. So for instance, for family members to recount what caring things this prisoner did while locked in a SHU cell, the guy you [Danny] were talking with that helped you, when he comes up to parole a letter from Danny saying this is what helped me get out of prison. The entire file is important, so for instance, on the antisocial personality, all the letters from family, teachers and preachers, etc. to say this person is not callous, they are entirely caring, they help the youth in the community, etc. That whole package needs to be consistent supporting the narrative that this is really a quality person that deserves to be out in the community.

**CS:** Thank you. Terry we had wanted to ask you to talk to family members a bit about what they might expect if their loved one comes home or even relating to them now as former SHU people.

**TK:** I met an awful lot of people who told me about one specific symptom, that after they got out of SHU they wanted to stay in their room. If they got out and they went to the general population prisons, they wanted to stay in their cell. So every chance they had to lockdown in their cell they would do it, and if they went home they would tend to stay in their room or in their home. And then something Mariposa mentioned is that they don't want to be in a crowd, they don't want to be with people they don't know, they don't want to be touched by anybody, they have a startle reaction, all of these things, the SHU post-release syndrome.

I want to tell you a story which is, I think, useful in terms of how to help people. I went to the SATF, the Substance Abuse Treatment Facility down by Corcoran, as part of the *Ashker* case, because some people had been released from SHU went there because they were plaintiffs in the case. I saw eight people and every one of them told me, 'When I got out of SHU I had all those symptoms you're talking about.' And there was a commander, a lieutenant or some ranking CO, who came and, first of all, put them all in the same corner of the pod, all in neighboring cells. He came and talked to them every day and said, 'Look, you just got out of the SHU. I know this is gonna be rough on you. I'm coming back every day to talk to you and I want you to come out of your cell and relate to each other.' All of these guys had been in the SHU, some of them knew each other and some of them didn't, but they started talking to each other and the lieutenant kept coming back and talking to them and they all told me that's what helped them get through it without going crazy.

A lot of it is to listen to people, not to tell them what they're supposed to be doing but to listen to what their experience is. We should learn what the experience is (I recommend my book, *Solitary*, for that) and just understand them, which is what we do with trauma. When people have been traumatized we let them tell their story, we don't tell them what to do. We listen, and listening is the core of the treatment. We have to find an opportunity to listen, that's true for people getting out of the SHU. With some understanding of getting to tell their story and what it's like, they gradually feel better and start involving themselves more socially.

## THE CALIFORNIA LIFER PAROLE PROCESS

This document is copied from the Life Support Alliance website: <http://www.lifesupportalliance.org/>

### Life Support Alliance

A nonprofit organization, is a gathering of friends and family members of life term prisoners working together with other responsible citizens concerned about the cost, effectiveness, and policies of the California department of corrections and rehabilitation system. LSA supports the return of parole suitable life is to our communities and is prepared to assist in there re-integration. Their mission is to assist life term prisoners in becoming suitable for parole and gaining their release, assist their families in understanding the parole process and how they can assist their loved ones in becoming suitable. To continue to educate legislators in the public about the characteristics of life worse. To encourage appointment of parole commissioners who will make decisions based on law and fact, not emotion and political ideology. To support forward-thinking legislation that will protect public safety, the rights of prisoners and promote fiscal responsibility.

**The California Lifer parole process** is complex, heavily discretionally and very often frustrating to both prisoners and their families. Families want to be supportive and helpful but often can't understand why their prisoner isn't coming home, despite exemplary institutional behavior, letters of support and years, even decades, in prison.

**THE GOOD NEWS:** The two-prong battle of being granted a date by the Board of Parole Hearings, and then successfully weathering a governor's review, has now largely been reduced to a single hurdle of being found suitable by the parole board, as Governor Brown has clearly expressed his intention to, by in large, not intervene in parole board decisions.

**THE NOT SO GOOD NEWS:** It often still seems to be a roll of the dice as to whether or not that date will be granted and if not granted, the possible length of denials can be much harsher, thanks to Marsy's Law

To set the stage, it is important to note that while parole grant rates are not at the level we would like to see or believe the law mandates them to be, the numbers are improving. From a dismal low of only.03% in 1995 to about 16% the first quarter of 2011 the grant rates are rising. And, with Brown staying out of the mix and more and more of former Gov. Schwarzenegger's reversals being overturned by the courts, this is the time for lifers to be ready when that window of opportunity opens for them.

There are no sure fire answers to how to be found suitable, but there are some actions both lifers and their families can do to make the chances of receiving a date from the board more favorable.

### **The two most important points for any lifer and their family are these:**

1. ***Don't give up hope.*** Parole is possible and in more and more cases, it is happening.
2. ***Be realistic about the time and work needed to successfully gain a date.*** You probably won't get a date on your first, second or maybe even third hearing, nor can you simply stay discipline free and just do your time. There is work involved, and it's up to the lifer to get it done.

We will not, in this summary, address all the things lifers must do within the institutional process to prepare themselves for parole, such as no write-ups, self-help classes, positive chronos and the like. What we will try to offer are suggestions lifers and family members can work on in conjunction with these institutional goals and in cooperation with each other.

### **Legal standards in Parole Hearings**

The only standard in the law to be granted parole is to show the prisoner is not a CURRENT danger to society. However, the path to that finding is left largely to the "discretion" of the parole board commissioners. By in large the commissioners look to a short list of items they feel show suitability or lack thereof.

1. The life crime. Although the board, by court decision, can no longer use the crime alone as a reason for denial, nearly all denial decisions mention the "heinous" or "cold" or "cruel" nature of the crime.

2. Lack of "remorse" or "insight" into how the prisoner came to commit the crime. This finding is often based on the psychological evaluation given to all lifers.

3. Lack of sufficient self-help or rehabilitative programming.

4. Insufficient or incomplete parole plans.

These items are used, often in varying combinations, as a reason to find prisoners are still an unreasonable danger to society and thus deny parole. The courts have held that a "modicum," or smallest, of provable deficiency in any of these areas is enough for the board to be allowed to find a prisoner unsuitable. So each area must be addressed and dealt with.

Every board attorney we spoke with felt the chances of attaining a date increased with good legal representation at the hearing. There are some very good state appointed attorneys in the system but it is the luck of the draw. If you and your family cannot afford to hire an attorney, strongly consider it.

### **The Life Crime Details**

1. Many attorneys advise their clients not to discuss the life crime at the hearing, but to stipulate to the facts on the record. There is no requirement to discuss the crime with the board. Some attorneys also feel stipulating to the facts shows the ultimate taking of responsibility and may also take much of the heat out of the District Attorney's usual anti-parole rant. Be prepared to discuss all other aspects of parole at the hearing, but avail yourself of the right not to discuss the crime.

2. If you do make the decision to discuss the life crime at the hearing, practice doing so ahead of time, so it is not unfamiliar territory on hearing day, as with most things, practice always helps.

3. Be prepared to discuss any prior criminal history or record prior to the life crime. Juvenile incidents are fair game for the hearing board and little if anything is ever really expunged from the record.

### **Insight, Remorse, Responsibility**

1. **Insight:** the board's latest buzz word, has two parts: contributing factors and responsibility. If substance abuse or anger issues figured in the life crime you must admit to the contributing factors but stress it was not drugs/alcohol/anger that caused the crime, but your decision to indulge in these behaviors. Whatever the contributing factors, the ultimate responsibility for the crime lies with the inmate and must be accepted.

2. **Expressions of remorse or amends must be genuine.**

These need to be in your own words, not stock phrases and words memorized from self-help programs or books.

3. **Letters of remorse and amends** should be written to the victim(s) and/or families, whether they are ever received or not. Send all such communications to the victims' bureau at the CDCR. They will be forwarded if appropriate. Keep copies.

4. **Write out your statement for the board**, and don't be afraid to read it. You lose no points for reading rather than memorizing the statement and reading it will insure you cover all the issues you want to in the way you want to.

### **Self-help**

1. If you have not already started participating in any and all self-help programs available, START NOW. AA and NA programs are helpful not only for substance issues but can be used by all prisoners to show serious dedication to rehabilitation. Use the 12 steps to show how you deal with issues other than substance abuse. Document your progress through the steps; try to find a sponsor, even an inmate who has already been through the steps.

2. Go beyond GED; correspondence courses, if possible, Use self-study books on all subjects, books on how to write resumes, social skills, parenting, relationship building.

3. Do book reports on books read, but not your high school book report.

These should be meaningful reports showing how the steps or lessons in the books relate to your situation and how you will use and apply them in your life. Books on victims' experiences and recovery can be used to understand and exhibit empathy.

4. If causative factors were present in the life crime (addictions, anger) the board will consider those factors are still present and will want to see how you have learned to deal with them.

5. Repair fractured relationships. Part of making amends and insight is to reach out to family and friends who may have been hurt by your past behaviors and initiate repair of those relationships. Be sure to address how the crime impacted others in your family and the community at large.

6. Consider a private psychological evaluation.

### **Parole Plans**

1. Employment: While a confirmed job is not a legal requirement to be found suitable and may in fact not be attainable for some lifers, show due diligence in seeking employment. a. Prepare a resume. b. Show research into likely jobs in your parole area. c. Letters of intent from employers are very useful, even offers of employment in your family's business. d. The board is interested in seeing you have a plan for providing yourself with the funds needed for living.

2. Have a relapse prevention plan. a. Know where and when support groups meet in your parole area, who to contact for help with emergency finances, housing, and counseling. b. A sponsor from AA/NA to carry over from prison into outside life is good.

3. Have short term and long term plans; to show the board you realize reintegration is a process, not just getting out of prison. a. Short term plans can include obtaining identity cards, Social Security cards, and enrolling in school.

4. Don't marry to help your parole plans, but if that event is in your plans anyway a spouse can provide evidence of a stable relationship and support on the outside.

5. Be sure your parole plans are solid and realistic. The board can and does sometimes check on letters of support and offers of assistance.

Don't allow your plans to be discounted because they are vague or not verifiable.

### **The Extra Effort**

1. Re-read your past transcripts, with an eye to how you are perceived by the board and others. Ask family members to review them also to help you with perspective.

2. Body language is important. Read up on this, observe others and take a close look at yourself.

3. Your attorney will be the best guide on how to handle and relate to victims and/or their relatives, if they appear at your hearing (known as VNOK hearing).

4. If you are denied, begin the process of appeal right away; also begin right away to plan for your next hearing.

### **Tasks for families:**

You will be your prisoner's confidant, legal aide, research assistant, material supplier and financial backer. You must be supportive, persistent and resourceful. The most important thing you can do is maintain to contact with and support and love for your prisoner. Solid family backing and support as well as assistance in developing parole plans are the best help you can be.

1. Letters of support are vital and will be addressed in a separate section. It is crucial the letters be updated for each hearing and be original, signed documents.

2. Hiring an attorney and/or psychologist for a private evaluation should be considered, if at all possible.

3. You will be the prisoner's eyes and ears on the outside, helping with finding job offers, locations of self-help rehabilitative groups (AA/NA) and when they meet.

4. Help find and provide books on self-help, correspondence education courses, even books for book reports as addressed above.

5. Help with short and long term parole plans, education enrollment, finding and securing medical assistance and any benefits the prisoner may be entitled to on release, these can include VA benefits, SS payments and documentation.

6. Check with the California Controller's unclaimed funds website; a surprising number of inmates have monies owned them being held by the Controller's unclaimed funds division. While these funds can't be sent to someone in prison, they can be accessed once a prisoner is released and can often be several hundred dollars.

7. funds are from unclaimed checks, wages, bank accounts, insurance settlements and the like the prisoner may have been owed but not collected prior to incarceration.

8. Read transcripts with an unbiased eye and communicate your feeling to your prisoner.

9. Prisoners would do well to exude sincerity and maturity, not cockiness and attitude.

10. Contact, contact, contact. Letters, phone calls, visits are the best way of demonstrating to the board and your prisoner that you will be there to support them.

### **What families can offer in support:**

1. Financial support, specific if possible as to amount and time duration
2. Help in obtaining Driver's Licenses, Social Security cards, cars, living arrangements.
3. Help in securing a job and transportation.
4. If the prisoner is eligible to be included on your health insurance policy or if an older prisoner/spouse can receive Social Security spousal benefits from your account.
5. Participation with the paroled prisoner in support groups or counseling sessions.

### **Support Letters**

Letters of support from friends and family are a vitally important part of a prisoner's parole packet. However, these need to be carefully crafted, meet certain requirements and be sent to specific locations. This is not the time to plead to let Jimmy or Janey come home and promise they will never be in trouble again. As one parole commissioner said, this is the same family the prisoner had when he/she got in trouble, so just saying they want the prisoner home doesn't mean much in terms of rehabilitation and non-recidivism.

Try to keep letters to one page and specific as to what support you can offer and for how long you are prepared to offer that support, bullet point for clarity. Your letter should address your relationship with the prisoner, how he/she has grown as a person, what impact he/she has had on your life.

\* Letters should be sent approximately 6 months prior to the parole hearing.

\* They must be updated for each parole hearing, must be original documents and signed. If not signed, they will not be considered valid.

\* Send all letters, as well as confirmation of other support, such as job offers, to the lifer desk at the prison housing the lifer, with copies to the prisoner, to the attorney and to the prisoner's counselor at the prison.

\* Form letters, petitions or letters from those who don't really know the prisoner are of no use.

\* The board will often call the letter writers to be sure they did, indeed, write the letter and know something about the inmate.

\* Bogus letters are worse than no letters.

*Life Support Alliance can be reached at:*

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*Rancho Cordova, CA 95741*

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*lifesupportalliance@gmail.com*

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## **ADVICE FOR PRISONERS AND THEIR SUPPORTERS**

### **REGARDING BOARD OF PAROLE HEARINGS**

## **PSYCHOLOGICAL EVALUATIONS**

### **Including Special Advice For**

#### ***Ashker* Class Members**

**October 2016**

*Published by the Prisoner Hunger Strike Solidarity Coalition*

We are an all-volunteer advocacy group. We are not attorneys and do not offer legal advice or represent clients. This material offers practical suggestions to consider as you work with your parole attorney. Your attorney is the best source of legal advice for your parole. We are not mental health professionals either, and relied on other sources for the mental health information in this paper.

To the best of our knowledge, the information in this document is current as of this date. However, laws and procedures (and mental health standards) change frequently. It is your responsibility, together with your attorney, to check relevant laws, regulations and guidelines when using this material.

We would appreciate hearing from you regarding your experience with the Board of Prison Terms and FAD psychologists in using this advice and material, whether negative or positive. Our address for correspondence related to this document is PHSS Parole Committee, P.O. Box 5586, Lancaster, CA 93539.

We are a committee of volunteers with limited time and resources, but will do our best to respond to correspondence. If you are able, a self-addressed stamped envelope will help us defray expenses.

### **Psychological Evaluations for the Board of Parole Hearings: Support for Parole Applicants and their Supporters**

This paper is provided to help California prisoners applying for parole understand the psychological evaluations conducted for the Board of Parole Hearings, and to provide advice to them and their supporters on how to counter the psychological evaluation with letters and other materials submitted to the Board.

It also includes special advice concerning some issues that arise for prisoners who were held for long periods of time in SHU for gang affiliation.

#### **What is the FAD?**

The California Board of Parole Hearings (BPH) has established the Forensic Assessment Division (FAD), a staff of psychologists who conduct psychological evaluations of prisoners for Board hearings.

#### **What does the FAD evaluator do?**

Before a prisoner goes to the Board, a psychologist for the FAD conducts an interview with the prisoner and prepares a Comprehensive Risk Assessment, or CRA, for the Board. The psychologist reviews the prisoner's criminal record, including past crimes, as well as the prisoner's record in prison, looking for the following types of information:

Evidence of remorse for the life crime or crimes

Positive programming like school, rehab programs, job training and job performance in prison

Positive paperwork, like laudatory chronos, clean time and parole recommendations from staff

Negative activities, like disciplinary infractions, gang validation or time spent in SHU

Substance abuse and recovery efforts

What kind of support the individual has in the community, and

Plans for post-release housing, job, and family life.

#### **How does the Board use the CRA?**

The Board relies heavily on the FAD's report in deciding suitability for parole. The prisoner can have an outside psychologist or psychiatrist write an alternative review, but generally the Board gives more weight to the FAD review. The key focus in the FAD assessment is risk of future crime and violence. The Board generally will not parole someone with medium to high risk, so the parole applicant and his supporters need to focus their efforts and arguments on why the individual is, in fact, a low risk of future substance abuse, crime and violence.

### **How does the FAD measure risk?**

The FAD psychologist uses two formal risk assessment tools – the Historical Clinical Risk Management 20, Version 3 (called the “HCR-20V3” in the FAD’s report) and the Hare Psychopathy Checklist (the “PCL-R”). The psychologist also makes a diagnosis as to whether the prisoner has a mental disorder, such as Antisocial Personality Disorder or a substance use disorder, under the standards of the Diagnostic and Statistical Manual of Mental Disorders (the “DSM-5). The DSM-5 is the manual that mental health professionals refer to when diagnosing mental disorders in the United States.

The HCR-20V3 and the PCL-R both revolve around the concept of Antisocial Personality Disorder. They measure other things and use different ways of measuring risk, but Antisocial Personality Disorder is a central building block in each of them. The Board’s Chief Psychologist has admitted these tools aren’t well suited to lifers and long-term prisoners. He stated publicly that a “Medium” risk score for a lifer is more like a “Low” risk score for other prisoners. It may be useful to point this out to the Board in submitted materials.<sup>1</sup>

### **What are some concerns with these risk measurement tools and concepts?**

#### **Antisocial Personality Disorder**

The diagnosis of Antisocial Personality Disorder, or “ASPD,” is important because the FAD psychologist and the Board weigh it as a big risk factor for future criminality. It also plays into both the PCL-R and the HCR-20V3 scores, which magnifies its effect on the overall risk score. Besides the negative effect on parole consideration, diagnosis of ASPD carries a serious stigma for an individual in the community.

The DSM-5 definition of ASPD centers on behavior that shows “a pervasive pattern of disregard for and violation of the rights of others.” The diagnosis requires three or more of the following behaviors or traits:

Failure to conform to or respect laws or social norms, as indicated by repeatedly performing acts that are grounds for arrest.

Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure (e.g., to obtain money, sex or power).

Impulsivity or failure to plan ahead, as indicated by decisions made on the spur of the moment without forethought or consideration of the consequences, sudden changes of jobs, residence or relationships.

Irritability and aggressiveness, as indicated by repeated physical fights or assaults. It doesn’t include aggressive acts to defend oneself or others.

Reckless disregard for the safety of self or others. It may be seen in recurrent speeding, DUIs or accidents; risky sexual behavior or substance abuse, disregard or neglect of children, and so forth.

Consistent irresponsibility, as indicated by repeated failure to maintain good work behavior or honor financial obligations. It can be seen in long periods of unemployment, frequent quitting of jobs, absences from work, or defaulting on debts, child support and other support obligations.

Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated or stolen from another. The person may offer a superficial rationalization for such behavior, somehow minimize the harm that was done, or blame the victims. Failure to make amends for the harm may be an indicator.

In addition to having three or more of the above traits, a person must be over the age of 18 to be diagnosed with ASPD, and the behavior must continue into adulthood. One important requirement for a diagnosis of ASPD is that there must be evidence of “conduct disorder” in the person starting before the age of 15 years. Conduct disorder is a separate DSM-5 diagnosis that involves a “repetitive and persistent pattern” of behavior that violates social norms and rules and/or the basic rights of others. This pattern may take the form of aggression to people or animals, destruction of property, deceitfulness or theft, or serious rule violations. In preparing a risk assessment, the FAD psychologist will generally look at a prisoner’s early personal history for symptoms of this disorder. If there is nothing in a prisoner’s early history to support a diagnosis of conduct disorder, there should be no diagnosis of ASPD.

The fact that a person has broken the law or is incarcerated doesn’t necessarily mean that person has ASPD. The DSM-5 warns that ASPD must be distinguished from ordinary criminal behavior for personal gain, if that criminal behavior is not accompanied by the other personality traits in the definition of ASPD. The DSM-5 supports this point by providing a special code (called a “V Code”) for “Adult Antisocial Behavior,” where an individual exhibits certain types of antisocial behavior without the other ASPD personality traits. This is not considered a mental disorder like ASPD, but is more often a reflection of the person’s history or socioeconomic status. As an example of Adult Antisocial Behavior, the DSM-5 cites the “behavior of some professional thieves, racketeers or dealers in illegal substances.” This doesn’t mean the behavior is not relevant to the FAD or to the Board, but it’s not a mental disorder that carries the lasting stigma of ASPD.

Although criminal and rule-breaking behavior is only one aspect of ASPD, many psychologists (particularly FAD psychologists) focus on it. This is a significant problem for prisoners, and has been criticized by psychologists who believe it leads to over-diagnosis in the prison setting. The stereotype that all or most prisoners have ASPD is not supported by the research. According to some sources, when all prisoners are studied to determine the prevalence of ASPD, only 15% to 30% actually meet the criteria for it.

When psychiatrists do focus on personality traits other than criminal behavior, another problem arises. These subjective traits are often affected by the biases, background and attitude of the psychologist. A diagnosis of ASPD is frequently connected with low socioeconomic status and urban settings, and the DSM-5 expresses concern that it may be misapplied where behavior that seems like antisocial behavior is just “part of a protective survival strategy.” For this reason, the DSM-5 advises psychologists to consider the social and economic context in which behavior occurs, and provides tools to help psychologists address these cultural and situational factors, including a model outline and model interview questions. It also provides V Codes to include in the psychological assessment that flag the presence of these social and cultural influences. These may include trauma, abuse or neglect in childhood; disruptive family life and relationships; poverty, homelessness and related factors; military deployment; educational problems; and notably, “imprisonment or other incarceration.” There’s little evidence that FAD psychiatrists use these tools and V Codes, or consider social context at all, so it’s important for the prisoner and his family to address these points if they are relevant. Written materials can

address family and community environment, limited educational and career opportunities, cultural expectations and other factors that may have affected the prisoner's behavior, habits and beliefs.

One of the biggest problems with the ASPD diagnosis, particularly for long-term prisoners, is the idea that this personality type is fixed for life and not amenable to change. In diagnosing ASPD, the FAD psychologists tend to focus on an individual's early life to meet the definition and then overlook change that may occur in later years. This ignores the fact that a diagnosis of ASPD under the DSM-5 requires an "enduring pattern" of antisocial traits that are "persistent" and "stable over time." It's hard to understand how these requirements can be met if the individual has not exhibited those traits for a very long period of time. Any evaluation for ASPD should consider whether these factors are present at the time of the evaluation. The idea that ASPD is a lifelong disorder is being challenged by many studies and research in criminology and psychology. The truth is that people who once evidenced antisocial traits change with age, time and positive influences.

Age is a very important consideration, and the DSM-5 recognizes it as a factor in the diagnosis. It describes ASPD as having a "chronic course," but states that it tends to become less evident or go into remission when individuals grow older, particularly after the age of forty. While this is especially true for criminal behavior, it applies to the full spectrum of antisocial behaviors as well as substance abuse. Age has long been recognized as one of the most important factors in rehabilitation and behavioral change. Although there is some recent debate in criminology about the impact of age, it is countered by a great deal of research in forensic psychology showing that age is consistently the most meaningful factor in judging criminal or violence potential. FAD psychologists should be applying these considerations before diagnosing a prisoner with ASPD. When they don't, it's up to the prisoner and his supporters to clearly show changes in behavior and attitude that occur with age and time.

There are many things that *do not* indicate ASPD. Conduct that occurs only in connection with bipolar or schizophrenic episodes is not ASPD. Conduct that occurs *only* in connection with substance use does not meet the ASPD definition. In addition, the traits listed in the definition indicate ASPD *only* when they are "inflexible, maladaptive and persistent and cause significant functional impairment or subjective distress." Traits are not maladaptive unless they lead to distress, dissatisfaction and failure, and to the most significant defining feature of personality disorders – interpersonal difficulties. How a person relates to others is a key factor of the ASPD diagnosis. A person with ASPD is rarely able to enjoy sustained, meaningful and rewarding relationships with others. This is where a prisoner's family and friends can provide particularly helpful information.

While authorities generally say ASPD is hard to treat, studies have concluded that a form of therapy called Cognitive Behavioral Therapy is the most effective with ASPD. If the prisoner has been through CDCR's Step Down Program, "Thinking for Change" or other programs identified in §3040.1 of Title 15, it should be raised as a positive point, because these programs are based on the model of Cognitive Behavioral Therapy.

### **The PCL-R:**

The PCL-R predictive tool looks at a set of 20 character traits to assess antisocial or psychopathic tendencies, which are viewed as risk factors for future offending and violence. About half of the checklist traits (Factor 1 traits) focus on psychological states that are supposed to indicate "psychopathic" tendencies. These include things like "superficial charm," "grandiose sense of self-worth," callousness or lack of empathy, "shallow affect" and pathological lying. The rest of the checklist traits (Factor 2 traits) focus more on behavior that is closely associated with Antisocial Personality Disorder under the DSM-5. These refer more to an antisocial lifestyle with frequent criminal behavior and early delinquency, with items like "parasitic lifestyle," poor

behavioral controls, promiscuous behavior, lack of realistic goals, impulsivity, irresponsibility and poor relationships.

Although the PCL-R is one of the most widely used predictive tools, there are many problems with it. Many recent research studies have raised serious issues with the Factor 1 traits especially. They are viewed as too subjective, leading to big differences in how different psychologists score them. The background and biases of the psychologist can easily affect the results. And the Factor 1 traits are not good predictors, either – recent studies show they are *no better than chance* at predicting violent criminal behavior. As for the Factor 2 traits, many authorities don't see any real difference between them and factors for antisocial personality disorder under the DSM-5. Overall, the PCL-R performs much worse than other commonly used predictive tools.

The developers of the HCR-20V3 – the other tool used by the FAD – have stated there's no need to use the PCL-R test in addition to the HCR-20V3, because they both measure the same thing and the PCL-R gets the same or less reliable results. Like many predictive tools, the PCL-R is subject to racial and cultural bias – these tools become less reliable the more the subject differs from the population that was used to develop the tool. Many of these tools were developed using white male populations. Finally, because the PCL-R relies on many of the same factors as Antisocial Personality Disorder, it carries the same problems for long-term and life prisoners – that is, a failure to recognize personality and behavioral change over time.

### **HCR-20V3:**

Like the PCL-R, the HCR-20V3 measures 20 factors to determine the risk of violence in the future. The factors are divided into three areas: Historical (10 factors), Clinical (5 factors) and Risk Management (5 factors). In a CRA, references to “H” numbers, “C” numbers and “R” numbers refer to these three different areas. These different areas look at issues in the past, issues in the present, and potential issues in the future.

**Historical:** The HCR-20V3 is weighted heavily on the side of historical factors, which include things like past violence and behavioral problems, problems with relationships, employment, substance abuse, negative childhood experiences, violent attitudes and problems with compliance. Past violence and other behavioral problems are separated by age – under 12, between 12 and 17, and over 18 – but none of the factors account for changes that occur between a person's twenties and his forties, fifties, sixties or beyond. This part of the test can't reflect the kind of major changes in behavior, attitude and accomplishment that occur in many prisoners during their time in prison.

**Clinical:** This part of the HCR-20V3 is supposed to measure the prisoner's present state of mind and dynamic factors that can change over time. However, it doesn't measure changes in the historical behavior identified above, and can't outweigh those historical factors. So it doesn't really work well for lifers and long-term prisoners. One very important aspect of this section concerns “Problems with Insight.” Insight is very important to the Board, and the HCR-20V3 focuses on specific insights: insight into mental disorder, insight into violent tendencies and risk factors that may trigger violence; and insight into the need for treatment. Unfortunately, many prisoners are improperly diagnosed with ASPD, and the FAD may expect them to show insight into that and into the need for treatment for it. The insight into past violent acts and the risk factors that might trigger such acts is extremely important and should be a focus for the prisoner. The Clinical section also looks at violent attitudes and thoughts, instability, and problems with compliance or responsiveness to treatment or correction. It looks for “current symptoms” of major mental illness; but unfortunately the FAD psychologists do not seem to assess whether the prisoner shows current signs of Antisocial Personality Disorder, the FAD's most common diagnosis. It's still rooted mostly in past behavior.

**Risk Management:** The Risk Management section of the HCR-20V3 looks into the future and tries to predict, based on Historical and Clinical factors, what the risk is of re-offending or getting involved in crimes or violence after release. The primary focus of this section is on the prisoner's plans and whether those plans will work to manage the risk of re-offending. The specific areas addressed in this section are plans for (1) professional services, (2) living situation, (3) personal support, (4) potential problems with compliance, and (5) potential problems with stress and coping.

### **Substance Use Disorders**

These are other mental disorders that often appear in the CRA prepared for Board hearings. In the DSM-5, they are diagnosed according to the specific substance used (such as "Alcohol Use Disorder" or Opioid Use Disorder"). Psychological studies show that substance use disorders frequently appear together with Antisocial Personality Disorder. This only states what a lot of people know – that drug and alcohol misuse is often strongly associated with criminal or antisocial behavior.

Each type of use disorder has a list of criteria that measure dependence and impairment, and the psychologist is supposed to rate these over a 12-month period to determine (1) if the person can be diagnosed with the disorder at all, and (2) if so, how "severe" the disorder is. For example, if a person does not meet at least two of the criteria for Alcohol Use Disorder, the diagnosis doesn't apply. If it does apply, then the psychologist needs to rate the severity. If someone meets 2 to 3 criteria over the 12-month period, it's rated a mild disorder; 4 to 5 criteria indicate a moderate disorder, and 6 or more indicate a severe disorder.

In addition, the DSM-5 provides "specifiers" that can indicate whether the use disorder is in remission. If someone has not met the criteria for the use disorder for 3 to 12 months, the psychologist can specify that it's in "early remission," and if the criteria are not met for over 12 months, the psychologist can specify that it's in "sustained remission." A person can be considered in remission even if he still has cravings for the substance.

The measures of severity and remission could provide very important information to the Board, but we have not seen any evidence that the FAD psychologists use either one of them in their risk assessments. Instead, they tend to treat the use disorders as diagnoses that never change over time. This is unfair to those who have overcome the problem, either through treatment programs or on their own. The prisoner should specifically ask the psychologist to address these categories.

Some FAD psychologists mention another specifier, "in a controlled environment." This can be negative, implying that the prisoner might not do so well outside a controlled environment. Some FAD psychologists, however, have stated that this specifier doesn't apply because drugs are readily available in the prison environment. This is a point the parole applicant should make in the interview with the psychologist and in materials submitted to the parole panel.

### **What can the parole applicant and his supporters do to counter a high risk score?**

If the FAD's risk assessment concludes there is antisocial personality or a high risk for future violent crime, then the prisoner and his supporters must debunk the notion that the individual has an antisocial personality or any of the other traits and behavior indicated by the FAD's risk assessment.

The way to push back against an unfair risk assessment is through letters from family, friends, clergy, past teachers and other supporters in the community, memos or materials submitted by the applicant personally, and if possible, outside psychological assessments. In materials from supporters and the prisoner, it is usually better not to mention antisocial personality disorder, the FAD's formal predictive tools, or any other technical psychological terms. Rather, supporters should simply talk about the traits in the individual prisoner that are clearly the opposite of those described in these psychological definitions and concepts.

For example, to show that a prisoner is sensitive, empathic, concerned about the plight of others, supporters should talk about what they know about and have seen the prisoner do, like help younger individuals in the family or community stay away from drugs, crime and prison. Supporters might tell about what they have seen the individual do to be a great father or mother. They should remember to stick with their own experience, and the behavior and actions they have seen or know about showing the prisoner does not have the characteristics of a person with ASPD, and is not a high risk for re-offending. Here are some things to focus on in materials submitted to the Board, including the prisoner's documents and letters from outside supporters:

**Personality Traits:** Materials and letters should provide evidence and examples of:

Actions and attitudes that show concern for others over one's own personal interests

Remorse for past crimes and harmful actions

Healthy, stable relationships without exploitation, coercion or intimidation

Honesty, sincerity, responsibility

Caring and empathy

The ability to deal with anger and control impulsive behavior

The ability to think ahead and consider the consequences of actions

The ability to comply with rules and expectations

Responsiveness to treatment or correction.

Materials could also describe behavior before the age of 15 demonstrating respect for rules and the rights of others, to counter the idea of "conduct disorder." Look at the criteria for ASPD (page 2 above) carefully and think about how to demonstrate that these characteristics don't fit the prisoner. During the interview with the FAD psychologist, the prisoner should try to be sincere and honest in answering questions, not try to charm or play the psych, and show that he can keep his cool even when the psych is saying or asking things that bother or embarrass him. He should mention any kind of cognitive behavioral therapy he has had, such as the Step Down program, "Thinking for Change" program or others. He should talk about how his thinking has changed.

**Insight:** Insight into violent tendencies and the risk factors that trigger them is one of the most important areas to focus on in preparing for a parole hearing. The prisoner should do everything possible to show understanding of past criminal or violent actions, the causes of that behavior, how to avoid those causes, and why they are no longer an issue. Any therapeutic programming, such as anger management or cognitive therapy programs, should be pointed out. If substance abuse was a problem in the past, it is especially important to show the Board what recovery programs the prisoner has done and how he or she plans to support sobriety in the community. He should ask the psychologist to provide a severity rating and address the "in remission" specifier, pointing out the absence of drug-related write-ups even though drugs are readily available in prison. The prisoner should think about possible triggers for drug use and how he has and will address them. The Board generally will want the prisoner to include specifically how he will remain sober once released from prison, such as attending Alcoholics Anonymous or NA to address this risk.

The FAD psychologist will also look for insight into a "mental disorder" and the need for treatment. In most cases, this will mean ASPD and possibly a substance use disorder. Even if the prisoner doesn't really meet the criteria for ASPD now, it may be useful to acknowledge problems in the past, and then repeatedly emphasize the changes in behavior and attitude over time, and the difference in who the prisoner is now and who he was when he came into prison.

**Behavior:** Since all of the FAD's tools and approaches over-emphasize past history, it's up to the prisoner and his supporters to fill in the blanks for the Board. Without trying to comment on criticisms or debates about these tools, they should make sure the materials submitted to the Board emphasize the things that have changed since the prisoner came to prison, how he accomplished that change, and how long it's been since the negative acts that led to a prison term. He should list accomplishments and activities that demonstrate his stability and his compliance with rules and expectations. It is also important to address the impact of age, and the steps the prisoner has taken to reinforce the natural tendency for substance abuse, crime and violence to subside with age. It is also important for supporters to show how the individual has changed over time to become much more "pro-social," responsible, loving, empathic, motivated to succeed, etc., and to explain why they are convinced the individual is not a risk for future substance abuse, crime or violence.

**Plans.** The parole applicant should do as much thinking and planning for release as he can *before* he meets with the psychologist, and make sure the psychologist understands and knows the plans he has in place. These are the same kinds of things he should have ready to present to the parole panel in his hearing. Be sure to address the following:

Professional services: substance abuse counseling or prevention services, medical or pharmaceutical services for conditions like ADHD or bipolar disorder, plans for ongoing medical care for chronic health conditions, etc.

The living situation: where the prisoner will live, how long he can live there, how he will support himself, a realistic budget, etc.

Personal support: The prisoner's support network; letters from family and others with details about how they can support him.

Potential problems with compliance: how will the prisoner ensure compliance with parole requirements, treatment, job expectations, medications and so forth?

Potential problems with stress and coping: how will the prisoner cope with stress and difficult situations? Does he have a spiritual practice or other means of stress-reduction, anger management techniques, support groups, family and friends?

## **HOW TO ADDRESS SOME SPECIAL ISSUES FOR ASHKER CLASS MEMBERS**

For prisoners who spent a long time in SHU under the CDCR's gang lock-up and debriefing policies, there are three special issues that may come up in psychological interviews and Board hearings:

Time in SHU

Refusal to Debrief

Participation in Hunger Strikes

**Time in SHU.** An individual in SHU, besides losing "good time," is largely unable to participate in pro-social programs. In addition, SHU time traditionally meant that a prisoner engaged in bad behavior to get there. All these are negative factors to the Parole Board and to its psychologists.

To counter this, the prisoner should make clear he was not in SHU for disciplinary reasons, and that it was legally wrong for CDCR to keep prisoners in SHU for so long. By signing the settlement agreement in *Ashker v. Brown*, the CDCR basically conceded that it was improper to keep prisoners in SHU solely based on alleged gang-affiliation or membership. It is also implicit in the settlement that Due Process was violated, and the six-year reviews were not fair. If an individual was in SHU for a long time and not able to take part in constructive programs because of CDCR's discredited policies, it is unfair for the Board to hold it against the prisoner.

The way to approach this is to show, in an alternative psych report and in letters from family friends and professionals who advocate for the individual's parole, that the prisoner did the very best he could at improving himself while consigned to the extremely harsh conditions of isolation and idleness. For example, he kept up meaningful correspondence with family and friends; read everything he could and improved his mind; learned skills by reading books from the library; took correspondence courses; did pro se legal work and had to learn law in the process; had a job as tier tender and so forth. He remained free of 115s in spite of the pressure of the environment and in spite of the fact he received no benefit for it. In other words, given the extreme restriction and control imposed in SHU, it is admirable how many pro-social things the prisoner did and how hard he worked to prepare himself for a law-abiding and constructive life after release.

**Refusal to Debrief.** This is a subject that is often raised as a negative in both parole hearings and psychological evaluations. It may be addressed very directly in the FAD interview, but is usually mentioned more subtly in the CRA, for example by reference to "failure to acknowledge gang status," or failure to "rid yourself of gang ties." This failure is seen as a risk for future violent behavior, and an indication of "a criminal mindset." In other words, a prisoner who doesn't snitch is still a criminal and gang member.

Psych reports and letters have to take on this aspect of the FAD's risk assessment. One way to address it is to point out that debriefing doesn't have any rational relation to suitability for parole, under the Board's own criteria, or to future violence risk under the FAD's criteria. For example, debriefing is not necessarily connected with any record of positive change prior to debriefing – under CDCR policies, inmates with terrible behavioral records could get out of SHU by debriefing. Debriefing is not necessarily tied to improvements in behavior after debriefing – records of behavior often remain problematic after debriefing, and SNY yards became management problems due to continuing bad behavior. Debriefing does not ensure an inmate will not engage in gang activity, since the greatest growth in new gangs is on the SNY yards. When it comes to insight, an important issue for the Board, debriefing may be inversely related to it. In some cases, debriefing is a way for a prisoner to avoid accepting responsibility and understanding past wrongs; it encourages rationalization of personal actions, and blaming others for one's own behavior. It may demonstrate a willingness to put others, including family, in danger in order to get better privileges and conditions. Because of the Department's flawed debriefing process, inmates are often incented to lie in order to successfully debrief.

On the other hand, unwillingness to debrief does not correlate with negative behavior or attitude. Many long-term SHU prisoners remained discipline-free in spite of the fact there was no incentive or reward for it, and no hope of getting out of SHU based on it. Prisoners released from SHU under the Step Down Program or *Ashker* settlement have generally had a positive impact on mainline yards, with fewer disturbances and incidents; most have committed to the Agreement to End Hostilities promoted by hunger strike leaders. These are not antisocial traits, but rather show commitment to personal change and mature attitudes. These qualities should be encouraged and valued, and indicate likelihood of success in the community.

**Participation in Hunger Strikes.** Since the hunger strikes and the settlement of *Ashker v. Brown*, many of the hunger strikers are appearing at parole hearings and finding their hunger strike participation used as a negative factor. For example, it may be viewed as "demonstrating an ongoing willingness to disregard institution rules and engage in antisocial behavior as a means of advancing his causes or wishes..." or as evidence of gang activity and loyalty. Participation is often tied to a rule violation report, which is considered additional evidence of antisocial activity.

In such cases, it is critical that the prisoner's participation be re-told as a peaceful and productive act that was ultimately sanctioned (the CDCR basically agreed to the prisoners' reasonable demands by settling the *Ashker* litigation). Rather than being a rule-breaking, self-serving effort, it was a pro-social action that brought peace to the prisons and helped a lot of other prisoners. A psychologist writing an alternative report, or family and friends writing letters to support parole can respectfully disagree with the psychologist's characterization of the hunger strike as a sign of antisocial personality and evidence of risk. Here are some points that can be made:

**It was a last resort after exhausting other steps:** The participants in the strikes had tried and exhausted all other means of expressing grievances, including the official grievance procedure and even appeals to elected representatives to do something about the harsh conditions of confinement in SHU.

**It was peaceful:** The participants agreed beforehand that the hunger strikes would remain peaceful and as little disruptive to prison routine as possible. In fact, the demands of the strikers were very reasonable – the CDCR agreed to many of them when the strikes ended and others when it settled the *Ashker v. Brown* class action lawsuit, and as a result the conditions are much improved.

**It was pro-social behavior:** The prisoners regretted that they had to resort to a hunger strike to have their needs addressed, but their participation absolutely did not reflect “an ongoing willingness to disregard institution rules and engage in antisocial behavior...” Rather, the hunger strike required quite a bit of planning and cooperation among participants.

**It resulted in positive change:** The hunger strikes and the *Ashker v. Brown* litigation actually improved conditions for very many prisoners in the CDCR. Thus, rather than interfering with institutional order, the net effect is less violence in the prisons and more order.

The same kind of positive points can be made about prisoners who participated in writing and signing an “Agreement to End Hostilities” on August 12, 2012. This is an agreement between prisoners of all races to halt violence within the CDCR. Many others have demonstrated their support of and compliance with this agreement, which has helped maintain a certain level of peace in the prisons. Thus, contrary to the way some FAD psychologists view it, participation in the hunger strikes and compliance with the Agreement to End Hostilities should be counted as “pro-social” and not “antisocial” acts.

If there was a CDCR 115 issued for participation, the prisoner should determine whether his circumstances are similar to those in *In re Gomez*, No. A142470, where a state appeals court ruled the prisoner's participation in the hunger strike did not constitute a rule violation.

## Summary

In summary, friends and family of a prisoner going to the Board need to offer reality-based support for the notion that the prisoner has done as much as he could, under the circumstances of his imprisonment, to reform himself. Based on facts that the Board would not otherwise know or be in a position to consider, supporters need to show that, contrary to the culturally insensitive and factually mistaken assumptions of the FAD's risk assessment, the prisoner is not at all likely to return to illicit substances, to crime, and to violence. ●

NOTE: Any issues we suggest raising or arguing to the Board should be raised in written materials submitted to the Board or through the prisoner's attorney. Opportunities for the prisoner to raise issues in the hearing are limited, and panels don't encourage or welcome it.

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