

# PAROLE MATTERS.

FALL 2008 Issue



**Parole Matters.**  
In this issue, you will learn new methods for using the Board and the Courts to gain your freedom.

Going home is akin to a science. It means putting together the strongest possible appearance before the parole board along with a well-written appeal of any denial in the courts. Both strategies are a must. And in order to win, you've got to have the right information. You'll find it here in simple and detailed terms.

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# JAILHOUSE LAWYERS: HOW GOOD INTENTIONS CAN BACKFIRE.

**THE GREATEST THREAT TO YOUR FREEDOM CAN COME FROM THOSE WITH GOOD INTENTIONS WHO LACK GREAT UNDERSTANDING.**

The great U.S. Supreme Court Justice Brandeis once remarked that the worst threat to freedom can come from those with good intentions who lack great understanding. This simple sentiment applies aptly to the issue of jailhouse lawyers. While many jailhouse lawyers deserve our admiration for schooling themselves in the law and for stepping up where the licensed legal community has failed, relying on a jailhouse lawyer for your freedom and your appeal efforts can be a disaster waiting to happen. In this top 10 list of gravest jailhouse lawyer mistakes, here's why:

**1. Jailhouse lawyers try to hard to write like a lawyer. and usually fail.**

Most jailhouse lawyers try to "sound" like actual lawyers in their appeal papers when this often times makes the arguments needlessly convoluted and full of unnecessary legalese. Most judges will tell you that the less legalese the better. But most jailhouse lawyers think that in order to sound legal they need to rely on wordy legal verbiage. Any judge who reads these papers can use legal diction in a fashion far superior to any imitation, and because of this, ultimately, a judge will wonder why a prisoner petition doesn't just present the arguments in the plainest, most straight forward fashion.

**2. Jailhouse lawyers throw in the kitchen sink.**

Ninety-nine percent of jailhouse lawyers argue every conceivable claim regardless of whether it has a real chance of success. This too is a failing strategy. Actual lawyers understand that it is best to only argue those claims that can win. Otherwise, this kitchen sink approach tells the judge that all of your claims are lacking because you've given the appearance that you've thrown everything at the wall to see what sticks.

**3. Jailhouse lawyers recycle too often.**

Even though recycling is generally considered a good thing, in law, over-relying on other appeals as a template for your own can be dangerous. First, a judge can usually tell if large portions of a legal brief are stolen/taken/recycled from other briefs, and this will often lose the attention of the court. Second, this recycling often means that

while you are complaining of a lack of individualized consideration of your parole suitability, you are giving your appeal that same treatment, by not giving your appeal that same tailoring and unique review.

**4. Jailhouse lawyers don't always know how to apply law to your facts.**

One of the hardest tasks of lawyering - even for a highly skilled lawyer -- is to apply the rule of law to a particular set of facts. All too often bad lawyers and jailhouse lawyers will simply place the law and the facts next to each other in the same paragraph without ever *applying* the law to those facts. The real art of lawyering -- which can often take years to refine -- is this application of law to fact.

**5. Jailhouse lawyers don't know how to read case law.**

Too often, I see jailhouse lawyers take an excerpt here and another there from a few cases and think that because the language comes from a case that they've just cited the law. Nope. Real understanding into how to cite the rule of law or the holding of a case is what the entire first year of law school is all about. It takes a trained aptitude, not cutting and pasting from cases to learn.

**6. Jailhouse lawyers forget that the weight of law comes from statutes, not cases.**

The bulk of the law now a days is embodied in statute (complex laws written by regulators or legislators) rather than case law from court decisions. Hence, any lawyer worth his or her salt needs to understand, interpret, and apply statutes with arguably better faculty than judge made case law from the courts. Jailhouse lawyers may not be up to this task.

**7. Jailhouse lawyers can often screw-up a statute of limitations.**

Yep, lawyers hate them too -- those nasty statute of limitations that tell you there is no time left of your clock to file your case. By definition, statute of limitations are tricky devices designed to slam the court house door in your unsuspecting face. You

When you can, turn to a licensed attorney, not a jailhouse lawyer. Here's why.

need a lawyer who understand how these ticking bombs work and how to navigate around them.

**8. Jailhouse lawyers are limited by prison law libraries.**

Through no fault of their own, jailhouse lawyers are often limited and hampered by incomplete prison law libraries which never have the most recent published -- and more importantly unpublished -- court decisions which may make the difference between going home and staying put.

**9. Jailhouse lawyers may place your case in peril on procedural issues alone.**

Many prisoner cases - whether they are Section 1983 civil rights suits or federal habeas appeals -- are won and more importantly *lost* on purely procedural grounds. This means that the government loves to get your case dismissed without the court ever actually considering the merit of your claims because of some procedural gaffe that you may have unintentionally committed.

**10. Jailhouse lawyers haven't been down this road before and don't have navigation tools.**

Great lawyering requires experience and resources. Jailhouse lawyers often have neither. Jailhouse lawyers haven't litigated cases to completion and in all their complex glory. So, often, they can't predict what's coming. Plus, jailhouse lawyers don't have the resources -- whether it's money, research, or logistical support -- to properly support a full court press.

**The final word:**

Don't mistake this advice as simply bashing jailhouse lawyers who can on occasion surpass the skills of a disinterested and untested lawyer. Jailhouse lawyers are often just fellow prisoners who devote their time, attention, and care to helping others who are locked-up. But give yourself a reality check. Jailhouse lawyers are no substitute for the skills and resources of a licensed, thoughtful attorney especially when you life depends on it.

**RECENT PAROLE CASES YOU MUST KNOW ABOUT.**

As you may know by now if you are a regular reader of Parole Matters, we keep you informed on the latest, greatest, and worst state and federal parole cases. And rather than giving you more than what you need or can understand, Parole Matters presents the cases as they are viewed by the courts, lawyers and judges.

On these pages appear the list of the most recent parole case you need along with the actual importance of the case identified.

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

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

## BEFORE THE BOARD: What Is A Nexus? And Why You Must Ask For One Between Your Crime and Your *Present Risk to Public Safety*.

According to the dictionary, a “nexus” is defined as \_\_\_\_\_. In plain English, it means a connection. To you, it could mean setting the Board up for your appeal should they deny your parole.

Recent California Supreme Court decisions -- In re Lawrence CITE and In re Shaputis CITE -- have affirmed the requirement that the Board cite a connection between those unchanging, static or “immutable” characteristics about your case to your *present* risk to public safety. This means that if the Board is relying upon those things in your past that you can not change such as, most notably, your life crime, your prior offenses or your supposedly unstable social history, these factors can only act as the basis for a parole denial IF the Board can connect -- i.e. finding a nexus -- these unchanging characteristics to a present dangerousness or threat to public safety. And while the law is now clear on this issue, the Board is expectedly not. As reported in the pages of Parole Matters, parole commissioners receive literally no training on the changing legal landscape that governs their decisions. In other words, don’t expect parole commissioners to either understand or know the law. They are paid to know corrections and presumably something about recidivism. But they often do not know or understand the legal authority that they must follow.

Here’s where you and your parole attorney come in. Before the Board breaks for its deliberation of your parole decision, respectfully ask the Board commissioners -- preferably through your attorney -- “What is the nexus or connections between any unchanging case factor in my case -- especially my life crime -- that speak to my present risk to public safety. Ask the Board to cite in their decision what the Board believes is the connection between your unchanging case factors, like your crime, and your current risk to public safety. Ask them to nail this down should they deny your parole in their decision. Ask

them to be as specific as possible.

The Board will respond in one of two ways. Either response is of benefit to you. One possibility is that they ignore this request because they don’t fully understand it. If they ignore the request, your appeal is strengthened. You asked for the nexus between the unchanging case factors and your present risk to public safety and the response was deafening silence. Your appeal can tell the judge -- “Hey, I explicitly asked for the connection between my life crime and my supposed current risk to public safety and the Board had no response.” In your appeal efforts, you can use the Board’s inability to cite a reason to underscore that a connection no longer exists between those unchanging factors and your risk to public safety.

And, of course, if the Board does attempt to cite a nexus, here too you can take this reasoning and challenge it, whatever the logic. If the thinking is flawed or arbitrary, at least now the Board have committed themselves to defending the connection. At least now, you have on appeal and at any future hearings, a better understanding of why the Board believes your unchanging factors evidence your present risk to public safety. Now, at least, you are dealing with a known quantity.

Remember, ask for it by name -- “What is now the the *nexus* between my life crime and why I continue to pose a present risk to public safety?” Regardless of the answer, you are likely to benefit.

**Navigate Your Appeal.**

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

The next issue will cover state and federal Habeas Appeals.

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## Getting your hearing transcript fast?

In order to avoid the usual delay of 3-6 months in getting your hearing transcript, strangely enough, the courts have ruled in \_\_\_\_\_ that the public has the right to your hearing transcript in 30 days even though you don't. Although strange, use this rule to your advantage. Immediately after the hearing, have your lawyer or family member request -- and you could even frame it as an official public records request -- for a copy of your hearing transcript from the Board. You may just get your transcript a lot sooner.

### SUBSCRIPTION?

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