

SUCCESSFUL PAROLE CONSIDERATION HEARINGS

The Basic Handbook for the Life Prisoner

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The purpose of this handbook is to teach you how to:

- 1) Use the tools of grace, truth, and information to
- 2) Prepare for your lifer hearing,
- 3) Have a successful hearing,
- 4) Be prepared to file a writ,
- 5) and fulfill your goal of earning **Release**

“A winning effort begins with preparation.” - Joe Gibbs

“Confidence is preparation. Everything else is beyond your control.” - Richard Kline

“Be the change that you want to see in the world.” - Mohandas Gandhi

Those quotes say it best since PREPARATION is crucial to having a successful parole hearing, your efforts are best spent on WHAT YOU CAN CONTROL, and because you can be the very TRUTH and JUSTICE that you seek from the system.

PREPARATION FOR YOUR INITIAL HEARING BEGINS DURING YOUR CASE, OR AS SOON AS YOU ARRIVE AT CDCR.

Part One: **Preparing for Your Hearing**

I. Living Suitable

Getting paroled is an inside job.

A. Keep Your Eyes on the Prize – YOUR GOAL IS RELEASE!

Changing behavior is hard. The one thing that would motivate anyone to change is freedom. You have to remind yourself each day when you wake up that you have one ultimate goal, freedom and permanent freedom. It does you no good to get paroled and then violate because you did not truly change the behavior that took you to prison in the first place. Work on permanent habits that will be with you as you complete parole.

As Zig Ziglar, well-known self-help author/speaker, wisely said: “People often say that motivation doesn’t last. Well, neither does bathing—that’s why we recommend it daily.”

B. Walk Your Goal – Absolute Truth and Boundaries

- Cell phones and cigarettes – top freedom stealers
- No time for ego
- Lose to Win – Do you want to be right or free? You choose.
- Walk with the Winners – Positivity Breeds Positivity – Maintain Individuality
- Truth is Absolute – More practical, and it takes less time to tell the truth.

Spend your time with those who encourage you and see the positive side of things. Avoid the negative voices on the yard and especially those who claim to know how to work the system. Comedienne and actress Roseanne Barr says, “I am willing to do anything to lose weight, except exercise and eat less.” That philosophy applies here: if you are willing to do anything to earn parole, start with following the rules, thinking of others, and respecting authority. You might lose the battle when you feel you are being treated unfairly, but if you stay true to your goal, you will one day win the war and walk out the front door. *ISN'T THAT WHAT MATTERS TO YOU IN THE LONG RUN?*

C. Attitude – Complainer or Point of Light?

- The first step is your attitude
- Fake it ‘til you make it
- Pause. Pause. Pause. Thoughtful actions equal freedom.
- Avoid Negative Self-Talk – do not dwell on negative thoughts or you will act them out. Train your mind to think positive and actions will follow.
- Give people the benefit of the doubt. Pastor Joel Osteen warns against thinking negatively of others. It’s not what they said, “it’s what **you tell yourself** they said or did or why.” Focus on thinking the best and not imaging the worst.
- You benefit the most from being friendly
- It takes more effort to be a jerk than to be nice
- No time to complain – you have a GOAL
- Always ask yourself: Do you want to be right or get paroled? Can you let the petty issues go? **ANY ARGUMENT THAT JEOPARDIZES YOUR FREEDOM IS JUST THAT – PETTY AND NOT WORTH YOUR TIME.** *What do you spend your time doing?*
- Is your support system positive? Choose people who are honest but supportive
- Have a system for channeling what bothers you when all else fails – apply relapse prevention now. If you are upset, work it out and save your energy for things that will help you earn your freedom.
- Follow Gandhi’s method of peace, truth, and kindness at all times – it will reveal the best in others, especially you.
- If you need help, ask! You are dependent on others – no one does it all alone. Do what you can, ask for help when you need it, and extend help to others.

D. Grace – Give What You Want

“The weak can never forgive. Forgiveness is the attribute of the strong.”

-Mohandas Gandhi

- You Want Grace – the Parole Board is all about whether you will get grace.
- To Whom Do You Give Grace? Are you wanting the Board to forgive you for murder but cannot forgive a fellow inmate or correctional officer that does you wrong? Think about that. Be gracious to others.
- Lift Up Others – look for the light.
- Wrong is Wrong – There is No Comparison – do not compartmentalize crimes. Who are you to judge others? Sin is sin, focus on your own grace and let other people worry about themselves.
- Divided You Fall – again, build each other up and forgive
- The Human Face of the System – those in charge of your freedom are people with feelings, families, fears, bills, they bleed the same as you, and you must believe they are doing their best. Give them grace and compassion and the benefit of the doubt. Don’t waste your time on negative self-talk.
- Life is About Mercy
- Inspiration is the Key
- Your Relationships with Staff Matter- Get ready for getting along with others on the outside by maintaining good rapport with C.O.’s and free staff. Good relations can only help you.
- Your Relationships with Prisoners Matter – Ditto as above.
- Your Relationships with Friends and Family Matter

II. Self-Help

A. Essential “Self-Help” Programming

Run! Don’t walk! To participate in programs that will help you improve yourself. Transfers happen and funding dries up so start rehabilitation right away. Continuously do self-help even if it means repeating courses. The BPH notes it to the negative when someone has a lapse in programming. **GET ON ALL WAITLISTS**, make sure it is documented in your C-file and follow-up on the list. If you cannot get into any programs at all – do book reports. If you tell the Board, “There are no programs here,” or “I am on the waitlist,” you are in trouble in the self-help area. Bring work to the table.

B. Overall Purpose of Self-Help – Becoming Suitable for Parole

Self-help is for you to learn and be able to explain to the BPH:

- 1) Why you did the crime – what led up to your actions,
- 2) How your actions impacted the victim, their family, the community, and others,
- 3) What you learned in prison, how you have changed and stay out of trouble, and
- 4) How you plan to avoid problems, crime, and violence, in the future.

All lifers should participate in the following programs if available:

- -Impact
- -Victim/Offender Groups
- -Alternatives to Violence
- -Breaking Barriers
- -Non-Violent Communication
- -Anger Management
- -Conflict Resolution
- -Life Skills
- -Selflessness Courses, i.e.: correcting narcissistic or selfish attitudes
- -Lifers Support Group
- -Re-Entry Type Training
- -Family Relationships
- -Parenting

Tailor your programming to fit your crime and personal shortcomings. Aside from the core programs listed above:

If you committed a gang shooting, aside from programs that help you understand the impact of gang-banging and the ripple effect of your crime, you need programs on:

- -self-esteem and leadership to learn how to not be a follower,
- -public speaking so you can take your message to youth when you get released,
- -any other type of character building and community improving courses that will make you a solid man of character who thinks and acts for himself and who can give back to the community that he damaged.

If you killed your wife or girlfriend or have any history of domestic violence, you need programs on:

- -understanding the marriage relationship
- -how to get along with others
- -how to avoid domestic violence, parenting skills
- -how to appreciate women and not be sexist
- -self-esteem and character building to develop personal worth and security
- -try workbook programs available on Amazon.com where you can do self-analysis, look at your relationship shortcomings, and practice the tools you learn

If you killed someone over money or material possessions, you need programs on:

- -valuing life
- -pro-social values
- -caring about people
- -selflessness

If you have any r-suffix issues (even stat rape), you should:

- -participate in therapy programs and have a chrono to show your progress
- -do individual self-help
- -do book reports on the causes of sexual deviance and understand rehabilitation

and do any workbooks in this area

If you have a history of substance abuse, you need any and all programs on how to stay clean and sober, including learning what can lead to a relapse. You must know the 12-steps and have worked the steps. If you have been attending A.A. for 20 years, you should have done the steps and written out what you learned, how you apply the steps to your life, and how you stay sober. You should have done some relapse prevention programs if available. **YOU MUST HAVE A SPECIFIC RELAPSE PREVENTION PLAN** detailing what used to trigger you to use, how you cope now, how you will avoid using again, what you will do if you get any temptations, etc. This should not be some generic plan but should apply to your personal circumstances. Do you know why you starting using substances and how to continue to avoid them on the outside?

If you have any history of mental health issues, i.e.: depression, anxiety, you need programs addressing causes, triggers, and treatment. If you are CCCMS or higher, get individual therapy and ask the doctor to prepare chronos on your progress. If you are in special EOP or DMH programs – ask the doctors to put chronos in your Central File reflecting this programming. Usually they just put it in your medical file and that is not available to the panel during your hearing. **NOTE:** If you have any mental health issues, you will need to show the panel that you have a history of taking your meds, acting appropriately, and seeking help when you need it, and that your condition is manageable.

C. Retaining the Lessons You Learn in Self-Help Programs

Over the years you will take so many self-help programs that you may have trouble remembering all of the information. You need more than the chrono; you should be able to demonstrate to the panel how the program has contributed to your rehabilitation and taught you tools on how to be peaceful, avoid situations that lead to substance abuse or violence, and how to be an asset to your community by not just being a good citizen, but by being a good spouse, father, son, brother, friend, and employee.

In order to retain the valuable lessons you need to remain suitable:

- -Keep a record of the programs, length, name of teacher(s)
- -Write out the main lessons AND how you apply them in your life
- -Apply the lessons you learn
- -Share the lessons with others or help teach the class
- -Refer back to those lessons and review periodically to continue to benefit

D. Independent Self-Help Studies Are Always Good

If self-help programs are not available to you or you want to show that you are doing even more to rehabilitate yourself, you should:

- -Read self-help books from the library or that your people send to you and prepare a book report on what you learned and how you can apply it in your life (or are applying it in your life) to be a better person, and to overcome your issues.
- -Use the Steps to identify and write out your wrongs and character defects, note

- what you are doing to make amends and change yourself.
- -Try to meet with a psychologist and address narrow issues in your life like what led you to the life crime and get a memo about your progress.

Be prepared to submit your work to your counselor and show it to the BPH. Don't worry about spelling and grammar – they want to know that you are learning about yourself and changing.

The Big Book of 12-Step Programs has many chapters that you can use for book reports. The Bible and other religious books are other examples of book report material.

Remember: Regardless of what programs are available, IT IS UP TO YOU TO SHOW THAT YOU ARE REHABILITATING YOURSELF. “THERE ARE NO PROGRAMS” IS NEVER AN ACCEPTABLE EXPLANATION FOR WHY YOU DON'T HAVE SELF-HELP – do book reports.

E. Self-Help Should be Documented in Your C-File

Be sure that you receive documentation of your self-help, that it is in your C-file, and always keep a copy with you and on the outside if possible. The BPH usually wants to see it in the C-File for it to be valid. If for some reason your self-help is not properly documented, you will need to use the record you kept as outlined above. If you are on any waitlists, it should be on a chrono in your C-file or the BPH will think you are not being truthful with them about your efforts at self-help.

III. Education

A. Educational Progress Helps to Demonstrate Suitability

The more education you have, the better you are prepared for the job market. Preferably you want to achieve:

- High School Diploma or G.E.D.
- College Courses/Degree

If you are academically limited:

- If you are having trouble passing the G.E.D., ask for help. Try to document that you are trying to get help to pass the G.E.D.
- If you have tried for years, but cannot pass it, ask someone in education or otherwise, to write a chrono explaining how much you have tried and that you are at a plateau in your learning.
- If your CYA records are not in your file, write to them for copies.

B. Educational Records Should Be in the C-File

Time and time again, the BPH states that they want “source documents” for your educational achievements. Reference to your educational work in some report or transcript is not enough. Provide your high school diploma, or G.E.D. papers, and college transcripts, grades, degree, to your counselor. **ALWAYS KEEP A COPY FOR YOURSELF.** Also keep records of your requests by letter for these documents in case you are having trouble finding them.

IV. Vocational Training/Job Skills

A. Vocations

One noted suitability factor is marketable skills or employment. Having both is the best, but you only need one. Rush to get your vocational certification, or PIA experience, you may not get another chance due to funding, transfers, etc.

Note the following in regards to vocations:

- The BPH favors more than one vocation or one completed recently
- The certificate of COMPLETION should be in your C-File; keep a copy
- Try to learn a vocation related to your career goals
- Retain positive reports on how you did in vocational classes
- If you do particularly well, ask the instructor for an additional personalized chrono
- Be prepared to talk about your vocation with the BPH at your hearing
- Be up-to-date on the pay for that vocation and if there are jobs available
- If possible, have a list of employers of that vocation in your parole area
- Subscribe to trade magazines related to your vocation to keep current
- If you could not finish a vocation, retain all that you learned/reports, etc.
- PIA’s agreement with the Board is that PIA experience can count as a vocation
- Get on all wait lists, make sure it is documented in your C-file and check back to see where you are on the list

B. PIA/Job Skills

If you did not get a vocation or you want to demonstrate additional marketable skills, make note of the following:

- Have documentation of your PIA work
- Have documentation or a list of your job history on the streets
- Stay assigned
- Work your behind off
- Keep track of your assignments and what skills you learned – you need good work reports
- Be able to explain any poor work reports; have documentation
- Get any information about the types of jobs and pay you can do on the outside

- with your job experience and skills
- Always be willing to do any job you can physically do
- Do extra, expect nothing
- If you are physically limited, get a doctor to note it in your file, keep a copy

V. Behavior Record

A. Handling 115s

If you don't have any 115's – congratulations – I hope you continue to be a role model for your fellow lifers. You will have one less topic to worry about at your hearing.

If you receive a legitimate 115, and have no defense:

- Admit it (it is all about responsibility, you cannot afford to minimize)
- Apologize
- Identify your wrong behavior OR what you would do differently next time, keep notes on your progress (individual self-help)
- Talk to a psych if you can – note what you did wrong, what you learned and what you are doing differently now (individual self-help or ask for a chrono)
- Take a self-help course that addresses the behavior or cell study book reports
- **FYI: CELL PHONES ARE THE NUMBER ONE REASON THAT SUITABLE PEOPLE ARE NOT BEING RELEASED – STAY OFF OF THEM! If you think not being able to talk to your loved ones on the phone is difficult – try telling your family that you aren't getting out for three more years because of a cell phone or think about how much more time you will have to do. It is not ever worth it.**

If you go to the hole or receive a 115 but you are innocent:

- Ask for staff assistance
- Write a letter to the Lt. declaring your innocence (you need not implicate others)
- Hire an attorney to assist you if you have the funds – they cannot be present at the hearing, but they can help you to prepare, file a 602, and file a writ
- Gather up all evidence, documents that you need and ask for witnesses
- Have a hearing and deny the charge
- If it is a sensitive issue, tell the hearing officer and ask him/her to put it on the record that you declare innocence and feel that telling what really happened would endanger your safety
- File a 602, this asserts your innocence and is a record of any procedural violations
- Keep all documentation that supports your innocence to present to the BPH
- File a Superior Court Writ
- If you ultimately lose all appeals, move on and do your best to demonstrate that this was out of character for you via good behavior, chronos, etc.
- Take records to your psych review to corroborate your explanation

If you are written up for something your cellie did (your safety considered first):

- Try to get the cellie to write a letter or do something to clear your name
- Ask for a new cellie right then – this cellie is going to keep you locked up
- Pie in the sky: Ask a supportive staff member who believes you to document something to the effect that the rules dictate that they must write both of you up, but that they suspect the cellie might be responsible

B. How the BPH Views 115s

Obviously any violent write-ups are serious trouble, and any non-violent, but serious 115s are going to weigh heavily against you. The BPH generally:

- Will want time between the last 115 and a grant of parole, depending on the violation. Your overall good record may excuse a recent 115, depending on the circumstances. [Courts are somewhat in disagreement on whether all 128s or 115s make you a present danger]
- Questions your innocence if you do not have a hearing AND file a 602.
- Presumes that all 115 hearings are fair
- Takes correctional staff's word over your word
- Thinks you are lying and lack insight if you deny all/most of your 115s, and/or minimize the write up
- May considers work stoppage, talking back, drugs, and cell phones to be signs of unsuitability
- Frowns upon blaming others for your actions
- Appreciates those who admit their wrongs
- Expects you to waive your hearing or stipulate if you have a recent rules violation
***There is no exact way to address this – sometimes it is appropriate to waive if you have recent 115s or if you do not have time to waive, you may wish to stipulate in some cases. *THIS IS AN INDIVIDUAL DECISION.*
- **WARNING****IF YOU HAVE A WRIT PENDING – STIPULATING TO UNSUITABILITY CAN RESULT IN THAT WRIT BEING DISMISSED AS MOOT SINCE YOU ARE NOW ADMITTING YOU ARE NOT SUITABLE.**

VI. Board Reports

The Board Report is prepared by your counselor. It includes the facts of the crime, your statement, post-conviction factors, and information about your parole plans.

As you know, counselors have big caseloads and less time to do their work with the furloughs and such. Be a solution and not a problem to your counselor. If your counselor forgets something on your report, simply write a polite note asking for an addendum if they are not too busy. Retain a copy of the note to present to the Board.

If you are unsure about discussing your crime, advise your counselor that you prefer to speak to the panel in person on this topic. Clients at PVSP told me that their counselors told them they had to sign a declaration about their crime. THAT IS NOT TRUE. You may, if you wish, tell your counselor your version, or submit it

in writing [not usually recommended], or if you know your case well, tell them which version in the record is correct, OR advise that you discussed the crime with the psych and/or you will talk about it with the Board at your hearing.

Provide Your Counselor with the Following Six Months in Advance of Your Hearing to Assist Them in Preparing Your Report:

- Parole plans, including support letters with addresses and phone numbers – NOTE THAT THE BPH WANTS THESE LETTERS SENT TO YOUR COUNSELOR AND IF IT IS 75 DAYS OR LESS BEFORE THE HEARING, YOUR FAMILY SHOULD SEND THEM TO THE PRISON, ATTN: BPH DESK AND SEND YOU A COPY. Avoid giving your only copy to your counselor.
- List of completed self-help, vocations, and other achievements since last hearing
- List of current programs and activities for which you do not have any chronos
- List of waiting lists that you have asked to be placed on

If there are errors in your Board report, you may ask your counselor to prepare an addendum and if they don't, explain the discrepancies to the Board and that you did request a correction.

VII. Olson Review

A. In General

- Do your Olson review before every hearing, period.
- Ask for all volumes of your C-file, you need to look at all of them.
- If you need an interpreter – ASK FOR ONE – there is no excuse not to read your whole C-File if you want to get released.
- If something is placed in your file after the review that you have not seen, and brought up at the hearing, talk to your attorney about a possible postponement that is not your fault.
- If you need help finding certain documents, ask your counselor for help.
- Do not disturb anything in your file; if something falls out of the file during the review, notify your counselor immediately.

B. Read Your Whole File and Especially:

- Probation report
- Any police reports
- Appellate Opinion
- Sentencing Transcript
- Preliminary Hearing Transcript
- Rapsheet
- Disciplinary Records
- All chronos
- Notices and Responses

- Certificates, etc. of “Misc. section”
- Support Letters

VIII. Psychological Evaluations

A. Overview

Here is a topic we could spend a whole day on alone. The Board hires the clinician to evaluate you prior to your hearing and that report will be good for up to four years. It is very difficult to get a new report. Even when there are errors and the Commissioners order a new report, the “Forensic” department writes a pro-forma letter denying a new report. These evaluations were originally done to identify any mental health issues that might interfere with parole. Today they are used to gauge your risk of danger, future violence, or recidivism, insight, remorse, and need for further therapy. The information and conclusions of the clinician carry a tremendous amount of weight; the BPH almost never grants a parole date if the risk level is above low-moderate (with the exception of a moderate historical rating for past behavior alone). There is controversy about the method used, testing criteria, lack of record of the actual interview and raw data, and absence of key topics. Evaluators vary on how much time they spend with inmates, which questions are asked, and the level of accuracy and fairness. The tests themselves are not supposed to be used on all ages and are based on one specific geographical group of men.

To refuse the interview pretty much guarantees a denial at your hearing. You can supplement the Board report with a private psych report. But do not substitute a Board report refusal with a private psych report. If you do not discuss the crime with the clinician, they more often than not will state that they cannot rate your risk of danger but will proceed to pass judgment on you in every other area based on your C-File. Review past reports and be prepared on all topics.

B. Suggestions for the Psych Interview, Etc.

- Be Polite and Respectful - No Excuses
- Listen carefully to the questions asked
- Ask questions if you do not understand something
- Do not make assumptions about the questions
- Speak clearly, use basic terms, short sentences, and clarify things if it appears the clinician does not understand what you said
- Do not ramble or discuss extra topics that might cloud the clinician’s memory
- Volunteer to correct errors in your C-file, offer documentation
- If you did not have time to bring your documents, request to be allowed to go back to your housing to retrieve the papers
- Do not interrupt the clinician
- If not asked about it, volunteer your feelings of remorse
- If not asked about it, volunteer your insight

- After the interview is over, go back to your house and make accurate notes on the length of the interview, the attitude of the clinician, what was asked, what you said, whether you were allowed to present any documentation to clear up errors in your C-file, and anything else you think is important
- When you get the report, note which information came from your C-file and which came from the interview

C. Correcting the Report if Necessary

- If there are errors in things relied upon to give you a higher than low risk rating in any category, you must take immediate action to have them corrected
- Write a letter to the clinician and the BPH summarizing the errors and requesting a new evaluation along with a copy of the report with the errors highlighted – YOU SHOULD INCLUDE DOCUMENTATION TO SUPPORT THE CLAIMS OF ERRORS
- Keep a copy of the letters you send requesting corrections
- If the BPH refuses to do a new report or correct the errors, file a writ in superior court raising a due process violation since the inaccurate information is being relied upon to rate your risk and ultimately could be used to deny parole [you should include samples of hearing decisions where the Board used the psych report to deny parole – may have to ask others]
- Failure to get the errors corrected will be viewed as acceptance of the inaccurate facts and conclusions

Part Two: **The Parole Consideration Hearing**

I. The Players

A. The Board of Parole Hearings (BPH)

The BPH is the agency responsible for parole consideration hearings. It is located in Sacramento and includes an Executive Officer, Commissioners, Deputy Commissioners, legal staff, investigators, managers, supervisors, and clerks. The Executive Officer (EO) is appointed by the Governor and oversees the agency. The EO is NOT the boss of the Commissioners. The people who work at the BPH are State employees.

The following information is taken from the CDCR website:
http://www.cdcr.ca.gov/Divisions_Boards/BOPH/

“Board of Parole Hearings (BPH), combines the Board of Prison Terms (BPT) the Youth Authority Board and the Narcotic Addict Evaluation Authority. BPH is comprised of 17 members appointed by the Governor and require confirmation by the Senate. Of the 17 commissioners, 12 hear only adult matters, and five hear only juvenile matters. They receive an annual compensation of \$99,693. *Note: (the other website information*

has the salary at \$111, 845)BPH considers parole release and establishes the terms and conditions of parole for all persons sentenced in California under the Indeterminate Sentencing Law, persons sentenced to a term of less than life under Penal Code Section 1168 (b), and for persons serving a sentence of life with possibility of parole. The Board may suspend or revoke the parole of any person under its jurisdiction who has violated parole. The Board also determines the necessity for rescission or postponement of parole dates for such persons. BPH also waives parole and may discharge any such person prior to the expiration of the statutory maximum parole period and reports to the Governor on applications for clemency. The BPH also conducts certification, placement, and parole revocation hearings for mentally disordered offenders and considers requests from foreign born inmates who wish to be transferred to their country of citizenship to serve the remainder of their sentences. At the request of the Governor, the BPH investigates and makes recommendations on all applications for reprieves, pardons and commutations of sentence, including death penalty commutations. It may also report to the Governor the names of any prisoners who, in its judgment, ought to be considered for reprieve, pardon or commutation. The BPH also has the discretion to recommend to the court that a prisoner's sentence and commitment be recalled and that the prisoner be re-sentenced, such as in situations calling for compassionate release. The Commissioners convene once a month to conduct a public business meeting. All are open to the public. Most are held in the BPH's Sacramento offices, although meetings are conducted occasionally in other locations to facilitate citizen participation. For those who anticipate testifying at a scheduled meeting and require translation services, please contact BPH's Executive Office at (916) 445-1539 at least one week prior to the meeting to provide ample time to make arrangements. Meeting agendas are published 10 days in advance of the hearings. All inquiries should be sent to: Board of Parole Hearings Post Office Box 4036 Sacramento, CA 95812-4036”

B. Attorneys

Qualifications

Any member of the California State Bar (lawyers licensed to practice in our State) can apply to be hired to do BPH hearings for the State by filling out some forms and reading the laws governing lifer hearings and ADA law. There is no special requirement for an attorney to contract with the Board; thus you sometimes see attorneys with little or no experience or a brand new bar card doing lifer hearings.

Hiring Process

The process for choosing attorneys to do the hearings is unknown to this writer. The BPH seems to strive to give equal work to the attorneys on the panel.

Job Duties and Pay

The BPH has a practice of appointing one contract attorney to do a week-long panel of about 6-12 hearings. The attorney may do up to two weeks of hearings in one month. The attorney is asked to interview the clients and read the central files prior to the hearing and to arrive on time for the hearings. Knowing the current law governing the hearings and doing the appropriate research is inherent in the job duties of the attorney. The BPH DOES NOT ask the attorney to meet with the inmate for a certain amount of time, or to help with letters, parole plans, or anything else. The attorney is paid about \$60 per hour

and incurs all of their own expenses, with a maximum of \$400 per case. Attorneys have high overhead, including bar fees, insurance, research materials, office costs, employee costs, and travel expenses. The amount attorneys are paid to do lifer hearings is low in comparison to what attorneys can potentially earn doing other work. In short, no attorney gets rich off of panel work or even private work as there are countless other areas of the law that pay better. Since there is a maximum amount paid on each case, some attorneys will work from 8:30 a.m. to 11:30 p.m. with no overtime pay or any kind of compensation for the long hours.

C. Commissioners

Presently, the hearings may have two appointed Commissioners or one Commissioner and one Deputy Commissioner, who is a state employee. One Commissioner reviews the life crime, priors, social history, parole plans, and reads the decision. The Governor appoints the Commissioners. There is no requirement to serve; they are usually not lawyers, usually are retired, and do not need a college degree. Some are CDCR retirees, previously worked in law enforcement, or come from some other type of government job. The BPH provides training. They must be confirmed by a majority vote of the Senate. The Senate holds confirmation hearings where the public can speak about whether the Senate should confirm the Commissioner.

Here is information taken the CDCR website as of January 2012 – subject to change:

“The Board (adult hearings) is composed of 12 full-time Commissioners who are appointed by the Governor. The Commissioners are appointed to staggered three year terms. The Commissioners conduct life prisoner parole suitability hearings and associated documentation, progress, and rescission hearings for adult offenders under the jurisdiction of the department. A monthly public session is convened in part to review cases referred by the Governor for rescission, resolve split decisions of parole suitability and decide cases referred per California Penal Code 1170. The Board may also consider matters referred for decision review, as well as requests for clemency and pardon. The Board may promulgate [regulations](#). Public comment and participation occurs at the monthly meetings.

BPH Commissioners travel to prisons throughout the state conducting on-site suitability hearings. Participants may include the inmate, [inmate's attorney](#), District Attorney's representative and [Victims and Victim's Next of Kin](#) present. The Commissioner and [Deputy Commissioner](#) consider all relevant information related to suitability for parole to make a determination as to whether or not the life inmate remains a current, unreasonable risk of dangerousness to the public. The Commissioner chairs these hearings and the panel considers the evidence presented in accordance with relevant Penal Code provisions, case law and California Code of Regulations, Title 15, Division 2.”

Arthur Anderson Jr., appointed February 22, 2008

Jeffrey Ferguson, appointed November 10, 2010

Dan Figueroa, appointed August 10, 2011

Cynthia Fritz, appointed June 28, 2011

Jack Garner, appointed October 3, 2005, and re-appointed on August 10, 2011

Howard Moseley, appointed August 10, 2011

John Peck, appointed December 22, 2009, and re-appointed on August 10, 2011

Michael Prizmich, appointed March 18, 2007, re-appointed August 10, 2011

Gilbert Robles, appointed June 28, 2011

Terri Turner, appointed August 10, 2011

The bios of the appointed Commissioners are available on the website. They do not post information on the Deputy Commissioners.

D. Deputy Commissioners

A Deputy Commissioner may make up one half of the parole consideration hearing panel. They review your post-conviction factors with you during the hearing. Deputy Commissioners are State employees who either serve full-time or are retired, part-time employees. They are not required to be lawyers though some are. Many have a CDCR, law enforcement, or government service background. They are not chosen by the Governor, but hired by the BPH.

E. Victims and Victim's Next of Kin (VNOKS)

By law, any victims of the crime and their close family members (including support people and representatives) may attend the hearing in person or by video and give an uninterrupted statement. (See details of Marsy's Law below)

F. District Attorney Representative

A representative from the District Attorney's Office from the county of your conviction can attend the hearing and opine as to your suitability. This is almost never the actual person who prosecuted your case. They usually write a letter opposing your parole and appear in person to deliver a long harangue of everything you have ever done wrong.

G. Governor

The Governor appoints the Executive Officer of the Board of Parole hearings who is responsible for the daily operations of the agency. The Governor appoints the Commissioners. The Governor either reverses a grant of parole for someone convicted of murder or in a non-murder case, refers a grant of parole back to the Commissioners for an en banc vote in Sacramento (the authority to do the latter is questionable but is the current practice).

H. CDCR Staff

Counselor

Your counselor serves the hearing rights, forms to request counsel, and forms to waive, etc. your hearing, the 1074 and prepares a Board Report prior to each hearing. Letters of support (always keep a copy) should be provided to your counselor to be placed in your central file. They will provide a copy to the BPH desk if the sluff file has already been prepared. Sometimes your Counselor may ask you to just present the item at the hearing if it is close to the hearing or if it is not something that would go in your central file. Don't ever use what your counselor did not have time to do as an excuse. Take care of what you can yourself and keep copies to take to the hearing.

BPH Desk

Prison staff that work with the BPH to schedule the hearings, arrange attorney interviews, prepare the sluff file from your central file prior to your hearing that is distributed to the commissioners, your attorney, and the prosecutor. They do other assorted tasks related to the administrative aspects of your hearing, as well as coordinating the VNOKs, and DAs.

II. Legal Counsel

A. Should You Hire a Lawyer?

Yes – if you can afford private counsel, get it. There are a number of qualified lawyers to represent you at your hearing. Prices vary depending upon your case and the attorney. Your best choice is someone who has extensive experience doing lifer hearings, knows the writ process, has experience doing criminal court cases, and with whom you feel most comfortable. Court experience as either a defense attorney or D.A. is crucial to understanding the documents in your file, the police investigation, rules of evidence, and the whole court process. Avoid letting your family hire an attorney they like but has no experience with lifer hearings – always a big mistake. This is a unique area of the law.

B. Long Term Legal Fee Considerations

You may have several hearings and writs before you are released. Figure out your total budget and how much private counsel you can afford. The initial hearing is important – no question there. If you receive a Governor reversal of a parole grant – it is very crucial

to get legal help there, as you have a strong chance of being released. All other proceedings may depend on your specific circumstances.

III. Pre-Hearing Proceedings

A. BPH Scheduling

The current BPH practice is to create a schedule four to six months in advance. The BPH is trying to get lifers scheduled prior to their “No Later Than” or “NLT” date while getting court orders on schedule, and adding persons that were postponed at previous hearings. Therefore the date/time and sometimes week of your hearing is subject to change. Be ready to proceed as early as Monday of the week of your hearing and as late as Friday. The BPH has been scheduling hearings one month earlier than the last hearing to allow themselves time to reschedule if the hearing has to be cancelled for some reason.

B. Sluff Files

The BPH desk prepares a “sluff file” that is distributed to the commissioners, the DA and your attorney about 60 days prior to the hearing, including some or all of the following:

- Board and Psychological Reports,
- Prior Hearing Decisions,
- Notices to investigating agencies, trial lawyers and judge, and VNOKs,
- Legal documents: probation report, police reports, coroner’s report, charging documents, preliminary hearing transcript, sentencing transcript, and appellate decision
- Copies of Hearing Rights Forms
- Disciplinary Sheet Showing Just the Write Ups, where and when
- Recent chronos and certificates since last hearing

Ask your attorney for the sluff file after your hearing: you need it to prepare for your next hearing and possibly to file a writ of habeas. If your file contains sensitive information that you do not wish to take to your house or receive in the mail, let your attorney know that you want it shredded and not to just leave it at the prison or throw it away. You have an absolute right to your file, however, it can be expensive for appointed attorneys to mail it to you if the prison has a problem with them giving it to you. PVSP has a weird policy where they ask the attorney to leave the file with them and they deliver it to the lifer. Try to get it in person if you can and try all congenial methods before complaining to the State Bar.

C. Request for an Interpreter or ADA Assistance

Your counselor will go over your 1073 form [disability issues] with you and ask if you want an interpreter. Panels seem to appreciate you trying to communicate directly with them. This will be an individual choice. You can always ask for one and then try to only use the interpreter if necessary. The State only provides a phone interpreter for your attorney interview. If you have hearing/reading/walking issues, let your counselor know.

You may get a hearing device, magnifier, or other accommodations. Write to your attorney if your ADA condition means you will need extra time to communicate with them so they plan ahead and allow enough time for your interview.

D. Waivers

You may request to waive your hearing for 1-5 years – **THE BPH MUST GET THE WAIVER AT LEAST 45 DAYS BEFORE YOUR HEARING.** Your counselor will ask you if you wish to waive long before you see your attorney. Attorneys should try to see you at least 45 days before your hearing, but that does not always happen. The Board will generally grant the request if it is timely. A waiver is not an admission of unsuitability. It is very difficult to get a waiver the day of your hearing; the panel will want you to stipulate to unsuitability. While it is best to get attorney advice before making the decision to waive – if you believe it is necessary to waive – **GET THE FORM TO YOUR COUNSELOR WITHIN THE 45 DAYS (OR EARLIER) AND LET THEM KNOW YOU WOULD HAVE LIKED TO SPEAK TO YOUR LAWYER FIRST BUT HAD NOT CHOICE DUE TO THE DEADLINE.** The BPH has denied late waivers where the lifer waited for their lawyer and it was past the 45-day cutoff.

Possible Reasons to Waive

- Recent 115 (s) (depending on which type – EVERY CASE IS DIFFERENT)
- Not Enough Overall Programming
- Want to Transfer Before Hearing
- Time to Complete G.E.D., Vocation, Self-help programs, etc.
- Have Not Fulfilled Recommendations of the BPH from the Last Hearing
- Do Not Have Parole Plans
- Pending Writ on reversal or winning on denial Writ and awaiting outcome

E. Stipulating to Unsuitability

You may stipulate to unsuitability for 3-15 years. Note: if you are 45 days or more before your hearing and you are not ready, waiver is most appropriate. Stipulations should be reserved for when you are past the 45-day requirement and really do not wish to proceed with your hearing for serious reasons. There is no exact formula for when to stipulate; this is an individual decision. However as noted above: **IF YOU HAVE A PENDING WRIT AND THEN STIPULATE TO UNSUITABILITY– THE ATTORNEY GENERAL CAN REQUEST A DISMISSAL OF THE WRIT ON MOOTNESS SINCE A STIPULATION IS AN ADMISSION OF UNSUITABILITY – THE COURTS USUALLY GRANT THEM.**

F. Getting Ready for the Hearing

1. Parole Plans Summary

Prepare a one-page road map of what you will do once released, including:

- Where you are staying
- Where you will work and how you will get there,

- Summary of Your Relapse Prevention Plan,
- Other short and long-term goals

2. **Support Letters – attach to parole plans**

Under the law you need “realistic” parole plans. The Board expects your parole plans to be in *writing, dated, signed, and include the author’s name, address, and phone number*. Do not go overboard – more than 15 letters can be a nuisance. If you have more than five letters, they should be organized and tabbed as set forth below.

You should have support letters that are recent (in the last four months) for:

- Residence (1-5),
- Job offers (1-5),
- Mentors/AA sponsors (1-5), and
- General support (3 to 15).

a. Tips on Residential Plans (any county where you will do well if approved by the Board)

- Transitional housing – the BPH almost always prefers that you start out with this, especially if you have never lived on your own. Start writing to places at least one year before your hearing and be able to explain what that place offers you and how much it costs
- Home with family where you will have your own room – the Board will ask how many people live there and where you will stay, how long you will stay, and whether you must pay rent.
- DO NOT plan to live with the co-def or persons on parole or probation,
- Avoid gang-infested areas if you are a former gang member if possible,
- Bring Photos
- Parole will check out your housing plans
- Prepare a budget plan – know the current costs of living – identify your expenses short and long term and set realistic goals

b. Tips on Job Offers

- Should include specific job, pay, start date, hours and benefits information
- Should not be offered by someone on parole or probation
- Notify employers that parole agent will contact them
- Try to line up jobs for which you have skills and/or interest
- **Prepare a resume with your skills and job history** – use the address of your residential offer instead of your prison housing

c. Tips on Relapse Prevention – A Daily Plan to Stay Clean and Sober

- List of meetings in the area or outpatient programs
- Sponsor or clean and sober support persons
- List of challenges you will face and a plan to deal with them
- List of your own personal triggers for using and how to cope
- List of people to contact in case of crisis, including parole agent
- Make it a specific plan tailored to your personal needs

d. General Support

Letters from family members and friends attesting to what they can do for you upon your release besides provide a home and job, i.e.: moral support, guidance, money, clothes, car, etc. Persons whom have known you a long time can provide helpful insight about your positive character traits. ***Your family and friends should acknowledge your crime and avoid statements like, “He has been in longer than a child molester,” or “She has already done her time,” or “He has served enough time for this mistake,” as it sounds like they are minimizing your behavior or telling the Board what to do.

G. Letter of Remorse

You should write a letter to the victim and their family to show to your attorney. You should have your attorney review it to ensure you have not written anything that would hurt someone’s feelings. This is a very sensitive issue and you want to approach it with deep thought and consideration. If acceptable, the letter should be mailed to the Board’s Victim Services Unit. Keep a copy for the hearing. The letter should include the following:

- Apology
- Acknowledgement of the Harm You Caused to all Individuals

Do NOT ask for forgiveness, DO NOT tell them there is nothing you can do to bring their loved one back, AND DO NOT expect anything in return.

Now you have:

- learned all the facts in your case,
- prepared your parole plans,
- have support letters,
- prepared relapse prevention plan
- written a letter of remorse in your own words
- have everything ready for your attorney visit
- have neatly organized all of the papers you need to take into the hearing
- have reviewed the most commonly asked questions (*See Last Page Also*)

...Next you should:

H. Begin Mental and Physical Preparation for the Hearing

- Be thinking about what you will say so that you do not stumble over words due to being nervous or anxious,
- Think about your list of persons you have harmed and amends you have made,
- Eat right,
- Exercise,
- Sleep well,
- Do not drink a lot of caffeine before the hearing – avoid being hyper or jittery,
- Expect positive things to happen in the hearing – keep a good attitude – do not wallow in doubt, self pity, or negative expectations

- Do not obsess on technical reasons why you should be released – stay focused on how to best communicate with the panel – that is the key

IV. What To Do in the Hearing

See the List of Frequently Asked Questions, Issues, and Check-off List

A. Your Appearance and Demeanor Send a Message

Your appearance at the hearing is necessary, unless you are not feeling well or do not think you can positively contribute to the hearing. You should be able to get a postponement if you are ill. If at all possible, attend your hearing.

Your physical presence speaks volumes. Make it a good one. The BPH is not paroling your file – it is paroling you. Some lifers think that if everything in their file is good then they should be found suitable. If that were the case, there would be no need for a hearing; it would all be decided on paper. Your interactions with the panel are as or more important than your record. I have heard panels say they want to be comfortable with the idea of you living next door to them before they grant a date.

Tips for Your Personal Appearance and Demeanor:

- Shave
- Clean Attire
- Positive attitude no matter what
- Good manners
- Speak in full words and sentences (no “yeah’s” or head nodding)
- Keep your papers organized
- If you are too nervous it usually shows as your being “robotic” and inhuman; so breathe deeply and relax
- Make eye contact
- Listen carefully to every word spoken – LISTENING IS IMPORTANT
- If at anytime you do not hear what is being said or do not understand, let your attorney and/or the panel know
- If you feel hurt, angry, or frustrated, COPE – do not spray your emotions out on the table. Genuine expressions of remorse are the one exception.
- Humility is the key; over confidence or aggression is not recommended
- Listen to what the panel says, let them finish speaking, and do not over talk anyone in the hearing.

B. Parole Plans Packet

Bring at least one packet that includes:

- Coversheet overview of parole plans
- Letter of Remorse
- Support letters – Residence, Job, General Support
- Relapse Prevention & AA and Sponsor Information

- Short term and long term plan & Budget

Tips for Parole Plans packet:

- Typed is best but not required
- Tab the packet if possible to make it easy for the panel
- Bring additional copies for the DC, DA, and your attorney if possible (the law does not require that you provide the DA a copy but the panel may allow the DA to read the packet)
- You may also want to submit recent chronos and Book Reports not in C-File, family and housing photos, and samples of your artwork or other hobbies

C. Objections

Your attorney should discuss possible objections:

- Any material that would violate due process
- Information received in less than 10 days
- DA presence if they agreed not to attend hearings, etc. as part of your plea bargain
- Extra persons attending with the DA (not always important) – there are cases where non-relatives have showed up not as support persons, or interns want to sit in on the hearing
- Marsy's Law
- The panel if there is a conflict

Remember: YOU CANNOT TELL THE BOARD THE LAW OR FORCE THEM TO FOLLOW THE LAW – do not give your attorney a big list of legal issues you want them to say – adhere to *appropriate* lawful objections. You have a right to respond to anything in your file in writing and submit documents to the panel – use that right wisely and do not stress on technical issues or minor details. If you have numerous papers to submit – ask your attorney to submit them to the Board in advance of the hearing.

D. Whether to Discuss the Crime

That is the million-dollar question. There is usually not a black and white answer. Keep in mind that some panels simply will not grant parole if you do not discuss the crime, despite the law. The law states and several Court of Appeal decisions have held that you do not have to discuss the crime, however, the *Lawrence* case that came out in 2008 requires insight and a evidence of a present mental state that does not show an unreasonable risk of danger to society. Some might argue that in order to assess your present mental state, they need to know if you are admitting everything about the crime. Parole grants have been given in the past where the crime is not discussed at that hearing, though in most cases, the lifer had previously discussed the crime at other hearings. Again – this is something to determine with your attorney – on an individual basis.

The panel does not have your trial transcripts. ALWAYS RETAIN YOUR TRIAL TRANSCRIPTS – you may need it to clarify mistakes in the probation report or impeach VNOKs. Sometimes they do not recall events in a light most positive to you and you

might have to show that they are wrong with the testimony given at trial. You should show this to your attorney ahead of time. The BPH panels take the probation report and/or appellate opinion as the gospel. Attorneys know that this is shocking because the probation reports and even appellate opinions can contain gross errors and the witnesses may have lied.

Commissioners may ask very detailed questions. For example, they may ask where you got the gun, why you had a gun, had you ever shot a gun, etc. If you used any type of weapon, expect detailed questions.

If you are not ready to discuss the crime, you should not. This could hurt you permanently. **DO NOT BE OVERCONFIDENT** in your ability to handle discrepancies in the facts of the crime.

TIPS FOR DISCUSSING THE CRIME:

- If the facts in your record are the same as what you recall – no worries. Own it and prepare for detailed questions. If you don't recall, just say you don't remember – **AVOID BEING A "YES MAN"** who just goes along with whatever the panel says. This leads to trouble and inconsistent statements.
- If the facts in the record are different from what you recall, you will need to discuss this issue with your lawyer – whether you can document your statements with the trial transcript or other documents will be key to making your decision
- Panels differ on discussing the crime and every case is different – there is no golden rule
- Unless your attorney was present at the last hearing where you discussed the crime, she or he may not be able to give you the magical answer on what to discuss having no experience with how you handle yourself in a hearing
- If you have any doubts about your ability to take on the facts of the crime in the face of a record that does not support your version – **DO NOT DISCUSS THE CRIME.**
- If you discuss the crime, the DA will most certainly ask you questions about the facts designed to make you look like a liar, etc. (more on this later)
- Discussing the facts can be very uncomfortable, try to stay focused and answer all questions correctly. If you forget what is asked, ask them to repeat the question. Accuracy is very important.
- If you choose not to discuss the crime, you can stipulate to the conviction if it is true – if there is an accurate version of the crime – you can say that you stipulate to that version. Be careful! Do not stipulate to versions that are not true. This is why you need to read all of your documents.

- If you choose not to discuss the crime, **LET THE PANEL KNOW YOU ARE WILLING TO ANSWER ANY QUESTIONS ABOUT THE FACTORS THAT LED YOU TO THE CRIME, HOW YOU SEE IT NOW, AND INSIGHT AND REMORSE**
- “I take full responsibility for the crime,” is an empty statement that doesn’t really say much. Be specific, i.e.: “I killed Charley Doe.” You can admit the crime without going into the facts. But do not just give some generic statement that the panel has heard a hundred times.
- **Review all of your previous transcripts, psych reports, and any other statements you have given in the past before the hearing if you want to intelligently speak to the panel. You may need to clarify previous errors, etc.**

E. Prior Crimes/Arrests

The Commissioner will question you about any prior arrests/convictions. They use the information in the probation report and rap sheet, if available. It can be uncomfortable to look back at these mistakes, but it is necessary to have it out on the table. This is where many people minimize. Every human being minimizes. We are egotistical creatures and want to think the best of ourselves and want others to like us – it is our nature to try to sound better than we are. **YOU MUST MAXIMIZE YOUR RESPONSIBILITY** – admit all of your wrongs without candy-coating anything. If you were selfish, greedy, lazy, etc., just put it out there. The old, “I was hanging out with the wrong crowd,” is not the best explanation for your past record. You can say that you chose to hang around with other persons who, like you, were not trying to avoid trouble, etc. Another short-sighted answer is “I was young.” Okay, we are all young at one time. What made you different? Be descriptive. Were you selfish? Did not think of how your actions hurt others? Impulsive? Thought you could get over on people? Were you looking for the easy way despite how it hurt others? These are just some examples of the shortcomings of youth. Sometimes your home life and role models sent you messages that you adopted as your own and you will need to explain that.

Tips for Discussing Prior Criminal Arrests/Convictions:

- You should know your priors and what is in the record before the hearing
- Take responsibility for your behavior
- Do not minimize your behavior or try to deny or blame others
- If the priors are incorrect, explain without minimizing – documentation to support your version is helpful
- Tell the panel if you successfully completed probation or parole for the prior
- **Explain what you learned from your priors; how you have corrected the behavior**

F. Social History

The Commissioner will start with information in your Board Report and ask you about

your personal background, family, job history, etc. He/she may ask if you have any relatives in prison and whether you are in contact with your family. This is an important discussion and again – take responsibility and be humble.

Tips on Social History:

- Expect possible questions about prior marriages, relationships, job history, substance abuse, education
- If you have been married more than 2-3 times, this is a red flag. Do not make excuses where there are none.
- If you had several wives or children in prison, you should be prepared to discuss whether you have contact with any of them presently
- If you did not take care of your children – you better not gloss over that.
- If you had a sketchy job history – explain why and what you have learned
- As a human you will have to resist trying to sound better where it is not appropriate, i.e.: if your family depended on social services before you came to prison, you should take the opportunity to get real about your inability to handle a family and/or unwillingness to be responsible
- ALWAYS KNOW WHAT IS IN THE RECORD ABOUT YOUR SOCIAL HISTORY SO YOU WILL BE PREPARED – READ ALL PREVIOUS TRANSCRIPTS, PSYCH AND BOARD REPORTS, LEGAL DOCUMENTS

G. Post-Conviction Factors

The Deputy Commissioner (DC) will review your progress since the last hearing and all of your disciplinary record. If it is an initial hearing, all of your achievements will be covered. The DC will also review your most recent psychological evaluation. Listen carefully to what the Deputy Commissioner says and if you need to make a correction, advise your lawyer, but always wait until they are done talking.

THE BIGGEST ERROR I SEE IN HEARINGS IS THE “YES MAN” SYNDROME: Lifers agree with everything the Deputy Commissioner says without thinking. You should be comparing what they say to your list of achievements. Do not be too quick to agree with anything. Take a moment to think about what is being asked.

Keep the Following in Mind:

- If you have 115s, be prepared to discuss them at the hearing. Speak truthfully but do not minimize your behavior.
- Ask your attorney to read your list of self-help previous to what is covered at that hearing either after the DC is done or at the end of the hearing. Have your chronos and certificates organized in case they want to confirm what you have on your list. Note: It is best to put the self-help in the transcript in case of a writ – otherwise you have to attach it as another exhibit.
- If the psychological report is not supportive or has errors, your attorney should point out information from your notes to make corrections and explanations
- Some DC’s are not particularly polite; do not take it personal; let your attorney handle this, remain calm

- Be prepared to explain what you learned in your programs
- DC's are supposed to announce if there is confidential information in the file and whether it will be used at the hearing. Of course you and your attorney do not know what is in there. I would assume that a human being cannot NOT consider something in the confidential section of your file whether it is good or bad. If they do use it, they will put it on the tape in the absence of everyone else and it will be excluded from the transcript given to you. I object to this for due process reasons if applicable.

H. 3042 Notices

The BPH is required by law to notify the victims/their next of kin, the investigation agency, trial defense attorney, DA's office, and the judge who presided over your case of the hearing and invite them to comment on your suitability. The only parties who normally respond are the DA's office and the cops. Their letters almost always recount the facts of the crime and recommend a denial. These letters should be received 10 days in advance of the hearing and you can object if that is not the case.

- The letters from the investigation agency should be checked for accuracy and timeliness.
- It is a good idea to get a letter from your trial attorney if they have positive things to say and they are sometimes helpful to clarify inaccuracies in your record. Sometimes the judge will write a letter. Write your trial attorney about whether the judge would write a positive letter for you.
- **IF YOU JUST STARTED YOUR TERM – NOW IS THE TIME TO ASK YOUR TRIAL ATTORNEY FOR A LETTER THAT MIGHT HELP CLARIFY ANY ERRORS IN YOUR PROBATION REPORT AND SHED SOME LIGHT ON POSITIVE ASPECTS OF YOUR CASE NOT IN THE PROBATION REPORT.**

I. DA Questions

The law states that the DA can ask “clarifying questions of the panel” and comment on suitability. Most DAs behave as if they are in court and have equal say in everything, despite the law. In court they rarely get to cross-examine defendants and are trained to scrutinize everything a defendant says give the impression that the defendant is not credible. You are no match for a legally trained DA with experience in cross-examination. They are typically thrilled when they can question you “through the panel” on the crime and lapse into a cross-examination format. My philosophy is if they are asking you relevant questions that are truly an attempt to “clarify” something in the record or hearing, you should consider answering them. If they are just trying to trip you up on facts via cross-examination, the questions are not relevant and not helpful to you.

****The DA may not introduce evidence outside of the record. Your attorney must**

object to this and ask that it be stricken from the record and not considered. This is common in LA County where they keep a database on all lifer cases and add things not in the record that they read from their computer file. Though unfair, the prison allows them to bring laptops in where your attorney cannot. If the DA that did the original case is there – your attorney should ask at the beginning that the DA refrain from introducing any information not in the record.

Tips for DA Questions:

- They must present their questions through the panel
- You do not have to answer questions posed by the DA
- If your attorney knows the answer, they can provide it – again it is supposed to be an attempt to “clarify” something
- The panel may adopt one of the DA questions that you did not answer as their own, then you and your lawyer must decide if it is advantageous to answer
- You can stop answering any time you want
- Don’t take their questions personally, they are just doing their job, remain calm
- Overall, 99.9 percent of the time, the DA is not there to help you so BEWARE

J. Questions from Your Attorney

Your attorney is trying to make sure that your suitability is communicated to the panel and on the transcript. They cannot tell the panel information or raise things that are not part of your record. The attorney is not a sworn-in witness. Therefore, if there is something that is not in the record that is helpful, they will ask you. Also, they may identify areas that need to be fleshed out or glaring issues the panel may use to deny parole in the decision that you have not been asked about. The victim or their next of kin are not allowed to ask you questions. If they want to question you, discuss this with your attorney before you do anything.

K. Closing Statements

The DA

Brace yourself for a negative litany of you as the devil. Do not take this personally, the DA is doing their job to comment on suitability. Their boss is worried that if they recommend parole and you get out and hurt someone, they will lose their job. Or they just think are you not suitable and want to make sure you not released. Either way, listen to what they say respectfully – sometimes they give good advice and other times they go overboard unnecessarily.

The law suggests that they cite to the source document for the information they provide in their statement. Most do not. Listen carefully to what the DA says as sometimes they speak in error. You can respond to them and correct them in your closing. They should not be commenting on things in their personal knowledge or DA file that you have not seen. That is why it is important to know what is in your file so if they raise something that you and your attorney could not have seen the in the C-file, you can advise your attorney and she can ask to have it stricken from the record.

The DA will heavily scrutinize every statement you have ever given to attack your credibility. You may want to respond to certain aspects of their closing to clarify something. Mostly your attorney should handle this.

Your Attorney

Your attorney's closing should cover:

- Good things that are in the record and have not already been stated shared in the hearing,
- Mitigating aspects of the crime and your behavior,
- Go through the reasons why you are suitable and point out your record of remorse and insight
- Address any issues posed by the DA and attack their statement if it is negative
- Overall weave together all the positive points and point out weaknesses in any evidence against suitability
- Ask the panel to grant you parole or where appropriate, a short denial period (warning: some appointed lawyers won't do this and if you believe you are suitable, then you should promptly report them to the State Bar immediately – if your attorney is not willing to ask for parole, and you feel that you are ready for release, they have a conflict and should not be representing you)

Your Closing Statement

This is where you are supposed to tell the panel why you are suitable but that is not how to do it in reality.

You may rest on the comments of your attorney and not give a closing statement if you feel you have said all that was needed during the hearing.

- Your statement should be written in advance, however it is just a guide.
- You should not read from your written statement – but try to communicate directly. You cannot know in advance all that must be said at the end because each hearing is different.
- After a long thorough hearing where your attorney has given a solid closing, it is best to close with an apology to the victim and their family.

Tips on Closing Statement

- Know your audience and what questions they have about your dangerousness
- Do not repeat things that are already said, unless necessary
- Take your time to look over your statement and then deliver only what is left to say. **DO NOT JUST READ YOUR STATEMENT FROM THE PAPER**
- Make eye contact
- Be as brief as possible
- Do not ramble on
- Do not read a list of your accomplishments
- Address the damage you have caused and your remorse
- Summarize why you are suitable – hitting the most important issue – you are rehabilitated and no longer dangerous
- Thank the panel for their generous time and attention - they have to make a big

decision and you should appreciate the stress of their job.

L. Victims/Next of Kin Statement

The victim and/or their family may attend the hearing and give a statement after your closing in person, by video-conference, or by submitting a video in advance. There is no rule about notification to you, but if they raise something that is not in the record, your attorney can ask for a rebuttal or to continue the hearing so that you can respond to new information under the tenants of due process. Under Marsy's Law they are supposed to talk last and uninterrupted. If they get into the facts, you can ask for a rebuttal – but the Board may deny your request. The bottom line is due process. They have to follow Marsy's Law, but it still must comport with your due process. You may be relegated to arguing due process in your writ. If they are saying inaccurate and/or untruthful things about you that you can disprove, ask for a BPH investigation [the BPH has their own investigation staff] and find evidence on your own to present at the next hearing. Do not stare when they talk and do appreciate how your crime has impacted them. If you are concerned about your safety, advise your attorney. Note that objecting to their statements is at times necessary and at other times not legally required or helpful to your case. If you want to write them a letter of apology – do it through the BPH victim services unit.

M. The Decision

Panels deliberate for 5 to 60 minutes. The Commissioner reads the decision, with some assistance from the Deputy Commissioner. Look at the panel as they speak, always being polite and carefully listening. Sometimes they have good things to say and make great suggestions. The words, "You are suitable and would not pose an unreasonable risk of danger if released.." are especially nice to hear. I am happy to report that today's panel is rarely rude or verbally abusive. If they are denying parole they have to state the reasons why and sometimes you will disagree with what they say, but remain calm and quiet. Interrupting them is not a good idea. They don't like it and it should only be done in rare circumstances by your attorney. I think it best to address any errors in your writ where they cannot correct themselves. I know it can be very painful to listen to the reasons for denial when they don't seem right or you feel the panel was not fair. But if you want to get out someday, try to glean the best from the decision and stay confident. Under Marsy's Law you can be denied 3, 5, 7, 10, or 15 years. Keep your composure and smile and say thank you as you leave. DO not pretend to know the true reasons for the denial and let it turn to anger. Give them the benefit of the doubt. You don't have time to be judging others or guessing why they do things – it will not get you any closer to your goal – FREEDOM.

Part Three: **After the Hearing**

- Keep any documents you presented to the panel that are not in your C-file or sluff file to submit as exhibits if you file a writ (i.e.: letter of remorse, parole plan

- summary, etc.)
- You will receive a transcript of the hearing in about 30-45 days
 - Review your transcript for accuracy – you can write to the BPH if you suspect there is an error in the transcription and they will listen to the tape and check it out. They have to provide you a “record” of the hearing, so you can request a tape, but they may feel a transcript is sufficient.
 - Review the decision for the reasons for denial
 - Make a list of the reasons for denial, that is the starting point and basis of your writ if you believe that you are suitable and it is a starting point for improving your suitability
 - Begin working on improving problem areas for your next hearing
 - ALWAYS KEEP ALL TRANSCRIPTS – PERIOD. Send a copy home if possible. Sometimes your family can help you see the decision objectively.
 - You can petition for a hearing sooner than the decision, but only once every three years

****This handbook is a general guide and not all recommendations apply to everyone as each case is different.**

ABOUT THE AUTHOR AND HER FIRM, Rutledge & Rutledge...

Katera Estrada Rutledge is a senior partner in the law firm of *Rutledge & Rutledge*. The firm does lifer and parole revocation hearings, lifer writs, criminal court cases (including cases charged against for prisoners), criminal writs, appeals, and administrative proceedings. The firm is dedicated to zealous and effective representation.

Ms. Rutledge has done over a thousand lifer and parole hearings both appointed and privately, in front of many different panels at various prisons throughout the state. She is a graduate of the UCLA School of Law and began working for criminal defendants in death penalty appeals, criminal court cases, and administrative hearings as a law student in 1997. She formerly taught evidence, criminal procedure, criminal justice, political science, civil law, and business law at Hartnell College from 2003-2009.

“Most people do not understand the reasons for civil liberties or the power of the government until they are arrested or accused of a crime. Upholding the rights to property, freedom, and due process of law promised in our Constitution; the cornerstone of our nation is my job. Representing the incarcerated is ground zero.”

- Katera E. Rutledge

Her law partner and husband, Richard K. Rutledge, graduated first in his class at Monterey College of Law. He has worked as a police officer, deputy district attorney, college instructor, and as a court commissioner where he frequently sat as a judge. Aside from his extensive experience with criminal court cases, he too, has represented over a thousand life prisoners and parolees.

LIFER HEARING CHECKLIST

Provided by Katera Estrada Rutledge, Attorney at Law
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1. Papers You Should Have Ready For Your Attorney at the Interview:

- ✓ Parole Plans, Support Letters, Resume, Book Reports & Budget
- ✓ Letter of Remorse
- ✓ Relapse Prevention Plan (Substance Abuse and/or Crime)
- ✓ Closing Statement
- ✓ List of Self-Help, Education, Vocations, and other Achievements
- ✓ Court Orders/Decisions
- ✓ List Of Past Issues At Hearing
- ✓ Copy Of Last Hearing Transcript and Other Previous Transcripts
- ✓ Copies of 115s – Whole Document Including Hearing/any proof of 602 and Writ

2. Important Topics to Discuss with Your Attorney:

- ✓ Is a Waiver Appropriate?
- ✓ Should You Discuss the Crime; Any Problems With the Facts; Your Statement of the Facts and Any Corroboration
- ✓ Version of the Crime in the Record to Be Used at the Hearing
- ✓ Strong/Weak Areas of Your Case – Incl: Psych Eval, History of VNOKS
- ✓ Adequacy of Parole Plans, Letters
- ✓ 115s/128s – Whole Record & What You Have Done To Challenge Them or to Correct the Behavior
- ✓ What You Have Done Since Your Last Hearing

3. Parole Packet to Bring to the Hearing for the Commissioners

- ✓ Parole Plans, Support Letters, Resume, photos of residence/family
- ✓ Letter of Remorse
- ✓ Relapse Prevention Plan
- ✓ List of Self-Help, Education, Vocations, and other Achievements – NOTE THAT THE BOARD USUALLY ONLY REVIEWS WHAT YOU DID SINCE YOUR LAST HEARING – THUS YOUR ATTORNEY SHOULD HAVE A LIST OF WHAT YOU DID BEFORE TO ADD TO THE CLOSING STATEMENT.

4. Papers to Have at the Hearing for You/Attorney NEATLY ORGANIZED

- ✓ Copy of packet you gave to Commissioners
- ✓ Closing Statement
- ✓ Court Orders/Decisions
- ✓ Previous Hearing Transcripts
- ✓ Copies of 115s – Whole Document Including Hearing/any proof of 602 and Writ
- ✓ ALL OF YOUR CHRONOS, CERTIFICATES, MEMOS ORGANIZED BY TYPE OF PROGRAMS IN DATE ORDER

COMMON HEARING QUESTIONS By Katera Estrada Rutledge, Attorney at Law

1. Why did you commit this crime? (the heart of this question is how you were capable of murder or some other serious crime)
2. Did you have any other options? Why did you ignore them?
3. Where did you get the gun? (more questions about details of the weapon)
4. Why did you shoot more than once?
5. Do you or did you have anger issues? Why?
6. What have you done to address your anger or other problems?
7. What are the most important things you learned in self-help programs?
8. Have you written a letter of remorse? When?
9. What is the victim's name? What do you know about the victim?
10. Who are all the victims in your case?
11. How do you feel about what you did?
12. What has changed about you? Why/when did you decide to change for better?
13. How do we know you will not commit any more crimes if released?
14. Who visits you in prison and how often?
15. Did alcohol or drugs play a role in your crime?
16. How much did you drink or use each day (many questions about specifics of substance use)?
17. How did you support your habit?
18. Were you committing crimes to support your habit?
19. Did you ever drive while under the influence?
20. Are you an addict or alcoholic?
21. How did you get clean and sober? How do you stay clean and sober?
22. Do you have a sponsor or list of AA meetings in your area?
23. Name some steps, how you use them; which are most important to you & why?
24. Have you ever made a list of the people you harmed and made amends to anyone?
25. Who is on that list?
26. Name some of your triggers: (things that might lead you to drink or use)
27. How do you plan to cope with triggers on the outside?
28. What is your relapse prevention plan?
29. How will you stay clean and sober so that you do not reoffend?
30. Are any of your family members in prison?
31. What are your children doing and do they keep in touch with you?
32. Why did you get divorced?
33. What crimes have you done for which you did not get caught?
34. Is your sentence fair?
35. How long do you think you should have to do for this crime?
36. Did your trial attorney do a good job?
37. Did you enter this country illegally; # of times? Why don't you speak English?
38. What is an average day in prison for you?
39. What books have you read and what books are your reading now?
40. Why haven't you done any vocations or recent vocations or more self-help?
41. Why didn't you do what the last Board asked you to do?
42. Why are you suitable for parole?