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**BARNUM & BAILEY'S CIRCUS CLOSES; CALIFORNIA BOARD OF PAROLE
HEARINGS FINDS USE FOR RINGMASTERS, CLOWNS AND MAGICIANS**

In a previous writing we discussed the purpose of the California Board of Parole Hearings (BPH), i.e., to conduct parole suitability hearings of life-term prisoners to determine if the parole applicant remains a danger to society if released. As discussed, the BPH grants parole to only the bare minimum number of life-term prisoners as is necessary to maintain the prisoner population at 137.5% (as ordered by the federal courts) of design capacity of the California Department of Corrections and Rehabilitation (CDCR).

Governor Brown has set a predetermined and fixed rate of 30% for parole grants, which allows him enough flexibility to reverse 20% of those grants yet remain under the 137.5% prisoner population cap.

The law is well-settled that California's life-term prisoners have a liberty interest in parole. (In re Lawrence (Cal. 2008) 44 Cal.4th 1181, 1191, 1204; In re Rosenkrantz (Cal. 2002) 29 Cal.4th 616, 654, 664) That liberty interest requires the BPH to provide parole applicants certain, but few, due process protections in the course of parole suitability hearings. (Swarthout v. Cooke, 652 U.S. 216, 220 (2011)) Regulatory unsuitability and suitability factors are of fundamental importance in the parole suitability determination.

"And as set forth in the governing regulations, the Board must set a parole date for a prisoner unless it finds, in the exercise of its judgment after considering the circumstances enumerated in section 2402 of the regulations, that the prisoner is unsuitable for parole." (Lawrence, supra, 44 Cal. 4th at 1204; California Penal Code § 3041(b)) California Code of Regulations, Title 15, § 2402, enumerates the factors of unsuitability and suitability that the BPH is required to follow. Unsuitability factors are: (1) the life-crime was committed in an especially heinous, atrocious, or cruel manner; the life-term prisoner (2) has a previous record of violence; (3) has an unstable social history; (4) has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison. (§ 2402(c)) Circumstances tending to show suitability for parole include that the life-term prisoner: (1) does not possess a record of violent crime committed while a juvenile; (2) has a stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his or her life, especially if the stress had built over a long period of time; (5) committed the crime as a result of battered woman syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release or has developed marketable skills that can be put to use upon release; and (9) has engaged in institutional activities that suggest an enhanced ability to function within the law upon release. (§ 2402(d); see also, Lawrence, supra, 44 Cal.4th at p. 1203 nn. 7 and 8, respectively)

In the decades leading up to 2008, to deny parole the BPH found virtually every life-crime to be especially heinous,

atrocious and cruel. In the Lawrence ruling the California Supreme Court held that the rote recitation of "heinous, atrocious and cruel," was not sufficient to meet the due process protections of life-term prisoners. The Lawrence Court attempted to curtail the BPH's practice of forever using the life-crime, with nothing more, to deny parole.

The Lawrence Court attempted to define the language "must set a parole date," holding that "parole is the rule, rather than the exception." (Lawrence, supra, 44 Cal.4th at 1204; In re Smith (Cal.App. 2003) 114 Cal.App.4th, 343, 366) The California Supreme Court's attempt to get the BPH back on the correct path was met with contempt and derision. BPH Ringmasters instructed the clowns and magicians to abandon the decades-old talisman, and to immediately switch to the new talisman of "the prisoner 'lacks insight.'" Courts have since found that "lacks insight" is an undefinable term, but do nearly nothing to enforce "the rule." Virtually every denial is founded on the life-term prisoner's "lack of insight." 70% denials.

The Lawrence Court instructed that the BPH must point to something more than rote recitation of one or more unsuitability factors to deny parole. The BPH must also provide reasoning establishing a rational nexus between the unsuitability factor(s) -- current behavior -- and the life-crime, to arrive at the ultimate determination of dangerousness. The BPH must identify the specific evidence in the record upon which the denial of parole is based, and articulate how that evidence relates back to and connects to the life-crime to show the parole applicant is unsuitable for parole. The BPH rarely provides any reasoning for denials of parole. Indeed, the BPH does not trouble itself with articulating any nexus between supposed current behavior and the life-crime. The BPH simply says the parole applicant is a danger to society if released

due to a lack of insight. Prisoners filing parole habeas petitions are stymied by the courts, which show a near-complete lack of will to force the BPH to follow the law.

In the rare instances that the BPH does identify evidence of current behavior, it is often irrational, or inconsistent, or magical; it is no wonder that the BPH does not offer any nexus back to the life-crime, because it can't. Let us look at a small sampling of reasons given by the BPH when denying parole. For example, denial may be based on mere "speculation," a "feeling," or "hunch." One life-term prisoner was denied because he talked too fast. Many life-term prisoners have been told to get more programs, while others are told that you cannot earn your way out of prison. Despite "309 self-help chronos, 8 vocational trades, 19 vocational skills, and 885 laudatory chronos" -- the BPH denied parole and recommended that the life-term prisoner "continue self-help programs and continue to gather supportive chronos." At least one denial was based on the life-term prisoner associating with known criminals (yes, a prisoner associating with other prisoners). Too few support letters results in denial because "you don't have the necessary support to survive outside of prison," but too many support letters has been deemed evidence of "manipulation and control of the outside world." Presenting evidence of rehabilitation is deemed an effort to "manipulate the hearing," and asking questions is an effort to "control the hearing."

"We think you know about things we are not talking about." Acceptance at one transitional housing facility is insufficient, but having acceptances at two facilities is evidence of being "wishy-washy." And, regardless of the life-crime, if the life-term prisoner ever drove a Jaguar automobile, then he cannot be paroled because "Jaguars are the automobile of choice of

drug dealers."

A life-term prisoner who killed his wife cannot be granted parole because, while in prison and therefore not in a domestic relationship with a female, the BPH cannot determine his level of danger if he were released and in another domestic relationship. No tears, crocodile tears, are both reasons for denial of parole.

An assessment as a "high risk" by the Forensic Assessment Division psychologist is absolutely, in the opinion of the BPH, unassailable, while a "low risk" assessment is brushed off as simply being the psychologist's opinion, thus not binding on the BPH.

A retired 72-years of age man worth tens-of-millions of dollars was told he needed to get a trade. Another man with pensions from the military and from twenty years with the telephone company was told he needed to find some way to support himself.

The BPH uses secret information to deny parole. The life-term prisoner is not afforded any opportunity to be heard on the information.

A life-term prisoner claiming actual innocence of the life-offense and persistent in litigation to prove his innocence, is told his actions are "not how an innocent person acts."

In virtually every parole denial the BPH fails to identify a single regulatory unsuitability factor, provides no evidence of current behavior suggesting dangerousness, offers no articulation of a nexus between the non-evidence and the decades-old life-crime. BPH's reasons for parole denial are often irrational, inconsistent, or magical. In innumerable ways the

BPH tacks true to Governor Brown's edict of 70% parole denials.

Ringmasters, clowns, and magicians, should not be allowed to perform circus deceptions and duplicities in matters of parole suitability determinations.

Circus events are from a different era. Courts should step up and close down the BPH circus, so as to protect the liberty interests and due process rights of California's life-term prisoners.

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